

CHAPTER 9
Licenses And Permits
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CHAPTER 9

Licenses and Permits

9.01.000 LICENSE COMMITTEE. The License Committee shall consist of the City Clerk, the Chief of Police, and 3 Aldermen to be appointed by the Mayor at the annual organization meeting of the Common Council.

9.01.010 License Applications to the Committee. Except where otherwise provided herein, all applications for licenses and permits under this Chapter shall be referred to the License Committee for recommendation to the Common Council as to issuance. No license or permit shall be issued by the Common Council until a recommendation of the License Committee is heard, except that the City Clerk or the Clerk's designee may issue a Provisional Operator's License pursuant to the procedures set forth in Wisconsin State Statutes Section 125.17 (5), as they may be amended from time to time.

9.02.000 RECORD OF LICENSES. The City Clerk shall keep a complete record of each license issued, and of all renewals, suspensions and revocations thereof, which record shall be kept on file with the original application for a license.

9.03.000 LICENSE PERIOD. Unless otherwise specifically provided herein, the license period is from July 1 to June 30th of each year.

9.04.000 INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES AND WINE.

9.04.010 State Statute and Rules Adopted. Except as otherwise specifically provided in this chapter, all provisions of Ch. 125 of the Wisconsin Statutes and administrative rules of the state Department of Revenue in Ch. Tax 8, Adm. Code, defining and regulating the sale, procurement, dispensing and transfer of intoxicating liquor, fermented malt beverages and wine, including provisions relating to prescribed procedures and the penalty to be imposed or the punishment for violation of such statutes or rules, as they may be amended from time to time, are adopted and made a part of this chapter by reference. A violation of any such provisions shall constitute a violation of this chapter. Sections of Ch. 125, Wis. Stats. adopted by reference or as may be altered, amended or recreated in any manner whatsoever shall include, but are not limited to, the following:

- 125.07(1) (Alcohol Beverages; Restrictions Relating to Underage Persons)
- 125.07(2) (Sales of Alcohol Beverages to Intoxicated Persons)

- 125.07(3) (Presence in Places of Sale; Penalty)
- 125.07(4) (Underage Persons; Prohibitions; Penalties)
- 125.09(2) (Possession of Alcohol Beverages on School Grounds Prohibited)
- 125.33(9) (Campuses and Retailers to Purchase from Wholesalers)
- 125.69(6) (Campuses and Retailers to Purchase from Persons Holding Permits)

9.04.020 Licenses.

- A. When Required. No person, except as provided by Section 9.04.010, 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, fermented malt beverage or wine, 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 regulations of the State and City applicable thereto.
- B. Separate Licenses Required for Each Place of Sale. A separate license shall be required for each stand, place, room or enclosure or for each suite of rooms or enclosures which are in direct connection or communication where intoxicating liquor or fermented malt beverages are kept, sold or offered for sale; and no license shall be issued to any person for the purpose of possessing, selling or offering for sale any intoxicating liquor or fermented malt beverage in any dwelling house, flat or residential apartment.

9.04.030 Classes of Licenses; Fees. There shall be the following classes of licenses which when the fee specified is paid and the license issued shall permit the holder to sell, deal or traffic in intoxicating liquor and fermented malt beverages as provided in Chapter 125.000, Wisconsin Statutes, as they may be renumbered and/or amended from time to time:

1. **Retail “Class A” Intoxicating Liquor License** \$325 effective July 1, 1993 and \$500 effective July 1, 1994.
2. **Retail “Class B” Intoxicating Liquor License** \$350 effective July 1, 1993 and \$500 effective July 1, 1994.
3. **Retail Class “A” Fermented Malt Beverage License** \$100 per year.
4. **Retail Class “B” Fermented Malt Beverage License** \$100 per year.
5. **Temporary “Class B” Club Picnic License** issued under Section 125.26 (6)-\$5.00 per day or \$10.00 per event.
6. **Operator’s License**-\$20.00 per year/renewals; \$25.00-new
7. **Pharmacist’s Permit**-\$10.00 per year.
8. **Part Time “Class A” and “Class B” and Class “A” and “B” License** issued under Section 125.51 (9), Wisconsin Statutes-The proportion of the annual license fee as the number of months or fraction of a month remaining until June 30 bears to 12.
9. **Provisional Operator’s License**-\$15.00.
10. **Retail “Class C” Wine License** \$100.00 per year.
11. **Wholesalers’ License**-\$25.00 per year or fractional part thereof.
12. **Brewer’s License**-\$25.00 per permit period or fractional part thereof.
13. **Provisional Retail Licenses** – issued under secs. 125.185 (1) – (6) of the Wisconsin Statutes, a provisional retail license may be issued 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. Provisional retail licenses shall be issued by the City Clerk and the

Six-Month Licenses

1. Fermented Malt Beverages-3/4 of the annual license fee.
2. Intoxicating Liquor-1/2 of the annual license fee.
3. Wine-3/4 of the annual license fee.

9.04.040 Application for License. Applications for intoxicating liquor and fermented malt beverage licenses shall be made in writing on the form provided by the City Clerk, shall be sworn to by the applicant as provided by Section 125.04(3)(f), Wis. Stats. and shall be filed with the City Clerk not less than fifteen (15) days prior to the Common Council meeting at which the application is to be considered. At the time a license application is filed with the City Clerk, the applicant shall remit a fee of \$16.00 to the City to pay the cost of publishing the application, or such other cost of publication as may be determined from time to time by the City under secs. 125.04(3)(g) and 985.08, Wis. Stats.

9.04.050 Qualifications for Granting of License; Investigation.

- A. The City Clerk shall notify the Chief of Police, Fire Chief, and Building Inspector of each new or renewal application, and these officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto, including those governing sanitation in restaurants, and whether the applicant is a proper recipient of a license. The Police Department shall conduct an investigation of the applicant, including, but not limited to, in the discretion of the Police Department, requesting information from the State, surrounding municipalities, and/or any community where the applicant has previously resided, concerning the applicant's arrest and conviction record. These officials shall furnish a written recommendation to the City Clerk as to whether a license should be granted or refused, together with the information derived from such investigation. The City Clerk shall forward such information and recommendation to the Common Council.

- B. If the inspecting officials recommend the denial of the application, the applicant shall be notified by the City Clerk at least fifteen (15) days prior to the Council Meeting at which the application is to be considered. The notice shall set forth the basis for such recommendation and inform the applicant of the opportunity to appear before the Common Council and to provide evidence as to why the application should be approved. In addition, the applicant shall be notified that the consideration of the application shall be heard in closed session, pursuant to Section 19.85 (1) (b) of the Wisconsin Statutes, unless the applicant requests such consideration to be held in open session.
- C. No license shall be granted to any person who is not of good moral character and a full citizen of the United States and of Wisconsin and who has not resided in this state continuously for at least one year prior to the date of filing the application; nor shall any license be issued to a person who has habitually been a petty law offender, or has been convicted of a felony, unless the person so convicted has been duly pardoned. The provisions of this section shall not apply to a Wisconsin corporation, but such provisions shall apply to all officers and directors of any such corporation.
- D. No license shall be granted to any underage person as stated in the current Wisconsin Statutes, 125.035 (20m).
- E. No Retail “Class B” or Class “B” Intoxicating Liquor or Fermented Malt Beverage License shall be issued unless the premises to be licensed conform to the sanitary, safety and health requirements of the State Building Code, the State Plumbing Code and the rules and regulations of the State Board of Health applicable to restaurants as required by Section 175.05 (6a), Wisconsin Statutes, and also conform to all ordinances and regulations of the City.
- F. No initial or renewal alcohol beverage license shall be issued for any premises for which taxes, assessments, or other claims to the City of Port Washington are delinquent and unpaid.
- G. No initial or renewal alcohol beverage license shall be issued to any person who is delinquent in the payment of any taxes, assessments, or other claims owed to the City of Port Washington.

9.04.060 Granting of License.

- A. Opportunity shall be given by the Common Council to any person to be heard for or against the granting of any license. Upon the approval of the application by the Common Council, the City Clerk shall, upon the filing by the applicant of a receipt showing the payment of the required license fee to the City Treasurer, issue to the applicant a license. Each license shall be numbered in the order in which issued and shall specifically state the premises for which issued, the date of issuance, the fee paid, and the name of the licensee. No license shall be issued

- B. Any license duly granted and not issued within sixty (60) days shall be subject to review and possible revocation by the Common Council, pursuant to the provisions of Section 125.12, Wisconsin Statutes. These licenses may not be re-granted during this sixty (60) day period. Any license issued requires the business to be open a minimum of 150 days during the license period. In cases of revocation under this section, no refund of the license fee is to be made.

9.04.070 Conditions of All Retail Alcohol Beverage Licenses. All retail alcohol beverage licenses granted hereunder shall be granted subject to the following conditions and all other conditions of this chapter and subject to all other ordinances and regulations of the City applicable thereto.

1. **Inspection.** Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the City at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles they had in violation of City Ordinances or State Laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offense.
2. **Employing of Minor.** No Retail alcohol beverage licensee shall employ any underage person upon the licensed premises but this shall not apply to hotels, restaurants or combination grocery stores and bowling alleys, nor to members of the immediate family or household of the licensee. "Members of the immediate family and household" means the husband, wife, parents, and children of the licensee over the age of 18 years and residing in the household of the licensee.
3. **Use of Curtains, Blinds, Screens.** No Retail alcohol beverage licensed premises shall, during the hours in which they are required to close or in which the sale of liquor or malt beverages is prohibited, obstruct by the use of curtains, blinds, screens, or in any other manner, a full and complete view of the interior from the outside. During the hours in which the sale of intoxicating liquors and malt beverages is permitted the premises shall be properly and adequately lighted. However, a retail alcohol beverage license shall entitle the holder thereof to serve such beverages in a separate room at banquets or dinners during the hours in which the sale of such beverages is permitted.
4. **Restrictions on Clubs.** No club shall sell intoxicating liquors or fermented malt beverages except to members and to guests invited by members.
5. **Orderly Conduct Required.** Each licensed premises shall at all times be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.

