

CHAPTER 12

LICENSES AND PERMITS

(with amendments through 7-9-2020)

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12.01 GENERAL PROVISIONS.

(1) **APPLICATION.** Every application for a license or permit required by this chapter shall be made upon a form furnished by the Clerk-Treasurer and verified. The appropriate license or permit fee, together with a publication fee, if any, shall be paid to the Clerk-Treasurer prior to the issuance of a license or permit. No initial license or permit fee shall be refunded unless the granting of the license or permit is denied.

(2) **LICENSE ISSUANCE.** Licenses, when granted, shall be issued by the Clerk-Treasurer and shall state the date thereof, the day from which it shall be in force, the name and place of business of the person to whom it is issued, the particular purpose and the time period for which issued, and the amount of license fee paid. The Clerk-Treasurer shall keep all such applications on file and keep a record of all licenses issued.

(3) **LICENSE TERMINATION.** Except as otherwise specifically provided, every license or permit granted under this chapter shall terminate or expire on June 30 of each year.

(4) **NO PRORATING OF FEES.** Except as otherwise specifically provided by law, no initial license or permit fee shall be prorated.

(5) **NO REFUND OF FEES.** No license or permit fee shall be refunded if a license or permit is revoked for cause.

(6) **TRANSFER OF LICENSES AND PERMITS PROHIBITED.** No license or permit may be transferred from the licensee or permittee to another person unless otherwise provided in this Chapter.

(7) **SUSPENSION AND REVOCATION OF LICENSES AND PERMITS.** Except as otherwise specifically provided, any license or permit granted under this chapter may be suspended or revoked by the Village Board for cause after giving the licensee or permittee an opportunity to be heard, as provided by law.

(8) **LICENSE CONDITIONS - NONPAYMENT OF VILLAGE TAXES, CLAIMS, AND UTILITIES.**

(a) No license shall be granted or renewed for the operation of any trade, profession, business or privilege, for which a license or permit is required by any provision of this Chapter, for operation upon any premises upon which taxes or assessments or other financial claims of the Village, or of any Village utility are delinquent and unpaid.

(b) No person who is delinquent in the payment of any taxes, assessments or other claims owed to the Village, including a forfeiture resulting from a violation of any ordinance of the Village, shall be granted or renewed any license for any trade, profession, business or privilege in the Village for which a license or permit is required by any provision of this Chapter.

12.02 INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES.

(1) INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES (STATE STATUTES ADOPTED). The provisions of ch. 125, Wis. Stats., defining and regulating the sale, procurement, dispensing and transfer of beverages, excluding provisions the violation for which results in a criminal penalty, are adopted and made a part of this section by reference. A violation of any of such provision shall constitute a violation of this section. Any future amendments, revisions or modifications of the statutory regulations in ch. 125, Wis. Stats., incorporated herein are intended to be made part of this code in order to secure to the extent legally practicable uniform statewide regulation of alcohol beverages in the State of Wisconsin.

(2) LICENSES AND FEES (AUTHORIZATION REQUIRED).

(a) When Required. No person except as provided by s. 125.06, Wis. Stats., shall within the Village of West Baraboo, 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 section. [Ref. Note: s. 125.04(1), Wis. Stats.]

(b) No owner, lessee, or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate retail license or permit. This subsection does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, campuses of private colleges, as defined in s. 16.00(3g), at the place and time an event sponsored by the private college is being held, churches, premises in a state fair park or clubs. This subsection also does not apply to the consumption of fermented malt beverages on commercial quadricycles except in municipalities that have adopted ordinances under s. 125.10(5)(a).

(c) Separate License Required for Each Place of Sale. A license shall be required for each location or premises where intoxicating liquor or fermented malt beverages are stored, sold, or offered for sale.

(d) Fees. There shall be a fee for each type of license issued. The fee shall be as set forth in the Official Village Fee Schedule. Except for temporary licenses, the full license fee for retail alcohol licenses issued for less than one year shall be prorated according to the number of months or fraction thereof for which the license is issued. There is no fee for a "Class A" license if the license is limited to the sale of cider.

(Amended 12/14/2017; Ord. 17-07)

(3) CLASSES OF LICENSES AND FEES. The Village shall have the following classes of licenses as provided in ss. 125.17, 125.25, 125.26, 125.28, 125.51 and 125.57, Wis. Stats.

(a) Retail Class "A" Fermented Malt Beverage License. Class "A" licensees may sell beer and other fermented malt beverages for consumption in original packages or containers for off-premises consumption only. [Ref. Note: s. 125.25]

(b) Retail Class "B" Fermented Malt Beverage License. Class "B" licensees may sell beer to consumers for on-premises or off-premises consumption. [Ref. Note: s. 125.26]

(c) Temporary Class "B" (picnic) License. Temporary Class "B" licensees may sell beer and other fermented malt beverages to consumers at a picnic or similar gathering of limited duration. Such licenses may be issued to bona fide clubs and chambers of commerce, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six months before the date of application and posts of the veterans' organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during the fair conducted by the fair association or agricultural society. [Ref. Note: s. 125.26(6)]

(d) Retail "Class A" Liquor License. "Class A" licensees may sell intoxicating liquor to consumers only in original packages or containers for off-premises consumption [Ref. Note: s. 125.51(2)]

(e) Retail "Class B" Liquor License. "Class B" licensees may sell intoxicating liquor to be consumed by the glass only on the premises where sold and also in the original package or container, in multiples not to exceed four liters at any one time, and to be consumed off the premises where sold. [Ref. Note: s. 125.51(3)(e)]

1. Sale of wine by the bottle in restaurants. “Class B” licensees may sell wine in an opened original bottle, in a quantity not to exceed one bottle, for consumption both on and off the premises where sold if all of the following apply: (a) the licensed premises is a restaurant also operated under a “Class B” license, (b) the purchaser of the wine orders food to be consumed on the licensed premises, (c) the licensee provides a dated receipt that identifies the purchase of the food and the bottle of wine, (d) prior to being taken off the licensed premises, the cork is reinserted into the bottle to the point where the top of the cork is even with the top of the bottle and (e) the cork is reinserted at a time when sales of wine are allowed.

(f) Reserve “Class B” Liquor License. Reserve “Class B” licenses are those licenses subject to a quota pursuant to s. 125.51(4). [Ref. Note: s. 125.51(4)]

(g) Temporary “Class B” (picnic) Wine License. Temporary “Class B” licensees may sell wine in an original package, container, or bottle or by the glass if the wine is dispensed directly from an original package, container, or bottle at a particular picnic or similar gathering of limited duration. Such licenses may be issued to bona fide clubs and chambers of commerce, or county or local fair associations or agricultural societies, to churches, lodges, or societies that have been in existence for at least six months before the date of the application, and to posts of veterans’ organizations, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. [Ref. Note: s. 125.51(10)].

(h) Provisional Retail Licenses. [Ref. Note: s. 125.185]

1. Provisional licenses may be issued by the Village Clerk to persons who have applied for any of the retail licenses listed above, and who meet the qualifications of s. 125.04(5), Wis. Stats. The Clerk may revoke the license if he or she discovers that the holder of the license made a false statement on the application. (Amended 4/12/2018; Ord. 18-04)

2. Such licenses only authorize the activities that the type of retail license applied for authorizes. No person may hold more than one provisional license per year for each type of license applied for by the holder. A provisional license expires 60 days after issuance or upon issuance of the regular retail license, whichever is sooner.

