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CHAPTER 9

LICENSES, PERMITS & FEES

9.01 INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES

- (1) **State Statutes Adopted.** The provisions of the WI Statutes, Chapter 125 relating to the sale of intoxicating liquor and fermented malt beverages, exclusive of any provisions thereof relating to the penalty to be imposed or the punishment for violation of said statutes, are hereby adopted and made a part of this ordinance by reference.
- (2) **Licenses When Required.** No person, except as provided by subsection (1) of this section, shall distribute, vend, sell, offer or keep for sale at retail or wholesale, deal or traffic in, or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage, or cause the same to be done, without having procured a license or permit as provided in this section, nor without complying with all the provisions of this section and all statutes, ordinances and regulation of the State and Town applicable.
- (3) **Classes of Licenses; fees.** There shall be the following classes of licenses which, when issued by the Town Clerk under the authority of the Town Board, and after payment of the fee set forth in the Appendix B Fee Schedule, referenced by code section, shall permit the holder to sell, deal or traffic in intoxicating liquor and/or fermented malt beverages as provided in Chapter 125 of the WI Statutes. Sections 125.25, 125.26, 125.27, 125.28 and 125.51.

[Amended 11/28/05]

Proration of Fees. Licenses shall be granted annually and expire on June 30 each year except when a new license is issued, proration of the annual license fee is required on the basis of the number of months or fractions thereof remaining in the licensing year. §125.54(4), 125.26(4) and 125.51(9)(a).

- (a) **Class “A” fermented malt beverage retailer's license.** Licensees may sell fermented malt beverages to consumers in original packages or containers for off-premises consumption only. §125.25(4).
- (b) **Class “B” fermented malt beverage retailer's license.** Licensees may sell fermented malt beverages to consumers for on-premises or off-premises consumption. The annual license fee shall be determined by the municipality, but may not exceed \$100 per year.

A six-month Class “B” license may be issued for a period of 6 months in any calendar year which runs from Jan. 1 to Dec. 31 and is thus

different from a license year which runs from July 1 to June 30. The fee for a six-month license is half of the annual license fee - §125.26(5). Such licenses are not renewable during the calendar year in which issued. A six-month license issued from Jan. 1 through June 30 or for the balance of the year would not prohibit the applicant from obtaining an annual license as of July 1 of that same year. *[Added 11/28/05]*

- (c) **Temporary Class “B” retailer's license to sell fermented malt beverages** at picnics or gatherings– The amount of the fee shall be determined by the municipality, but may not exceed \$10.00 per application. Required filing of application with Town Clerk at least 15 days prior to granting of each temporary license, and requires applicant to have been in existence six months prior to date of application. (Sections 125.26(6) and 125.04(3)(f))

Temporary "Class B" retailer's license to sell wine containing not more than 6% alcohol by volume at picnics or gatherings – The amount of the fee shall be determined by the municipality, but may not exceed \$10.00 per application except that no fee may be charged to a person who at the same time applies for a temporary Class “B” fermented malt beverage license (above) for the same event - §125.51(10). Requires filing of an application with Town Clerk at least 15 days prior to granting of each temporary license, and requires applicant to have been in existence six months prior to date of application. (Section 125.51(10) and 125.04(3)(f).) Not more than two (2) licenses may be issued under this subsection in any twelve (12) month period. Background checks may be waived by the Town Clerk.

- (d) **“Class A” intoxicating liquor retailer’s license.** Licensees may sell intoxicating liquor to consumers only in original packages or containers for off-premises consumption. Wine taste samples are allowed of not more than 3 fl. oz. each, free of charge, to customers and visitors for consumption on the premises only between the hours of 10 a.m. and 6 p.m. No licensee may provide more than 2 taste samples per day to any one person. §125.06(13)(a). Fee may not exceed \$500. §125.51(2)
- (e) **“Class B” intoxicating liquor retailer’s license.** Licensees may sell intoxicating liquor to consumer by the glass for on-premises consumption. However, wine may be sold for consumption off-premises in the original package or container in any quantity.

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- (f) **Class A beer/liquor license.** *[Amended 4/7/08]*
Restrictions on dispensing. Class “A” premises may remain open for the conduct of their regular business but may not sell, dispense or give away fermented malt beverages between 12:00 midnight and 8 a.m.

No premises for which a “Class A” license or permit has been issued may remain open for the sale of intoxicating liquor between the hours of 9 p.m. and 8 a.m.

- (g) **Class B beer/liquor license.** *[Amended 4/7/08]*
Restrictions on dispensing. Between 12:00 midnight and 6 a.m. no person may sell, dispense or give away fermented malt beverages or intoxicating liquor on a Class “B” licensed premises in an original unopened package, container or bottle or for consumption away from the premises.

- (h) **Reserve “Class B” license.** *[Created 1/28/02]*
Licenses available under the quota system which existed before December 1, 1997 and were not granted or issued by the municipality as of December 1, 1997. The number of reserve “Class B” licenses available to a municipality is determined by a series of calculations described in Sections 125.51(4)(br)(1) and 125.51(4)(a)(4)(v)(1),(2) of the WI Statutes.

Two exceptions: if a municipality has granted or issued a number of licenses equal to or exceeding its quota, the municipal governing body may issue a license for any of the following:

A full-service restaurant that has a seating capacity of 300 or more persons;

A hotel that has 50 or more rooms of sleeping accommodations and that has either an attached restaurant with a seating capacity of 150 or more persons, or a banquet room in which banquets attended by 400 or more persons may be held.

- (1) On December 1, 1997, pursuant to §Sec. 125.51(4)(bm), the Town of Menasha consisted of 15,287 residents thus allowing the Town Clerk to issue 14 regular non-reserve “Class B” liquor licenses.
- (2) Initial Retail Reserve “Class B” License Fee. *[Amended 7/12/04]*

There shall be an initial fee set forth in the Appendix B Fee Schedule, reference this code section, to be paid in addition to the regular liquor license fee.

- (i) **Temporary Operator's License.** The Town Clerk or designee may issue a temporary operator's license subject to the following conditions: *[Amended 6/27/05]*

- (1) A written application shall be filed with the Town Clerk giving the name, residence, age and gender of the applicant, together with other such pertinent information as to determine whether applicant has a satisfactory background check.
- (2) At the time of application, the applicant shall pay to the Town Treasurer a fee in the amount of five dollars (\$5.00). *[Effective 1/1/96]*
- (3) A temporary operator's license shall be valid for fourteen (14) days and shall be issued only to operators employed by, or donating their services to, holders of Special Class “B” license pursuant to Section 9.01 (3)(c) of this code.
- (4) No person may hold more than one temporary license per calendar year.

Completion of a mandatory alcohol server training program is not required to obtain a temporary license.

- (j) **Retail "Class C" wine license.** Authorizes retail sale of wine by the glass, or in an opened original container for consumption on premises. License may be issued to a person qualified for a restaurant in which the sale of alcohol beverages accounts for less than 50% of gross receipts and which does not have a barroom, or, for a restaurant in which the sale of alcohol beverages accounts for less than 50% for gross receipts and which has a barroom in which wine is the only intoxicating liquor sold. Fees stated in the Appendix B Fee Schedule, reference this code section. Section 125.51(3m). *[Amended 11/28/05]*

- (k) **Provisional Retail Licenses.** *[Added 4/7/08]*
There shall be an initial fee determined by the municipality and set forth in the Appendix B Fee Schedule, reference this code section, to be paid in addition to the regular liquor license fee and may not exceed \$15.00.

- (1) A provisional retail license may be issued by the Town Clerk only to a person who has applied for a Class “A”, Class “B”, “Class A”, “Class B”, or “Class C” license and authorizes only the activities that the type of retail license applied for authorizes.
- (2) A provisional retail license expires 60 days after its issuance or when the Class “A”, Class “B”, “Class A”, Class B” or “Class C” license is issued to the holder, whichever is sooner.
- (3) The Town Clerk may revoke the license if he or she discovers that the holder of the

license made a false statement on the application.

- (4) A provisional “Class B” license may not be issued if the municipality’s quota under 125.51 prohibits the municipality from issuing a “Class B” license.
- (5) No person may hold more than one provisional retail license for each type of license applied for by the holder per year.

(l) **Wholesaler's fermented malt beverage license.** The amount of the license fee shall be determined by the municipality, but may not exceed \$25.00 per year, or fraction thereof. §125.28(4). Fee set forth in Appendix B Fee Schedule, reference this code section. *[Amended 6/23/03]*

(m) **Operator's license.** License is issued for a two-year term and is prorated for new licenses, per the Appendix B Fee Schedule, reference this code section. Section 125.32(2). Included in the license fee, is the current cost of obtaining a background check. It shall be at the discretion of the Town of Menasha Police Chief as to whether the remainder of the fee shall be refunded. *[Effective 1/1/96] [Amended 1/28/02, 11/28/05]*

(1) **Operator Licenses Required.** All of the provisions of Section 125.68(2), of the WI Stats., and any future amendments or changes to this statute, are hereby incorporated herein. *[Adopted 12/4/89]*

(2) **Application.** *[Amended 6/27/05]*
 An operator’s license may not be issued unless applicant fulfills one of the following requirements: Person is renewing an operator’s license, within the past two (2) years held a current manager’s, retailer’s or operator’s license, or, within the past two (2) years has completed a State mandated Server’s Training Course and must show proof. New applicants must at least be registered for the course and shall present a schedule at the time of application.

A written application shall be filed with the Police Department which shall include the name, residence, age and gender of applicant, and the prescribed fee shall be paid according to the Payment Schedule incorporated herein. A background check shall be performed to determine whether applicant has a satisfactory history. All applications shall be accompanied by a recommendation for approval/denial by the Chief of Police or his/her designee.

(3) **Issuance of Operator's License** *[Amended 6/27/05]*

(a) An operator's license shall be granted by the Town Board of Supervisors only to persons who have attained the legal age established by State law and have met the requirements defined by Chapter 125 of the WI Stats., and for all new applicants on or after January 1, 1990 who have successfully completed a mandatory Responsible Beverage Server Training Course, at which time license shall be issued by the Police Department. The operator’s license shall be issued for two (2) years, expiring on June 30 of even years, or prorated depending upon the month of issuance within the two-year period, unless otherwise revoked.

(b) **Mandatory Schooling Required.** Operator license applicants in the Town of Menasha shall be required, prior to the issuance, to provide the Police Department with proof of successful completion of a server's training course offered at any location by a technical college district and that conforms to curriculum guidelines specified by the college system board, or a comparable training course which may include computer-based training and testing that is approved by the State of Wisconsin under WI Stat. 125.17 and 125.04. However, an applicant who fails to timely renew their operator's license shall be granted a 30-day grace period without mandatory schooling required. It is the responsibility of the applicant to pay the tuition fee for the Server’s Training Course. An exception to this requirement is temporary operators (bartenders) who may only hold a fourteen (14) day license in a calendar year.

Operator’s (Bartender) Instructions

The following Bartender's Awareness Certification Program Procedure Policy, as it relates to the issuance of Operator's Licenses, is effective January 1, 1996:

- A. Applicant applies for Operator's License at the Police Department.
- B. The Town requires new applicants and expired licensees to successfully complete the 4-hour Bartender's Awareness Course through the Fox Valley Technical College prior to issuance of the license.

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- C. The applicant must score 80% or above on the post-test to receive the Certificate of Completion. Applicants who score below 80% may take the course over at any time.
- D. The Certificate must be presented to the Police Department upon completion of the Bartender's Awareness Course.
- E. If the applicant wishes to take the course before they apply for the Operator's (Bartender's) License, they may do so.
- F. The Police Department will perform a background check and recommend approval or denial of the license.
- G. It is the policy of the Town of Menasha that any Operator's (Bartender's) License application may be denied for up to two (2) years following a conviction of an alcohol/drug related offense.
- H. Upon approval by the Police Department, they will issue licenses during two-year periods, provided the applicant has successfully completed the Bartender's Awareness Course. *[Adopted 2/26/96]*
- I. Bartender Awareness Course Fee is the responsibility of the applicant.
- J. License fee is for a two-year period. Included in the license fee is the current cost of obtaining a criminal investigation check through the Department of Justice. The license fees set forth in the Appendix B Fee Schedule, reference this code section, is to be prorated for all new licenses.

Payment Schedule. Applying on or before the 15th of the month, the applicant will be charged for a full month. On or after the 16th of the month, the applicant will not be charged for the month. An operator license is for a two-year period and thereafter, the applicant pays the prorated license fee which includes the fee for a background check by the Police Department.

The two-year term commences on July 1 of the even numbered years. *[Amended 1/28/02, 11/28/05]*

- (m) **Provisional Operator's License.** The Police Department may only issue a provisional operator's license to a person who has applied for a regular operator's license under Section 9.01(1). *[Amended 6/27/05]*
 - (1) Fee shall be paid upon application. *[Amended 1/28/02]*
 - (2) A provisional operator's license may not be issued to any person who has been denied a beverage operator's license.

- (3) The provisional operator's license expires 60 days after its issuance or when a license under 9.01 (10) is issued to the applicant, whichever is sooner.
- (4) Persons are limited to one provisional license per calendar year.
- (5) Revocation. The provisional operator's license shall be revoked by the Police Department if it is discovered the holder of the provisional operator's license made a false statement on their application, or holder fails to complete the Responsible Beverage Server Training Course, if required, or is in non-compliance of WI Stats. *[Amended 6/27/05]*
- (n) **Pharmacist's permit.** Fee shall be paid at the time of application and is non-refundable. §125.57.
- (4) **Replacements of License.** A fee per Appendix B Fee Schedule, reference this code section, shall be charged for a duplicate license or permit. *[Amended 6/27/05, 11/28/05]*
- (5) **License Restrictions;** in addition to the requirements imposed by provisions of the WI Stats. adopted by reference in subsection (1) of this section. The following restrictions shall apply to the issuance of licenses or permits pursuant to this section.
 - (a) **Requirement for Licenses.** No license or permit shall be issued any person who is not 21 years of age or over, of good moral character, a citizen of the United States and the State of Wisconsin. No license shall be issued to any person who have been a habitual petty law offender or convicted of a crime under the laws of this State punishable by imprisonment in the state prison unless such person has been pardoned. This paragraph shall not apply to Wisconsin corporations but shall apply to all officers and directors of any such corporation.

As of January 1, 1990, where new application is made for a Class "A" or Class "B" license, or any combination thereof, on behalf of an individual, the individual shall successfully complete the program within sixty (60) days from the filing of the application with the Town Clerk. The same shall be required for each partner of an application filed by a partnership, and for an agent of an application filed by a corporation, and for an agent of a Special Class "B" license. *[Amended 7/8/02]*

- (b) **Effect of Revocation of License.** No license shall be issued for any premises if a license covering such premises has been revoked within six (6) months prior to application. No license

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shall be issued to any person who has had a license issued pursuant to this section revoked within twelve months prior to application.

(c) **Inspection of Application and Premises.** The Town Clerk shall notify the Police Department and Fire Department Inspector of all licenses and permit applications, and these officials shall inspect each application and premise to determine whether the applicant and the premises comply with the regulations, ordinances and laws applicable and the applicant's fitness for the trust to be imposed. No license or permit provided for in this Section shall be issued without the approval of a majority of the Town Board.

(d) **Health and Sanitation.** No license shall be issued for any premises, which do not conform to the sanitary, safety and health requirements of the State Industrial Commission and the State Board of Health, and to all such ordinances and regulations adopted by the Town.

(e) **Tax Delinquencies.** No license shall be granted for operation on any premises upon which taxes or assessments or other financial claims of the Town are delinquent. *[Amended 07/23/07]*

Premises. No initial or renewal alcohol beverage license shall be granted for any premises for which taxes, assessments or other claims of the Town are delinquent. *[Amended 07/23/07]*

Persons. No initial or renewal alcohol license shall be granted to any person:

- (a) Delinquent in payment of any taxes, assessments or other claims owed to the Town.
- (b) Delinquent in payment of a forfeiture resulting from a violation of any ordinance in the Town.
- (c) Delinquent in payment to the State of any state taxes owed.

(f) **Non Renewals.** Renewal of a license may be denied where any of the following has occurred: *[Created 07/23/07]*

- (a) Providing false information on an application;
- (b) Violation of the provisions of Chapter 125 Wisconsin Statutes or Town Ordinance 9.01;
- (c) Failure to pay suppliers of liquor or beer as required by Sections 125.33(7) or 125.69(4) Wisconsin Statutes.

(g) **Surrender of License Due to Non-use.** *[Created 5/22/89]*

(1) A licensee may hold a license until its expiration date or request approval of the Town Board to transfer the license to another qualified location in the municipality. The license may also be surrendered to the Town Clerk. (NOTE: An alcohol beverage license is not "tied" to a particular location. The license is issued to a particular person for a specific premise, but it is the person that holds the license not the place.)

(2) If a licensed premise is leased or sold, the new owner or tenant may receive an available retail license for the premises, if, prior to granting the license, control of the premises can be shown by purchase or lease agreement.