6. **Gambling Prohibited.** No gambling or games or chance of any sort shall be permitted in any form upon licensed premises. Slot machines, or any device of chance are prohibited and shall not be kept upon the premises.
7. **Health Rules.** Each premise shall be conducted in a sanitary manner and shall be in a safe and proper place for the purpose for which used. The Health Officer may make reasonable and general rules for the sanitation of all places of business possessing licenses under this section. Such rules or regulations may be classified and made applicable according to the class of business conducted. All such rules and regulations shall have the same force as this section and infractions thereof may be punished as violations of this section.
8. **Wearing Apparel.** All persons involved in the operation of any licensed premises under this section, whether as licensee, member of the immediate family of the licensee, licensed operator, unlicensed operator of the supervision of the licensee or licensed operator, waiter, waitress, entertainer, dancer or other employee, shall observe the following applicable minimum standards for such licensed premises:

The costume, uniform or attire, of any person involved in operation of a licensed premises as set forth herein, shall be of a fully opaque material and must completely cover the human male or female genitals, pubic area, vulva, anus, anal cleft and buttocks at all times. The costume, uniform or attire of any female person involved in the operation of any license premises as set forth herein shall completely cover the female breast below a horizontal line across the top of the areola at its highest point, and the lower portion of the female breast, but this restriction shall not include or apply to any portion of the cleavage of the female breast exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel, provided the areola and any portion of the nipple are not exposed in whole or in part.

9. **Enclosed Area.** All persons issued a Temporary Class “B” (Picnic) Beer License shall provide and maintain an enclosed area within which beer may be sold, served, consumed or stored at a picnic or similar gathering of limited duration. As used in this section, “enclosed area” shall mean a portion of the license holder’s premises separated from the remainder of the premises by a fence or similar barrier approved by the Common Council. A drawing showing the proposed location of the enclosed area shall be included with the application for license at the time such application is filed with the City Clerk.

9.04.080 Closing Hours.

- A. No premises for which a wholesale or retail “Class A” liquor license has been issued shall be permitted to remain open for the sale of liquor:

1. If a wholesale license, between 5:00 p.m. and 8:00 a.m., except on Saturday, when the closing hour shall be at 9:00 p.m.
 2. If a retail license, between 9:00 p.m. and 8:00 a.m.
- B. No premises for which a Retail “Class B” or Class “B” liquor or fermented malt beverage license has been issued shall be permitted to remain open for the sale of liquor or fermented malt beverages or for any other purpose between the hours of 2:00 a.m. and 6:00 a.m. except as provided in this paragraph and Paragraph E. On Saturday and Sunday, the closing hours shall be between 2:30 a.m. and 6:00 a.m. On January 1, premises operating under a “Class B” or Class “B” license or permit are not required to close.
- C. Between 12:00 midnight and 6:00 a.m. no person may sell fermented malt beverages on Class “B” or “Class B” licensed premises in an original unopened package, container or bottle or for consumption away from the premises.
- D. Class “A” premises may remain open for the conduct of their regular business but may not sell fermented malt beverages between 9:00 p.m. and 8:00 a.m.
- E. Hotels and restaurants, whose principal business is the furnishing of food and lodging to patrons may remain open for the conduct of their regular business but may not sell fermented malt beverages during the hours prohibited hereunder.

9.04.090 Posting of License. Every license issued pursuant to this section shall be posted while in force in a conspicuous place in the room or place where intoxicating liquors or fermented malt beverages are kept for sale. No person shall post such license or be permitted to post such, upon premises other than those mentioned in the application, or knowingly deface or destroy such license or permit, or remove such without the consent of the licensee or permit holder.

9.04.100 Duplicate License. Whenever a license or permit shall be lost or destroyed without fault on the part of the holder, his agent or employee, a duplicate in lieu thereof under the original application shall be issued by the City Clerk upon satisfying himself as to the facts, and upon the payment of a fee of \$5.00.

9.04.110 Transfer of License. Every license or permit issued pursuant to this section, may, for a fee of \$10.00 be transferred by the Common Council from one premises to another within the City, but no licensee shall be entitled to more than one transfer in any one license year. No license can be transferred to another premises unless such premises is already licensed or the premises from which transfer cannot be granted another license unless the number of licenses in force is less than 19. Whenever a license is transferred, the licensing authority shall forthwith notify the State Treasurer of such transfer. The Class “B” fermented malt beverage license and the Class “B” intoxicating liquor license must be transferred at same time.

9.04.120 License Quotas.

9.04.120 A. Retail “Class B” Intoxicating Liquor Licenses. As provided in Section 125.51 (4), Wisconsin Statutes, the number of licenses available to issue shall be whichever of the following is the largest:

1. One license per 500 population or fraction thereof.
2. The number of licenses lawfully issued and in force within the City on August 27, 1939.
3. The number of licenses lawfully issued and in force within the municipality in the previous year.

9.04.120 B. Retail Class “A” Fermented Malt Beverage Licenses. No Quota.

9.04.120 C. Wholesaler’s Fermented Malt Beverage Licenses. 4.

9.04.130 Revocation, Suspension or Nonrenewal of License.

1. Except where a different procedure is prescribed by another provision of Sections 9.04.000 et seq. of these ordinances, the following provision shall apply to the suspension, revocation or nonrenewal of alcohol beverage licenses issued pursuant to Chapter 9 of these ordinances.
 - a. **Complaint.** Upon complaint made in writing under oath by any resident of the City, and filed with the City Clerk, that any person or other entity licensed pursuant to this chapter has violated any provision of this chapter or keeps or maintains a disorderly or riotous, indecent or improper house, or that the licensee has sold or given away any intoxicant to any underage person, or to persons intoxicated or bordering on intoxicating, or to known habitual drunkards or has failed to maintain the premises according to standards prescribed for sanitation by the City Health Officer or other authority, has violated any criminal law of the State of Wisconsin and upon conviction of such criminal charge or upon accumulation of the total number of points set forth in the schedule herein, the Common Council shall issue a summons, to be signed by the Clerk, commanding the licensee complained of to appear before the Alcohol Licensee Review Committee or a special committee designated by the Common Council on a day and time and at a place named in the summons to show cause why the license should not be revoked or suspended. Such summons shall be served not less than three (3) and not more than ten (10) days before the time at which the licensee is commanded to appear, and may be served personally upon the licensee or the agent of the licensee or upon the person in charge of the licensed premises. The complaint shall be served with the summons and shall set forth the offense allegedly committed, the date, and place of such offense,

b. Procedure on Hearing.

1. If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the committee finds the allegations sufficient, the license shall be revoked. The Clerk shall give notice of the revocation to the person whose license is revoked.
2. The Alcohol License Review Committee (hereinafter Committee) shall serve as the hearing agency for the Common Council. The chairman of the committee, or the chair's designee shall conduct the hearing, administer oaths to all witnesses and may issue subpoenas. The rules of evidence provided in Section 227.45, Wis. Stats., shall be followed. The complainant shall have the burden of proving the charges by preponderance of the evidence.

If the licensee appears as required by the summons and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witness, and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. All proceedings and testimony shall be recorded on tape and transcribed unless waived by both the complainant and licensee. If either party requests a stenographic recording and transcription, City staff shall make the necessary arrangements, but the expense shall be borne by the requesting party. The secretary of the Committee shall mark and receive all exhibits admitted into the record.

With twenty (20) days of the completion of the hearing, the Committee shall submit a report to the Common Council, including findings of fact, conclusions of law and a recommendation as to what action, if any, the Common Council should take with respect to the license. The Committee shall provide the complainant and the licensee with a copy of the reports. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the Common Council. The Common Council shall determine whether the arguments shall be represented orally or in writing or both.

At the second regular meeting of the Common Council after the filing of the Committee's recommendation, the Common Council shall act on the recommendation. If the recommendation is based upon a stipulation of the parties, the Common Council may accept or reject the recommendation by a simple majority vote. If the Common Council rejects the recommendation, the matter shall be referred back to the Committee for a full fact-finding hearing. If the recommendation is based upon a full fact-finding hearing, the recommendation shall become the decision of the Common Council unless reversed or modified by a simple majority vote. No further evidence shall be allowed before the Common Council. Only those members of the Common Council who have certified to the Clerk, in writing, that they have read the transcript, unless waived by both the complainant and licensee, exhibits and report of the Alcohol License Review Committee shall be permitted to vote on the matter. If the City Council, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to the report recommending suspension or revocation, the license shall be suspended for no more than ninety (90) days or revoked. The decision of the Common Council shall be a final determination for purposes of judicial review. If the complaint is found to be true, the licensee may be required to pay to the City the actual cost of the proceeding subject to any determination of such payment by the Circuit Court if the licensee elects to appeal such proceeding.