3. No provisional “Class B” license may be issued if the municipality’s quota under s. 125.51(4), Wis. Stats., prohibits the municipality from issuing a “Class B” license.

(i) Operators' Licenses. [Ref. Note: s. 125.17]

1. The Village Board shall issue an operator's license to any applicant who is qualified under s. 125.04(5), Wis. Stats. An operator's license is only required for the purposes of complying with ss. 125.32(2), 125.68(2) or 125.06(3g), Wis. Stats. Operators' licenses may be issued only on written application on forms provided by the Village Clerk. Operators' licenses shall be valid for a maximum period of one year and shall expire on June 30th of each year.

2. Provisional Operator's Licenses. [Ref. Note: s. 125.17(5)]
(Amended 4/12/2018; Ord. 18-04)

a. Issuance. The Village Clerk shall issue provisional operator's licenses to individuals who: have applied for a regular operator's license, are at least 18 years of age, are enrolled in or have completed a beverage server training course, do not have an arrest or conviction record as set out in s. 125.04(5)(a), Wis. Stats., have not been denied an operator's license by another municipality and have paid the applicable fee. In addition, the Village Clerk shall issue an operator's license to a person who has applied for a regular operator's permit and, at the time of the application and payment of the fee, files a certified copy of a valid operator's license issued by another municipality.

b. A provisional license expires 60 days after issuance or when a regular operator's license is issued, whichever is sooner. A provisional license will also expire upon the expiration of an operator's license issued by another municipality that is submitted as part of the provisional license application (see section 12.02(3)(i)2.a, above).

c. Revocation. The Village President may revoke the license if he or she discovers that the holder of the license made a false statement on the application, or if the Village President determines that the operator's license issued by another municipality and filed with the application is not valid or upon denial of the person's application for an operator's license under sub. (1).

3. Temporary Operator's Licenses. [Ref Note: s. 125.17(4)] The Village Board may issue temporary operator's licenses to individuals

employed by or donating their services to nonprofit corporations provided that no person may hold more than 2 temporary licenses per year and each license is valid for no more than 14 days.

(Amended 12/14/2017; Ord. 17-07)

(4) LICENSE APPLICATION AND ISSUANCE

(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 State Department of Revenue, or, in the case of operators' licenses, on forms prescribed by the Village of West Baraboo, and filed with the Village Clerk. 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 where not separated by a solid wall.

(b) Application to be Notarized. Applications shall be signed and sworn to by the applicant as provided by s. 887.01, Wis. Stats.

(c) Duplicate. Upon approval, a duplicate copy of each application shall be forwarded by the Village Clerk to the State Department of Revenue.

(d) All licenses shall be issued by the Village Board and signed by the Village Clerk, except for provisional operator's licenses and provisional retail licenses, which shall be issued and signed by the Village Clerk. (Amended 4/12/2018; Ord. 18-04)

(Amended 12/14/2017; Ord. 17-07)

(5) LICENSE RESTRICTIONS. [Ref. Note: s. 125.51, Wis. Stats.]

(a) Statutory Requirements. Licenses shall be issued only to persons eligible therefor under ss. 125.04 and 125.33(3)(b), Wis. Stats. In addition, no license of any type described in this chapter shall be issued to any person or persons who is not satisfactory to the Village Board with respect to character, record and reputation.

(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 feet from the main entrance of any established public school, parochial school, hospital, or

church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church, or hospital to the main entrance to the premises covered by the license.

2. The foregoing s. 12.05(b)(1) 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 feet thereof by any school building, hospital buildings, or church building.

(c) Violators of Liquor or Beer Laws or Ordinances. No retail license referred to in this chapter 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 chapter during one year prior to such application. The 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" or "Class B" license shall be issued for any premises which do 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 Agriculture, Trade and Consumer Protection applicable to restaurants and to all ordinances and regulations adopted by the Village of West Baraboo. (Amended 12/14/2017; Ord. 17-07).

(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 s. 125.51(4), Wis. Stats.

(f) Corporations. No license shall be granted to any corporation when more than 50% of the voting stock interest, legal interest, or beneficial interest is held by any person or persons not eligible for a license under this section.

(g) Age Requirement. No license under this chapter shall be granted to any person under 18 years of age. (Amended 12/14/2017; Ord. 17-07)

(h) Effect of Revocation of License. Whenever any license has been revoked, at least six (6) months from the time of such revocation shall elapse before another license shall be granted for the same premises and twelve (12) months shall elapse before another license shall be granted to the person whose license was revoked.

(i) Delinquent Local and State Taxes, Assessments, and Claims. No license shall be granted or renewed under this chapter or under ch. 125, Wis. Stats., for any premises for which taxes, assessments, or other claims of the Village of West Baraboo are delinquent and unpaid, or to any person delinquent in payment of any taxes, assessments or other claims owed to the Village of West Baraboo, or any person delinquent in payment of a forfeiture resulting from a violation of any ordinance of the Village of West Baraboo, or any person delinquent in payment to the State of Wisconsin of any state taxes owed.

(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.

(6) FORM AND EXPIRATION OF LICENSES. All licenses shall state clearly the specific premises for which granted, the date of the issuance, the fee paid, and the name of the licensee and, unless sooner revoked, shall expire on June 30th thereafter except as otherwise provided. The Village Clerk shall affix his or her affidavit to the license as required by s. 125.04(4), Wis. Stats.

(7) TRANSFER OF LICENSES.

(a) Person to Person. No license shall be transferable by a licensee except as provided by s. 125.04(12), Wis. Stats.

(b) Place to Place. Licenses issued pursuant to this section may be transferred from place to place as provided by s.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.

(8) POSTING AND CARE OF LICENSE. Every license or permit required under this chapter shall be framed and posted and at all times displayed as provided in s. 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, or remove the same without permission of the license holder. Whenever a license shall be lost or destroyed without fault on the part of the holder or his or her employees, a duplicate in lieu thereof under the original application shall be issued by the Village Clerk on satisfying himself or herself as to the facts and upon the payment of a fee of \$1.00.

(9) 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 Class "A" license, between 12:00 a.m. and 6:00 a.m. on all days of the week. (Amended Resolution 17-06, 5-11-17)

(b) If a "Class A" license, between 9:00 p.m. and 6:00 a.m. on all days of the week. (Amended Resolution 17-06, 5-11-17)

(c) If a retail Class "B" or "Class B" license, between 1:00 a.m. and 8:00 a.m. on all days, except during that portion of each year when the standard of time is advanced under s. 175.095, Wis. Stats., when the closing hours shall be between 2:00 a.m. and 8:00 a.m. on all days and except on January 1 of each year when the closing hour shall be between 3:00 a.m. and 8:00 a.m. Between 12:00 a.m. and 8:00 a.m. on all days of the week, no person may sell fermented malt beverages on Class "B" licensed premises in the original unopened package, container or bottle or for consumption away from the premises.

(d) Hotels and restaurants the principal business of which is the furnishing of food or lodging to patrons, and bowling alleys and golf courses, may remain open for the conduct of their regular business, but no intoxicating liquors or fermented malt beverages shall be sold during prohibited hours.

(Amended 12/14/2017; Ord. 17-07)

(10) REVOCATION AND SUSPENSION OF LICENSES.

(a) Procedure. Whenever the holder of any license under this chapter violates any portion of this chapter, proceedings for the revocation or suspension of such license may be instituted in the manner and under the procedure established by s. 125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.