(3) An agreement between a landowner and tenant regarding the premises, is not binding on the Town Board. The Town Board decides whether licenses are granted and to whom they are granted. A landowner or previous licensee cannot force the Town Board to grant a license to the applicant of the landowner's choice or force revocation of the license at a later date.

(4) The Town Board requires that no licensee shall close down an establishment for more than 90 days. To do so may result in a revocation or suspension of the license.

(6) **Search of Licensed Premises.** It shall be a condition of any license issued that the licensed premises may be entered and inspected at any reasonable hour by any police officer of the Town of Menasha without any warrant, and the application for a license shall be deemed a consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license issued and shall be deemed a violation of this section.

(7) **Posting Licenses.** Licenses or permits, issued under this section, shall be posted and displayed as proved in Chapter 125 of the WI Stats. and any licensee or permittee who fails to post his/her license(s) or permit as required shall be presumed to be operating without a license.

(8) **Safety and Sanitation Requirements.** Each licensed premise shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.

(9) **Revocation and Suspension of Licenses.**

- (a) **Procedure.** Except as provided, the provisions of Chapter 125 of the WI Stats. shall be applicable to proceedings for the revocation or suspension of all licenses or permits granted under this section. Revocation or suspension proceedings may be instituted by the Town Board upon its own motion by adoption of a resolution.
- (b) **Suspension of Licenses.** The Town Chairperson upon obtaining reasonable information that any licensee has violated any provision of this section or/and State or Federal Liquor or fermented malt beverage law or committed any felony may suspend the license or permit of such person for a period not to exceed ten (10) days pending hearing by the Town Board pursuant to par. (a).
- (c) **Automatic Revocation.** Any license or permit issued under the provisions of this section shall stand revoked without further proceedings upon the conviction of a licensee or permittee or his/her employee, agent or representative of a second offense under this ordinance or Chapter 125 of the State Stats. or any other State or Federal liquor or fermented malt beverage law or any felony.
- (d) **Repossession of License or Permit.** Whenever any license or permit under this section shall be revoked or suspended by the Town Board or Town Chairman or action of any court or par. (c), it shall be the duty of the Town Clerk to notify the licensee or permittee of such suspension or revocation and to take physical possession of the license or permit wherever it may be found and file it in the Town Clerk's office.

(10) **Transfer of Premises.**

Any person desiring to transfer his or her license from any building in the Town to any building in the Town shall file a written application with the Town Clerk stating:

- (1) The place he/she desires to move to.
- (2) Whether he/she is to be the owner or lessee.
- (3) The nature of any other business carried on concurrently at the location proposed to be licensed.
- (4) And such other information as may be required time to time by the Town Board.

Such applications shall be filed for at least fifteen (15) days with the Town Clerk before acted upon by the Board. The Town Clerk shall promptly notify the Chief Officer, the Health Inspector, and the Fire Inspector of such application and these officers shall inspect or cause to be inspected the premises sought to be licensed. They shall make such other investigation as the

Town Board or an Administrative Committee shall order to determine whether the application complies with the regulations, orders and laws applicable and the premises are in a proper physical condition and a suitable location. The aforesaid officers shall furnish to the Administrative Committee in writing of the information derived from such investigation.

As far as applicable, provisions of Section 3 of this ordinance shall apply to further proceedings in regard to the granting or refusal by the Board of the applicant's request to transfer the license.

(11) **Publication of Licenses.** Fee shall be set forth in Appendix B Fee Schedule, reference this code section, and is non-refundable. *[Amended 12/20/04, 11/28/05]*

(12) **Change of Agent.** The corporation or limited liability company shall, following the approval of each successor agent or another qualified agent by the licensing authority, pay a fee set forth in the Appendix B Fee Schedule, reference this code section.

(13) **Beer Gardens Regulated.** *[Created 7/11/05]*
[Amended 5/8/06]

(a) **Required For Outdoor Consumption.** No permit shall be given for the consumption of alcohol beverages on any part of the licensed premises not enclosed within the building, except under permit granted by the Town Board of Supervisors. The permits are a privilege in which no rights vest; and therefore, may be revoked by the Town Board of Supervisors at its pleasure at any time or shall expire on June 30 of each year. No person shall consume or have in his/her possession alcohol beverages on any unenclosed part of licensed premises which is not described in a valid Beer Garden Permit. It is the purpose of proper fencing in the beer garden area to prohibit or significantly restrict the ease in which alcoholic beverages may be passed from within the beer garden area to anyone outside the beer garden.

(b) **Limitations on Issuance of Beer Garden Permits.**

- (1) No permit shall be issued for a beer garden if any part of the beer garden is within fifty (50) feet of any property used for residential purposes, measured from the property line.
- (2) There shall be a licensed operator within the beer garden when alcohol beverages are dispensed in the beer garden.
- (3) No open flames may be displayed unless approved by the Town of Menasha Fire Prevention Bureau staff.

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- (4) Outdoor premises shall be completely surrounded by an attractive wall, fence, or barrier at least four (4) feet in height. The outdoor premises shall be attached to the main business premises and access to the outdoor premises shall only be allowed through the main building.
- (5) The outdoor premises shall only be used for serving food and alcohol beverages and no part of said area shall be used for recreational activities, including, but not limited to, volleyball, horseshoes, darts, and softball.
- (6) Noise from any source that is emitted from the outdoor area and measured at any border of the real property on which licensed premises is located shall not exceed 85db from 8:00 am to 10:00 pm and 75db from 10:00 pm to close of the outdoor premises.
- (7) Lighting of the area must be shielded and not be of intensity or brilliance to create glare which is distracting to adjoining property owners or can become a hazard or danger to vehicular traffic.
- (8) Service in the outdoor premises shall be limited to persons seated at tables and/or a bar unless the premises is located on a parcel that is a distance of one-hundred (100) feet or greater from a parcel zoned or used for residential purposes within the Town or an adjacent municipality. *[Amended 12/03/07]*
- (9) The outdoor premises shall be allowed to be open during the following hours unless the premises is located on a parcel that is a distance of one-hundred (100) feet or greater from a parcel zoned or used for residential purposes within the Town or an adjacent municipality. In such case, the premises may remain open for the same hours allowed for the principal liquor license. *[Amended 12/03/07]*
 - (a) Sunday through Thursday, 8:00 am to 11:00 pm.
 - (b) Friday and Saturday, 8:00 am to 12:00 midnight.
- (c) **Site Plan.** All applicable permits required shall be obtained and submitted along with a site plan that complies with Chapter 6, Subdivision Control Ordinance/Planned Unit Development.
- (d) **State Statutes Enforced Within Beer Gardens.** Every permittee under this section shall comply with and enforce all provisions of Chapter 125, WI Stats., applicable to Class "B" licensed

premises, except where such provisions are clearly inapplicable. Violation of the provisions of Chapter 125 of the WI Statutes shall be grounds for immediate revocation of the Beer Garden Permit by the Town Board of Supervisors.

- (e) **Inspections.** The Beer Garden shall be inspected annually by the Town of Menasha Building Inspector and the Fire Prevention Bureau Staff.
- (f) **Permit Fee.** Fee for a beer garden permit is required at time of application as set forth in Appendix B Fee Schedule, reference this code section, and the permit shall have a term of one (1) year commencing on July 1 and expiring June 30 of each year. If granted subsequent to July 1 in any given year, the permit shall expire on June 30 after issuance. The fee is non-refundable.

9.015 REGULATION OF ALCOHOL LICENSES FOR SEXUALLY ORIENTED BUSINESSES
[Created 12/17/07]

- (1) **Application.** This ordinance shall only apply to licensed establishments that operate sexually oriented businesses as defined below, subject to the excluded categories of businesses described as follows.

Excluded from application of the provisions of this ordinance are the following licensed establishments; wherever performances of serious artistic merit, theaters, performing arts center, civic centers, and dinner theaters, where live dance, ballet, or music, of serious artistic merit, are offered, or legitimate educational, medical or health related programs, are offered, and in which the predominant business or attraction, is not the offering to customers of entertainment which is intended for the sexual interests or titillation of customers; and where the licensed establishment is not distinguished by an emphasis on, or the advertising or promotion of live nude or live semi-nude performances, or live specified sexual activities take place. Also excluded from application of this ordinance are such establishments at hotels, motels, and restaurants which are licensed establishments, but which do not operate sexually oriented businesses.

Also excluded from application of this ordinance are sexually oriented businesses, which are not licensed establishments.

- (2) **Intent.** It is the intent of this ordinance to promote the health, safety, welfare, and morals of the citizens of the Town of Menasha by establishing reasonable and uniform regulations to prevent the deleterious secondary effects associated with licensed establishments that operate sexually oriented businesses. The provisions of this ordinance have neither the purpose nor the effect of imposing a limitation or restriction on the content of any

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communicative or expressive materials or acts, including sexually oriented materials or acts. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials or acts 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 as regulated by state law.

(3) **Authority.**

- (a) The Town Board of the Town of Menasha has explicit authority under §125.10 Wis. Stats. to adopt regulations governing the sale of alcoholic beverages.
- (b) Under Wisconsin Statutes §§ 60.10(2)(c), 60.22(3), and 61.34, and its police powers, respectively, the Town Board has authority to act for the good order of the Town of Menasha and for the health, safety and welfare of the public; and may carry out its powers by ordinances and enforcement.
- (c) The Town Board recognizes it lacks authority to regulate obscenity, to the extent preempted by State of Wisconsin Statutes, and does not intend by adopting this ordinance to regulate or to condone obscenity.
- (d) The Town Board recognizes that the authority to adopt zoning ordinances applicable to the Town falls under the jurisdiction of Winnebago County, and the Town Board does not by adoption of this ordinance create a zoning regulation.
- (e) The Town Board recognizes that the U.S. Supreme Court has held that nude or semi-nude dancing is expressive conduct within the outer parameters of the First Amendment to the United States Constitution and therefore is entitled to protection under the First Amendment, and the Town Board further recognizes that freedom of speech and expression are among our most precious and highly protected rights, and wishes to act consistently with the full protection of these rights.

(4) **Findings.**

- (a) Notwithstanding the foregoing, the Town Board has become aware, based upon its own observations and experiences, as well as testimony before the Board by legal counsel for the Town, and also the experiences of other communities, that sexually oriented businesses may and do generate secondary effects which the governing body believes are detrimental to the public health, safety, welfare, and morals of the citizens of the Town of Menasha.

- (b) Specifically, the Town Board has reviewed evidence concerning adverse secondary effects on other communities found in, but not limited to, the cases of *Ben's Bar, Inc. v. Village of Somerset*, 316 F3d 702 (2003), *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *California v. LaRue*, 409 U.S. 109 (1972); *City of Newport, KY v. Iacobucci*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. City of Chattanooga*, 107 F3d 403 (6th Cir. 1997); *Kev. Inc. v. Kitsap County*, 793 F2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F3d 1248 (5th Cir. 1995); *South Florida Free Beaches, Inc. v. City of Miami*, 734 F2d 608 (11th Cir. 1984); *New York State Liquor Auth. v. Bellanca*, 452 US 714 (1981); *Blue Canary Corp. v. City of Milwaukee*, 251 F3d 1121; *MDK, Inc. v. Village of Grafton*, 345 F. Supp 2d 952 at page 957; *Daytona Grand, Inc. v. City of Daytona Beach, Florida*, 490 F3d 860 (11th Cir. 2007); and a compilation of studies on various municipalities regarding the impact of adult oriented business, and reports of harmful secondary effects occurring in and around sexually oriented businesses, including a publication of the American Planning Association compiled by Eric Damian Kelly and Connie Cooper entitled, "Everything you always wanted to know about regulating sex businesses xxx", Report of the Attorney General's Working Group on the Regulation of sexually oriented businesses, June 6, 1989, reports from studies in Phoenix, Arizona-1984 and 1995-1998; Minneapolis, Minnesota-1980; Houston, Texas-1997; Indianapolis, Indiana-1984; Amarillo, Texas-1977; Garden Grove, California-1991; Los Angeles, California-1977; Whittier, California-1978; Austin, Texas-1986; Seattle, Washington-1989; Oklahoma City, Oklahoma-1986; Cleveland, Ohio-1977; Dallas, Texas-1997; St. Croix County, Wisconsin-1993; Bellevue, Washington-1998; Newport News, Virginia-1996; and New York Times Square study-1994.

- (c) Based upon the foregoing evidence as well as Town Board members' own individual experiences, observations and reasoning, the Town Board finds that:

- (1) Crime statistics show that many types of crimes, especially sex-related crimes, such as prostitution, occur with more frequency in neighborhoods where sexually oriented businesses are located.
- (2) Studies of the relationship between sexually oriented businesses and neighborhood property values have found a negative impact on both residential and commercial property values.

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- (3) Sexually oriented businesses will probably contribute to an increased public health risk through the spread of sexually transmitted diseases.
- (4) Areas with sexually oriented businesses exhibit an increased potential for infiltration by organized crime for the purpose of unlawful conduct.
- (5) The consumption of alcoholic beverages on the premises of a sexually oriented business exacerbates the deleterious secondary effects of such businesses on the community.
- (6) That restricting performers and entertainers only to a requirement of wearing minimal coverings such as pasties or G-strings alone will not avoid undesirable secondary effects in licensed establishments.
- (7) Some persons frequent sexually oriented businesses for the purpose of engaging in illicit sexual behavior on the premises.

(d) The Town Board desires to protect the health, safety, and welfare of the citizens of the Town by preventing and controlling the secondary adverse effects associated with licensed establishments that operate sexually oriented businesses.

(e) The Town Board has determined that the enactment of an ordinance prohibiting licensed establishments from operating sexually oriented businesses promotes the goal of minimizing, preventing, and controlling the above-referenced adverse secondary effects and thereby protects the health, safety, and welfare of the citizens of the Town of Menasha.

(5) **Definitions.**

(a) **Anal cleft and cleavage.** The definition of anal cleft and cleavage for this ordinance can generally be described as including only that one-third (1/3) of the complete buttocks centered over the cleavage for the length of the cleavage, more particularly described as follows:

The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two (2) imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being one-half (1/2) below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom such line being one-half (1/2) inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two (2) imaginary straight lines, one on each side of the body (the "outside line"), which outside lines are

perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point(s) at which each nate meets the outer side of each leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, the tensor faciae latae muscle or any of the above-described portion of the human body that is between either:

- (1) The left inside perpendicular line and the left outside perpendicular line; or
- (2) The right inside perpendicular line and the right outside perpendicular line.

For the purpose of (1) and (2): The left inside perpendicular line shall be an imaginary straight line on the left side of the anus:

- (a) That is perpendicular to the ground and to the horizontal lines described above; and
- (b) That is one-third (1/3) of the distance from the anus to the left outside line; and the right inside perpendicular line shall be an imaginary straight line on the right side of the anus.
- (c) That is perpendicular to the ground and to the horizontal lines described above; and
- (d) That is one-third (1/3) of the distance from the anus to the right outside line.

(b) **Breasts.** A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and the areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is:

- (1) Reasonably compact and contiguous to the areola; and
- (2) Contains at least the nipple and the areola and one-half (1/2) of the outside surface area of such gland located below the top of the areola, which area shall be reasonably compact and contiguous to the areola.

(c) **Entertainer or Performer.** Any person who provides performances or entertainment for customers or patrons at a sexually oriented business, whether or not for consideration, such as fees, wages, or tips, charged or accepted for the performance or entertainment, and whether or not the performance or entertainment is provided as an employee or independent contractor,

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including any person who performs or entertains customers or patrons in the form of either (i) live nudity, (ii) live semi-nudity, or (iii) live specified sexual activities.

- (d) **Licensed establishment.** Any premises licensed by the Town of Menasha pursuant to Chapter 125 Wisconsin Statutes for serving alcoholic beverages for on-premises consumption.
- (e) **Nude or Nudity.** The showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft or cleavage with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola, or the showing of covered male genitals in a discernable turgid state. This definition shall not include any portion of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel commonly worn by persons in public.
- (f) **Operator.** Any person operating, conducting, maintaining or owning any sexually oriented business.
- (g) **Prohibited sexual contact.** Touching the breasts, buttocks, anus, vulva, labia, penis or testicles of another person in public view of customers or patrons done for the purpose of gratifying the sexual desires of either party.
- (h) **Semi-nude or semi-nudity.** All definitions of nude or nudity above, and also the exposure of a bare female breast including the nipple and areola, at any point below a horizontal line intersecting the top of the areola. This definition shall not include any portion of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel commonly worn by persons in public. The terms “semi-nude” and “semi-nudity” includes females adorned by clothing consisting of pasties covering only the nipple and areola, and G-strings.
- (i) **Sexually oriented business.** A business that regularly features either (i) live nudity, or (ii) live semi-nudity, as a permanent focus of its business, giving special prominence to such content on a permanent basis, as cited in *Kraimer v. City of Schofield*, 342 F. Supp. 2d 807 at page 822, citing *Schultz v. City of Cumberland*, 228 F.3d 831 or, otherwise permits live display of Specified Sexual Activities to members of the public.
- (j) **Specified sexual activities.** means live simulated or live actual:
 - (1) acts of human masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, cunnilingus;

- (2) Excretory functions as part of or in connection with any of the activities set forth in (1) above.