3. The City Clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked.
 4. If the Common Council finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the Common Council finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The Common Council or committee may require the complainant to provide security for such costs before issuing the summons under Subdivision (a).
- c. **Effect of Revocation.** When a license is revoked under this subsection, the revocation shall be recorded by the City Clerk and no other license issued under this chapter shall be granted to such licensee or for such premises for a period of twelve (12) months from the date of the revocation.
 - d. **Judicial Review.** The action of the Common Council in granting or failing to grant, suspending or revoking any license, or the failure of the Common Council to revoke or suspend any license for good cause, may

- e. **Other Provisions.** Any changes in the required ordinances that change the provisions relating to cancellation, nonrenewal or termination of license, shall be subject to hearing before the License Committee and Common Council, and due notice to all license holders in the City of Port Washington of such change.

2. Search Warrants.

- a. When complaint shall be made to the judge of the Circuit Court that intoxicating liquor is being sold or kept for sale in any particular building or premises in the City of Port Washington in violation of this section, said judge, if he or she be satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such intoxicating liquor.
- b. Such warrants shall be directed to any police officer of the City of Port Washington commanding such officer to search the building or premises designated and described therein, and to bring before the said judge of the Circuit Court any such intoxicating liquor found being kept, sold, or kept for sale in violation of the provisions of this section, and the person in whose possession the same are found.
- c. When any officer, in the execution of a search warrant shall seize any intoxicating liquor for which a search is authorized by this subsection, all such property or things shall be safely kept by the direction of the court so long as shall be necessary for the purpose of being produced as evidence on any trial and as soon as may be afterward returned to the owner, destroyed, or otherwise disposed of as the judge of said court may direct.

3. Exceptions.

- a. No license shall be required for the use of intoxicating liquor in hospitals or in bona fide institutions for the aged and infirm where such liquor is used for medicinal, mechanical, or scientific purposes only, or for one licensed to practice surgery or medicine in using alcohol in any form in the bona fide treatment of the sick or in using or prescribing such alcohol for such bona fide treatment.
 - b. No provision of this chapter shall apply to alcohol intended for use and used in the manufacture and sale of any of the following when unfit for beverage purposes, namely:
 - 1. Denatured alcohol produced and used pursuant to acts of Congress and regulations promulgated thereunder;
 - 2. Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;
 - 3. Flavoring extracts, syrups, and food products;
 - 4. Scientific Chemical, mechanical and industrial products.
 - c. Any person who shall knowingly sell any of the products enumerated in the preceding subdivision for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes, shall be guilty of a violation of this section.
 - d. Nothing in this section shall be construed to prevent any person from manufacturing wine or beer of any alcoholic content at this home or place of residence to be consumed by himself, his family, and guests without compensation.
4. Point Values for Alcohol Beverage Violations; Suspension, Revocation or Nonrenewal.
- a. Purpose and Definitions.
 - 1. The purpose of this subsection is to administratively interpret those portions of Chapter 9, Municipal Code of the City of Port Washington, relating to establishing an alcohol beverage demerit point system to assist in determining which license holders should be subject to suspension, revocation or nonrenewal procedures.
 - 2. "ALRC" shall mean the Alcohol License Review Committee, which shall consist of all of the members of the Finance and License Committee as provided in sec. 2.12.100 of the Municipal Code.

b. Demerit Point Schedule. The scale of demerit points is listed according to the type of alcohol beverage violation. This point system is used to identify habitually troublesome license holders who have repeatedly violated state statutes, rules or the Municipal Code, for the purpose of recommending suspension, revocation or nonrenewal of their alcohol beverage licenses, or taking any such action.

<u>TYPE OF VIOLATION</u>	<u>ORD. SEC. NO.</u>	<u>POINT VALUE</u>
Traffic to Underage Person	9.04.010	50
Traffic to Intoxicated Person	9.04.010	50
Underage Person on Premises	9.04.010	25
False Statement on Application	9.04.040	50
Transfer of License Without Permission	9.04.110	25
Sell or Dispense After Hours	9.04.080	50
Open After Hours	9.04.080	50
No Carryout After Hours	9.04.080	25
After-Hours Consumption (Class B)	9.04.080	25
Refuse Inspection, Search, Removal of Items	9.04.070 1.	100
Gambling	9.04.070 6.	25
Licensed Premises to be Sanitary, Safe	9.04.070 7.	25
Resisting or Obstructing an Officer	11.02.060	100
Any other nonenumerated violations of the Municipal Code, Ch. 125, Wis. Stats., or Ch. Tax 8, Wis. Adm. Code		As determined in discretion of the Common Council

1. Points shall be assessed against the licensed premises upon conviction of each license holder, or his or its agents, servants or employees for a violation of the Municipal Code or the laws or rules of the state of Wisconsin.
2. In construing the number of demerit points to be assessed for an alleged violation, it is "ordinance section number" rather than the "type of violation" which shall control.
3. Demerit Points Not a Penalty. Demerit points are not deemed a penalty hereunder. Demerit points are a means of tracking the performance of license holders under this Ch. 9 of the Municipal Code.
4. Discretionary Demerit Points. Nonenumerated violations shall be the subject of such number of demerit points as designated by the Common Council, within its discretion. In exercising its discretion, the Common Council may take such action as the circumstances warrant with due consideration for mitigating factors. Notwithstanding the foregoing, the number of demerit points to be assessed for a nonenumerated violation shall be not less than 25 nor more than 100.
5. Time for Action. Disciplinary actions, including suspension, revocation or nonrenewal hearings, need not be commenced and completed in the same license year as the violation occurred. Where such disciplinary actions are not

6. Judgment of Conviction as Prima Facie Proof of Violation. The judgment of conviction of any license holder, or agent, servant or employee thereof, in any municipal, state or federal court, irrespective of whether obtained following trial, plea agreement or bond forfeiture, shall be prima facie proof of said violation for purposes of this ordinance. However, in the case of any judgment of conviction entered pursuant to a no contest plea, or considered in law to be rendered pursuant to a no contest plea, said judgment of conviction as a prima facie case may be rebutted. Further, mitigating circumstances may be introduced with respect to any judgment of conviction.
7. Discretion Upon Review. The Common Council is not required to suspend, revoke or nonrenew a license which is subject to suspension, revocation or nonrenewal based upon the criteria in Subsection 9.04.130 4.b., but may, in its discretion, take such action as the circumstances warrant with due consideration for mitigating factors. However, where a suspension is imposed the maximum suspension period specified in Subsection 9.04.130 4.d.2. of this ordinance shall be applicable.

c. Violations, How Calculated. In determining the accumulated demerit points against a license holder within a standard period, the City shall use the date each violation was committed, not the conviction date, as the basis for the determination.

d. Suspension, Revocation or Nonrenewal of License.

1. The ALRC shall call before it for purposes of a suspension, revocation or nonrenewal hearing all licensees who have accumulated 100 demerit points in a twelve (12) month period, or 250 demerit points in a thirty-six (36) month period as a result of court imposed convictions.

- a. Formal Expression of Concern. In those instances in which a licensee has accumulated less than 100 demerit points as determined by the City Attorney, and additional violations on one date would result in the accumulation of at least 100 demerit points, but not more than 200 demerit points, the ALRC shall call before it the licensee for purposes of a formal expression of concern. If the licensee appears, no discussion of the alleged facts underlying the assessment of demerit points shall be permitted unless the licensee requests such discussion, but only if the licensee is advised that any statements made by the licensee and/or her/his representatives regarding the alleged facts may be considered by the ALRC in any subsequent suspension, revocation or nonrenewal hearing which may result from the alleged violations which are the

2. If the demerit point accumulation, calculated from the date of violation, equals or exceeds 100 points in a twelve (12) month period, or 250 points in a thirty-six (36) month period, the license holder shall have its or their license subject to suspension, revocation or nonrenewal, within the discretion of the Common Council. Any suspension period shall be for not more than ninety (90) days. Penalties shall commence the day after they have been imposed by the Common Council. Days of suspension shall run consecutively. If the license is revoked, no other license shall be granted to such licensee for a period of twelve (12) months from the date of revocation. No part of the fee paid for any license so suspended or revoked may be refunded.

5. Severability. The several terms and provisions of this section shall be deemed severable, and if any provision hereof or the applicant thereof to any person or circumstances is held invalid, the remainder of the section and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

6. Penalty.

- a. Any person violating any provision of this chapter shall be subject to a penalty of not more than Two Hundred (\$200.00) Dollars, unless a greater maximum penalty is specifically provided for in this Chapter, except that where a lower maximum penalty shall be provided by Chapter 125 of the Wisconsin Statutes for any specific offense such maximum penalty shall prevail for the same offense committed in violation for this ordinance.

- b. Nothing in this subsection shall in any way diminish the authority of the Common Council to suspend, revoke or nonrenewal of any license issued pursuant to this chapter for any violation for this chapter or grounds enumerated in Section 9, City of Port Washington.

9.04.140 UNDERAGE PERSONS ON LICENSED PREMISES. Pursuant to §125.07 (3) 8. and 9., Wis. Stats., underage persons are permitted to enter and remain on Class “B” or “Class B” premises under the following circumstances:

1. The licensee makes application on a form to be provided by the City Clerk for a written authorization from the Port Washington Police Department permitting underage persons to be present pursuant to the requirements of Wis. Stats. §125.07 (3).
2. The licensee stores all alcoholic beverages off the premises or in a locked portion of the premises during any times when underage persons are allowed to enter or remain on the licensed premises.
3. The licensee notified the City of Port Washington Police Department, in advance of the times underage persons will be allowed on the licensed premises.
4. Before issuing the authorization, the Port Washington Police Department shall make the determination that the presence of underage persons on the licensed premises will not endanger the health, welfare or safety of any member of the community.
5. The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises. No licensee may obtain more than one (1) authorization per calendar year.
6. All other requirements of §125.07 (3), Wis. Stats., are complied with.
7. The licensee shall pay a fee of \$25.00 for each application for authorization pursuant to this ordinance. Such fee shall be paid at the time that the application is made.