(b) Automatic Revocation.

1. Any license issued under the provisions of this chapter shall stand revoked without further proceedings on the conviction of a licensee or employee, agent or representative thereof for a second offense under this chapter or for a violation of ch. 125, Wis. Stats., and ch. 139, Wis. Stats., or any other state or federal liquor or fermented malt beverage laws.

2. Cessation of Operations. If any licensee shall suspend or cease doing business for six consecutive months or more, his Class B

intoxicating liquor license and fermented malt beverage license shall be subject to revocation by the Board after a public hearing. The Board may, for good cause shown, extend such six month period.

(c) Effect of Revocation. The effect of a revocation under this section shall be the same as set forth in s. 12.05(h) of this Ordinance.

(11) NONRENEWAL OF LICENSES. Before renewal of any license issued under this chapter 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 Village Board.

(12) LICENSEE ACCOUNTABLE FOR VIOLATIONS BY AGENTS AND EMPLOYEES. A violation of this chapter by an authorized agent or employee of a licensee shall constitute a violation by the licensee. [Ref. Note: s. 125.12(3), Wis. Stats.]

(13) ADDITIONAL CONDITIONS: ADDITIONAL CONDITIONS, REGULATIONS AND PROHIBITIONS. In addition to all other conditions of these ordinances and subject to all other ordinances and regulations of the Village of West Baraboo applicable thereto, all classes of licenses granted, issued, or renewed hereunder shall be granted, issued, or renewed subject to the following conditions, regulations, and prohibitions:

(a) Consent to Entry, Search and Seizure. Every applicant procuring a license consents to the entry of police or other duly authorized representatives of the Village of West Baraboo at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of city ordinances or state law, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.

(b) Unobstructed View; Maximum Height of Booth Backrests Restricted. The windows and doors of all premises on which a "Class B" or Class "B" liquor license is held, shall be unobstructed by screens, partitions, blinds, plants, curtains, shades, advertising material, paint, or other articles or substances and shall be kept in such condition at all times so as to permit a clear and unobstructed view of all of the interior of said premises from the outside. Backrests of booths shall not exceed a maximum height of 30 inches from the seat to the top of the booth.

(c) Proper Lighting. All licensed premises shall be at all times, when opened to the public, clearly and sufficiently lighted by proper illuminating fixtures.

(d) Band Music One Hour Before Closing Prohibited. It shall be unlawful for the owner, licensee, or operator of any premises licensed under this section to furnish or have on said premises any orchestra or persons playing musical instruments for the purpose of dancing later than one hour before the official closing time for said licensed premises.

(e) Obscene Entertainment Prohibited. No retail licensee for on-premises consumption shall allow or permit any person to appear on licensed premises in such manner or attire as to expose to view any portion of the buttocks, anus, pubic area, vulva, or genitals, or any simulation thereof, nor allow or permit any female, transsexual, or transvestite to appear on licensed premises in such manner or attire as to expose to view any portion of the breast below the top of the aureole, or any simulation thereof, nor allow or permit any act or acts which simulate sexual intercourse, masturbation, sodomy, flagellation, erotic touching, bestiality, oral copulation or any sexual acts prohibited by Wisconsin Statutes.

(f) Loud Noise Prohibited.

1. It shall be unlawful for any licensee or operator of any premises licensed under this chapter or ch. 125, Wis. Stats., to permit or allow the use or operation of sound amplifying equipment on the licensed premises in such manner that the sound emanating from said equipment through any open window, open doorway, or other opening of the licensed premises is unreasonably loud so as to disturb the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

2. In this section, "sound amplifying equipment" shall mean any machine or device for any amplification of the human voice, music, or any other sound.

(g) Premises to be Promptly Vacated at Closing Hour. No alcohol beverage shall be sold or consumed upon any licensed premises after the official closing hour for said licensed premises, and said premises shall be promptly vacated at such closing hour by all persons except the owner and regular employees of the licensed premises, except that licensed premises, whose principle business is the furnishing of some other commodity or services, may remain open during such closing periods solely for the furnishing of such other commodity or

services, provided that all intoxicating liquor contained in such premises be placed in padlocked cases promptly at the closing hour and be kept padlocked during official closed hours.

(14) SELLING AND SERVING ALCOHOL BEVERAGES WHILE INTOXICATED PROHIBITED

(a) Prohibition. It shall be unlawful for a licensee or an agent or employee of the licensee to be under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination thereof while engaged in any of the following activities: tending bar, serving or selling alcohol beverages to customers, verifying the ages of customers, or supervising employees who are engaged in any of these activities. For purposes of this subsection 12.02(14), “under the influence” means not only all the well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging in any degree in alcohol beverages and which tends to deprive a person of the clearness of intellect and control of himself or herself which he or she would otherwise possess.

(b) Presumption. A test of the person’s breath, blood, or urine, including a preliminary breath test, that shows the person has an alcohol concentration of .08 or more is prima facie evidence that he or she is under the influence. Law enforcement officials may request a preliminary breath test upon reasonable suspicion of violation of this subsection 12.02(14). Refusal by a licensee, agent, or employee to submit to a requested test may be considered by the Village Board as grounds for revocation, suspension, non-issuance, or non-renewal of any license granted to that person under section 12.02 of this Code.

(c) Penalty. Any person violating this subsection 12.02(14) shall be subject to a penalty as provided in sec. 25.04 of this Code. In addition, the licensee of a licensed premises where an agent or employee of the licensee is found guilty of a violation of this subsection shall be subject to a forfeiture of \$100.00 per violation.

(Adopted 7/12/2018; Ord. 18-07) [Former sections (14) – (16) amended and relocated to section 9.17 on 12/14/2017; Ord. 17-07]

(17) PENALTIES. Any person who violates any provision of this chapter for which a specific penalty is not provided, shall forfeit not more than \$500.00 and pay the costs of prosecution. Any license or permit issued to a person under this chapter may be revoked or suspended by the Court.

12.03 CIGARETTE RETAILER'S LICENSE.

(1) LICENSE REQUIRED. No person shall sell cigarettes in the Village without first obtaining a license from the Clerk-Treasurer. The provisions of S. 134.65, Wis. Stats., are hereby adopted and made a part of this section by reference.

(2) LICENSE FEE. The license fee shall be \$5 per year.

12.04 REGULATION AND LICENSING OF DIRECT SELLERS AND SOLICITORS.

(1) REGISTRATION REQUIRED. It shall be unlawful for any direct seller or solicitor to engage in direct sales or solicitations within the Village without being registered and licensed for that purpose as provided herein.

(2) DEFINITIONS. In this section, the terms used shall be defined as follows:

(a) Direct Seller. Any person who sells goods or services or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of said person and shall include, but not be limited to, peddlers, solicitors and transient merchants. For purposes of this section, the acceptance of a "donation" in exchange for goods, or an order for goods, shall be deemed an act requiring compliance with all of the regulatory provisions of this section, including registration and the posting of a bond.

(b) Permanent Merchant. A direct seller who, for at least one year prior to the consideration of the application of this section to said merchant, has continuously operated an established place of business in the Village or has continuously resided in the Village 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, but shall not include religious organizations.