- (k) **Premises.** Premises is defined as the real property upon which a licensed establishment operating a sexually oriented business, is located, or is proposed to be located, and all appurtenances thereto and buildings thereupon, including, but not limited to the licensed establishment, the grounds, the private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the operator of the licensed establishment.
- (6) **Grounds for Non-Issuance, Suspension, Revocation or Non-Renewal of Alcohol Beverage License Issued Under Chapter 125 Wisconsin Statutes.** The following shall constitute grounds for non-issuance, suspension, revocation or non-renewal, in accordance with notice and hearing procedures under Chapter 125 Wisconsin Statutes, of a license issued by the Town of Menasha, for any Premises, pursuant to Chapter 125 Wisconsin Statutes, which license authorizes on-premises consumption of alcoholic beverages, at any proposed or existing licensed establishment which operates a sexually oriented business.
- (a) Conviction of an offense, contrary to Wisconsin Statute § 944.21, or any successor statute or later amended version.
 - (b) A finding by the Town Board that the operation of the licensed facility or activity is in conflict with Wisconsin Statute § 944.21.
 - (c) A finding by the Town Board that any of the following have occurred on the licensed establishment’s premises:
 - (1) Live nude, live semi-nude performances by entertainers or performers, performed at a sexually oriented business, directed at a licensed establishment’s patrons or customers, or the general public.
 - (2) An instance of live public display of specified sexual activities involving any entertainer or performer at a licensed establishment.
 - (3) An instance of live display of prohibited sexual contact involving an entertainer or performer.

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- (4) The failure of any operator to comply with the following requirements at a sexually oriented business:
- a) It shall be unlawful for any operator of a licensed establishment to conduct a sexually oriented business on the premises.
 - b) It shall be unlawful for any operator of a licensed establishment covered by this ordinance to permit any patron or customer of a sexually oriented business to participate in any public performance or public entertainment featuring either (i) live nudity, (ii) live semi-nudity, or (iii) live specified sexual activities.
 - c) Entertainers and performers shall remain a distance of not less than five (5) feet away from customers and patrons during performances.
- (7) **Penalties.** In alternative to, or in conjunction with, action the Town may take, described in section 6. above, with respect to licenses, the Town may impose a forfeiture for each violation as determined by said Town Board taking into account the number of past and present violations proven, and the severity of the current offense, pursuant to issuance of a summons and complaint to the operator of the licensed premises followed by hearing with respect to the charges in accordance with municipal court procedures of the Town of Menasha.
- (a) Any person, partnership, or corporation who is found to have violated this ordinance shall be punished by forfeiture as set forth in Appendix C Fines and Penalties Schedule, reference this code section.
 - (b) Each violation of this ordinance shall be considered a separate offense, and any violation continuing more than one day shall be considered a separate offense.
 - (c) Nothing herein precludes the Town Board from taking action on any alcohol beverage license pursuant to, or consistent with, the requirements and procedures applicable under Chapter 125 Wisconsin Statutes, or other applicable Town Ordinances, on other legal grounds than those specified in this ordinance.
- (8) **Standards for Enforcement Action.** All notice and hearing requirements required for action on licenses under Chapter 125 Wisconsin Statutes shall be followed for purposes of taking license action pursuant to this ordinance. All actions of the Town Board regarding licenses under Chapter 125 Wisconsin Statutes pursuant hereto shall be subject to the rights of appeal applicable to action taken under

this ordinance in accordance with Chapter 125 Wisconsin Statutes. For purposes of enforcement of this ordinance pursuant to sections 6 and 7 above, regardless of the basis for the hearing involving any violation of this ordinance, in those cases where hearings are conducted pursuant to Chapter 125 Wisconsin Statutes, regarding a sexually oriented businesses' violation of this ordinance, the standard for enforcement action shall be whether the Town Board finds, by sufficient evidence, that the violation has occurred.

- (9) **Severability.** In the event any portion of this ordinance is found unconstitutional or invalid, the remaining portions shall remain in full force and effect.
- (10) **Effective Date.** This ordinance shall be effective upon passage and publication as provided by law.

9.02 AUCTIONS AND CLOSING-OUT SALES
[Recreated 9/9/96]

- (1) In order to maintain the peace and good order in the Town of Menasha, and in order to provide for the public health, safety and welfare of the Town residents, it is necessary that an ordinance regulating auctions and closing out sales exist in the Town of Menasha.
- (2) Auctions and closing-out sales shall be unlawful without obtaining a permit from the Town Clerk. The permit for an auction or closing out sale shall be obtained by making an application in writing on a form provided by the Town Clerk a minimum of five (5) working days prior to the date of the auction or closing out sale. The application shall require information including the legal name of the business, address, the location, time and date(s) of the sale, the names and addresses of the principals, agents and/or officers of the business, and the name of the person who will conduct and be responsible for the sale. The permit shall in no way be construed to affect existing or future zoning or land use.
- (3) The daily auction permit fee shall be submitted at the time of application. A six-month permit or a one-year permit may be obtained for a regularly scheduled auction held at the same site on a continuing basis by the same auctioneer in a commercially zoned area. The auctioneer shall be required to give dates and times of all auctions held in the Town of Menasha to the Town Clerk. Fees are set forth in the Appendix B Fee Schedule, reference this code section, and are non-refundable. *[Amended 11/28/05]*

A Closing-out sale permit shall be issued for a period of ninety (90) days with no more than one permit per calendar year. The permit fee shall be submitted at the time of application. Fees are set forth in Appendix B Fee Schedule, reference this code section, and are non-refundable. *[Amended 7/14/03, 11/28/05]*

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- (4) **Definition.** "Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and prospective purchasers of goods or real estate that consists of a series of invitations made by the auctioneer to the prospective purchasers for offers for the purchase of goods or real estate and that culminate in the acceptance by the auctioneer of the highest, or most favorable offer made by one of the prospective purchasers.
- (5) It shall be unlawful for any auction permit holder under this ordinance to conspire with any other person or to provide any other person at any sale to submit any false bid, and no person shall act at any such sale by auction as a bidder, a "capper", "booster", "shiller" or offer or make any false bid to buy, or pretend to buy, articles sold or offered for sale at any auction.
- (6) **Exhibit merchandise.** No merchandise shall be sold at any auction sale which has not been placed on the sale premises at least 24 hours before the sale begins and made available for the purpose of inspection by interested persons. No merchandise shall be added to the inventory of any individual or firm conducting a sale after an application for a permit is filed with the Town Clerk.
- (7) **Exemptions.** An auction permit shall not be required for the following exemptions adopted by reference and made a part of this chapter under the provisions of WI Stats. 480.02.
- (a) Auction conducted by, or under the direction of an official of the United States or of this state or a county, city, village or town of this state.
 - (b) An auction required by a court order or judgment.
 - (c) A sale of goods required by law to be a sale by auction.
 - (d) An auction conducted by the owner of the goods or real estate for sale if the owner has held the goods or real estate for his or her personal use for at least one year immediately preceding the date of the auction.
 - (e) An auction conducted by or under the direction of a religious, fraternal or benevolent society, a school or nonprofit organization.
 - (f) An auction conducted by or under the direction of a political organization or candidate if the proceeds of the auction will be used for political purposes.
 - (g) An auction in which the total appraised value of the goods or services for sale is less than \$500.00.
 - (h) Fur auctions and fur auctioneers licensed by the Department of Natural Resources under Chapter 29 of the WI Stats.
- (i) Motor vehicle auction dealers licensed by the Department of Transportation under Subchapter VIII of Chapter 218 of WI Stats.
 - (j) A person, other than a licensee as defined in section 452.01(5) who conducts an auction, or manages or has primary responsibility for handling sales, proceeds, down payments, earnest money, deposits or other trust funds received at or as a result of an auction while lawfully practicing within the scope of a license, permit or certificate granted to that person by a state governmental agency other than the department.
- (8) **Definition. "Closing out sale"** means a sale/ transaction conducted by a person or business, at retail, for the purpose of closing out merchandise, or the sale of merchandise which is advertised or implied as a closing out or going out of business sale, which results in the termination of that business.
- (9) **False Description.** No person shall sell or offer for sale at any auction or closing out sale, any goods, wares or merchandise that have been falsely described or which any untruthful statement has been made as to character, quality, description or cost.
- (10) **Surety Bond.** The applicant for an auction or closing-out sale shall further file a Surety Bond in an amount set forth in Appendix B Fee Schedule, reference this code section, to guarantee compliance with the rules and regulations under this section and compliance with all laws of this State, however, the Town Clerk at his/her discretion may waive the Surety Bond requirement. *[Amended 11/28/05]*
- (11) **Payment of Outstanding Taxes and Fees.** No permit may be granted or issued to any applicant, or for any premises upon which taxes or assessments, or other financial claims of the Town are delinquent or unpaid.
- (12) **Penalty.** Failure to obtain an auction or closing-out sale permit or comply with this ordinance will result in a penalty as set forth in Appendix C Fines and Penalties, reference this code section, per day, and no more than \$200.00 per day. *[Amended 11/28/05]*

9.025 TRANSIENT MERCHANTS

- (1) **Permit Required.** No transient merchant shall vend, sell or dispose of or offer to vend, sell or dispose of goods, wares, or merchandise, produce or any other thing at any place whatsoever within the Town of Menasha without first obtaining a permit as set forth in this ordinance.
- (2) **Definition.** The following definitions shall apply to this section:

Transient Merchant: Any person who temporarily engages in the retail sale of merchandise at any place in the Town of Menasha, and who is not or does not intend to become a permanent merchant of the Town of Menasha. "Transient Merchant" includes any peddler, solicitor, canvasser, or any other person who does or transacts any temporary or transient business in the Town of Menasha which involves the selling of goods, wares, or merchandise, or who solicits for such trade.

Permanent Merchant: Any person who, for at least six months prior to the consideration of this ordinance to said merchant has continuously operated an established place of business in the Town of Menasha or in the Fox Valley area.

Merchandise: Merchandise shall include personal property of any kind, and shall include merchandise, goods, or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of goods by a donor or perspective customer.

Clerk: The Town Clerk.

Charitable Organization: Any organization that is described in Section 501 (c)(3) of the Internal Revenue Code and that is exempt from taxation under Section 501 (a) of the Internal Revenue Code. A charitable organization is further defined as any person, organization or business who is or purports to be established for a charitable purpose, which includes any benevolent, educational, philanthropic humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective.

- (3) **Exemptions.** The following shall be exempt from all provisions of this ordinance:
 - (a) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
 - (b) Any person selling agricultural products which the person has grown.
 - (c) Any person who has an established place of business where the merchandise being sold is 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.

- (d) 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.
 - (e) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided there is proof submitted to the Town Clerk that such charitable organization is registered under Section 440.41, WI Stats. Any charitable organization engaged in the sale of merchandise and not registered under Section 440.41, WI Stats., or which is exempt from that statute's registration requirements shall be required to register under this ordinance.
 - (f) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Town Clerk that such person is a transient merchant; provided that there is submitted to the Town Clerk proof that such person has leased for at least six months, or purchased, the premises from which he/she has conducted business in the Fox Valley area for at least six months prior to the date the complaint was made.
 - (g) Any artists selling art objects at art fairs or art auctions.
 - (h) Any other exemptions pursuant to state or federal law.
- (4) **Application for Permit.** Any transient merchant desiring to engage in sales of merchandise within the Town of Menasha shall be required to complete and return to the Town Clerk a registration form furnished by the Town Clerk which shall require the following information:
- (a) Name, permanent address and telephone number, and temporary address, if any.
 - (b) Age, date of birth, height, weight, color of hair and eyes, and drivers license number of the transient merchant(s).
 - (c) Name, address and telephone number of the person, firm, association or corporation that the transient merchant represents or is employed by, or whose merchandise is being sold.
 - (d) Temporary address and telephone number from which business will be conducted, if any.
 - (e) Nature of business to be conducted and a brief description of the merchandise, and any services offered.

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- (f) Proposed methods of delivery of merchandise, if applicable.
 - (g) Make, model and license number of any vehicle used by applicant in the conduct of his/her business.
 - (h) Most recent cities, villages, towns, or other municipalities, not to exceed five, where applicant conducted his/her business.
 - (i) Place where applicant can be contacted for at least seven days after leaving the Town of Menasha.
 - (j) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five years, and the nature of the offense and the place of conviction.
- (5) **Further Application Requirements.** All applicants shall present to the Town Clerk for examination the following:
- (a) A driver's license or some other proof of identity as required by the Town Clerk.
 - (b) 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.
 - (c) A State Health Officer Certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certification to state the applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application license is made.
 - (d) A State of Wisconsin sellers permit when required by State law.
- (6) **Application License Fee.** At the time the permit application is returned to the Town Clerk, a fee set forth in Appendix B Fee Schedule, reference this code section, shall be paid to the Town Clerk to cover the cost of processing said registration. The fee amount shall be paid in the form of a certified check, bank money order, cashiers check, or cash. This application fee shall be non-refundable. Any applicant who is a member of a religious organization selling religious literature shall be exempt from payment of the fee. *[Amended 11/28/05]*
- (7) **License Investigation.** Upon receipt of an application for a license as described, the Chief of Police shall institute such investigation of the applicant as he/she deems necessary for the protection of the public good, and shall endorse his/her approval or disapproval upon the application within a reasonable time, not to exceed ten working days after it has been filed. The Town

Clerk shall issue approved permits in accordance with such findings after presentation by the applicant all portions of the application form have been fully completed, the Chief of Police has approved the application, and the application fee (as described above) set forth in Appendix B Fee Schedule, reference this code section, has been paid in full. Should the investigations by the Chief of Police include a recommendation for denial, then the Town Clerk shall not approve the permit and the applicant shall have the right to an appeal to be heard before the Town Board at the next regularly scheduled Town Board Meeting. *[Amended 11/28/05]*

The Clerk shall refuse to grant a permit to any applicant if it is determined that: the application contains any material omission or inaccurate statement(s); complaints of a material nature have been received against the applicant by authorities in the most recent cities, villages and towns in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with the provisions concerning the application of the permit or other provisions as described in this ordinance.

- (8) **Service of Process.** The applicant shall sign a statement appointing the Clerk as his/her agent for the purpose solely 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.
- (9) **Duration of Permit.** Any transient merchant permit granted to any person shall be valid for a period of 60 days from the date of entry provided the applicant remains in conformity with all provisions of this ordinance.
- (10) **Surety Bond.** Each applicant shall file a surety bond in an amount set forth in Appendix B Fee Schedule, reference this code section, to guarantee compliance with the rules and regulations of this ordinance and to remain in compliance with all laws of this state. *[Amended 11/28/05]*
- (11) **The following provisions shall apply:**
 - (a) The hours for selling any product or service at any location or dwelling, shall be between 9:00 a.m. and 7:00 p.m., except by appointment. *[Amended 2/28/05]*

Prohibited practices shall include signs indicating "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

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or other person having authority over such premises.