9.04.150 Prohibition of Intoxicating Liquor, Cereal Malt Beverage or any Other Alcoholic Beverage in Sexually Oriented Businesses.

- A. Notwithstanding anything to the contrary in Sections 9.04.000, et seq. or 9.15.000, et seq. of the Municipal Code, it shall be prohibited in a sexually oriented business, as defined in Section 9.22.020 of the Municipal Code, to serve, sell, use, provide or consume any intoxicating liquor, cereal malt beverage or any other alcoholic beverage.
- B. Penalties. Any person who, or any proprietorship, partnership, corporation, limited liability company, limited liability partnership, association, or other legal entity which, violates any of the provisions of this ordinance shall be subject to a forfeiture of Five Hundred Dollars (\$500.00) plus court costs and assessments per violation. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, a violation of this ordinance constitutes sufficient grounds for suspending, revoking or non-renewing an alcohol beverage license under Section 125.12 of the Wisconsin Statutes and Sections 9.04.130 of the Municipal Code.

9.05.000 TAXICABS.

9.05.010 Taxicabs Defined. Except for carriages licensed under Sections 9.23.00, et seq., and except for vehicles, which operate on established routes regulated by the Public Service Commission of Wisconsin, the term “taxicab” as used herein shall include all vehicles carrying passengers for hire for which public patronage is solicited.

9.05.020 Taxicab License. No taxicab shall be operated upon the streets of this City until a license therefore shall have been obtained from the Common Council.

9.05.030 Application for License. Application for license for taxicabs shall be made by the owner thereof upon blank forms to be furnished by the City Clerk. Such application shall contain the full name and address of the owner, the make, model and year of manufacture, the Wisconsin State license number for the current year, engine number, factory number of the motor vehicle.

9.05.040 Public Convenience and Necessity. Whenever any applicant for a license shall have complied with all conditions and regulations relative to the filing of the application, the City Clerk shall forward said application to the Common Council for a public hearing thereon to determine the public convenience and necessity. Notice of hearing shall be given to all persons interested, including the owner of the vehicle, at least ten (10) days before the date set for such hearing. The kind of notice, place of hearing and all facts connected with or relating to such hearing shall be regulated by the Common Council.

The Common Council may issue or refuse such license as the public welfare, convenience, or necessity may require, and shall refuse to issue a license when it shall find that transportation facilities already are available and adequate to meet the public need.

9.05.050 Renewal. A license issued hereunder shall expire on December 31 of each year but shall be subject to renewal without a further determination of public convenience and necessity.

9.05.060 License Fees. The fee for a license hereunder shall be \$10.00 per year or fraction thereof for each licensed vehicle.

9.05.070 Insurance. No license to operate a taxicab shall be issued unless the owner shall have filed with the City Clerk an insurance policy issued by an insurance company licensed to do business in the State of Wisconsin, providing insurance coverage for such taxicab (which must be specifically described in the policy) with a maximum liability of \$250,000 for the injury or death of any one person and \$500,000 for injury or death of any number of persons in any one accident, and \$10,000 for property damage in any one

accident, which policy or policies shall insure said owner against his legal liability for damage to the property of others, including baggage, but excluding property of the assured or property hired or leased by the assured and for the bodily injury or death of others, except to employees of the assured engaged in the course of their employment resulting from the accident of collision, for which said owner or the operator of said vehicle would be liable on account of the liability imposed upon said owner or upon the operator of said vehicle for any acts of negligence of the said owner or of his agents or servants or of any person operating said vehicle with the permission and consent of said owner.

Said policy shall further provide that it cannot be cancelled until 20 days notice of such cancellation shall have been given by registered mail to the City Clerk. The cancellation or other termination of any insurance policy issued in compliance with this subsection shall automatically revoke and terminate all licenses issued for the taxicab covered by such insurance policy, unless another such policy shall be provided and in effect at the time of such cancellation or termination.

The owner of any such taxicab, at the time of filing with the City Clerk said insurance policy, shall also file a receipted bill from the insurance company issuing said policy showing that the premium for said policy for one year has been paid in full.

9.05.080 Inspection. No vehicle shall be licensed until it has been thoroughly and carefully examined by the Chief of Police, or such person as he may designate, and found to be in a thoroughly satisfactory and safe condition for the transportation of passengers, clean, of good appearance, well painted, and that said vehicle complies with all the other provisions of this section. Such examination shall be made and a report filed with the City Clerk before the license is issued. If such examination and inspection shows that such vehicle does not comply with any one or more of the provisions of this section, no license shall be issued.

9.05.090 Register. The City Clerk shall keep a register of the name of each person owning or operating any vehicle licensed under this section, together with the license number and description, make, and the name and address of the insurance companies and the date of the expiration of such insurance and furnish the Chief of Police with a copy thereof. The records shall be open to the inspection of the public at all reasonable times.

9.05.100 Revocation. Licenses granted under this section may be suspended or revoked at any time by the Common Council for any violations of any of the provisions of this section and also if the vehicle for which said license was issued shall not be of good appearance, clean and safe. Licenses suspended or revoked because the vehicle is not of good appearance, clean or safe shall not be reissued until the vehicle shall be put in good condition for use by the public to the satisfaction of the Common Council.

When a taxicab license is revoked or cancelled as herein provided, it shall be the duty of the City Clerk to immediately notify the owner to cease at once to operate the vehicle for which the license has been revoked as a taxicab.

9.05.110 Suspension. All licenses to operate taxicabs issued to any person as provided by this section shall be suspended automatically for a period of 15 days upon said person, his agents, servants or employees being convicted of a violation of any of the provisions of this section or section 9.06.

9.05.120 Taxicab Regulations.

- A. License Non-Transferable. Licenses issued or granted under this section shall be non-assignable and non-transferable.
- B. Identification Required. The serial number of said licenses shall be printed or painted on each side and on the rear of each taxicab, in figures at least 2 inches high and ¼ inch wide, at a point not lower than ½ the height of the taxicab. The name of the owner of each taxicab shall be printed on both sides and rear of each cab in like letters.
- C. Fares to be Posted. Each taxicab shall have a card on which shall be printed in plain legible figures the fares charged, posted in a conspicuous place inside the cab in plain sight of passengers.
- D. No person operating, owning or controlling any vehicle licensed hereunder, except for any shared ride taxi operated by the City of Port Washington or any other political subdivision of the United States or the State of Wisconsin, shall stop to pick up any passenger at any point between the point of original pick up and the destination of the original passenger unless consented to by said passenger. Any shared ride taxi operated by the City of Port Washington or as other political subdivisions of the United States Government, or the State of Wisconsin, may stop to pick up any passenger at any point between the point of original pick up and the destination of the original passenger without the consent or permission of the original passenger.
- E. Inspection by Chief of Police. The Chief of Police shall have the authority at all times to inspect taxicabs, drivers, and the quality of service of taxicab owners and drivers.
- F. Condition of Cars-Report Periodically. The brakes, horn, lights and tires of every motor vehicle used for hire under this section shall be examined and tested as to sufficiency at least once every 90 days by a reliable garage keeper who shall furnish a certificate as to the examination of said motor vehicle, and the sufficiency of its brakes, horn, lights and tires, which certificate shall be filed in the office of the City Clerk.
- G. Drivers to be Licensed. No person licensed hereunder shall employ as a driver of any taxicab any person other than a driver duly licensed under Section 9.06.000.

9.05.130 Fraud in Obtaining License. No person shall give any false information or practice any fraud, misrepresentation, or subterfuge, to secure a license hereunder.

9.05.140 Doctor's Certificate Required. No person shall be granted an operator's license pursuant to Sec. 66.054 (11), Wis. Stats., or 176.05, Wis. Stats., unless with his original application for such license, and every second year thereafter commencing

January 1, 1974, there is submitted a doctor's certificate certifying freedom from any communicable disease not more than 20 days prior to such application being filed.

9.06.000 TAXICAB DRIVER'S LICENSES.

9.06.010 Requirements. Every person driving a taxicab must be licensed as such and each applicant for a driver's license must fulfill the following requirements:

1. Be at least 18 years of age.
2. Be of sound physique, with good eye-sight, and not subject to epilepsy, vertigo, heart trouble, or any other infirmity of body or mind which might render him unfit for the safe operation of the vehicle.
3. Be able to speak, read, and write the English language plainly.
4. Be clean in dress and person and not addicted to the use of intoxicating liquors or habit-forming drugs.
5. Produce on forms to be provided by the City Clerk, through the Chief of Police, affidavits of his good character from two reputable citizens of the City who have known him personally and observed his conduct frequently during one year next preceding the date of his application, and also a further testimonial from his last employer.
6. Fill out upon a blank form to be provided by the City Clerk through the Chief of Police, a statement giving his full name, including his full first name, his residence or places of residence for 3 years previous to his moving to his present address, his age, color, height, color of eyes and hair, place of birth, length of time he has resided in the City, whether a citizen of the United States, place of previous employment, whether married or single, whether he has ever been convicted of a felony or a misdemeanor, whether he has ever been previously licensed as a driver or chauffeur, and if so, when and by what authority, whether his license has ever been revoked or suspended, and if so, for what cause, which statement must be signed and sworn to by the applicant and filed with the City Clerk and kept as a permanent record. Such application must have endorsed upon it the approval or disapproval of the Chief of Police and recommendation of the Common Council.
7. Each applicant for a driver's license under the provisions of this section shall be examined by a person designated by the Chief of Police as to his knowledge of and his compliance with all the provisions of this chapter, and the traffic regulations, and if the result of this examination be unsatisfactory, he shall be refused a license.