(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 the regular course of business.
- (e) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis and in which the buyer has initiated contact with and specifically requested a home visit by said person.
- (f) Any person who has had, or one who represents a company which has had, a prior business transaction such as a prior sale or credit arrangement on other than a one-time basis with the prospective customer.
- (g) Any person selling, or offering for sale, a service not connected with the sale or offering for sale of goods.
- (h) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- (i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the Clerk-Treasurer proof that such charitable organization is registered under S. 440.41, Wis. Stats. However, any charitable organization not registered under S. 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-Treasurer that such person is a transient merchant, provided that there is submitted to the Clerk-Treasurer 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 this Village for at least one year prior to the date complaint was made.
- (k) Any religious organization having tax exempt status under S. 401(c)(3) of the United States Internal Revenue Code upon submitting proof thereof to the Clerk-Treasurer.

(4) REGISTRATION OR LICENSING.

(a) Applicants for registration or licensing must complete and return to the Clerk-Treasurer a form furnished by the Clerk-Treasurer.

(b) Applicants shall present to the Clerk-Treasurer for examination:

1. A driver's license or some proof of identity as may be reasonably required by the Clerk-Treasurer.

2. A State certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by State authorities.

3. A State health officer's certificate where applicant's business involves the handling of food or clothing, and is required to be certified under State law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.

4. Proof of insurance from the event organizer for liability, products liability, property damages and injuries, including injury resulting in death, caused by the operation of any multi-vendor event held involving direct sellers on Village-owned property, including Village parks, which event constitutes a Village-wide enterprise or promotion of community trade as that phrase is used in Section 8.05 of the Code. The insurance must cover the activities of all vendors at the event. Such policy shall carry a minimum limit of \$1,000,000 per occurrence and the Village of West Baraboo shall be named an "additional insured." (Adopted 7/9/2020; Ord. 20-04)

(c) At the time the registration is returned, an investigation fee of \$100 shall be paid to the Clerk-Treasurer to cover the cost of processing said registration. The Clerk/Treasurer may waive this fee or require that it be paid only by the event organizer for any multi-vendor event held involving direct sellers on Village-owned property, including Village parks, which event constitutes a Village-wide enterprise or promotion of community trade as that phrase is used in section 8.05 of the Code. Religious and charitable organizations are exempt from paying said fee. The applicant shall sign a statement appointing the Clerk-Treasurer his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant in the event the applicant

cannot, after reasonable effort, be served personally. Upon payment of said fee and the signing of said statement, the Clerk-Treasurer shall register the applicant as a direct seller and date the entry. Said registration shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in sub. (5)(b) below, or forfeiture as provided in sub. (8) below. (Amended 7/9/2020; Ord. 20-04)

(5) INVESTIGATION; GRANTING OR DENIAL OF LICENSE.

(a) Upon receipt of a completed registration form, the Clerk-Treasurer shall make an investigation.

(b) The Clerk-Treasurer shall refuse to issue a license to the applicant for any of the following reasons:

1. The application contains any material omission or materially inaccurate statement.

2. The applicant was convicted of a crime, statutory violation or ordinance violation within the last 5 years, the nature of which is directly related to the applicant's fitness to engage in direct selling or solicitation.

3. The applicant failed to comply with any applicable provision of sub. (4)(b) above.

4. If as a result of the investigation required under this section, the applicant's business or character are found to be unsatisfactory, the Clerk-Treasurer shall endorse on said application his disapproval and his reasons for the same and shall notify the applicant that his application was not approved and no license will be issued.

(c) In the event the Clerk-Treasurer shall refuse to issue the applicant a license, the Clerk-Treasurer shall provide that applicant an opportunity to refute said reasons for denial of the license. After the Clerk-Treasurer has made a final determination, he shall either issue the license or provide the applicant with written reasons for refusing to issue the license.

(d) Any person denied application for a license may appeal such action by filing with the Administrative Review Appeals Board within 14 days after written notice of the denial a written statement requesting a hearing and setting forth the grounds for the appeal. The Administrative Review Appeals Board shall set a time and place for the hearing. Written notice of the time and place of the

hearing shall be given to the applicant at least 24 hours prior to the time set for the hearing.

(6) REGULATION OF DIRECT SELLERS.

(a) Prohibited Practices.

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

2. A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A charitable or religious organization direct seller shall specifically disclose what portion of the free donation or the sale price of goods being offered will actually be used for the charitable or religious purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the goods.

3. No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.

4. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one hundred foot radius of the source.

5. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.

(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 any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit of more than \$25, or is a cash transaction, in accordance with the procedure as set forth in S. 423.203, Wis. Stats., and 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 S. 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.

4. The provisions of (6)(b)1. and 2. shall not apply to any multi-vendor event involving direct sellers on Village-owned property, including Village parks, which event constitutes a Village-wide enterprise or promotion of community trade as that phrase is used in Section 8.05 of the Code. (Adopted 7/9/2020; Ord. 20-04)

(c) Bond. Every applicant who intends to take sales orders and down payments for the later delivery of goods and services and is not a resident of Sauk County, Wisconsin, or who is such a resident and represents a business or organization whose principal place of business is located outside the State of Wisconsin, shall file with the Clerk-Treasurer a surety bond for a term of one year from the date of issuance of license, running to the Village in the amount of \$5,000 with surety acceptable to the Village Attorney, conditioned that the applicant comply with all applicable ordinances of this Village and statutes of the State of Wisconsin regulating peddlers, canvassers, solicitors and transient merchants. Such bond shall guarantee to any citizen of this Village that all money paid as a down payment will be accounted for and applied according to the representations of the seller and that the property purchased will be delivered according to the representations of the seller. Action on such bond may be brought by the person aggrieved and for whose benefit, among others, the bond is given. The surety may, pursuant to a court order, pay the face amount of the bond to the Clerk of Courts in which suit is commenced and be relieved of all further liability.

(7) RECORDS. The Clerk-Treasurer shall note any violations of this section on the record of the registrant convicted.

(8) REVOCATION OF LICENSE.

(a) Any license issued under this section may be revoked by the Village Board after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for a license, 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.

(b) Written notice of the hearing mailed to the seller at the permanent address shown on the registration at least 15 days, or 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 the hearing and a statement of the facts upon which the hearing will be based.

(9) PENALTY. Any person convicted of violating any provision of this section shall forfeit not less than \$10 nor more than \$200 for each violation plus costs of prosecution. Each violation shall constitute a separate offense.

12.05 REGULATION AND LICENSING OF DOGS.

(1) DEFINITIONS. For purposes of this section, certain words and terms are defined as follows:

(a) Owner. Any person owning, keeping or harboring a dog.

(b) Kennel. Any establishment where dogs are kept for breeding, sale or sporting purposes.

(c) At Large. Any dog shall be deemed to be at large when it is off the property of its owner and not under the control of a competent person.

(d) Restraint. A dog is under restraint within the meaning of this section if it is controlled by a leash, "at heel" beside a competent person and obedient to that person's commands, on or within a vehicle being driven or parked on the streets, or within the property limits of its owner or keeper.

(e) Spayed Female Dog. Any female dog which has been operated upon to prevent conception.

(f) Neutered Male Dog. Any male dog which has been operated upon to prevent conception.

(g) Pound. Any premises designated by the Village Board for the purpose of impounding and caring for all animals found running at large in violation of this section.

(h) Exposed to Rabies. An animal has been exposed to rabies within the meaning of this section if it has been bitten by, or comes in contact with, any animal known to have been infected with rabies.

(2) ENFORCEMENT. The Village Board shall cause the provisions of this section to be enforced.

(3) LICENSING OF DOGS.