- (b) A transient merchant shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity, or characteristics of any merchandise offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents. A charitable organization transient merchant shall specifically disclose what portion of the sale price of the merchandise being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the merchandise.
 - (c) No transient merchant 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.
 - (d) No transient merchant 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.
 - (e) No transient merchant shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.
 - (f) Sale of concessions and all other goods on or about the park property is prohibited without first obtaining written permission from the Park Commission, pursuant to 17.03(2)(o). *[Added 6/24/02]*
 - (g) A transient merchant shall obtain a license from the Town Clerk's office and be posted in a conspicuous place during selling hours. A name tag will be worn on their person for identification purposes. *[Added 2/28/05]*
- (12) **Disclosure Requirements.** The following provisions apply:
- (a) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of merchandise or services he/she offers to sell.
 - (b) If any sale of merchandise is made by a transient merchant, or any offer for the later delivery of merchandise is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than an amount set forth in Appendix B Fee Schedule, reference this code section, in accordance with the procedure as set

forth in Section 423.203, WI Stats.; the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Sections 423.203 (1)(a)(b) and (c), (2) and (3), WI Stats. *[Amended 11/28/05]*

- (c) If the transient merchant takes a sales order for the later delivery of merchandise, he/she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance whether full, partial, or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date, and whether a guarantee or a warranty is provided and, if so, the terms thereof.
- (13) **Records.** The Police Chief shall report to the Town Clerk all convictions for violation of this ordinance and the Town Clerk shall note any such violation on the record of the transient merchant convicted.
- (14) **Revocation of Permit.** Revocation of any permit granted herein shall be as follows:
- (a) Any permit may be revoked by the Town of Menasha Board of Supervisors after notice and hearing, if the transient merchant made any material omission or materially inaccurate statements in the application for license, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in transient sales, violated any provision of this ordinance or was convicted of any crime or ordinance or statutory violation which is directly related to the applicant's fitness to engage in selling.
 - (b) Written notice of the hearing shall be served personally or upon the Town Clerk (as described above) at least 72 hours prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.
- (15) **Penalty.** Any person adjudged in violation of any provision of this ordinance shall forfeit amounts set forth in Appendix C Fines and Penalties, reference this code section, for each violation per day plus all costs of prosecution. Each violation shall constitute a separate offense. In addition, in default of the forfeiture and cost of prosecution, or either of them, such convicted person shall be committed to and confined within the County Jail of Winnebago County, Wisconsin until such fine and cost of prosecution are paid, but not to exceed 60 days. *[Amended 11/28/05]*

9.03 CIGARETTES AND ALL TOBACCO PRODUCTS *[Amended 3/10/03]*

- (1) **License Required.** No person shall in any manner, directly or indirectly, manufacture, sell, exchange, dispose of or give away or keep for sale any cigarettes, cigars and pipe tobacco products without first obtaining a license from the Town Clerk in the manner provided in Section 134.65, WI Stats. This Section shall not apply to jobbers or manufacturers doing interstate business with customers outside Wisconsin.
- (2) **Fee.** The fee for cigarette and tobacco product licenses shall be set forth in Appendix B Fee Schedule, reference this code section, and application shall be made in the Clerk's office. Fees are non-refundable. *[Amended 11/28/05]*
- (3) **Form of License.** Expiration: Transfer. All cigarette licenses shall be signed by the Town Clerk and indicate the name of the licensee and the place where he/she is authorized to conduct the licensed business and shall expire on June 30th next succeeding the date of issue.

they may be conveniently fastened or riveted to the animal's collar or harness.

- (b) Dogs and cats shall wear license and rabies vaccination tags at all times. Exception: Show dogs or cats during competition.
- (c) A duplicate license may be obtained upon payment of a replacement fee set forth in Appendix B Fee Schedule, reference this code section. *[Amended 11/28/05]*

9.04 DOGS/CATS - LICENSING REGULATIONS *[Effective 10/03/90, Amended 3/12/07]*

- (1) **State Laws Adopted.** The provisions of Chapter 174, WI Stats., exclusive of any penalties, are adopted by reference and made a part of this code, so far as applicable.
- (2) **License Required.** Any person or entity owning, keeping, harboring or having custody of any dog or cat over five months of age within the Town of Menasha must obtain a license as provided, not otherwise licensed in another municipality. Every owner of a dog/cat more than five months of age on January 1 of any year, or five months of age within the license year shall annually, or within 30 days from the date such dog/cat becomes five months of age (at the time and in the manner provided by law for the payment of personal property taxes), pay to the Town of Menasha their dog/cat license fee and obtain a license.
- (3) **License Fees.** Effective December 1, 2002, license fees for neutered male or spayed female dogs and cats, upon presentation of evidence attesting to the same, and for un-neutered male or un-spayed female dogs and cats, shall be as set forth in Appendix B Fee Schedule, reference this code section. Unless a dog or cat has just been obtained, a late fee shall be assessed the owner of each dog/cat five months of age or over who fails to obtain a dog/cat license by April 1 of each year. *[Amended 9/9/02, 11/28/05]*
 - (a) Upon acceptance of the license application and fee, the licensing authority shall issue a durable tag stamped with the identifying number and the year of issuance. Tags should be designed so that

- (4) **Multiple Dog License Option.** Per WI Stat. 174.053 *[Amended 3/12/07]*
 - (a) Multiple dog license option. Any person who keeps more than one dog may, instead of the license tax for each dog required by this chapter, apply to the collecting official for a multiple dog license for the keeping of the dogs. Such person shall pay for the license year a license tax for 12 or fewer dogs and an additional fee for each dog in excess of 12 shall be paid per the Appendix B Fee Schedule, by reference of this code section. Upon payment of the required multiple dog license tax and upon presentation of evidence that all dogs over 5 months of age are currently immunized against rabies, the collecting official shall issue the multiple dog license and a number of tags equal to the number of dogs authorized to be kept by the person.
 - (b) Multiple dog license tags. Multiple dog license tags shall be made in a form so that they may be readily distinguishable from the individual license tags for the same year. The owner or keeper of dogs for which a multiple dog license has been issued shall keep at all times a multiple dog license tag attached to the collar of each dog over 5 months old kept by the owner or keeper under a multiple dog license, but this requirement does not apply to a dog during competition or training, to a dog securely confined indoors, to a dog while hunting, or to a dog securely confined in a fenced area. An owner or keeper may transfer a multiple dog license tag from a dog that the owner or keeper no longer owns or keeps to another dog if the other dog is currently immunized against rabies. The rabies vaccination tag or substitute tag shall remain attached to the dog for which it is issued at all times, but this requirement does not apply to a dog during competition or training, to a dog securely confined indoors, to a dog while hunting, or to a dog securely confined in a fenced area. No dog bearing a multiple dog license tag shall be permitted to stray or to be taken anywhere outside the limits of the owner's or keeper's premises unless the dog is in leash or temporarily out for the purposes of hunting, breeding, trial, training, or competition.

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- (c) Licensing under this section does not pertain to residential dwellings referred to in Section (13) when limiting up to 4 animals.
- (d) Applicability of other requirements. Unless clearly inapplicable, all the provisions of this chapter relating to the individual dog license tax, licenses, and tags shall apply to the multiple dog license and tags.
- (5) **Dogs/Cats Not to Run at Large.** No person shall permit their dog/cat to run at large within the Town of Menasha at any time. A dog/cat shall not be considered running at large when it is accompanied by its owner, a member of the owner's family, or any employee of the owner, and under its immediate control except that no dog/cat shall be allowed in any public park in the Town of Menasha at any time.
- (6) **Prohibited Acts.** No person shall wrongfully remove the collar, license number or muzzle from, or shall wrongfully kill, maim, entice or carry away any dog/cat licensed.
- (7) **Vicious Dogs/Cats Prohibited.** No person shall knowingly keep or harbor a vicious dog/cat that is known to have bitten a human being, livestock, or a domestic animal as defined in Section 174.001(2G)(3) WI Stats. *[Revised 10/13/97]*
- (a) "Vicious Animal" is any animal that, when unprovoked, inflicts bites, injures, kills, or attacks a human being or domestic animal on either public or private property.
- (b) Exceptions. Notwithstanding the definition of a "Vicious Animal" above:
- (1) No animal may be declared vicious if death, injury or damage is sustained by a person who, at the time such was sustained, was committing a trespass of the land or criminal trespass of the dwelling upon premises occupied by the owner of the animal, or was teasing, tormenting, abusing or assaulting the animal, or was committing or attempting to commit a crime or violating or attempting to violate an ordinance which protects person or property.
- (2) No animal may be declared vicious if death, injury or damage was sustained by a domestic animal, which, at the time such was sustained, was teasing, tormenting, abusing, or assaulting the animal.
- (3) No animal may be declared vicious if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.
- (4) No animal may be declared vicious for acts committed by said animal while being utilized by a law enforcement agency for law enforcement purposes while under the control and direction of a law enforcement officer.
- (8) **Howling Dogs/Cats Prohibited.** No person shall keep or harbor a dog, which frequently or habitually barks, yelps or howls. No person shall keep or harbor a cat, which frequently or habitually howls.
- (9) **Restrictions on Keeping of Dogs/Cats.** It shall be unlawful for any person within the Town of Menasha to own, harbor or keep any dog/cat which:
- (a) Habitually pursues any vehicle upon any public street, alley or highway in the Town.
- (b) Assaults or attacks any person.
- (c) Is at large within the limits of the Town.
- (d) Habitually barks or howls to the annoyance of any person(s).
- (e) Kills, wounds, or harasses any domestic animal.
- (f) Is known to be infected with rabies, or to have been bitten by an animal known to have been infected with rabies.
- (10) **Animal Excreta.** The owner or person having immediate control of any animal shall promptly remove and dispose of, in a sanitary manner, any excreta left or deposited by the animal upon any public or private property.
- (11) **Duty of Owner in Case of Dog/Cat Bite.** Every owner or person harboring or keeping a dog/cat who knows that such dog/cat has bitten any person shall immediately report such fact to the Police Department and shall keep such dog/cat confined for not less than fourteen days or for such period of time as the Police Department shall direct. The owner or keeper of any such dog/cat shall surrender the dog/cat to any Town Police Officer upon demand for examination.
- (12) **Impounding or Killing of Dogs/Cats.** In addition to any penalty provided for under state or local law, any person may confine any dog or cat; or any Police Officer of the Town may impound any dog or cat, which habitually pursues any vehicle upon any street, alley or highway of this Town, assaults or attacks any person, is at large within the Town, habitually barks, or howls, kills, wounds any domestic animal or is infected with rabies. Confinement by any person as defined in this section shall be reported to the Police Department immediately. Possession of dogs/cats impounded under this section may be obtained by paying a fee set forth in Appendix B Fee Schedule, reference this code section, to the Town Treasury plus any costs incurred for each day or fraction thereof the dog/cat has been impounded. Dogs/Cats impounded for a period of seven days or vicious dogs/cats shall be destroyed in accordance with Sections 174.02(3) or

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174.046(9), WI Stats. *[Revised 10/13/97][Amended 11/28/05]*

- (13) **No person or residential dwelling, regardless of the number of occupants, shall keep, maintain or harbor more than four (4) animals** (i.e. four dogs and zero cats; or three dogs, and one cat; or two dogs and two cats; or one dog and three cats; or zero dogs and four cats) over the age of three months within any residential district of the Town of Menasha, Winnebago County, Wisconsin. "Residential District" means any part of parcel of land within the limits of the Town of Menasha, on which five or more residences are occupied within a distance of one thousand (1,000) feet of each other, excluding agricultural zoning.

- (a) Any person desiring to be exempt from the four-animal limit, described above, who does not qualify for a kennel license, shall have the right to request the granting of a variance/exemption to the four-animal limit. The applicant requesting the exemption shall state the reasons and request for exemption and submit the written request to the Town Clerk. The Town Board shall then schedule the matter for the next Town Board Meeting. The Town Board shall then review the request and either approve or deny the request for exemption. The exemption shall then be reviewed on an annual basis, unless there is any complaint of any Town resident prior to the annual review, which would then result in an immediate review of the exemption.

- (14) **Any violation of this chapter shall constitute a fine** consistent with the current ordinance bond schedule on file in the Police Department, which includes court costs and penalty assessments. *[Adopted 12/18/95]*

9.05 SALVAGE YARD OPERATORS *[Revised 8/26/98]*

- (1) **License Required.** No person shall keep or maintain in the Town any building or yard for the keeping or storing in commercial quantities or for dealing in any old, used or secondhand materials of any kind including rags, paper, rubbish, bottles, rubber, iron or other metals or junked motor vehicles or parts thereof, without first having obtained a license as provided.
- (2) **Application for License.** Every application for a Salvage Yard Operator's License shall be in writing and shall contain the name and address of the person applying for such license, and proposed location of the business and a detailed account of the type of materials to be dealt in or stored. *[Revised 8/26/98]*
- (3) **Issuance of License, Fees.** Whenever it shall appear that the proposed location of such yard or business and the types of materials to be collected and stored are suitable and proper with regard to the public health, safety and welfare and whenever it shall further

appear, that such business shall not be or become a fire hazard and shall not be a public nuisance by reason of foul, noise or unsightliness, the Town Board shall authorize and the Town Clerk shall issue a Salvage Yard Operator's License. License shall be annual or a six-month license may be obtained and shall terminate on June 30th. Fees are set forth in Appendix B Fee Schedule, reference this code section, and are non-refundable. *[Revised 7/14/03][Amended 11/28/05]*

- (4) **Revocation of License.** Any Salvage Yard Operator's License may be revoked by the Town Board whenever it shall appear that such business is conducted in such a manner as to create a public nuisance or upon conviction of such licensee for violation of any state law or town ordinance pertaining to salvage yard operators. *[Revised 8/26/98]*
- (5) All licenses shall be issued as of July 1st and shall continue in force until June 30th next succeeding the date of issuance thereof, unless sooner revoked as provided by law.
- (6) In no event shall a license be issued to any person or persons, association, partnership, firm, or corporation to carry on and do any of the things enumerated in Sections 1 to 3 of this ordinance on premises not used for such purposes within 500 feet of any dwelling house or 1,000 feet of any public highway within the Town of Menasha.
- (7) Premises licensed under this ordinance for the purpose of carrying on a salvage yard or storing of salvage shall be enclosed by a substantial fence 7 feet in height and shall be painted in a suitable manner, which shall effectively conceal the things within the enclosed fence from the view of the streets and highways. *[Revised 8/26/98]*
- (8) At no time shall old iron, scrap iron, old bottles, old rags, papers, old automobile tires, rubber, brass, steel or other materials of any and all types be piled 7 feet in height, or be exposed above the enclosure of any salvage yard. *[Revised 8/26/98]*
- (9) Each licensee shall keep his/her salvage yard in a sanitary condition complying with Town and State laws relating to sanitary conditions, rules and regulations of the local Board of Health and shall keep inflammable material in such condition that there will be a minimum danger from fire, and it shall be the duty of the Town Board to inspect every salvage yard periodically. *[Revised 8/26/98]*
- (10) Every licensee shall permit inspection of their premises and any salvage by duly authorized representatives of the Town Board at all reasonable hours.

9.06 SPECIAL EVENTS AND MECHANICAL AMUSEMENT DEVICES - REGULATION AND LICENSING [Adopted 07/10/89]
[Amended 03/28/05, 3/27/06]

Purpose: It is recognized that special events often bring certain benefits to the community. At the same time, the Town must have sufficient notice prior to an event so that Town departments can evaluate the potential impact such an event might have on resources of Town departments, Town-owned properties and facilities, and ultimately on the public safety. Each event has unique characteristics and will have a different impact on the services. Therefore, events should be considered on a case-by-case basis with the ultimate goal being the preservation of the public's health, safety, welfare, and to promote the responsible use of facilities and property.

(1) **Definitions**

- (a) *Special Event* means any planned occurrence which changes the approved use of any facility; or any event on the public right-of-way or premises including, but not limited to, parades, gatherings, festivals and athletic events, which is not within the normal and ordinary use of that premises or place or which, by nature of the event, may have a greater impact on Town services or resources or public safety than would have occurred had the event not taken place. Whether the event is considered within the normal, ordinary, or intended use of the facilities or property shall be determined by the Town's Fire and/or Building Officials.
- (b) *Outside Event* means an event conducted outside in a space commonly used for alternate use, such as a street or parking lot. These events may or may not include erection of a tent, fence, or boundaries to delineate the area of the event.
- (c) *Building Official* shall mean the officer or other designated authority charged with the administration and enforcement of this code or a duly authorized representative as defined in the Wisconsin Enrolled Building Code.
- (d) *Fire Official* shall mean the Fire Chief or his/her designee as defined in the Town of Menasha Fire Prevention Code.
- (e) *Police Official* shall mean the Police Chief or his/her designee as defined in the Town of Menasha Municipal Code.
- (f) *A mechanical amusement device* is defined as any machine which upon insertion of a coin or slug operates a game, contest or amusement such as video games, dartboards, jukeboxes and karaoke. A billiard table or pool table is a mechanical device when operated commercially, whether it is coin-operated or not.

- (2) **Determination.** A Special Event License shall be required by the Establishment Owner/Facility Manager for an intended event which by description exceeds the normal and ordinary use of such property. It shall be the responsibility of the Fire and Building Officials to determine whether the event falls outside the facility's use classification as identified in the Building Code. The Wisconsin Building Code will be the prevailing document to make this determination.

Example: A banquet hall shall be required to obtain a Special Event License to hold a trade show or exhibition.

A Special Event License shall be required for outside events that intend to use outside space for other than its intended use. It shall be the responsibility of the Building, Fire and Police Officials to determine whether the event requires additional parking, security or control. The Town of Menasha Municipal Ordinances shall be the prevailing document relative to outside uses.

Example: A business anniversary celebration that will require the erection of a tent in the business parking lot.

- (3) **Application and Fee.** A completed application for a Special Event License shall be filed with the Town Clerk at least thirty (30) days prior to the first day of the event including a proposed layout of the space. The applicant shall pay an event fee set forth in Appendix B Fee Schedule, reference this code section. An escrow fee set forth in Appendix B Fee Schedule, reference this code section, shall be required, and if unused, may be returned after 30 days following the date of the event. Any re-inspections shall be charged a fee set forth in the Appendix B Fee Schedule. Fees are non-refundable, excepting the escrow fee. [Amended 11/28/05]

- (a) **Site Plan.** In addition to the application for the outside event, a site plan indicating the location and any ancillary structures (i.e. tent, canopy, etc.) must be provided so as to determine emergency access to the site.