9.06.020 Fee. The fee for a driver's license shall be \$5.00 for the first year or fraction thereof, to be returned upon the return of the badge. Every driver's license shall expire on December 31. Driver's licenses shall be approved by the Council and signed by the Mayor and the City Clerk.

9.06.030 Record of City Clerk. There shall be kept by the City Clerk a complete record of each license issued to a driver and of all renewals, suspensions, and revocations thereof, which record shall be kept on file with the original application of the driver for a license.

9.06.040 Badge. There shall be delivered to each licensed driver a metal badge of such form and style as the City Council may prescribe, with the license number thereon, which badge must, under penalty of revocation of the license be constantly and conspicuously displayed on the driver's coat or outer garments while he is engaged in his employment. No driver shall loan his badge or permit for another person to use the same.

9.06.050 Revocation and Suspension. A driver's license may be suspended or revoked at any time for a violation of any provision of this section, or for any cause deemed sufficient by the Common Council, or the judge of any court in which such driver is convicted of any offense, and the driver thereupon shall be deprived of his badge by the authority suspending or revoking his license. When the license is suspended or revoked by any official other than the Common Council, the driver's badge and a record of such suspension or revocation shall forthwith be forwarded to the Common Council. If the penalty is suspension of license, the badge will be returned to the driver at the expiration of the period for which the suspension was made. A second suspension for the same reason, or a third suspension for any cause shall automatically revoke the driver's license. A driver whose license has once been revoked may again be licensed as a driver in the City, providing a new license is granted by the Common Council. Where a license has been suspended or revoked by the court, or a judge thereof, the approval of such court or judge shall be necessary for the restoration or reissue of such license. Where any driver's license shall be suspended or revoked by the Common Council, the Chief of Police shall immediately be notified thereof.

9.06.060 Regulations.

- A. Drivers to Wear Caps. The driver of each taxicab shall wear a cap at all times while operating a taxicab, with the name of the owner of said taxicab legibly printed thereon.
- B. Drivers to Report Accidents. Every driver of a taxicab shall report to the Chief of Police, within 12 hours after the happening thereof, any accident involving any injury to persons or damage to property wherein his vehicle is involved.

9.06.070 Fraud in Obtaining License. No person shall give any false information or practice any fraud, misrepresentation, or subterfuge, to secure a license hereunder.

9.07.000 DIRECT SALES AND SOLICITATIONS.

9.07.010 Registration Required. It shall be unlawful for any direct seller or solicitor to engage in direct sales or solicitations within the City of Port Washington without being registered and licensed for that purpose as provided herein.

9.07.020 Definitions. In this ordinance:

1. **“Direct Seller”** means any individual who, for him/herself, or for a partnership, association or corporation, sells goods or services or takes sales orders for the later delivery of goods or services at any location other than the permanent business place or residence of said individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, canvassers and transient merchants. The sale of goods and services includes donations requested or required by the direct seller for the retention of goods or services by a donor or prospective customer.
2. **“Permanent merchant”** means a direct seller or one representing a merchant who, for at least one year prior to the submission of an application pursuant to this ordinance, has continuously operated an established place of business in this City or has continuously resided in this City and now does business from his/her residence.
3. **“Goods”** shall include personal property of any kind and shall include goods provided incidental to services offered or sold.
4. **“Solicitor”** means any individual who, for him/herself or for any other person, organization, society, association or corporation, personally solicits money, property or financial assistance of any kind from persons other than members of such organization, society, association or corporation.
5. **“Charitable organization”** shall mean any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation for which there is provided proof of tax-exempt status pursuant to Sec. 501 (c) (3) or (4) of the United States Internal Revenue Code.
6. **“Clerk”** shall mean the City Clerk.
7. **“Applicant”** shall mean each individual applying for registration and licensing as a direct seller or solicitor.
8. **“Registrant”** shall mean each individual registered by the Clerk and to whom a license has been issued.

9.07.030 Exemptions.

- A. The following shall be exempt from all provisions of this ordinance:
 1. Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
 2. Any person selling goods at wholesale to dealer in such goods.
 3. Any farmer or truck gardener selling agricultural products of the farm or garden occupied or cultivated by such person.
 4. Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such goods in their regular course of business.
 5. Any person who has an established place of business where the goods being sold are offered for sale on a regular basis and in which the buyer

6. Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with a prospective customer.
 7. 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.
 8. Any person who claims to be a permanent merchant, but against whose complaint has been made to the Clerk that such person is a transient merchant; provided that there is submitted to the Clerk, proof that such person has purchased or leased for at least one year the premises from which he/she is conducting business or proof that such person has conducted such business in this city for at least one year prior to the date complaint was made.
- B. Charitable organizations shall be exempt from the requirements set forth in 9.07.040 A and C and 9.07.060 if the organization has provided the individual representing it with credentials stating the name of the organization, the name of the representative and the purpose of the solicitation and provided, further, that said individuals provide the Clerk with the following information:
1. The individual's name and permanent address.
 2. The name and address of the organization represented.
 3. The name and address of the officers or directors of the organization.
 4. The nature of the sales or solicitations.
 5. Proposed dates and time of sales or solicitations.

A license operative for the dates provided to the Clerk shall be issued without charge upon compliance with the foregoing. The Clerk shall then forward the information and notice of the issuance of a license to the Chief of Police.

- C. Any religious organizations for which there is provided proof of tax-exempt status pursuant to Sec. 501 (c) (3) of the United States Internal Revenue Code shall be exempt from the requirements set forth in 9.07.040 A and C, and 9.07.060. The provisions of subsection (3) (b) above shall be applicable to such organizations.
- D. Any veteran who holds a special state license pursuant to Sec. 440.82 (2), Stats., shall be exempt from the provisions of 9.07.040 and 9.07.060 provided that such veteran provides the Clerk with the following information:
1. The veteran's name and permanent address.
 2. The nature of the sales or solicitations.
 3. Proposed dates and times of sales or solicitations.

The Clerk shall then forward the above information to the Chief of Police.

9.07.040 Registration Requirements.

A. Applicants for licenses must complete and return to the Clerk a registration form furnished by the Clerk which shall require the following information:

1. Name, permanent address, telephone number and temporary address, if any.
2. Date of Birth, height, weight, and color of hair and eyes.
3. Name, address and telephone number of the person, firm association or corporation that the direct seller represents or is employed by or whose merchandise is being sold.
4. Temporary address and telephone number from which sales or solicitations will be conducted, if any.
5. Nature of sales or solicitations to be conducted and a brief description of the goods and/or services offered.
6. Proposed dates and times of sales or solicitations.
7. Proposed method of delivery of goods, if applicable.
8. Make, model and license number of any vehicle to be used by applicant in the conduct of sales or solicitations.
9. Last 3 cities, villages and towns where applicant conducted similar sales or solicitations.
10. Place where applicant can be contacted for at least seven days after leaving the City.
11. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's sales or solicitations or other transient merchant activities within the last five years, the nature of the offense and the place of conviction.

B. Applicants shall present the following items to the Clerk for examination.

1. A driver's license or some other proof of identity as may be reasonably required.
2. A State certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by State authorities.
3. A State health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under State law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.

C. No application shall be processed until the application fee has been paid to the Clerk to cover the cost of processing said application. Said fee shall be \$15.00.

- D. No application shall be processed until the applicant signs a statement appointing the Clerk his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale, service performed or solicitation by the applicant in connection with the direct sales or solicitation activities of the applicant in the event the applicant cannot, after reasonable effort, be served personally.

9.07.050 Investigation; Denial of Application.

A. Upon receipt of a completed registration form, the Clerk shall immediately refer it to the Chief of Police to make an investigation.

B. The Clerk shall refuse to issue a license to the applicant for any of the following reasons:

1. The application contains any material omission or materially inaccurate statement.
2. Complaints of a material nature have been received against the applicant by authorities in any of the last three cities, villages or towns in which the applicant conducted similar business.
3. 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 solicitations.
4. The applicant failed to comply with any applicable provision of 9.07.040.

C. Any person denied application for a license may appeal such action by filing with the Common Council within 14 days after written notice of the denial a written statement requesting a hearing and setting forth the grounds for the appeal. The Common Council shall set a time and place for the hearing. Written notice of the time and place of the hearing shall be given to the applicant at least 72 hours prior to the time set for the hearing.

9.07.060 Registration and Issuance of Licenses.

A. Upon compliance with the foregoing requirements, filing of a bond and payment of the license fee as hereinafter set forth the Clerk shall register the applicant as a direct seller or solicitor and issue a license to the applicant. The license shall be operative only during the days requested on the registration form.

B. Such license shall contain the signature of the Clerk, the name and address of the direct seller or solicitor, the type of goods or services being sold or the nature of the solicitation, the dates during which the license is operative and the license number of any vehicle used for sales or solicitation.

C. Registrants shall exhibit their licenses at the request of any citizen or police officer.

D. Every applicant shall pay a license fee of \$5.00 per day.

9.07.070 Regulation of Direct Sellers and Solicitors.

A. Prohibited Practices:

1. A direct seller or solicitor shall be prohibited from:

Calling at any dwelling or other place between the hours of 8:00 p.m. and 9:00 a.m. except by appointment.

Calling at any dwelling or other place where a sign is displayed bearing the words “No Peddlers”, “No Solicitors” or words of similar meaning.