(a) License Required. It shall be unlawful for any person in the Village to own, harbor or keep any dog more than 5 months of age without complying with the provisions of S.S. 174.05 through 174.09, Wis. Stats., relating to the listing, licensing and tagging of the same. There is hereby imposed a Village dog license tax, payable to the Clerk-Treasurer, which includes a dog license tax imposed under S. 174.05(2) and (3), Wis. Stats., in the amount of:

1. \$5 for spayed or neutered dog

2. \$8 for others

3. One-half the license tax for dogs becoming 5 months of age after July 1 per year for all dogs required to be licensed under the Wisconsin Statutes.

(b) Late Fees and Lost License Tag Fees. The Clerk-Treasurer shall assess and collect a late fee of \$5.00 from every owner of a dog 5 months of age or older if the owner failed to obtain a license prior to April 1 of each year or within thirty days of acquiring ownership of a licensable dog, or if the owner failed to obtain a license before the dog reached licensable age. In the event that a metallic license tag issued for a dog shall be lost, the owner may obtain a duplicate tag from the Clerk-Treasurer upon the payment of \$1.00.

(c) Kennel License Option. The owners of kennels may opt to pay a kennel license fee of \$75.00 for a kennel of 12 dogs or less plus \$3.00 for each dog in excess of 12 in lieu of the fees provided in (a), above and the Clerk-Treasurer

shall issue tags for each dog owned by the kennel owners. No kennel may be located in a residential district.

(d) Change of Ownership. If there is a change in ownership of a licensed dog or kennel during the license year, the new owner may have the current license transferred to his name upon the payment of a transfer fee of \$1.00.

(e) Transfer Prohibited. No person shall use for any animal a license receipt or license tag issued for another animal.

(4) RABIES VACCINATION REQUIRED. It shall be unlawful for any person to keep a dog in the Village which is over 5 months of age and has not received a rabies vaccination as required by S. 95.21(2), Wis. Stats. No dog license shall be issued until a certificate of rabies vaccination issued by a veterinarian has been presented. A rabies vaccination tag shall be attached to the collar of all licensed dogs at all times, except as provided in S. 95.21(2)(f), Wis. Stats.

(5) DOGS RUNNING AT LARGE AND UNTAGGED DOGS.

(a) Dogs Running at Large. A dog is considered to be running at large if it is off the premises of its owner and not under the restraint of the owner or some other person as defined in sub. (1)(d) above.

(b) Untagged Dog. A dog is considered to be untagged if a valid license tag is not attached to a collar which is kept on the dog whenever the dog is outdoors unless the dog is securely confined in a fenced area.

(c) Dog Subject to Impoundment. Peace officers shall attempt to capture and restrain any dog running at large and any untagged dog.

(d) Penalties. If the owner of a dog, negligently or otherwise, permits the dog to run at large or be untagged, the owner shall forfeit \$10 plus costs for the first offense, \$30 plus costs for the second offense and each subsequent offense. If the dog is unlicensed, the above penalties shall be doubled.

(6) VICIOUS DOGS PROHIBITED.

(a) No person shall harbor or keep a vicious dog within the Village. A dog is deemed to be vicious when it has attacked or bitten any person or when a propensity to attack or bite persons exists and is known or reasonably should be known to

the owner. Any vicious dog which is found off the premises of its owner may be seized by any police officer and, upon establishing to the satisfaction of a court the vicious character of such dog, may be destroyed.

(b) Notwithstanding par. (a) above, a police officer may kill or tranquilize a vicious dog if he determines that it is necessary to take such action to prevent real and immediate personal injury to any person, including himself.

(7) DUTY TO REPORT DOG BITE. Every person, including the owner or person harboring or keeping a dog, who knows that a dog has bitten any person, shall immediately report such fact to the Clerk-Treasurer, who shall inform the County Sheriff.

(8) IMPOUNDING AND DISPOSITION OF DOGS. A police officer or other person restraining a dog running at large shall take such dog and hold the same for the County Animal Control Officer.

(9) INVESTIGATION. For the purpose of discharging the duties imposed by this section and to enforce its provisions, any police officer is empowered to enter upon any premises upon which a dog is kept or harbored and to demand the exhibition by the owner of such dog or the license for such dog. It is further provided that a police officer may enter the premises where any animal is kept in a reportedly cruel or inhumane manner and demand to examine such animal and to take possession of such animal when, in his opinion, it requires removal from the premises.

(10) HOWLING DOGS. No person shall own, keep, harbor or have in his possession any dog within the Village which, by frequent or habitual howling, yelping, barking or other disturbing noise, individually or together offend the peace and quiet of persons of ordinary sensibilities, thereby causing a serious disturbance to persons or to the neighborhood. Each day that such a disturbance continues or occurs shall be a separate offense.

(11) NUMBER OF DOGS PER HOUSEHOLD LIMITED. No person, except a kennel licensee, shall own, harbor or keep more than 3 dogs that are more than 5 months of age except in a place or places where animals are impounded or restrained, as specified in this section. If a total of more than 3 dogs are owned, harbored, or kept in or by any one household, the head of the household shall be deemed the person so owning, harboring or keeping such dogs, notwithstanding that the dog license or licenses may be issued to other members of the household as owners of such animals.

(12) PENALTIES. In addition to other penalties provided in this section, the following penalties are imposed.

(a) Failure to Obtain Rabies Vaccination. A dog owner who fails to have a dog vaccinated against rabies, as provided in this section, shall, upon conviction, forfeit not less than \$50 nor more than \$100.

(b) Refusal to Comply With Quarantine Order. An owner of a dog or cat who refuses to comply with an order issued under this section to deliver the animal to a police officer, the County Pound or veterinarian, or who does not comply with the conditions of an order that the animal be quarantined, shall, upon conviction, forfeit not less than \$100 nor more than \$500.

(c) Other Penalties. Any person violating any other provision of this section shall be subject to a penalty as provided in sec. 25.04 of this Code.

12.06 JUNK DEALERS.

(1) LICENSE REQUIRED. No person within the Village shall keep, conduct or maintain any building, structure, yard or place for keeping, storing or piling in commercial quantities, whether temporarily, irregularly or continually, or for the buying or selling at retail or wholesale or dealing in any old, used or second hand materials of any kind, including cloth, rags, clothing, paper, rubbish, bottles, rubber, iron, brass, copper or other metal, furniture, used motor vehicles or the parts thereof, or other article which from its worn condition renders it practically useless for the purpose for which it was made and which is commonly classed as junk, whether with a fixed place of business or as an itinerant peddler, without first having obtained and paid for a license as hereinafter provided. One carrying on the aforesaid business shall be referred to herein as "junk dealer."

(2) EXCEPTION. No license shall be required for the storage of wrecked motor vehicles stored within service garages and filling stations or on any service garage or filling station site provided that not more than 3 wrecked vehicles may be stored on said premises at any one time for a period not exceeding 30 calendar days.

(3) APPLICATION. Application for such license shall be made to the Clerk-Treasurer on a form provided by the Clerk-Treasurer.

(4) LICENSE FEE. The license fee shall be \$25 per year or any fraction thereof, said year to commence on July 1 and end on June 30. In addition, there shall be an investigation and inspection fee of \$100 for the initial license.