Exceptions. Town of Menasha municipal functions;

An application shall be filed in the Town Clerk's office at least 30 days prior to the event and for informational purposes, shall be placed on the next Regular Town Board of Supervisor's meeting agenda under Reports.

- (4) **Inspections.** An inspection by the Fire and/or Building Official(s) shall be conducted with the Establishment Owner/Facility Manager before the event, at a time determined by the code official(s) so that event set-up may be determined safe for the public. Compliance with all fire prevention and building codes, as well as any other department/agency (i.e., Board of Health) inspections

is required before a Special Event License will be issued. Written documentation of supporting agency inspections must be provided to the Town Clerk's office. Upon approval, the license shall be given to the Event Coordinator by the Fire Official to be properly posted at the building's entrance.

- (5) **Food and Beverage Control.** If eligible for a Temporary Class "B" Retailer's beer and/or wine license (see SS. 125.26 & 126.51), and proposes to set up a bar, it shall be the responsibility of the Event Coordinator holding the event to make application for a beer/wine license, and arrange for a designated area along with some manner of monitoring such as bracelets or hand stamp. All temporary operators serving at the event shall also be licensed.
- (6) **Mechanical Amusement Device License.**
[Amended 3/27/06]

Policy: A Mechanical Amusement Device License is required for any coin-operated entertainment to operate any mechanical amusement device.

- (a) **Application and Annual Fee.** Commencement shall be on July 1 and shall expire June 30. The annual license fee shall be an amount set forth in Appendix B Fee Schedule, reference this code section, or a six-month license may be obtained. Fees are non-refundable. [Amended 11/28/05]
- (b) **Inspection, Approval and Issuance.** Upon receipt of each application and after prior approval by the Building, Fire and Police Officials, the Town Board shall, at the next regularly scheduled Town Board Meeting approve or deny the license, and the Town Clerk shall notify the applicant of their decision.

(7) **License Fees.**

All license fees shall be paid in full to the Town Treasurer by the applicant prior to the issuance of any license.

9.07 TRACKS

- (1) **License Required.** No person, firm, partnership or corporation shall be allowed to operate or maintain or allow upon any premises in the Town of Menasha any racetrack, stock car track, go-carting track or any track or concourse not a public highway upon which any gasoline engine, electric engine or steam engine propelled vehicle shall travel without first obtaining a license as required. This Section shall not apply to snowmobile events or tracks regulated under Chapter 4 of the Municipal Code of the Town of Menasha. The license period shall be semi-annual and shall expire April 30th or October 31st following the date of issuance.

- (2) **Application.** Every application for a license shall be made upon a form furnished by the Town Clerk and verified, and shall contain the name, place of residence, age, and occupation of the applicant, the purposes for which a license is desired, the place and time, and the terms and conditions for which they purpose to carry on the track or concourse to be licensed.
- (3) **Issuance.** Upon the filing of the application as provided in the preceding Section, the Town Board shall, upon the approval of such application and the payment to the Town Clerk or Town Treasurer of the license provided, issue a license to the applicant. The semi-annual license fee shall be an amount set forth in Appendix B Fee Schedule, reference this code section. The license issued shall continue in force until April 30th or October 31st next succeeding the date of issuance unless sooner revoked as provided by law. [Amended 11/28/05]
- (4) **Use of Premises.** The licensed premises shall at all times be kept, maintained and used in strict conformity with the provisions of any state law, county, or town ordinance or by by-law and the rules and regulations of every public authority.
- (5) **Revocation.** Upon sufficient verified complaint stating the facts of such violation, being made in writing by any town official or resident of the Town to the Town Clerk that any licensee has violated any of the provisions of this ordinance or of law, the Town Board shall upon ten (10) days notice summon such licensee to appear before it at the time specified in the summons, a copy of said complaint being served therewith, to show cause why the license shall not be revoked. The Town Board shall proceed to hear the matter and if it finds the allegations of the said complaint are correct, the license shall be revoked. Whenever any license shall be revoked, no fund or any unearned portion of the fee shall be made and no license shall be granted to any person, firm, partnership, or corporation whose license has been revoked within a period of three (3) years from the date of such revocation.

- (6) **All licensees shall submit an annual surety or cash bond** to the Town Board in an amount set forth in Appendix B Fee Schedule, reference this code section, to guarantee that track premises shall be restored to its prior, natural condition (state); and, in case of established tracks, permanent in nature, the bond shall be issued to guarantee that, at the finish of each track sport season, all race vehicles covered by this ordinance shall be removed from the licensed premises. This bond requirement shall be a condition precedent to the issuance of a license under paragraph (1) above. [Amended 11/28/05]

9.08 PUBLIC DANCES

- (1) **Permit Required.** No person or business shall hold a public dance in the Town of Menasha without obtaining a permit from the Town Clerk and payment of the permit fee. Application for the permit shall be in writing on a form provided by the Town Clerk at least ten (10) business days before the proposed date of the dance. *[Revised 1/27/97]*
- (2) **The permit fee** shall be per dance within a 24 hour period as set forth in Appendix B Fee Schedule, reference this code section. Permit fee covers inspection of the premises and shall be required at the time of application. Application shall be made in the Town Clerk's office and is non-refundable. *[Amended 3/10/03, 11/28/05]*
- (3) **Definitions.**
Public dance: means any dance to which the public generally may gain admission with or without payment of a fee.

Facility: means any room, place or space in which a public dance may be held.
- (4) **Health and Fire Regulations.** No license for a public dance shall be issued until such facility complies with and conforms to all ordinances, health and fire regulations of the Town and that it is properly ventilated and supplied with a sufficient toilet convenience and is a safe and proper place for the purpose for which it is to be used.
- (5) **Sanitation, Public Safety and Good Order.** All public dance facilities shall be kept at all times in a clean, healthful and sanitary condition, all stairways and outer passages and all rooms connected with the dance hall, kept open and well-lighted. Whenever any provision of this ordinance is being violated or any indecent act is being committed or disorder of a gross, violent or vulgar nature takes place, law enforcement may utilize police powers in requesting vacation of all participants involved in the dance facility.
- (6) **Obscenity, Lewdness, Etc.** No person, proprietor or association of persons shall give, conduct, permit or allow in any dance hall in the Town any obscene, immoral, indecent or lewd act, dance or conduct.
- (7) **Powers and Duties of Chief of Police.** The Chief of Police, or any member of the Police Department, may enter or cause to be entered into any dance to arrest a person(s) violating the provisions of this section; and no person shall obstruct, resist, or interfere with the Police in the performance of any act authorized by this section.
- (8) **Indecent Act(s), Disorderly Conduct.** No person shall be allowed to participate in disorder of a gross, violent or vulgar character obscenity, lewdness, and obscene, immoral, indecent or lewd act, dance or conduct shall be as defined in Chapter 7, Municipal

Code of the Town of Menasha.

- (9) **Penalty.** Failure to obtain a dance permit shall be assessed a penalty per event. Second and subsequent offenses shall be assessed at the rate set forth in Appendix C Fines and Penalties, reference this code section, per event. *[Amended 11/28/05]*

9.09 ANNUAL LICENSE PERIODS

All licenses required by this chapter and by any other chapters of the Town of Menasha ordinances shall have an annual license period from July 1st of each year to June 30th of the year following the date of issue, unless otherwise specified under any other specific provision of this Code.

9.10 COMMUNITY ANTENNA TELEVISION FRANCHISE

(1) Franchise or License to be Issued

- (a) **License Required.** No person, firm, or corporation shall operate a community antenna television system in the Town of Menasha for the production, interception, sale or distribution of television signals closed circuit and otherwise via coaxial cable to any person or to subscribers in the Town of Menasha without first obtaining a license. Therefore, the license required by this section shall only be granted by the Town Board providing all of the requirements of this section are met. Any license granted shall not be exclusive, and the Town Board as it sees fit, may grant additional licenses if it deems it to be in the public's interest.
- (b) **Public Hearing Required.** No licenses shall be granted prior to the Town Board holding a public hearing. Notice of said hearing shall be published at least twice, 20 days in advance, in the manner and in the newspaper required by the Town for publication of legal notices. At said public hearing, applicants for a franchise having made application 48 hours prior to said hearing by filing an application for franchise shall be heard, and the Town Board shall examine other qualifications and the adequacy and feasibility of its construction arrangements.

- (2) **Construction Requirements.** The licensee is prohibited from erecting and maintaining any of its equipment on any structures, poles or facilities for such cable on any of the streets or roadways of the Town of Menasha, except as authorized by this Section. That transmission shall be made only upon the public utility facilities of the Wisconsin Telephone Company, Wisconsin Michigan Power Company, or the Town of Menasha, or their successors in interest. Such licensee shall obtain the necessary permission for the installation and maintenance of such facilities

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from the Wisconsin Telephone Company, the Wisconsin Michigan Power Company, or the Town of Menasha, or their successors in interest. That the requirements of this Section may be waived upon specific application to the Town Board to vary the terms of this provision to accommodate the installation of separate facilities where such facilities are necessary.

- (3) **Franchise Term.** The license shall be granted for the initial term of ten (10) years with a right of renewal at the option of the Town Board, for succeeding periods of ten (10) years.
- (4) **Termination of Franchise.** Any license granted pursuant to this ordinance may be terminated for any violation of this ordinance at any time by resolution of the Town Board, and ninety (90) days notice to licensee, provided, however, that in case of emergency, or as a measure to safeguard the health and safety or welfare of the Town or its inhabitants, the Town Board may prescribe a shorter time. If removal of the equipment is not made by the licensee in the time required, or in case of emergency, the Town Board may cause the same to be removed at the licensee's expense without notice. The licensee shall furnish a performance bond in an amount set forth in Appendix B Fee Schedule, reference this code section, to insure removal of its equipment in accordance with this Section. *[Amended 11/28/05]*
- (5) **Assignment Limited.** Licenses granted may be assigned only with the written consent of the Town Board of the Town of Menasha. That there shall be no assignment of the rights under the license during the first five (5) years subsequent to the granting of a license hereunder, except by petition of the Town Board. That any assignment thereafter shall be subject to all of the terms and conditions of this ordinance and shall be with the approval of the Town Board of the Town of Menasha. The licensee shall be required to notify the Town Board when there is a change in the controlling interest of such licensee. If the license is a corporation, the licensee shall furnish the Town a list of stockholders showing the names of stockholders who hold or own more than 5% of the shares in said corporation, and that list shall be kept up to date at all times with a change of ownership being noticed to the Town Board within thirty (30) days subsequent to said change.
- (6) **Franchise Fee.** The license tax or permit fees that the company shall pay, shall be set forth in the Appendix B Fee Schedule, reference this code section, upon the initial grant of the franchise and upon any renewal period thereon. In addition, the company shall annually pay a percentage set forth in Appendix B, reference this code section, *(April 17, 2001- 15 Year Agreement)* of its annual gross subscriber revenues to the Town during the term that the licensee holds such franchise. A certified statement showing the annual gross subscriber revenues from the Township for each fiscal year covered by the franchise shall be submitted

to the Town to substantiate the sums paid pursuant to the above provision. That the payment of the franchise tax shall be made on the 31st day of January for each year. That any statements made to the Town Board shall be confidential, except with the consent of the licensee, shall be open for review only by the Town Board of the Town of Menasha unless said items become material in any judicial proceeding whereupon they may be introduced in evidence by order of the Court. *[Amended 11/28/05]*

Gross subscriber revenue (defined) shall mean to include revenues derived from the supplying of regular subscriber services including the installation fees, disconnect and reconnect fees, and fees for regular cable benefits including the transmission of broadcast signals and access and origination channels if any. (It does not include revenues derived from per-program or per-channel channel charges, leased channel-revenues, advertising revenues, or any other income derived from the system.)

- (7) **Time Allowed for Construction; Service Area.** The licensee shall, within six (6) months from the date of the grant of the license, furnish to the Town, complete plans and specifications for the construction of its plant and distribution system for the approval of the Town Board. Upon approval, licensee shall complete 25% of construction over the proposed service area within one (1) year after receiving a certificate of authority from the Federal Communication Commission and shall complete the plant contemplated by such plans and specifications within two (2) years after certification. The licensee shall be required as facilities are extended to cover the entire area of the Town, to permit any person to have access to its fees, if any, and monthly charges, provided that the licensee shall not be required to extend its services to any portion of the Town unless the area to be served shall be a minimum of sixty (60) homes per lineal mile and shall be contiguous to an area then being served by the licensee. The licensee shall furnish service to all applicants, whose residence or commercial establishments are contiguous to the main cable or lateral cables as set out above, within sixty (60) days after the filing of a written application for service. Delays in the performance of the licensee's obligations under this ordinance which are caused by strikes, equipment shortages, a state of war, acts of God, or other circumstances beyond the control of the licensee, shall not be construed to be violations of this ordinance, and a reasonable extension of time shall be granted by the Town Board upon application therefore.
 - (a) **Subscription Not Required.** It is provided herein that it should not be mandatory for any citizen of the Town to subscribe to the services provided by the licensee. Subscribers shall not be required to subscribe to the licensee's service for any length of time.

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- (b) **Underground Installation.** The licensee shall place all trunk and distribution plant facilities underground where other utilities are underground, and may do so elsewhere in its system subject to prior approval of the Town Board.
- (c) Provisions of the Introductory paragraph of 9.11(7) regarding density requirements of homes or residences shall be interpreted by the Town of Menasha Board of Supervisors in such a manner as to provide the most desirable service to potential and existing customers. *[Revised 2/11/85]*
- (8) **Installation Standards.** The licensee shall install and maintain and operate its system in accordance with good engineering practice sufficient to comply with all existing Town of Menasha regulations, and state law, Federal Communication Commission regulations, and such installations of equipment shall be of a permanent nature, durable and operable in such a manner as to render efficient service.
- (a) **Service Office.** The licensee shall establish a service and maintenance office in one of the following localities: Town of Menasha, City of Appleton, City of Neenah, and City of Oshkosh. The service office shall be staffed by competent and trained employees qualified to service complaints and correct malfunctions. The licensee is required to respond to all service calls within 24 hours of said call, and shall be required to have its office available to receive service calls or complaints twenty-four (24) hours per day.
- (b) **Repairs and Service.** Whenever it is necessary to interrupt or shut off service for the purpose of making repairs, adjustments, or installations, the licensee shall do so at such time as will cause the least amount of inconvenience to his customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.
- (c) **Signal Interference Prohibited.** The licensee at all times shall operate its system so as not to interfere with the existing reception and shall prevent radiation from the licensee's facilities to the antennas in the Town. In the event that the licensee's operation should interfere with existing reception or should radiation exist from the licensee's cables to any antenna in the Town, the company shall make immediate correction for such interference to remedy the same.
- (9) **Conditions of Street Occupancy.** All transmission and distribution structures, lines and equipment erected by the licensee within the Town shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience or of property owners who adjoin the streets, alleys, or public ways and places. In the case of any disturbance of pavement, sidewalk, driveway, or other surfacing, or any private property, the licensee shall at its own cost and expense and in any matter approved by the Town, replace and restore all paving, sidewalk, driveway, or other surface of any street, or alley, or private property disturbed, and shall restore the same to as good condition as before the said work was commenced, then shall maintain the restoration in an approved condition for a period of at least one (1) year. The licensee shall, upon the request of any person holding a Moving Permit issued by the Town, temporarily raise or lower its wires or cables to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires or cables shall be paid by the person requesting the same and the licensee shall have the authority to require such payment in advance. The licensee shall be given not less than forty-eight (48) hours advanced notice to arrange for such temporary changes. The same temporary removal condition shall apply in any other situations where such temporary removal or raising or lowering of wires or cables is necessary pursuant to order of the Town of Menasha or other State or municipal authorities. The protection of or moving of cables at the request of the Town or Town Utility District will be free of cost to the Town of Menasha.
- (10) **Indemnification and Hold Harmless; Insurance.** The licensee shall indemnify and hold harmless the Town of Menasha and all agents, officers, and employees and representatives, from all claims, demands, causes of action, damages, costs, including attorney fees, and expense of investigations and litigation of claims and suits, which shall arise from or are based on the installation, use, maintenance, presence, or removal of any equipment or apparatus of such community antenna television systems. In order to secure performance, the licensee shall obtain and file with the Town Clerk, and at all times, keep in force a public liability policy of insurance, insuring the licensee and the Town of Menasha against any and all hazards of liability of not less than \$100,000.00 property damage and \$1,000,000.00 bodily injury coverage for any one accident, act, omission or occurrence.
- (11) **Federal Communications Commission Rules to Apply.** The licensee shall comply fully with all Federal Communication Commission rules and regulations as may be presently in effect or may become effective in the future and all other Federal and State rules and regulations applicable to community antenna television systems. Any and all modifications of Section 76.31 of the Federal Communications Commission rules resulting from amendment of these rules by the Commission shall be incorporated into this ordinance within one year of the adoption of the modification by the Federal Communications Commission, or at the time of franchise renewal, whichever event occurs first. Compliance with all Federal Communications

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Commission rules or modifications shall be a condition for continuance of any franchise.