Calling at the rear door of any dwelling place.

Remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

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

3. No direct seller or solicitor shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales or solicitations are made from vehicles, all traffic and parking regulations shall be observed. No direct seller or solicitor shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon in excess of 15 minutes, nor shall any be permitted to operate in a congested area where such operations might impede or inconvenience the public use of such streets. Any move from a stationary location shall be to a place not less than 100 feet from such location, and the seller or solicitor shall not return to within 100 feet of any previous occupied location within 4 hours of having moved from said location. For the purpose of this section, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced.

4. No direct seller or solicitor shall make any loud noises or use any sound amplifying device to attract customers or donors if the noise produced is capable of being plainly heard outside a one-hundred foot radius of the source.
5. No direct seller or solicitor shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business or making solicitations.

B. Disclosure Requirements. The following requirements shall govern the conduct of registrants:

1. After the initial greeting and before any other statement is made to a prospective customer or donor, a direct seller or solicitor shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of goods or services he/she offers to sell.
2. If any sale of goods or services is made by a direct seller, or any sales for the later delivery of goods or services 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 \$25, if accordance with the procedure as set forth in Sec. 423.203, 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) (b) and (c), (2) and (3), Stats.
3. If the direct seller takes a sales order for the later delivery of goods, 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 warranty is provided and, if so, the terms thereof.

9.07.080 Records of Violations. The Chief of Police shall report to the Clerk all convictions for violations of this ordinance and the Clerk shall note any such violation on the record of the registrant convicted. The Clerk shall note any complaint or report of an alleged violation made by a resident of this City or a police officer.

9.07.090 Revocation of License.

A. The registrant's license may be revoked by the Common Council after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales or solicitation, violated any provision of this ordinance or was convicted of any

crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling or solicitations.

B. Written notice of the hearing shall be served personally on the registrant at least 72 hours prior to the time set for the hearing. Such notice shall contain the time and place of hearing and a statement of the acts or omissions upon which the hearing will be based.

9.07.100 Severance Clause. The provisions of this ordinance are declared to be severable, and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this ordinance; they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

9.08.000 FUND SOLICITORS.

9.08.010 Permit Required. No person representing or pretending to represent, directly or indirectly, or using the name of any lodge, club, charitable, philanthropic, educational, patriotic, political or labor organization or any other association or society shall solicit funds from the public for any purpose through the sale of tickets, tags, contributions, advertising, or any other method where such person shares or receives, directly or indirectly any part of such fund for such solicitation and promotion without having first secured a permit to do so from the City Clerk and paid the fee of \$7.00 per person therefore, and no such permit shall be issued except on written application therefore, which shall contain the following information:

1. The name and address of the person, association or corporation making such application and if an association or corporation, the certificate or resolution of authorization from its governing board.
2. The name of the organization or society for whose benefit such solicitation and promotion is to be carried on, together with the names and addresses of the president and secretary, the location of the room or meeting place thereof and a certificate or resolution of such organization consenting to the enterprise.
3. The nature of the entertainment or enterprise proposed, the date and place thereof and general plan of organization, the price of tickets, tags, subscriptions and contributions and the plan and methods to be followed in the sale or solicitation thereof.
4. The method of distribution of the funds or proceeds from any such undertaking, including the names of the promoters and the organizations represented, or under whose auspices the enterprise is conducted or purported to be conducted and the respective percentage or amounts to be distributed or allotted to each.
5. The names and addresses of 3 bona fide residents of the City as references.

9.08.020 Exceptions to Fee. In the case of solicitation by the regularly constituted and duly authorized members of associations or organizations having nonprofit or exempt status pursuant to the Internal Revenue Code, and where the entire funds or proceeds derived from the solicitation for enterprises described in 9.08.010, go and belong to such organization, the fee for each person shall be \$2.00.

9.08.030 Cause for Revocation. Any misrepresentation or misstatement of a required fact in said application shall be a ground for withholding or revocation of such permit by the Common Council.

9.09.000 CLOSING OUT SALES-This entire section is repealed.

9.10.000 AMUSEMENT LICENSE.

9.10.010 License Required. Any person owning, conducting or managing for gain within the City, any circus, or other performance, exhibition, theater, show, amusement, concert, or musical entertainment shall obtain a license. This section shall not require a license for a lecture on a scientific, moral, educational or literary subject, or for a concert of music, given exclusively for a scientific, moral, educational, or literary object or for any lecture, concert, performance, exhibition or show given or made by citizens of the City none of whom makes a vocation of providing such amusement.

9.10.020 Application. Every application for a license required by this section shall be made upon a blank furnished by the City Clerk and verified and shall contain the name, place of residence, age and occupation of the applicant, the purpose for which a license is desired and the place where and the time for which he proposes to carry on, conduct or manage within the City any circus, exhibition, theater, show, amusement, concert, musical entertainment or other performance. The City Clerk shall issue a license to the applicant upon his compliance with this section upon payment of the proper fees.

9.10.030 Fees. The license fees shall be as follows:

1. Theaters and movie houses \$100.00/Yr.
2. Each coin-operated amusement machine \$ 10.00/Yr.
3. Each circus, per appearance \$100.00
4. Each carnival, per day \$ 15.00
5. All others, per day \$ 10.00

9.10.040 Suspension. Any license granted herewith may be suspended by the Mayor when such suspension is reasonably necessary for the preservation of decorum or the public peace, by giving notice of such suspension to the licensee thereof, or anyone apparently in charge of the hall, performance, theater, exhibition or show licensed, or the person in charge of the premises upon which the same is located. The Mayor shall report such suspension to the Common Council at its next regular meeting and such suspension shall continue as long as the Mayor shall deem such suspension necessary unless the

Common Council shall order the suspension to be terminated. No license fee, or part thereof, shall be refunded for any time such suspension was in operation.

9.11.000 SALE OF WEAPONS.

9.11.010 License Required. No person shall engage in the business of selling, or shall sell or give away to any person, within the City, any blackjack, slingshot, billy, sandclub, sandbag, bludgeon, metal knuckles, martial arts and karate-type weapons, revolver, pistol, air rifle or other instrument or weapon which uses loaded or blank cartridges, except rifles and shotguns used for hunting purposes, without securing a license so to do as herein provided, and no person having such license shall sell or give away any such weapons to any person within the City who has not secured a permit from the Chief of Police to purchase such weapon in the manner herein provided.

9.11.020 Application for License. Any person desiring a license authorizing the sale of any of the weapons or other articles mentioned in 9.11.010, shall make application to the City Clerk in writing, setting out in such application the full name and residence of the applicant, if an individual, and if a firm or corporation, the name and residence of each of its members or officers. Such applicant shall also set out the location at which it is intended or desired to conduct such business. Upon the receipt of such application the City Clerk shall refer such application to the License Committee pursuant to Section 9.01.

9.11.030 Issuance. Upon approval of the application by the Common Council and payment of an annual license of \$5.00, the City Clerk shall issue the license.

9.11.040 Daily Report on Sales. Every person who is licensed to deal in the foregoing weapons and other articles described in 9.11.010, shall make out and deliver to the Chief of Police every day before 12:00 o'clock noon a legible and correct report of every sale or gift made under authority of said license during the preceding 24 hours, which report shall contain the date of such sale or gift, the name of the purchaser or donor, with his or her address and age, the number, the kind, description and price of such weapon, the number of the purchaser's permit and the purpose for the purchase of such weapon. No person engaged in the buying or selling of such deadly weapons, in wholesale or job-lots, need make the above mentioned report, but such person shall permit the Chief of Police to examine his books at any time.

9.11.050 Permit to Purchase. No person shall purchase or possess any of the weapons or articles enumerated in subsection (1) until he has obtained a permit for such purpose from the Chief of Police.

9.11.060 Revocation. The Common Council may revoke any permit or license issued hereunder for cause after notice to the permittee or licensee and opportunity to be heard.

9.12.000 MILK DISTRIBUTOR. See 10.03.000 of this Code.

9.13.000 CIVIC FUNCTIONS AND PROMOTIONS. The Common Council may by majority vote to issue a license to an organization for the purpose of conducting civic functions or promotions and may authorize said organization to control concessions, entertainment, parade and marching units, and allied activities, and to make charges therefore, but such charges shall be subject to prior approval by the Finance Committee of the City of Port Washington. Said organization shall have the opportunity to prescribe such reasonable rules and regulations as it may deem advisable, and, when approved by the Common Council of the City of Port Washington, shall have the same force and effect as an act of the Common Council and may be enforced as though it were an act of the Common Council.

9.14.000 DOGS. All dogs required to be licensed by State Statute shall be immunized against rabies. Statutory evidence of such vaccination shall be presented to the City Treasurer before issuance of any dog license.

9.14.010 Dog and Cat Licenses. Except as provided in Wis. Stats. §174/054, the owner of a dog or cat more than five (5) months of age on January 1 of any year, or five (5) months of age within the licensed year, shall annually pay a dog or cat license tax and obtain a license from the City Clerk. Fees for said licenses shall be as set forth in Wis. Stats. §174.05 through 174.09.

9.15.000 CABARET LICENSE AND PERMIT.

9.15.010 Cabaret Establishments.

A. Regulation; License Required. No person or alcohol beverage licensee shall suffer, cause or permit the operation or conduct of a cabaret except in strict compliance with this section, and without first having obtained a license therefor from the Common Council.