(5) INSPECTION REQUIRED. The Clerk-Treasurer shall report such application to the Building Inspector, who shall inspect or cause to be inspected such premises to determine whether it complies with all laws, ordinances, rules and

regulations. Said premises and all structures thereon shall be so situated and constructed that the business of junk dealer may be carried on in a sanitary manner, shall contain no fire hazards, and shall be arranged so that thorough inspection may be made at any time by the proper health, fire and police authorities.

(6) REFERRAL TO VILLAGE BOARD. The application for an initial license shall be referred to the Village Board which may grant, grant with conditions, or deny the license.

(7) OPERATIONAL REQUIREMENTS. Each licensee shall comply with the following operational requirements:

(a) Fencing. Each junk yard shall be entirely enclosed with a cyclone-type fence or tight board fence not less than 8 feet in height. Such fence shall be built and maintained in a substantial manner and painted in a uniform color. No signs shall be posted on said fence, and any signs illegally posted shall be removed. The storage of any junk outside the fenced area is prohibited.

(b) Setback and Yard Requirements.

1. Setback. The junk yard setback for fencing shall be 100 feet from the centerline of any street or highway, except where 50% or more of the area buildings have an average setback of more or less than said 100 feet, no fence shall be constructed within the average setback line so established; provided that in no event shall the fence be constructed within 25 feet of the street or highway right of way.

2. Side Yards. The minimum side yards shall be 4 feet.

(c) Off-street Parking. The licensee shall construct 200 square feet of hard-surfaced off-street parking space and adequate access to a public street or alley.

(d) Property Maintenance. The licensee shall cut all noxious weeds and take all necessary means to exterminate rats and other vermin.

(8) REVOCATION. Upon complaint being made in writing by any resident or any official of the Village to the Village Board that any licensee hereunder has violated any of the provisions of this section, the Board shall summon such licensee to appear before it at the time specified in the summons, which shall be not less than 10 days after the date of the service thereof, to show cause why his license shall not be revoked or suspended. The Board shall thereupon proceed to hear the matter and if it finds that the

allegations of said complaint are true, may revoke or suspend the license of such person. The provisions hereunder shall not be effective unless the licensee has received notice from the Building Inspector that a complaint has been filed with the Board as to the operation of his premises and such licensee has been given a reasonable time to correct the condition complained of or to otherwise satisfy such complaint.

12.07 MOBILE HOMES AND MOBILE HOME PARKS.

(1) STATE STATUTES ADOPTED BY REFERENCE. The provisions of S. 66.058, Wis. Stats., and the definitions therein are hereby adopted by reference.

(2) PARKING OUTSIDE LICENSED MOBILE HOME PARKS RESTRICTED. No occupied mobile home shall be permitted to be located in the Village unless the same is in a licensed mobile home park, except those mobile homes legally occupied outside of a mobile home park on or before the enactment of this section, which right to occupy ceases when the present mobile home is removed from the premises.

(3) MOBILE HOME PARKS.

(a) License Required. No person shall establish or operate upon property owned or controlled by him within the Village a mobile home park without having first secured a license therefor from the Village Board.

(b) Mobile Home Park Fee. The mobile home park fee shall be \$25 per year for 50 units or fraction thereof. The transfer fee shall be \$10.

(c) Additions to Parks. Licensees of mobile home parks shall furnish information to the Clerk-Treasurer and Assessor on such homes added to their park within 5 days after their arrival on forms furnished by the Clerk-Treasurer.

(4) PARKING PERMIT FEES. There is imposed on each nonexempt mobile home located in the Village a parking permit fee, such amount to be determined in accordance with S. 66.058, Wis. Stats. The fees shall be paid to the Clerk-Treasurer on or before the 10th day of the month following the month for which they are due. It shall be the full and complete responsibility of the licensee of a mobile home park to collect such fees from each nonexempt mobile home therein and to remit such fees to the Clerk-Treasurer. Failure to do so is to be treated like a default in payment of personal property taxes and subject to all procedures and penalties applicable under Chs. 70 and 74, Wis. Stats.

12.075 GARAGE, YARD AND RUMMAGE SALES REGULATED.

(1) LICENSE REQUIRED. No person shall conduct a garage, yard or rummage sale within the Village without having obtained a license from the Village Clerk, except as provided in sub. (2) below. The license shall be obtained at least one working day before the sale and shall be prominently displayed during the sale. Before issuing the license, the Clerk shall refer the application to the Building Inspector for verification as to whether or not such sale at the proposed location is compatible with ch. 17 of this Code.

(2) EXCEPTION TO LICENSE REQUIREMENTS. No person shall be required to obtain a license if:

(a) The sale is conducted in a C-1 or M-1 district and is a permitted use in such district.

(b) The person conducts, on his own residential premises, no more than 3 sales in any one calendar year. Each sale may be held for no more than three consecutive days and shall not be conducted between the hours of 7:00 P.M. and 7:00 A.M.

(c) The sale conducted by religious, educational, charitable or civic organizations on premises located in a residential district no more than three times in any calendar year. Each such sale shall not be conducted between the hours of 7:00 P.M. and 7:00 A.M.

(3) OWNERSHIP OF MERCHANDISE. All goods for sale at a garage, yard or rummage sale shall be household goods or personal possessions from the residence where the sale is being held or, in the case of a group sale, from the residences of the participating households. In no case shall any sales become outlets for wholesale or retain commercial sales.

(4) ADVERTISING SIGNS REGULATED. Signs advertising garage, yard or rummage sales shall be subject to the following:

(a) Such signs may be free standing and shall not exceed 2 square feet in size.

(b) Such signs may be located on tree banks if:

1. The sign does not impeded or obstruct pedestrian or vehicular traffic, and

2. The explicit permission of the occupant of the property that adjoins the tree bank is obtained.

(c) Such signs shall not be located on utility poles, signposts, traffic control devices, public trees or shrubs.

(d) No more than three signs may be used for any sale and no more than one sign per yard shall be permitted, except that two signs shall be permitted on corner lots, one facing each street.

(e) Such signs may be displayed only between 7:00 A.M. and 7:00 P.M. on the date of sale and shall be promptly removed by the owner of the property where the sale was held.

(5) LICENSE FEE. The license fee shall be \$10.00 per sale.

(6) LENGTH OF SALE. Under no circumstances shall a garage, yard or rummage sale be held for more than three consecutive days or between the hours of 7:00 P.M. and 7:00 A.M.

12.08 PENALTY. In addition to the specific penalties provided in this chapter, any person who shall violate any provision of this chapter shall be subject to a penalty, as provided in sec. 25.04 of this Code. A separate offense shall be deemed committed on each day on which a violation of this chapter occurs or continues.

12.09 REGULATION OF SEXUALLY ORIENTED BUSINESSES.

WHEREAS, sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such business as well as the citizens of the communities where they locate, and

WHEREAS, the Village Board finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the village that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, Acquired Immune Deficiency Syndrome (AIDS) is a sexually transmitted disease which destroys the body's immune system, is fatal, and has no known cure and the

viral agents responsible for AIDS and other sexually transmitted diseases have all been isolated at one time or another from human semen and it has been reported that in the State of Wisconsin between 1982 and April of 1994, 1,286 persons have died from AIDS in Wisconsin and as of April, 1994 18 new deaths by AIDS in 1994 have occurred in the State of Wisconsin; and

WHEREAS, permitting and/or licensing is a legitimate means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, 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; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Village Board wants to prevent these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime, preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, 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 secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and

WHEREAS, it is not the intent of the Village Board to condone or legitimize the distribution of obscene materials, and the Board recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the Village of West Baraboo.