- (12) **Service to Schools and Public Buildings.** The licensee shall furnish its monthly service free of charge, to all of the elementary and high schools within the school district of which the Town of Menasha is a part. This provision shall be applicable only to schools, which are located within the municipality, whether or not the school district serving the Township extends beyond the boundaries of the Town of Menasha. The company shall connect one television set in each school free of installation or distribution service charges. The company shall connect additional television sets in the schools upon request of the Town. The installation charge for such additional sets shall be the actual cost of labor and materials. There shall be no monthly service charge for any additional sets. Education programs available under the appropriate Federal Communication Commission rules and regulations and upon consultation with the designated school, authorities shall be made available to the schools here covered. That further, the company shall extend services to any public building within the limits of this franchise and shall connect one television set in each building free of installation or distribution service charges. Additional television sets in any public building shall be connected upon the request of the Town. The Town shall pay the actual cost of materials and labor for any additional charge for the initial television set connection, nor shall there be any monthly service charge for any additional sets.

- (13) **Rates Established.** Unless superseded by state or federal regulations, the Town of Menasha retains jurisdiction to establish rates for installation charges for customer service for a period of two years from the first operations under the franchise. All such rates shall be fair, just, and reasonable. Before services are furnished to any customers, the licensee shall file with the Town Clerk, a schedule of proposed rates and installation charges. No rate during the first two years of operation shall exceed the highest rate charged customers of cable services in the City of Appleton or the City of Menasha. Before any rate changes are effective, the licensee shall file with the Town Board for approval by the Town Board a schedule of the proposed change in rates and installation charges.

"Operation" under the franchise shall mean when the first service is made to customers in the Town of Menasha.

Before any increase charge is made to the customer, notice by regular mail shall be given at least 60 days in advance of the proposed increase, the effective date, and the amount of increase.

- (14) **Conflicts of Laws.** In the event of any valid law, rule, or regulation of any governing authority or agency having jurisdiction, including, but not limited to the Federal Communication Commission, contravenes the

provisions of this ordinance, then the provisions shall be superseded by any valid law, rule, or regulation to the extent that the provisions are in conflict and contrary to any such law, rule, or regulation. That each section of this ordinance, in each part of each section, is hereby declared to be an independent section or part of a section and the holding of any section or part thereof to be constitutional, void, illegal, in effect of, or contrary to the provisions of the ordinances of the Town, State or Federal regulation, or any amendments, for any reason, shall not affect any other section or part of section of this ordinance.

- (15) **Examination of Records.** Licensee agrees to give to the Town of Menasha the right of examination of all its records and its equipment to secure full compliance with this ordinance. Such examinations shall be at reasonable time and may be conducted by the Town Board or other persons authorized by the Town Board.
- (16) **Notice to Parties.** Whenever by the terms of this ordinance notice as required to be given by the Town to the company, it shall be given by mail or by leaving a written letter during the ordinary business hours at the principal offices of the licensee. Whenever the company is required to give notice to the Town, it shall be given by mail or by leaving a written letter at the offices of the Town during its business hours.
- (17) **Additional Regulations.** The right is reserved to the Town to adopt an addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, not in conflict with the rights granted herein. The Town further reserves the right to supervise all construction performed, and makes such inspections as it shall find necessary to insure compliance with the governing ordinances and the ordinance herein.
- (18) **Termination by Bankruptcy or Receivership.** In the event of any act of bankruptcy, receivership, or assignment for the benefit of creditors of the licensee or its assignments, all rights granted under this ordinance are terminated.
- (19) **Limitations on Business of Licensee.** The licensee shall not engage in any business in the area of this franchise other than the operation of its cable television system authorized pursuant to this ordinance. The licensee shall not service television sets or sell television sets in competition with any service or sales firm located within the area which the cable television system is operating. The licensee, however, shall maintain service operations to correct faulty adjustments, correct faulty cables, or leads to any subscriber's premises or building, or to correct any other defect causing interference with the transmission of its signal to the subscriber's premises or building. That service for such defects or interruptions in service shall be made promptly upon notice to the licensee by any subscriber to the service provided herein.

(20) **Annexation of Portions of Town.** In the event that any portion of the Town of Menasha should be legally annexed by an adjoining municipality, all rights granted to the licensee shall continue for the duration of the term of the license granted, including succeeding option renewal periods provided under this ordinance. The licensee shall hold the Town harmless from any costs of removal necessitated by such annexation and in the event removal is necessary, such removal shall be done promptly in the event the licensee cannot reach a satisfactory agreement with the new governing body. A removal of land or rights to land within the Township pursuant to annexations shall not be a cause for termination of this franchise as to portions of land annexed, or as to any other portions of land within the Township. The removal performance bond required pursuant to paragraph (4) of this ordinance shall also apply to insure the removal under this paragraph in the event the Town is required to remove the said equipment at any time at which the license is in effect or upon the termination of said license. The Town in no way shall be held liable under this contract for any required termination of services in any area of annexation where the Town shall legally be required to terminate that portion of the license area.

9.11 PENALTIES

- (1) **Intoxicating Liquor Section Penalties.** The holder of any license under 9.01 of this code who shall violate Section 9.01 of this code or any of the provisions, or whose agents or employees shall do so, or who, having had their or its license revoked, shall continue to operate such place of business, shall be deemed guilty of a misdemeanor and shall upon due proof and conviction, be punished as follows:
 - (a) A violation of any provision of this ordinance where a like violation is covered provided for and penalized by Chapter 125 of the WI Stats., shall be punished by a fine or not less than the minimum fine and not more than the maximum fine provided for by said Chapters for the said violation or offense, besides the costs of prosecution. And in default of the payment of any such fine and/or costs of prosecution, such guilty and convicted person shall be committed to and confined within the County Jail of Winnebago County, Wisconsin, until such fine and/or costs of prosecution are paid, but not to exceed 60 days.
- (2) Each day of violation under this Section shall constitute a separate and distinct offense.
- (3) A first violation of any other provision of this ordinance shall be punished by a fine set forth in Appendix C Fines and Penalties, reference this code section, besides the costs of prosecution; and on default of the payment of any such fine and/or costs of prosecution such person shall be committed to the

County Jail of Winnebago County until such fine and costs are paid, but not to exceed 90 days. *[Amended 11/28/05]*

- (4) Any person violating this ordinance, who previously had been convicted of a violation of the same ordinance, shall, upon proof and conviction, forfeit not less than amounts set forth in Appendix C, reference this code section, together with the costs of prosecution, and in default of the payments and costs of prosecution, or either of them, such convicted person shall be committed to and confined within the County Jail of Winnebago County, Wisconsin, until such fine and costs of prosecution are paid, but not to exceed 6 months. *[Amended 11/28/05]*
- (5) Penalties set forth in Section 9.11 shall be in addition to penalty provisions in other Sections of Chapter 9, if any there be.

9.12 BICYCLE LICENSE REQUIRED *[Revised 6/20/99]*

- (1) **License Required.** It shall be unlawful for any resident of the Town of Menasha to operate a bicycle upon any street in the Town of Menasha unless the bicycle is registered and tagged as provided by this ordinance in accordance with WI Stats. 349.18(2). A "bicycle" for purposes of this ordinance is defined as: *Bicycle:* Every device propelled by the feet acting upon pedals and having wheels and 2 of which are not less than 14 inches in diameter.
- (2) **Registration.** Each bicycle shall be registered by filing with the Police Department the name and address of the owner together with a complete description of the bicycle on forms provided by the Police Department. Registration will be kept and license tags will be permanent. Registration shall be serially numbered and kept on file by the Police Department of the Town of Menasha. Upon such registration, the Police Department shall attach an identification tag to be affixed to the registered bicycle, which shall serially correspond with the registration number. The tag shall remain affixed to the bicycle unless removed by the Police Department for cause. In case of theft or loss, a new license number will be issued.
- (3) **Removal of Tags.** No person shall willfully remove, deface or destroy any identification tag.
- (4) **Transfer or Nonuse.** Within ten (10) days after any bicycle registered shall have changed ownership or have been dismantled or taken out of operation, the person in whose name the bicycle has been registered shall report such information to the Police Department of the Town of Menasha. In case of change of ownership, the registration shall be changed to show the name of the new owner. In case of dismantling and taking out of operation, the registration shall be canceled and the identification tag destroyed.

(5) **State Code Adopted.** State bicycle regulations and forfeiture laws as specifically referred to in this section are hereby adopted and by reference made part of this ordinance. Any act required to be performed or prohibited by any Statue incorporated by reference is required or prohibited by this ordinance. Sections adopted hereby are as follows:

- (a) 346.79(1), (2), (3), (4) - Special Rules Applicable to Bicycles
- (b) 346.80(1), (2), (3), (4) - Riding Bicycle on Roadway
- (c) 346.802(1)(a), (b); (2)(a), (b); (3); (4) - Riding Bicycle in Bicycle Lane
- (d) 346.81(1), (2) - Lamps and Other Equipment on Bicycles

(6) **Penalty**

- (a) Offenders under the age of 16 disregarding the rules and regulations of this ordinance may be processed by directing them to appear before the Municipal Court for the Town of Menasha, and may be penalized by the removal of registration from their bicycle for a period not to exceed thirty (30) days.
- (b) Any person 16 years old or older may be issued a traffic citation and be subject to the penalties provided hereby. Any person operating an unlicensed or unregistered bicycle or any person who operates a registered bicycle in a manner in violation of the provisions of this ordinance shall be fined not less than an amount set forth in Appendix C Fines and Penalties, reference this code section, plus court costs. That upon failure to pay the fines and/or forfeitures imposed, and the costs in addition, a person found guilty of violations of this ordinance may be sentenced for a period not to exceed two (2) days in the County Jail for Winnebago County. *[Amended 11/28/05]*

9.13 HOTEL AND MOTEL ROOM TAX: PERMIT & REGULATIONS

(1) **Definitions**

(1) **Hotel or motel:** A building or group of buildings in which the public may obtain accommodations for a consideration including without limitation, such establishments as inns, motels, hotels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartments hotels, resort lodges and cabins and any other buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanitariums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or

educational purposes provided that no part of the net earnings of such corporations and associations inured to the benefit of any private shareholder or individual.

- (2) **Gross receipts:** has the meaning as defined in WI Stats., Section 77.51(11)(a)(b) and (c) insofar as applicable.
- (3) **Transient:** Any person residing for a continuous period of less than one month in a hotel, motel, or other furnished accommodations available to the public.

(2) **Room Tax**

(a) Pursuant to WI Stats., Section 66.75, a tax is hereby imposed on the privilege and service of furnishing, at retail, of rooms or lodging to transients by hotel keepers, motel operators, and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Such tax shall be at the percentage rate set forth in Appendix B Fee Schedule, reference this code section, of the gross receipts from such retail furnishing of rooms or lodging. Such tax shall not be subject to the selective sales tax imposed by WI Stats., Section 77.52(2). The proceeds of such tax shall be remitted quarterly to the Town Treasurer (hereafter referred to as "Treasurer"). *[Amended 11/28/05]*

The Treasurer shall direct the current tax rate to the general fund, with the balance of the proceeds directed to the Fox Cities Convention and Tourist Bureau, to be used for the promotion of the Fox Cities as a convention location and tourist area. *[Revised 5/8/00][Amended 11/28/05]*

(b) This section shall be administered by the Treasurer. The tax shall be payable quarterly and shall be due on the last day of the month next succeeding the calendar quarter for which imposed. A return shall be filed with the Treasurer by those furnishing at retail such rooms and lodging on or before the same date on which such tax is due and payable. Such return shall show the gross room receipts of the preceding calendar quarter from such retail furnishing of rooms or lodging, the amount of taxes imposed for such period and such other information as the Treasurer deems necessary. Every person required to file such quarterly return shall, with his first return, elect to file an annual calendar year or fiscal year return. Such annual return shall be filed within ninety (90) days of the close of each such calendar or fiscal year.

The annual return shall summarize the quarterly returns, reconcile and adjust for errors in the quarterly returns, and shall contain certain such

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additional information as the Treasurer requires. Such annual returns shall be signed by the person required to file a return or his/her duly authorized agent. The Treasurer may, for good cause, extend the time of filing any return, but in no event longer than one month from the filing date.

(3) **Permit and License**

- (a) Every person furnishing rooms or lodging under Subsection 2 (a), shall file with the Treasurer an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the Town Board and shall set forth the name under which the applicant intends to transact business, the location of his place of business, and other information as the Treasurer requires. The application shall be signed by the owner, if a sole proprietor and, if not a sole proprietor, by the person authorized to act on behalf of such sellers. At the time of making an application the applicant shall pay the Town Treasurer an initial fee set forth in Appendix B Fee Schedule, reference this code section, for each permit. *[Amended 11/28/05]*
- (b) After compliance with Subsection 3(a) and Subsection 4(d) by the applicant, the Treasurer shall grant and issue to each applicant a separate permit for each place of business within the Town. Such permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated. It shall at all times be conspicuously displayed at the place for which issued.
- (c) When any person fails to comply with this section, the Town Treasurer may, upon ten (10) day notification and after affording such person the opportunity to show cause as to why his permit should not be revoked, revoke or suspend any or all of the permits held by such person.

The Treasurer shall give to such person written notice of the suspension or revocation of any of his permits. The Treasurer shall not issue a new permit after the revocation of a permit unless he/she is satisfied that the former holder of the permit will comply with the provisions of this section. A fee, set forth in Appendix B Fee Schedule, reference this code section, shall be imposed for the renewal or issuance of a permit, which has been previously suspended or revoked. *[Amended 11/28/05]*

- (d) If any person liable for any amount of tax under this section sells out their business or stock of goods or quits the business, their successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Treasurer that it has been paid or a certificate stating that no amount is due. If a person subject to the tax

imposed by this section fails to withhold such amount from the purchase price as required, he/she shall become personally liable for payment of the amount required to be withheld by him to extent of the price of the accommodations valued in money.

- (e) The Treasurer may, by office audit, determine the tax required to be paid to the Town or the refund due to any person under this section. This determination may be made upon the basis of the facts contained in the return being audited or on the basis of the other information within the Treasurer's possession. One or more such office audit determinations may be made of the amount due for any one or for more than one period.
- (f) The Treasurer may, by field audit, determine the tax required to be paid to the Town or the refund due to any person under this section. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information within the Treasurer's possession. The Treasurer is authorized to examine and inspect the books, records, memoranda, and property of any person in order to verify the tax liability of that person or another person. Nothing within shall prevent the Treasurer from making a determination of tax at any time.

(4) **Failure to file**

- (a) If any person fails to file a return as required by this section, the Town Treasurer shall make an estimate of the amount of the gross receipts under Subsection (3). Such estimate shall be made for the period from which such person failed to make a return and shall be based upon any information which is in the Treasurer's possession or may come into his possession. On the basis of this estimate, the Treasurer shall compute and determine the amount required to be paid to the Town, adding to the sum arrived at, a penalty equal to a percentage thereof, as set forth in Appendix C Fines and Penalties, reference this code section. One or more such determinations may be made for one or more than one period. *[Amended 11/28/05]*
- (b) All unpaid taxes under this section shall bear interest at the percentage rate per annum, set forth in Appendix C Fines and Penalties, reference this code section, from the due date of the return until the first day of the month following the month in which the tax is paid or deposited with the Treasurer. All refunded taxes shall bear interest per annum, from the due date of the return until the first day of the month following the month in which said taxes are refunded. An extension of time within which to file a return shall not operate to extend the due date of the return for purposes of interest

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computation. If the Treasurer determines that any overpayment of tax has been made intentionally or by reason of carelessness or neglect, or if the tax which was overpaid was not accompanied by a complete return, it shall not allow any interest thereon. *[Amended 11/28/05]*

- (1) Delinquent tax returns shall be subject to a late filing fee set forth in Appendix C Fines and Penalties, reference this code section. *[Amended 11/28/05]*
- (2) The tax imposed by this section shall become delinquent if not paid.
 - (a) In the case of a timely filed return, within thirty (30) days after the due date of the return, or within 30 days after the expiration of an extension period if one has been granted.
 - (b) In the case of no return filed or a return filed late, by the due date of the return.
 - (c) If, due to negligence, no return is filed or a return is filed late, or an incorrect return is filed, the entire tax finally determined shall be subject to a penalty of the tax, an amount set forth in Appendix C Fines and Penalties, reference this code section, exclusive of any interest or other penalties. If a person fails to file a return when due or files a false or fraudulent return with the intent in either case to defeat or evade the tax imposed by this section, a penalty shall be added to the tax required to be paid, exclusive of interest and other penalties. *[Amended 11/28/05]*
 - (d) In order to protect the revenue of the Town, the Treasurer may require any person liable for the tax imposed by this section to place with him, before or after a permit is issued, such security, not in an excess of an amount equal to the maximum possible revenue to be derived from said property per quarter of operation to be determined by the Treasurer. If any taxpayer fails or refuses to place such security the Treasurer may refuse or revoke such permit. If any taxpayer is delinquent in the payment of the taxes imposed by this section, the Treasurer may, upon ten (10) days notice, recover the taxes, interest and penalties from the security placed with the Treasurer by such taxpayer. No interest shall be paid or allowed by the Town, to any person for the deposit of such security.