B. Definitions. For the purposes of this section:

1. Cabaret. A restaurant, tavern, bar or any similar business, other than an adult cabaret as defined in sec. 9.22.020(s) of the Municipal Code, having all of the following characteristics:
 - a. Serves alcoholic or non-alcoholic or non-alcoholic beverages;
 - b. Provides musical or other entertainment or performance (such as singers or dancers), whether live or recorded;
 - c. Provides space for dancing of patrons.

2. Cabaret Establishment. A location where the primary or secondary business function is to operate or conduct a cabaret.
3. Patron. A customer or other person present at a cabaret establishment by invitation or with the permission of the cabaret owner, operator, proprietor, manager or lessee (or his agents or employees), whether or not such customer or person has paid money, purchased anything of value or provided any other consideration to enter or remain on the premises.

9.15.020 License Procedures.

A. Application. Upon sworn written application filed with the City Clerk on forms the Clerk shall prescribe, and upon payment of the fee therefor, a cabaret license may be granted or renewed by the Common Council for a premises, subject to the conditions and restrictions set forth in Section 9.15.040 of this ordinance. Whenever anything shall occur to change any fact or information set forth in the application, the applicant or licensee shall file with the City Clerk a written notice of such change within ten (10) days after the occurrence. The application shall include:

1. The location, mailing address and all telephone numbers of the proposed cabaret establishment.
2. The full name, current address and telephone number of the person or entity owning the premises for which a license is requested.
3. For an individual or for each partner of a partnership or limited liability partnership, each member of a limited liability company, each party to a joint venture, and each agent of a corporation or other entity.:
 - a. Full name, current address and telephone number.
 - b. The last two addresses and dates of residence at each, for the three-year period immediately preceding the date of application.
 - c. Date of birth, height, weight, color of hair and eyes and social security number.
 - d. The business or occupation for the three-year period immediately preceding the date of application.
 - e. Whether the applicant has, within the three-year period immediately preceding the date of application, been licensed to operate or conduct a cabaret in this City or elsewhere.
 - f. Where and for what period the applicant operated or conducted such cabaret under such license.
 - g. Whether a cabaret or similar license issued to the applicant has been nonrenewed, suspended or revoked and, if so, a listing of the locations, dates and explanation of the circumstances thereof.
 - h. Whether the applicant has been convicted of violating any law or ordinance regulating the operation or conduct of a cabaret.

4. If the applicant is a corporation, the names and addresses of each officer, director and shareholder of such corporation, together with the extent of the ownership of each, and a statement whether such officer, director or shareholder holds office or stock in any other corporation operating or conducting a similar business in the State of Wisconsin. An agent registered as such with the State of Wisconsin shall make such application.
5. The names, addresses and telephone numbers of all persons employed by the applicant at the proposed cabaret establishment at the time of application.
6. Certification of compliance of the proposed premises with all zoning, building, fire, health, safety and sanitation ordinances and regulations of the Municipal Code of the City of Port Washington and all such laws, codes and regulations of the State of Wisconsin; or, in the alternative, as to building alterations, applicant shall file a bond assuring that any work required to be done to bring the premises into compliance therewith shall be accomplished prior to the opening or continuation of the business.
7. A statement signed by the applicant and each partner of a partnership or limited liability partnership, each member of a limited liability company, each party to a joint venture, and each agent of a corporation or other entity that all information contained in the application is true and correct.

B. Fees. The fee for an annual license shall be one hundred dollars (\$100). The fee for applications approved during the year shall be prorated so that the portion of the total annual fee due shall be determined in the same proportion which the remaining number of months (or portions thereof) in the license year bears to 12. A license for one (1) day only requires the payment of a fee of fifteen dollars (\$15). No fees shall be refunded if a license is denied, non-renewed, suspended or revoked.

C. License Period; Expiration. An annual cabaret license shall automatically expire on the 30th day of June following the date of its issuance. A license for one (1) day only shall expire at 11:59 p.m. on the date for which it was issued.

D. Time For Filing Application; Late Fee. Applications for a cabaret license shall be filed with the City Clerk at least fifteen (15) days before the Common Council may act on such license. Renewal licenses shall be applied for by June 1 of each year or be subject to a late filing fee of 15% of the license fee. Payment of a late fee shall not entitle any applicant of premises to issuance of a renewal license, and shall not relieve any person or entity from any other penalties prescribed by these ordinances for failure to possess or obtain a license.

E. Publication of Notice. Notice of the filing of a cabaret license application shall be published in a weekly newspaper published in the City of Port Washington, and such publication shall be made at least once prior to the Common Council acting thereon. The notice shall include the name and address of the applicant, the kind of license applied for and the location of the proposed cabaret establishment.

9.15.030 Granting of License.

A. Referral to Licensing Committee; Investigation. An Application for the granting or renewal of a cabaret license shall be referred by the City Clerk to the License Committee. The License Committee shall thereupon make an investigation as to the advisability of granting or renewing such license, and shall within a reasonable period report its findings and recommendation to the Common Council. The License Committee shall have the assistance of the Police, Fire and Building Inspection Departments in making such investigation, including, but not limited to, in the discretion of the Police Department, requesting information from the State, other municipalities and/or any community where the applicant has previously resided or operated a cabaret or similar business, concerning the applicant's arrest and conviction record. Such Departments shall furnish written recommendations to the License Committee and to the City Clerk as to issuance of such license, together with the information derived from such investigation. No license shall be granted, issued or renewed by the Common Council or City Clerk until a recommendation of the License Committee is heard.

B. Action on Application. Upon hearing the recommendation of the License Committee, the Common Council may act upon a cabaret license application at any regular or special meeting. However, the Common Council may act upon only those license applications that have been timely filed, are complete and in proper form, and for which all fees have been paid. If the Common Council decides to deny a new license, the City Clerk shall, within ten (10) days after such denial, send written notification thereof to the applicant setting forth the reason (s) for such denial.

C. Standards for Denial, Nonrenewal, Suspension or Revocation. The Common Council may deny or refuse to renew a cabaret license, or, if such license has been issued and is in effect, may suspend or revoke such license if any one or more of the following are shown, which shall constitute good cause:

1. Operation of or conduct on the premises as proposed by the applicant or as actually occurring does not comply with all applicable zoning, building, fire, health, safety, sanitation and other ordinances and regulations of the Municipal Code of the City of Port Washington and all such laws, codes and regulations of the State of Wisconsin; or, in the alternative, as to building alterations, applicant shall file a bond assuring that any work required to be done to bring the premises into compliance therewith shall be accomplished prior to the opening of business. Compliance therewith shall be determined by appropriate City or State departments or staff, and shall be a condition precedent to the opening or continuation of the business. No alterations, changes or additions shall be made to a licensed premises without first obtaining a permit for such alterations, changes or additions from the Building Inspector.

2. An application form was not timely filed; is incomplete or in improper form; or lacks payment of the required fee.
3. Any applicant has knowingly or with intent to deceive made any false, misleading or fraudulent statements of fact in the application form or in any other document required by the City in conjunction therewith.
4. The applicant does not possess the qualifications required under this chapter to hold a cabaret license.
5. The applicant has violated any provision of this chapter; or that he keeps or maintains a disorderly or riotous, indecent or improper house; or that he has sold or given away any intoxicant to any underage person, or to persons intoxicated or bordering on intoxication, or to known habitual drunkards; or that he has not observed and obeyed any order of the Common Council or police officers of the City made pursuant to law or for other good reason.
6. The granting, renewal or continuation of such cabaret license is against the public interests and welfare of the community, either because of the unsuitability of the location, undesirability or unreliability of the applicant, licensee or his manager or agent, or because of the failure of the applicant, licensee or his manager or agent to observe the provisions of this chapter in the operation or conduct of a cabaret.

9.15.040 Restrictions. The following restrictions shall apply:

1. No dancing shall be permitted within six (6) feet of a bar or counter over which patrons are directly served food or beverages.
2. While dancing is in progress, the dance area shall be illuminated by at least 2-foot candles per square foot.
3. The licensee or his agent shall obey all reasonable orders or directions of any police officer.
4. The performance of any act, stunt or dance by performers upon the licensed premises shall be given only on a raised portion of the floor separated from the patrons by a railing or other device at least two (2) feet in height.
5. No licensee or his agent or employee shall permit any patron to participate in any act, stunt or dance with performers.
6. No licensee shall permit any entertainer employed on the premises, other than a musician, to sit at any table or in any booth or to fraternize elsewhere on the premises with patrons.
7. No licensee or his agent or employee shall permit any entertainer, except a musician, to perform on the licensed premises who is not 21 years of age or over. Prior to said entertainer performing in the City of Port Washington, the licensee shall file with the City Clerk on a form to be prescribed by said Clerk, the name, age, last permanent address, booking agent, if any and list of arrests for misdemeanors or felonies, if any. The establishment of the following by the licensee shall constitute prima facie evidence of innocence as a defense to any prosecution hereunder.

That the performer has executed a sworn affidavit to the facts set forth in the form filed with the Clerk and said affidavit is filed with the Clerk.

That the licensee acted in good faith in reliance upon such sworn affidavit.

8. Separate and private dressing room facilities on the premises shall be provided for any such entertainer.
9. All persons involved in the operation of any licensed premises under this section, whether as licensee, member of the immediate family of the licensee, licensed operator, unlicensed operator under the supervision of the licensee or licensed operator, waiter, waitress, entertainer, dancer or other employee, shall observe the following applicable minimum standards for such licensed premises:

The costume, uniform or attire of any person involved in the operation of a licensed premises as set forth herein shall be of a fully opaque material and must completely cover the human male or female genitals, pubic area, vulva, anus, anal cleft and buttocks at all times. The costume, uniform or attire of any female person involved in the operation of any license premises as set forth herein shall completely cover the female breast below a horizontal line across the top of the areola at its highest point, and the lower portion of the female breast, but this restriction shall not include or apply to any portion of the cleavage of the female breast exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel, provided the areola and any portion of the nipple are not exposed in whole or in part.