SECTION I. Purpose and Intent.

It is the purpose of this ordinance to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the village, and to establish reasonable and uniform regulations to prevent the deleterious

location and concentration of sexually oriented businesses within the village. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene materials.

(1) DEFINITIONS.

(a) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

(b) ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment having a substantial or significant portion of its stock in trade for sale, rent, lease, inspection or viewing any one or more of the following: books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

(c) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment that regularly or routinely features:

1. persons who appear in a state of semi-nudity; or
2. live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
3. films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas"; or

4. persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

(d) ADULT MOTEL means a hotel, motel or similar commercial establishment that offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas", and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions.

(e) ADULT MOTION PICTURE THEATER means a commercial establishment for adults where regularly or routinely, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown which have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

(f) ADULT THEATER means a theater, concert hall, auditorium or similar commercial establishment for adults that regularly or routinely features persons who appear in a state of nudity or live performances which have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or by the exposure of "specified anatomical areas".

(g) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(h) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(i) ESTABLISHMENT means and includes any of the following:

1. the opening or commencement of any sexually oriented business as a new business;

2. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

3. the additions of any sexually oriented business to any other existing sexually oriented business; or

4. the relocation of any sexually oriented business.

(j) PERMITTEE AND/OR LICENSEE means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

(k) NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(l) NUDITY or a STATE OF-NUDITY means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(m) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(n) SEMI-NUDE means a state of dress in which clothing covers no more than the human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(o) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

2. activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(p) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(q) SPECIFIED ANATOMICAL AREAS means the male genitals in a

(r) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

1. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

2. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

3. masturbation, actual or simulated; or

4. excretory functions as part of or in connection with any of the activities set forth in 1 through 4 above.

(s) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas exists on June 1, 1994.

(t) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

1. the sale, lease, or sublease of the business;

2. the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

3. the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(2) CLASSIFICATION. Sexually oriented businesses are classified as follows:

(a) adult arcades;

(b) adult bookstores or adult video stores;

(c) adult cabarets;

- (d) adult motels;
- (e) adult motion picture theaters;
- (f) adult theaters;
- (g) escort agencies;
- (h) nude model studios; and
- (i) sexual encounter centers.

(3) PERMIT AND/OR LICENSE REQUIRED.

(a) It shall be unlawful for a person to operate a sexually oriented business without a valid permit and/or license, issued by the Village Clerk.

(b) An application for a permit and/or license must be made on a form provided by the Village Clerk. The application must be accompanied by a sketch or a diagram showing the configuration 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 designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(c) The applicant must be qualified according to the provisions of this ordinance and the premises must be inspected and found to be in compliance with all Village Codes including village, fire, health, building and zoning codes.

(d) If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a permit and/or license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty (20%) percent or greater interest in the business must sign the application for a permit and/or license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a twenty (20%) percent or greater interest in the corporation must sign the application for a permit and/or license as applicant.

(e) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business permit and/or license.

(f) Applications for a permit, whether original or renewal, must be made to the Clerk by the intended operator of the enterprise. The intended operator shall be required to give the following information on the application form:

1. a. The name, street address (and mailing address if different) and Wisconsin driver's license number of the intended operator;

b. The name and street address (and mailing address if different) of the owner(s);

2. The name under which the establishment is to be operated and a general description of the services to be provided;

3. The telephone number of the establishment;

4. The address, and legal description of the tract of land on which the establishment is to be located;

5. If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the permit is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the permit is sought; and

6. If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the permit). If the expected startup date is to be more than ten (10) days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.

7. A description which shall include the date and nature of the charge and the county and state of venue for each criminal and ordinance conviction (except minor traffic convictions) and each pending criminal and ordinance charge against the intended operator and each person identified in subsection (3)(d).

(g) The application shall be accompanied by the following:

1. Payment of the application fee in full:

2. If the establishment is a Wisconsin corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

3. If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto.

4. If the establishment is a limited partnership formed under the laws of Wisconsin, a certified copy of the certificate of limited partnership, together with all amendments thereto;

5. If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;

6. Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;

7. If the persons identified as the fee owner(s) of the tract of land in item (6) are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment;

8. A photocopy of the current motor vehicle driver's license, if any, of the intended operator(s);

9. Any of items (2) through (8), above shall not be required for a renewal application if the applicant states that the documents previously furnished the Clerk with the original application or previous renewals thereof remain correct and current.

(h) The application shall contain a statement under oath that:

1. The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and,

2. The applicant has read the provisions of this Ordinance.

(i) A separate application and permit shall be required for each sexually oriented business.

4. ISSUANCE OF PERMIT AND/OR LICENSE.

(a) The Clerk shall approve the issuance of a permit and/or license to an applicant within thirty (30) days after receipt of an application unless he/she finds one or more of the following to be true:

1. An applicant is under eighteen (18) years of age.

2. An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has inaccurately answered a question or request for information on the application form.

3. The applicant has been convicted of a crime, statutory violation or ordinance violation within the previous five years, the nature of which is directly related to the applicant's fitness to engage in the operation of a sexually oriented business.

4. The premises to be used for the sexually oriented business have not been approved by the Building Inspector and Zoning Administrator as being in compliance with applicable laws and ordinances.

5. The permit and/or license fee required by this ordinance has not been paid.

6. An application of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

(b) The permit and/or license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit and/or license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(c) The Building Inspector and Zoning Administrator shall complete his certification that the premises is in compliance or not in compliance within ten (10) days of receipt of the application by the Clerk. Each certification shall be promptly delivered to the Clerk.

(d) If the Clerk determines that an applicant is not eligible for a permit and/or license, the applicant shall be given notice in writing of the reasons for the denial within forty five (45) days of the receipt of the application by the Clerk, provided that the applicant may request, in writing, that such period be extended for

an additional period of not more than ten (10) days at any time before the notice is issued in order to make modifications necessary to comply with this ordinance.

(e) An applicant denied a permit and/or license by the Clerk may appeal such decision by requesting administrative review of the decision as provided in Chapter 6 of this Code and Chapter 68 of the Wis. Stats.

(5) FEES. The annual fee for a sexually oriented business permit and/or license is Four Hundred (\$400.00) Dollars. This fee is to be used to pay for the cost of the administration and enforcement of this ordinance. The fee for partial license years shall be pro-rated on a monthly basis beginning with the first day of the month of issuance.

(6) INSPECTION. An applicant, or permittee and/or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Building and Zoning Department, or other Village or State departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(7) EXPIRATION OF PERMIT AND/OR LICENSE.

(a) Each permit and/or license shall expire June 30 of each year and may be renewed only by making application as provided in Subsection (4) hereof. Application for renewal should be made at least sixty (60) days before the expiration date, and when made less than sixty (60) days before the expiration date, the expiration of the permit and/or license will not be affected. A license renewal fee of \$400.00 shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of \$100.00 shall be assessed against any applicant who files for renewal later than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned.

(b) When the Clerk denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the Clerk finds that the basis for denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date denial became final.

(8) REVOCATIONS OR SUSPENSIONS.

(a) The Village may revoke, suspend or refuse to renew any license and/or permit to operate a sexually oriented business as provided in this subsection.