- (e) Every person liable for the tax imposed by this section shall keep or cause to be kept such records, receipts, invoices and other pertinent information essential to the proper recording and payment of said tax.

(5) **Confidentiality**

- (a) All tax returns, schedules, exhibits, writings, or audit reports relating to such returns, on file with the Treasurer are deemed to be confidential, except the Treasurer may divulge their contents to the following and no others:
 - (1) The person who filed the return.
 - (2) Officers, agents, or employees of the Federal Internal Revenue Service or the State Department of Revenue.
 - (3) Officers, employees, or agents of the Town of Menasha as may be necessary to enforce collection.
 - (b) No person having an administrative duty under this section shall make known in any manner to business affairs, operations or information obtained by an investigation of records of any person on whom a tax is imposed by this section, or the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person, except as provided in subsection (a).
- (6) **Fines and Forfeitures.** Any person who is subject to the tax imposed by this section who fails to obtain a permit as required in Subsection (3) or who fails or refuses to permit the inspection of his/her records by the Treasurer after such inspection has been duly requested by the Treasurer, or who fails to file a return as provided in this section, or who violates any provision of this section, shall be subject to a forfeiture not to exceed an amount set forth in Appendix C Fines and Penalties, reference this code section. Each day, or portion thereof, that such violation continues is hereby deemed to constitute a separate offense. *[Amended 11/28/05]*
- (7) **Severability.** The provisions of this ordinance shall be deemed severable, and it is expressly declared that the Town Board would have passed the other provisions of this ordinance irrespective of whether or not one or more provisions may be declared invalid, and if any provision of this ordinance or the application thereof to any person, firm, association or corporation is held invalid, the remainder of the ordinance and the application of said provisions to other persons, firms, associations or corporations shall not be affected thereby.
- (8) **Effective Date -** This ordinance shall become effective November 1, 1985.

9.14 REAL ESTATE INQUIRY FEE

All real estate inquiries must be submitted in writing on a Real Estate Inquiry Request form.

Processing fee. Effective October 1, 2002 Real Estate Inquiry Letters shall be an amount set forth in the Appendix B Fee Schedule, reference this code section, per form. Please allow five (5) workdays. RUSH processing shall be additional. Please allow three (3) workdays. Application shall be made in the Finance Dept. and is non-refundable. *[Adopted 9/9/02][Amended 11/28/05]*

9.15 MISCELLANEOUS PROCESSING FEES

[Amended 3/10/03, 8/27/07]

- (1) **Town of Menasha Utility District Annexation, Street Vacation, Street/Road Name Changes.** Any "Petitioner" (i.e., any person, business, corporation, partnership or entity) that petitions for any sanitary district annexation, street vacation, or street/road name change shall pay all actual costs to complete such action. All petitions for sanitary district annexations, street vacations and street or road name changes shall be invoiced by the Town Clerk to the petitioner for actual costs incurred by such action. "Actual costs" as defined in this paragraph are as follows: recording fees, mailing/postage expenses, publication costs. "Petitioner", as defined in this paragraph, is the party requesting the particular action. *[Adopted 4/10/95]*
- (2) **Location fees.** All open records requests requiring research to locate or compile records shall be charged a processing fee per WI Statute 19.35(3)(c) and as set forth in Town of Menasha Appendix B Fee Schedule. Location fees shall not be payable until a minimum of \$50 has accumulated. Multiple open record requests of related subject matter may have location fees combined at the discretion of the Town Clerk. *[Amended 08/27/07]*

Visual inspection of public records during normal office hours is at no expense; however, an appointment shall be necessary. The fees for the following are shown in Appendix B Fee Schedule reference this code section, for all fee amounts. Any request expected to exceed \$25.00 must be paid in advance. *[Added 3/10/03] [Amended 11/28/05, 8/27/07]*

- (a) Photocopies. The Town shall collect from the requester, costs for photocopying, plus mailing and research costs, if applicable. *[Amended 11/28/05]*
- (b) Computer Disks. The Town shall charge a fee for each computer disk. If applicable, a mailing charge and/or hourly research costs may be added. *[Added 10/10/05][Amended 11/28/05]*

All requests must be put in writing to establish complete clarification by completing a town

record request form. Town staff shall not provide data conversion for record requests and will provide only the records it has available.

- (3) Any person requesting a certified Town of Menasha residency letter shall be charged a fee per letter. *[Amended 3/10/03, 10/10/05, 11/28/05]*
- (4) Tax Exempt Properties. Each Town property owner who qualifies for tax exemption must complete the appropriate forms and shall be charged an administrative fee. *[Added 10/10/05] [Amended 11/28/05, 08/27/07]*

9.16 SECURITY GUARD PERMIT *[Adopted 11/13/95]*

The Town Clerk or designee may issue a Security Guard Permit subject to the following conditions:

- (1) A written application, as provided by the Town Clerk, shall be filed with the Town Clerk by a person requesting said application, setting forth the name, residence, telephone number, birth date, and driver's license number.
- (2) At the time of application, the applicant shall pay to the Town Treasurer a fee for a two-year permit as set forth in Appendix B Fee Schedule, reference this code section. Included in the license fee, is the current cost of obtaining a criminal investigation check through the Department of Justice. *[Amended 11/28/05]*
- (3) The Police Department will receive the application for screening and recommend approval or denial of the permit.
- (4) After the Town Board of Supervisors has approved the application, the Town Clerk's office will issue the permit for a period of two years from date of Town Board approval.

9.17 PAWNBROKERS, SECONDHAND ARTICLE, SECONDHAND JEWELRY DEALERS, SECONDHAND ARTICLE DEALERS MALL, FLEA MARKETS *[Adopted 5/20/96]*

- (1) **State Law Adopted**
 - (a) The provisions of WI Stats. 134.71, relating to pawnbrokers and secondhand article, secondhand jewelry dealers, secondhand article dealer mall and flea market, exclusive of the definition of secondhand article dealer, and any provisions relating to the penalty to be imposed or the punishment for violation of WI Statutes are hereby adopted and made a part of this section by reference. A violation of any such provision shall be a violation of this section.

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(b) **Definition of Secondhand Article Dealer**

Secondhand article dealer in this section means any person other than an auctioneer, who primarily engages in the business of purchasing or selling secondhand articles, except when engaging in any of the following:

- (1) Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show, a convention or an auction.
- (2) Any transaction entered into by a person while engaged in a business for which the person is licensed or while engaged in the business of junk collector, junk dealer, or scrap processor, as described in WI Stats. 70.995(2)(x).
- (3) Any transaction while operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization.
- (4) Any transaction between a buyer of a new article and the person who sold the article when new which involves any of the following:
 - (a) the return of the article;
 - (b) the exchange of the article for a different new article.
- (5) Any transaction as a purchaser of a secondhand article from a charitable organization if the secondhand article was a gift to the charitable organization.
- (6) Any transaction as a seller of a secondhand article which the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

(2) **License Required**

The following individuals or firms involved in buying, selling or barter of used goods shall be licensed under this section:

- (a) Pawnbrokers, secondhand jewelry dealers, secondhand article dealer mall and flea market, as defined in WI Stats. 134.71; secondhand article dealers, as defined in Section 9.17 of this section.
- (b) Compact disc sellers, precious metals dealers and single owner used and antique furniture and household goods stores, not included under WI Stats. 134.71.
- (c) Dealers in large commercial, industrial and residential appliances including, but not limited to stoves, ranges, ovens, refrigerators, freezers, air conditioners, washers and dryers; and dealers

in sporting goods, not defined, under WI Stats. 134.71 shall also be required to be licensed.

- (1) The records and holding period requirements of WI Stats. 134.71 shall not apply to dealers in large electrical appliances and sporting goods.

(3) **Exempted Secondhand Article Dealers**

Secondhand article dealer does not include dealers who deal exclusively in used books or clothing, nor does it include any retailer or merchant who receives and resells trade-in merchandise if sales of used property constitute less than twenty percent (20%) of gross sales.

(4) **Application for License; License Fees**

Persons or organizations required to be licensed under this section, shall make application for the license with the Town Clerk's office on the appropriate form provided by the Department of Justice. The fees for licenses required are set forth in the Appendix B Fee Schedule, reference this code section. *[Amended 11/28/05]*

Pawnbrokers, Secondhand Jewelry Dealers, and Secondhand Article Dealers, have an annual licensing period from January 1 to December 31.

Secondhand Article Dealer Malls and Flea markets have a two-year licensing period from May 1 through April 30 of odd-numbered years.

(5) **Issuance of License**

- (a) Upon receipt of an application for a license under this section, the Chief of Police and Fire Chief shall institute such investigation of the applicant, as they deem necessary, for the protection of the public good.
- (b) The Town Board shall take action on a license application after investigation and the payment to the Town of the license fee. The Town Clerk shall notify the applicant of the Town Board's action either by issuance of a license upon approval, or by letter if denied.

(6) **Storage of Goods**

Licenseses shall insure that all of their merchandise and any parts for said merchandise shall be stored indoors.

(7) **Penalty**

- (a) Upon conviction for a first offense, second offense, or subsequent offense under this section, a person shall forfeit an amount as set forth in Appendix C Fines and Penalties, reference this code section. *[Amended 11/28/05]*

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9.18 BOWLING ALLEYS *[Adopted 3/10/03]*

- (1) License required. No persons, firm or corporation shall operate a bowling establishment without first obtaining a Bowling License.
- (2) Fees. The fee shall be set forth in the Appendix B Fee Schedule, reference this code section, and shall expire annually on June 30. Fee is non-refundable. *[Amended 11/28/05]*

9.19 CHRISTMAS TREE SALES *[Adopted 9/9/96]*

- (1) **Permit Required.** No person shall engage in the business of selling Christmas Trees in the Town of Menasha without a permit obtained from the Town Clerk and payment of the permit fee. The permit shall in no way be construed to affect existing or future zoning or land use.
- (2) **Application.** Any person requiring a Christmas Tree Sales permit shall make application in writing on a form provided by the Town Clerk prior to any sales of Christmas Trees within the Town of Menasha. The application shall contain the names and addresses of the seller(s) and the dates and location of the proposed sale, along with information pertinent to the granting of the permit. The Seller agrees to conform to all requirements outlined in the Town of Menasha Municipal Code including Chapter 8 Public Nuisances and Chapter 9.19 Christmas Tree Sales.
- (3) **Permit Fees.** Fees for selling Christmas trees are set forth in Appendix B Fee Schedule, reference this code section, and shall be required at the time of application. Permits shall be issued for a period of sixty (60) days. No permit may be granted or issued to any applicant or for any premises upon which taxes or assessments or other financial claims of the Town of Menasha are delinquent or unpaid. *[Amended 3/10/03, 11/28/05]*
- (4) **Clean up of Lot.** Any person licensed under this ordinance to sell Christmas Trees wreaths and the like, shall clean up the lot at which the trees are sold in a manner satisfactory to the Town of Menasha Department of Community Development within two (2) weeks after December 25th of each year.
- (5) **Site Plan.** All Christmas tree lots must submit a site plan complying with set backs, parking, where trees will be placed and other requirements as deemed necessary by the Community Development Department.
- (6) **Penalty.** Failure to obtain a Christmas tree permit and comply with this ordinance will result in a penalty set forth in Appendix C Fines and Penalties, reference this code section. Should the Town be required to clean up the lot, a fine will be charged to the licensee. *[Amended 11/28/05]*

9.20 MASSAGE AND REFLEXOLOGY *[Amended 3/10/03]*

- (1) **Permit Required.** No person shall engage in the business of massage and/or reflexology in the Town of Menasha without a permit obtained from the Town Clerk and payment of the permit fee. The permit shall in no way be construed to affect existing or future zoning or land use.
- (2) **Application.** Every person requiring a massage and/or reflexology permit shall make application in writing on a form provided by the Town Clerk prior to conducting business within the Town of Menasha. The application shall contain the name and home address of the therapist, name, address and the person in charge of the business where therapist will practice, along with any information pertinent to the granting of the permit. The therapist agrees to conform to all requirements outlined in the Town of Menasha Municipal Code including Chapter 9.20 *Massage and Reflexology*, and adopted by reference and made a part of this chapter under the provisions of WI Stats. 448.10(4).
- (3) **Permit Fees.** Fees are as stated in the official schedule of license/permit fees. A permit fee for each massage therapy therapist and reflexology therapist shall be required at time of application. A background check shall be executed by the Town of Menasha Police Department and a yearly inspection shall be conducted by the Town of Menasha Fire Department. Permit shall be from July 1st to June 30th each year.
- (4) **A Conditional Use Permit must be obtained** if the massage/reflexology therapist performs treatments in their home. If they perform treatments in their client's residence, a conditional use permit is not needed.
- (5) **Penalty.** Failure to obtain a massage and/or reflexology therapist permit shall be assessed a penalty set forth in Appendix C Fines and Penalties, reference this code section, per day. *[Amended 11/28/05]*

9.21 ESCORT AND ESCORT SERVICES *[Amended 3/10/03]*

- (1) **Definitions**
 - (a) Escort means any person who, for a fee, commission, salary, hire, profit, payment or other form of compensation accompanies or offers to accompany another person to or about social affairs, entertainments or places of amusement or consorts with another person about any place of public resort or within any private quarters.
 - (b) Escort Services means service provided by any person who, for a fee, commission, salary, hire, profit, payment, or other form of compensation furnishes or offers to furnish the names of persons who may accompany other persons to or

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about social affairs, entertainments or places of amusement, or who may consort with others about any place of public resort or within any private quarters.

- (c) Person means any individual, sole proprietorship, partnership, corporation or association, excepting the United States of America, the State of Wisconsin, and any political subdivision thereof.

- (2) **Exemptions.** This section does not apply to businesses, agencies, and persons licensed by the State of Wisconsin or the Town pursuant to a specific statute or ordinance, and employed by a business licensed and which perform an escort or escort service function as a service merely incidental to the primary function of such profession, employment or business and which do not hold themselves out to the public as an escort or an escort service.

- (3) **License Required**

- (a) No escort service shall be operated or maintained in the Town of Menasha without first obtaining a license to operate issued by the Town of Menasha.
- (b) A license may be issued only for one escort service located at a fixed and certain place. Any person, partnership, or corporation, which desires to operate more than one escort service, must have a license for each.
- (c) No license or interest in a license may be transferred to any person, partnership, or corporation.

- (4) **Application For License**

- (a) Any person, partnership, or corporation desiring to secure a license shall make application to the Town Clerk.
- (b) The application for a license shall be upon a form approved by the Town Clerk. An applicant for a license, which shall include each partner or limited partner of a partnership applicant, and each officer and director of a corporate applicant, each stockholder holding 10% or more of the stock or beneficial ownership, and every other person who is interested directly in the ownership, or operation of the business, shall furnish the following information under oath:

- (1) Name and address, including all aliases.
- (2) Written proof that the individual is at least 18 years of age.
- (3) All residential addresses of the applicant for the past 10 years.

- (4) The business, occupation, or employment of the applicant for 10 years immediately preceding the date of application.

- (5) Whether the applicant previously operated in this or any other state, county, city, village or town, and any other jurisdiction whatsoever under an escort license or similar business license; whether the applicant has ever had such a license revoked or suspended, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.

- (6) All criminal conviction, whether federal or state, or ordinance violation conviction, forfeitures of bond and pleas of no contest on all charges, except minor traffic violations.

- (7) Fingerprints and photograph registration with the Town of Menasha Police Department.

- (8) The address of the escort service to be operated by the applicant.

- (9) If the applicant is a corporation, the applicant shall specify the name of the corporation, the date and the state of incorporation, the name and address of the registered agent, and all officers and directors of the corporation.

- (10) A receipt from the Finance Department showing payment of the appropriated fee shall be submitted with the application. The amount of the fee shall be on file in the office of the Town Clerk.

- (5) **Standards for Issuance of License**

To receive a license to operate an escort service, an applicant must meet the following standards:

- (1) If the applicant is an individual:

- (a) The applicant shall be at least 18 years of age.