1. Any resident of the Village may file a sworn written complaint with the Village Clerk alleging that a person holding a license and/or permit to operate a sexually oriented business has violated this Code. Upon the filing of the complaint, the Village Board, or a duly authorized committee of the Village Board, shall issue a Summons, signed by the Village Clerk and directed to an approved person for service. The Summons shall command the licensee or permittee complained of to appear before the Village Board or the designated Committee on a date and place named in the Summons, not less than three days nor more than ten days from the date of issuance, and show cause why his/her/its license or permit should not be revoked or suspended. The Summons and a copy of the Complaint shall be served on the licensee or permittee at least three days before the date at which the licensee/permittee is commanded to appear. Service shall be in the manner provided under Chapter 801, Wis. Stats., for the service and civil actions in Circuit Court.

2. If the licensee or permittee does not appear as required by the Summons, the allegations of the Complaint shall be taken as true and if the Village Board or designated committee finds the allegations sufficient, the license or permit shall be revoked. The Clerk shall give notice of the revocation to the person(s) whose license is revoked within 3 days of such determination.

3. If the licensee or permittee appears as required by the Summons and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses, and be represented by Counsel. The licensee or permittee shall be provided a written transcript of the hearing at his or her expense. If the hearing is held before the Village Board and the complaint is found to be true, the license shall be either suspended for not less than 10 days nor more than 90 days, or revoked.

4. If the hearing is held before a Committee of the Board, the Committee shall submit a report to the Village Board, including Findings of Fact, Conclusions of Law and a recommendation as to what action, if any, the Village Board should take with respect to the license or permit. The Committee shall provide the complainant and the licensee or permittee with a copy of the report. Either the complainant or licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the Village Board. The Village Board shall determine whether the argument shall be presented orally or in writing or both. If the Village Board, after considering the Committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is

no objection to a report recommending suspension or revocation, the license or permit shall be suspended or revoked as provided herein.

5. The Village Board shall give notice of each suspension or revocation within 3 days of such determination to the person(s) whose license or permit is suspended or revoked.

6. If the Village Board finds the complaint untrue, the proceedings shall be dismissed without cost to the accused. If the Village Board finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The Village Board or the Committee may require the complainant to provide security for such cost before issuing a summons.

7. When a license or permit is revoked, the revocation shall be recorded by the Clerk and no other license issued under this section may be granted within 36 months of the date of revocation to the person(s) whose license or permit was revoked. No part of the fee paid for any license so revoked may be refunded.

8. The Clerk may refuse to renew a license for the causes provided in subsection 9 hereof. Prior to the time for the renewal of the license, the Clerk shall notify the licensee or permittee in writing of his/her intention not to renew the license and provide the licensee or permittee with an opportunity for a hearing. The notice shall state the reasons for the intended action. The hearing shall be conducted as provided in subsection 8 hereof. If the hearing is held before a Committee of the Village Board, the Committee shall make a report and recommendation as provided under subsection 8 and the Village Board shall follow the procedure specified under that subsection in making its determination.

9. Grounds for revocation or suspension of a permit and/or license issued under this section shall include but shall not be limited to, the following:

(a) a permittee and/or licensee gave false, inaccurate or misleading information in the material submitted during the application process;

(b) a permittee and/or licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(c) a permittee and/or licensee or an employee has knowingly allowed prostitution on the premises;

(d) a permittee and/or licensee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;

(e) a permittee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted and/or licensed premises;

(f) the owner or operator of the permitted establishment knowingly allowed a person under eighteen (18) years of age to enter an establishment; or

(g) there was a change of owner or operator for which a transfer application was not timely filed.

(h) a permittee and/or licensee violated any of the provisions of Sections 12.01(7) or (8) of this Code.

(i) Subject to s.s. 111.321, 111.322 and 111.335, Wis. Stats., the applicant, intended operator, or any of the persons identified in subsection (3)(d) hereof shall have been convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the person's fitness to engage in a sexually oriented business.

(b) When a permit and/or license is revoked, the revocation shall continue for three (3) years, and the permittee and/or licensee shall not be issued a sexually oriented permit and/or license for three (3) years from the date revocation became effective. If, subsequent to revocation, the Clerk finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date the revocation became effective.

(c) After denial of an application, or denial of a renewal of an application, or suspension or revocation of a permit and/or license, the applicant or licensee or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(9) TRANSFER OF PERMIT AND/OR LICENSE. A permittee and/or licensee shall not transfer his permit and/or license to another, nor shall a permittee and/or licensee operate a sexually oriented business under the authority of a permit and/or license at any place other than the address designated in the application.

(10) LOCATIONAL RESTRICTIONS. Sexually oriented businesses shall be permitted in the Commercial (C) district provided that:

(a) The sexually oriented business may not be operated within 300 feet of:

- (1) a church, synagogue or regular place of religious worship;
- (2) a public or private elementary or secondary school;
- (3) a boundary of any residential district;
- (4) a parcel used for residential purposes;
- (5) a public park;
- (6) a licensed day-care center; or

(b) All buildings used for the operation of a sexually oriented business shall be set back 75 feet from the street right-of-way.

(c) The sexually oriented business may not be operated within 1,000 feet of another sexually oriented business.

(d) For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, parcel used for residential purposes, or licensed day care center.

(e) For purposes of Subsection (c) above, the distance between any two sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(11) NON-CONFORMING USES.

(a) Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a nonconforming use. The non-conforming use will be

permitted to continue unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at a particular location is the conforming use and the later-established business(es) is non-conforming.

(b) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, or residential district within 300 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license, and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

(12) ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(b) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented permit and/or license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he/she rents or subrents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(13) REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video

cassette, or other video reproduction that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. The application shall be sworn to be true and correct by the applicant.

3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Director or his designee.

4. It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

6. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in Subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this section.

7. No viewing room may be occupied by more than one person at any time.

8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.

9. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(14) EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.

(a) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(b) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance.

(c) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

1. The establishment is a part of a commercial multi-unit center;
and

2. The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(d) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

(15) SIGNAGE.

(a) Notwithstanding any other village ordinance, code, or regulation to the contrary, it shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(b) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

- (1) not contain any flashing lights;
- (2) be a flat plane, rectangular in shape;
- (3) not exceed the dimensions for signs allowed in the zoning district where the sexually oriented business is located.

(c) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(d) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(e) Secondary signs shall have only one (1) display surface. Such display surface shall:

1. be a flat plane, rectangular in shape;
2. not exceed twenty (20) square feet in area;
3. not exceed five (5) feet in height and four (4) feet in width; and
4. be affixed or attached to any wall or door of the enterprise.

(f) The provisions of subsections (b)1 and (c) and (d) above shall also apply to secondary signs.

(16) PERSONS YOUNGER THAN EIGHTEEN PROHIBITED FROM ENTRY; ATTENDANT REQUIRED.

(a) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.

(b) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at or near each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

1. a valid operator's, commercial operator's, or chauffeur's driver's license; or
2. valid personal identification certificate issued by the State of Wisconsin reflecting that such person is eighteen (18) years of age or older.

(17) EXEMPTIONS. It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:

- (a) by a proprietary school, licensed by the State of Wisconsin; a college, junior college, or university supported entirely or partly by taxation;
- (b) by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

(18) PENALTY AND INJUNCTION. Any person who shall violate any provision of this section 12.09, or any order, rule or regulation made hereunder shall be subject to a penalty as provided in Sec. 25.04 of this Code and any person who operates or causes to be operated a sexually oriented business without a valid permit and/or license or otherwise violates this ordinance is subject to a suit for injunction as well as prosecution for criminal violations.