- (b) Subject to Chapter 111 WI Stats., the applicant shall not have been convicted of or pleaded no contest to a felony or any other crime involving moral turpitude, prostitution, obscenity or other crime of sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

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- (2) If the applicant is a corporation:
- (a) All officers, directors and other required to be named under (4)(b) shall be at least eighteen (18) years of age.
 - (b) Subject to Chapter 111, WI Stats., no officer, director or other person to be named under (4)(b) shall have been convicted of or pleaded no contest to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of application.
 - (c) No officer, director or other person required to be named under (4)(b) shall have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
- (3) If the application is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest.
- (a) All persons having a financial interest in the partnership, joint ventures, or any other type of organization shall be at least 18 years of age.
 - (b) No persons having a financial interest in the partnership, joint venture or any other type of organization shall, subject to Chapter 111, WI Stats., have been convicted of or pleaded no contest to a felony or any other crime involving moral turpitude, prostitution, obscenity, or other crime of sexual nature in any jurisdiction within five years immediately preceding the date of the application.
 - (c) No persons having a financial interest in the partnership, joint ventures, or any other type of organizations found to have previously violated this ordinance within five years immediately preceding the date of the application.
 - (d) No license shall be issued unless the Town of Menasha Police Department has investigated the applicant's qualifications to be licensed.
- (6) **Fees**
- (a) A license fee set forth in Appendix B Fee Schedule, reference this code section, shall be submitted with the application for a license. *[Amended 3/10/03, 11/28/05]*
- (7) **Renewal of a License or Permit**
- (a) Every license issued pursuant to this ordinance will terminate on December 31 of the year in which it is issued, unless sooner revoked, and must be renewed before operations shall be allowed to continue in the following year. Any operator desiring to renew a license shall make application to the Town Clerk. The application for renewal shall be filed with and dated by the Town Clerk. A copy of the application for license renewal shall be distributed by the Town Clerk to the Town of Menasha Police Department and the applicant. The application for renewal shall be upon a form provided by the Town Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license. No renewal application will be considered filed in the office of the Town Clerk unless it is accompanied by the receipt of the Finance Department showing payment of the appropriate fee. The amount of the renewal fee shall be on file in the office of the Town Clerk.
 - (b) A license renewal fee set forth in Appendix B Fee Schedule, reference this code section, shall be submitted with the application for a renewal. *[Amended 3/10/03, 11/28/05]*
- (8) **Denial of Application**
- (a) Whenever an initial application is denied, the Town Clerk shall, within 14 days of the denial, advise the applicant in writing of the reasons of such actions. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held at the next regularly-scheduled meeting of the Town Board of Supervisors as hereinafter provided.
 - (b) Failure or refusal of the applicant to give information relevant to the investigation of the applicant or their refusal or failure to appear at any reasonable time and place for examination under oath regarding said applicant or their refusal to submit or cooperate with any investigation required by this ordinance shall constitute an admission by the applicant that they are ineligible for such license and shall be grounds for denial thereof by the Town Clerk.
- (9) **Suspension, Revocation, or Non-Renewal of License**
- (a) The license granted herein may be revoked or suspended for up to six months or non-renewal by the Town Board as follows:
 - (1) If the applicant has made or recorded any statement required by this section knowing it to be false or fraudulent or intentionally deceptive;
 - (2) For the violation of any provision of this section;

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- (3) After one conviction of any escort service personnel or escort of an offense under Chapter 944, WI Stats., or an offense against the person or property of a person or of an offense involving substance in Sub. II of Chapter 161, WI Stats.; or any other offense which is substantially related to an escort service or an escort.
- (b) Notice and Hearing. No license shall be revoked, suspended, or not renewed by the Town Board except upon due notice and hearing to determine whether grounds for such action exists. Such hearing shall be before the Town Board of Supervisors. Notice of such hearing shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least 15 days prior to the date of the hearing and shall state the time and place thereof. The licensee shall be entitled to be heard, to be represented by counsel, to cross-examine opposing witnesses, to present witnesses on their own behalf under subpoena by the Town Board if such is required, and the hearing may be stenographically recorded at the licensee's option and expense. At the conclusion of such hearing, the Town Board of Supervisors shall submit a report including findings of fact and conclusions of law and a recommendation as to what, if any, action the Town Board should take with respect to the license. The Town Board shall provide the complainant and licensee with a copy of the report.

Either the complainant or the licensee may file an objection to the report and have the opportunity to present arguments supporting the objection to the Town Board. The Town Board shall determine whether arguments shall be presented orally or in writing, or in both. If the Town Board, after arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to the report recommending suspension or revocation, the license shall be suspended and revoked as provided at sub (a). The Town Board shall decide the matter and shall prepare a written decision which shall be filed with the Town Clerk, and a copy thereof delivered to the licensee and complainant within twenty (20) days after its decision.

(10) Responsibilities of the Operator

- (a) The operator of an escort service shall maintain a register of all employees or independent contractors, showing the names and aliases used by the employees, home address, birth date, sex, telephone numbers, social security numbers, and date of employment and termination. The above information on each employee shall be maintained in the register on the premises for a period of three years following termination.

- (b) The operator of an escort service shall make the register of employees available immediately to police upon demand by a member of the Town of Menasha Police Department at all reasonable times.
- (c) Every act or omission by an employee constituting a violation of the provisions of this ordinance shall be deemed that act or omission of the operator is such act or omission occurs either with authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- (d) Any act or omission of any employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(11) Registration of Employees

- (a) All operators or employees working for any escort service and independent contractor shall, prior to beginning employment or contracted duties, register with the Town of Menasha Police Department. Such registration shall include the following:
 - (1) Name, address, birth date, any aliases used, telephone numbers, date of employment, name of employer.
 - (2) Photographs and fingerprinting with the Town of Menasha Police Department.
- (b) Upon registration, the Police Department shall provide to each registered employee or independent contractor an identification card containing the employee's or independent contractor's photograph identifying the person as such, which shall be kept available for production upon request.
- (c) All registrations hereunder are valid for a period of one (1) year.
- (d) The registration fee shall be set forth in Appendix B Fee Schedule, reference this code section, per registration, and shall be paid to the Police Department to cover the costs of the identification cards. *[Amended 3/10/03, 11/28/05]*

(12) **Penalties and Prosecution**

- (a) Any person, partnership, or corporation who is found to have violated this ordinance shall be fined a definite sum not exceeding an amount set forth in Appendix C Fines and Penalties, reference this code section, and shall result in a revocation of any license. *[Amended 11/28/05]*
- (b) Each violation of this ordinance shall be considered a separate offense, and any violation continuing more than one day shall be considered a separate offense.
- (c) Severability. If any provision of this ordinance is deemed invalid or unconstitutionality by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions of same.

9.22 USE OF MUNICIPAL COMPLEX

The use of the Town of Menasha Municipal Complex at 2000 Municipal Drive shall be limited to governmental bodies and town staff for government purposes only. Government purposes shall be defined as any gathering that pertains to issues that are, or will likely be, before the Town Board.

This ordinance will insure that the Town of Menasha Municipal Complex is available for all government related business including meetings of the Town Board of Supervisors, commissions, committees and meeting by State and Federal authorities. The ordinance also serves to minimize the Town's liability over utilization of Town equipment. Those seeking to use Town facilities for their meeting will be encouraged to use the Town of Menasha Community Center at 1000 Valley Road. *[Added July 23, 2001]*

9.23 DESTRUCTION OF OBSOLETE RECORDS

[Created Feb.11, 2002]

The destruction of obsolete records is in accordance with the guidelines as set forth in the Town of Menasha Records Retention Schedule as outlined in **Appendix A**.

- (1) **Financial records.** Town officers may destroy non-utility records of which they are the legal custodians and which are considered obsolete, after completion of any required audit by the Bureau of Municipal Audit or an auditor licensed under Chapter 442 of the Wisconsin Statutes, but not earlier than seven years after payment or receipt of any sum involved in the particular transaction, unless a shorter period has been fixed by the State Public Records Board pursuant to WI State Stats 16.61(3)(e) then after such shorter period.

- (2) **Utility Records.** Town officers may destroy utility records of which they are the legal custodians and which are considered obsolete after completion of any required audit by the Bureau of Municipal Audit or an auditor licensed under Chapter 442 of the Wisconsin Statutes, subject to state Public Service Commission regulations but not earlier than seven (7) years after the record was effective, unless a shorter period has been fixed by the state Public Records Board pursuant to WI Stats 16.61(3)(e), then after such a shorter period, except that water stubs, receipts of current billings and customer's ledgers may be destroyed after 2 years.

- (3) **Other records.** Town officers may destroy records of which they are the legal custodian and which are considered obsolete, but not earlier than seven (7) years later than the record was effective unless another period has been set by statute, and then after such a period, or unless a shorter period has been fixed by the state Public Records Board pursuant to WI State Stats 16.61(3)(e) and then after such a shorter period.

- (4) **Historical Society notification.** Prior to the destruction of any public record as described in WI Stats. 19.21 (4) (a), (b), or (c), at least sixty (60) days notice in writing shall be given to the State Historical Society of Wisconsin, unless waived.

- (5) **When authorized.** This chapter shall not be construed to authorize the destruction of any public record after a period less than prescribed by statute or state administrative regulations.

- (6) **Statute or State Administrative Regulations shall be controlling.** In the event this ordinance is contrary to any State Statute or State Administrative Regulation, or any other binding law, said State Statute, State Administrative Regulations or other law shall be controlling, in the event it conflicts with this ordinance.

- (7) **Severability.** In the event that any section or portion of this ordinance shall be deemed to be unconstitutional or contrary to State Statute, State Administrative Regulations or any other law and found to be unenforceable or invalid, said section shall be considered severed from the remaining portion of the ordinance, which shall remain in full force and effect.

According to WI Stats. 16.611, documents of the Town of Menasha, which have been transferred to electronic format, shall be considered original and subject to State retention guidelines.

The Town of Menasha Records Retention Schedule [Appendix A] may be modified or updated when necessary.

9.24 TAXICAB OR LIMOUSINE SERVICES

[Amended 7/25/05]

Definitions.

Taxicab shall mean any vehicle (1) carrying passengers for hire; (2) on a prearranged or demand basis; (3) at a metered, mileage-based or per trip fare.

Limousine shall mean any vehicle (1) used for the business of carrying passengers for hire; (2) on a prearranged and not on a demand basis (3) at a premium fare.

(1) License--Required; exemptions.

- (a) No person, firm or company shall conduct a taxicab or limousine business with the Town of Menasha nor shall any person solicit passengers to be transported for hire within the Town unless license has been granted by the Town Board of Supervisors.
- (b) Subsection (a) of this section shall not apply to taxicabs or limousines that both pick up and drop off passengers within the Town if the services are licensed in another municipality.

(2) Application; issuance; renewal.

- (a) **Application.**
Application for a license shall be obtained from the Town Clerk, and shall give the address from which business is conducted and signed by the owner of the vehicle. The application shall state the number of vehicles proposed to be covered by such license.
- (b) **Approval and renewal.**
The application shall be submitted by the Town Clerk to the Town Board of Supervisors for the granting of such license. All licenses issued may be renewed from year to year upon payment of the annual license fee and deposit of a sufficient policy of insurance as required by (3) below, provided that if charges are filed with the Town Board against any license holder, such license shall not be granted until after a hearing and affirmative action is taken as in the case of original application. Whenever charges are filed against any licensee, a temporary license shall be issued by the Town Clerk to permit operation pending final action by the Town Board.
- (c) **Fee; approval by Police Chief.**
The license application shall be accompanied by the license fee. The amount of the fee shall be set forth in the Appendix B Fee Schedule, reference this code section. Before a license is granted by the Town Board, a background check shall be performed and application shall be approved or denied by the Police Chief. *[Amended 11/28/05]*

(3) Insurance.

No vehicle for the conveyance of passengers shall be operated or licensed under this division until the applicant for the license deposits with the Town Clerk a sufficient policy of insurance issued by an insurance company licensed to do business in the state which shall provide that the insurance company shall be liable for damages in the minimum amount of five hundred thousand dollars (\$500,000) representing a combined single limit for bodily injury and property damage liability for any accident due to the negligent operation of such vehicle. Said policy shall also include the Town of Menasha as an insured. The policy or contract is to be approved by the Finance Director for the Town before it is filed and shall contain a provision that the policy may not be canceled before the expiration of its term except upon thirty (30) days' written notice to the Town Clerk.

(4) Off-street parking.

Before a license to convey passengers for hire shall be issued, the applicant shall provide adequate off-street parking for the vehicles to be licensed. Such off-street parking shall be stated in the application for a license.

(5) Posting of fares.

The fares that are established by any licensee under this division for the transportation of passengers shall be printed in letters not less than one-half inch high and posted in a conspicuous place in all taxicabs. All advertised and business practices of licensees shall be in compliance with Wisconsin Trade Practices Laws.

(6) Identification of taxicabs.

Each taxicab licensed shall have painted in a prominent place on its exterior a number by which it may be easily identified.

(7) Inspection of taxicabs and limousines.

The Police Department may inspect taxicab or limousine at any times for the purpose of discovering defects that might make them unsafe for the transportation of passengers. When defects are found, the taxicab or limousine shall not be operated for the transportation of passengers until the vehicle has been repaired and then approved by the Police Department.

(8) Taxicab/limousine driver's license--required; term.

No person shall drive or operate a taxicab or limousine unless such person holds a valid driver's license issued by the State of Wisconsin. The taxicab/limousine licenses shall be valid for one (1) year from date of issuance.

(9) Application; issuance; revocation.

- (a) **Application.**
In order for a person to be licensed, the person must be at least eighteen years of age and must make written application to the Town Clerk on forms furnished by the Clerk, giving the applicant's name, address and gender, whether or not they have been convicted of a felony, whether or not his/her driver's license has ever been

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revoked or suspended and the type of State driver's license that has been issued to the person, and stating his/her experience and the number of the State driver's license. The application must be accompanied by the licensee fee for the initial license or any renewal license. The licenses shall be issued for a two-year period from date of issuance. After the Police Department has granted approval of the license, the Police Department shall issue an identification card which must be displayed on the licensee's person whenever driving or operating a taxicab or limousine. The cost of the identification card is included in the application, however may be replaced for a fee, if it is lost or stolen.

(b) Issuance.

No license under this section will be issued or renewed if any of the following apply:

1. Applicant has been convicted of operating while intoxicated in the past three (3) years.
2. Applicant has more than three (3) moving traffic violations in the past year.
3. Applicant has more than three (3) traffic accidents in the past year, regardless of fault.
4. Applicant was convicted of an offense that substantially relates to the licensed activity. Such offenses include, but are not limited to, burglary, sex offenses, drug offenses, possession or sale of stolen property. A license may be granted if the conviction is reversed or if the person is granted a pardon for the offense. In determining whether the circumstances of the conviction are substantially related, the Chief of Police or designee shall consider the number of convictions, the nature and seriousness of the crime(s), whether the crime(s) involved violence, theft, or other evidence of lack of trustworthiness with money, whether the crime(s) involved driving, the age and maturity of the individual at the time of the conviction, the amount of time elapsed since the conviction, and any evidence of personal rehabilitation.
5. The applicant has been declared a habitual criminal.

(c) Revocation.

- (a) The license of any applicant who knowingly makes a false statement in their application shall be void and the license shall be surrendered to the Town Clerk or any member of the Police Department.

- (b) Any driver licensed under this section found guilty or shall plead guilty to violations of the traffic code of the Town three (3) times within any one (1) year shall have their license automatically revoked.

9.25 GUN OR WEAPON DEALER *[Created 3/10/03]*

- (a) License required. No persons, firm or corporation shall operate or engage in the business of selling firearms and/or ammunition without having obtained a license.
- (b) Fee. Application shall be made to the Town Clerk with a fee set forth in Appendix B Fee Schedule, reference this code section, which shall expire annually on June 30 and shall be non-refundable. *[Amended 11/28/05]*

9.26 TATTOO/BODY PIERCING PRACTITIONER & ESTABLISHMENT *[Created 4/28/03]*

- (a) License required. No person shall engage in the business of tattoo artistry or body piercing in the Town of Menasha without a permit obtained from the Town Clerk.
- (b) Fees. *[Amended 11/28/05]*
 - (1) Fee for operating a tattoo artistry establishment or body piercing establishment shall be set forth in Appendix B Fee Schedule, reference this code section, annually on July 1 of each year and is non-refundable.
 - (2) Each tattoo artist *or* body piercing practitioner shall pay a fee for practicing within the parlor. The fee is non-refundable.
 - (3) Fee for a combined tattoo artistry *and* body piercing establishment shall be set forth in Appendix B Fee Schedule, reference this code section, and is non-refundable.
- (c) A license application form from the Winnebago County Health Department must be completed and approved prior to practicing in the Town of Menasha.
- (d) A written application shall be filed with the Clerk's Office, and prescribed fees paid to the Town Treasurer. It shall include other establishments where currently or previously employed, and whether a business or trade number under which the applicant operated, was subject to suspension or revocation.
- (e) All applications shall be accompanied by a recommendation for approval or disapproval by the Chief of Police, Fire Marshal and/or Building Inspector.

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- (f) Failure or refusal of the applicant to completely and truthfully provide responses to the application questions, to give any information relevant to the investigation of the application, or refusal to appear at any reasonable time and place for examination regarding said application shall constitute an admission by the applicant that the applicant is ineligible for such license and shall be grounds for denial thereof.