10. Efficient means shall be employed to prevent ordinary sounds of music, dancing, singing or entertainment within the cabaret from being heard on adjoining premises or on the public street.
11. No cabaret establishment which is located within or abuts a building containing a residential dwelling shall be permitted to provide music, dancing, singing or entertainment between 12:00 midnight and 11:00 a.m. unless an applicant or licensee has obtained a permit from the Common Council to provide music, dancing, singing or entertainment at other hours.
12. The licensee shall have direct control over the licensed premises and the operation of the business thereon; and shall be responsible for the conduct of his agents and any person in his employ.
13. Good order shall be maintained at all times.
14. The cabaret license shall be posted in a conspicuous place within the licensed premises, and each license shall by its terms be subject to nonrenewal, suspension or revocation as herein provided.
15. No cabaret license shall be assignable or inure to the benefit of any person or entity other than the person or entity to whom such license was originally issued. No cabaret license shall be transferred between locations or persons, and no license shall be sold or be subject to transfer of corporate assets or change of corporate officers or directors.

9.15.050 Refusal to Renew License.

A. Notice of Intent Not to Renew; Hearing. The Common Council may refuse to renew a cabaret license for any of the causes provided in Section 9.15.030. C. of this ordinance. Prior to the time for renewal of the license, the Common Council or the License Committee shall notify the licensee in writing of the City's intention not to renew the license and provide the licensee with an opportunity for a hearing. The notice shall state the reason(s) for the intended action.

B. Procedure on Hearing. If the licensee does not appear at the hearing as required by the notice, the reason(s) stated for such action shall be taken as true and if the Common Council finds the reason(s) sufficient, the license shall be nonrenewed and the City Clerk shall give written notice of such nonrenewal to the person or entity whose license is nonrenewed. If the licensee appears at the hearing as required by the notice and denies the reason(s) stated for such action, both the City and the licensee may produce and cross-examine witnesses under oath; and be represented by counsel. The licensee shall, upon request, be provided a written transcript of the hearing at his or its expense. If based upon the evidence presented at the hearing the Common Council finds the reason(s) stated for such action to be true, the license shall be nonrenewed and the City Clerk shall give written notice of such nonrenewal to the person or entity whose license is nonrenewed. If the Common Council finds the reason(s) stated for such action to be untrue, the proceeding shall be dismissed without cost to the licensee. The Common Council shall decide the matter and shall prepare a written decision which shall be filed with the City Clerk and a copy thereof mailed to the licensee within 20 days after the conclusion of the hearing.

9.15.060 Procedure on Hearing.

A. Complaint; Summons; Hearing. Upon complaint made in writing under oath by the Chief of Police or by any resident of the City and filed with the City Clerk alleging that any person or entity licensed under this ordinance, or his or its employee or agent, has violated the provisions of Section 9.15.030 C. or any other provision of this ordinance, the Common Council shall issue a summons, to be signed by the City Clerk and directed to any peace officer in the City, commanding the licensee complained of to appear before the Common Council on a day and at a place in such summons named, not less than three (3) days and not more than ten (10) days from the date of issuance, and show cause why his or its cabaret license should not be suspended or revoked. The summons and a copy of the complaint shall be served on the licensee at least three (3) days before the time at which the licensee is commanded to appear, and may be served either personally or upon the person in charge of the cabaret establishment. The complaint shall set forth the violation(s) allegedly committed, the date, time and place of said violation(s) and the facts constituting the alleged violation(s).

B. Procedure on Hearing. If the licensee does not appear at the hearing as required by the summons, the allegations of the complaint shall be taken as true and if the Common Council finds the allegations sufficient, the license shall be suspended or revoked in the discretion of the Common Council, and the City Clerk shall give written notice of such suspension or revocation to the person or entity whose license is suspended or revoked. If the licensee appears at the hearing as required by the summons and denies the complaint, both the complainant and the licensee may produce and cross-examine witnesses under oath, and be represented by counsel. The licensee shall, upon request, be provided a written transcript of the hearing at his or its expense. If based upon the evidence presented at the hearing the Common Council finds the complaint to be true, the license shall be suspended for not less than ten (10) days nor more than ninety (90) days or revoked, in the discretion of the Common Council, and the City Clerk shall give written notice of such suspension or revocation to the person or entity whose license is suspended or revoked. If the Common Council finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. The Common Council shall decide the matter and shall prepare a written decision which shall be filed with the City Clerk and a copy thereof mailed to the licensee within 20 days after the conclusion of the hearing. If the Common Council finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The Common Council may require the complainant to provide security for such costs before issuing the summons under Section 9.15.060 A. of this ordinance.

C. Automatic Revocation. Notwithstanding any procedures set forth in this ordinance for the nonrenewal, suspension or revocation of a cabaret license, in the event a licensee is convicted of two (2) separate violations of any provision of this ordinance in any one license year, any cabaret license issued hereunder shall be immediately forfeited and revoked, in addition to any penalties which may be imposed for such violations by law or such penalties as may be provided by Sections 25.04.000, et seq. of this Municipal Code.

D. Effect of Revocation. When a cabaret license is revoked, it shall be so entered of record by the City Clerk, and no other cabaret license shall be granted to such person or entity within twelve (12) months of the date of its revocation, nor shall any part of the fee paid for such license so revoked be refunded.

E. Operation Without a License; Public Nuisance. The operation of a cabaret establishment without a valid license issued under this ordinance is deemed a public nuisance and may be closed until the activity in violation of this ordinance is abated. When the activity is abated, the building or place may be used for any lawful purpose. Nothing herein shall be construed as prohibiting the City from enjoining such activity, or using other lawful methods to prevent such activity.

F. Judicial Review of Denial, Nonrenewal, Suspension or Revocation. The action of the Common Council in granting or denying, nonrenewing, suspending or revoking any cabaret license, or the failure of the Common Council to deny, nonrenew, suspend or revoke any such license for good cause, may be reviewed by the Circuit Court for Ozaukee County, upon application by any applicant, licensee or resident of the City. The procedure on review shall be the same as in civil actions instituted in the circuit court, as provided in sec. 125.12(2)(d), Stats.

9.15.070 Automatic Revocation. In the event any licensee is convicted of two (2) violations, upon such second conviction, any license issued hereunder shall be immediately forfeited, in addition to such penalties as may be provided by Sec 25.04 of this code.

9.16.000 HOTEL/MOTEL TAX.

9.16.010 Room Tax Levy. There is hereby imposed a tax on hotel keepers, motel operators and other persons furnishing accommodations to the public for the privilege of furnishing, at retail, rooms or lodging to transients, irrespective of whether membership is required for use of the accommodations at the rate of seven (7%) percent of the gross receipts from the furnishing of such rooms of lodging. As used herein, the term “transient”, “hotel”, and “motel” shall have the meaning set forth in Sec. 77.52 (2)(a) 1., Wis. Stats., as amended. The tax so imposed shall not be subject to the selective sales tax imposed by Sec. 77.52 (2)(a)1., Wis. Stats., as amended.

9.16.020 Filing Requirements. Every person subject to the tax imposed herein shall file its report and transmit the tax to the City Treasurer at the time such person is required to file his Wisconsin sales tax report. Said report shall include a statement of gross receipts from the first day of each month through the last day. A copy of the Wisconsin sales tax report shall be attached to such report.

9.16.025 Confidentiality of Room Tax Reports and Related Information; forfeitures. The room tax report, Wisconsin sales tax report and any related information filed with the City Treasurer pursuant to the provisions of sec. 9.16.020 shall be and remain confidential, except that such reports and information may be disclosed to those persons using the reports and information in the discharge of duties imposed by law or of the duties of their office or by order of a court. The City may publish statistics relating to the imposition, collection and disbursement of room taxes, provided that such statistics are classified so as not to disclose the identity of particular room tax and Wisconsin sales tax reports. Any person who violates this section shall, upon conviction, be subject to a forfeiture of not less than \$100 nor more than \$500.

9.16.030 Interest and Penalties. Any unpaid tax shall bear interest at the rate of one (1) percent per month from the due date of the report. A late filling fee of \$10.00 shall be imposed on any report not filed in a timely manner.

9.16.040 Review. Any person aggrieved by the tax imposed herein may petition the Board of Tax Appeals setting forth the basis of such challenge.

9.16.050 Board of Tax Appeals. There is hereby created a Board of Tax Appeals consisting of the City Treasurer and Aldermen. Such board shall prescribe such reasonable rules and regulations as it deems advisable, provided, however, payment of the tax imposed shall be a condition of any right to appeal.

9.17.000 ALARM SYSTEM PERMITS.

9.17.010 Alarm System Permits. Purpose. The purpose of this Chapter is to provide minimum standards and regulations applicable to burglar, fire and holdup alarm systems, alarm businesses and alarm users. Both society in general and public safety in particular will be aided by providing a useful and usable system of private security which properly balances quick response by law enforcement with minimization of law enforcement time spent on alarms which are false or otherwise not the intended function of private security systems. The intent of this Chapter is to prevent carelessness, improper maintenance or any other cause which results in false police and/or fire alarms from privately owned alarm systems. Such false alarms require police and/or fire apparatus which thereby creates unnecessary expenses to the City, increased risk of damage to property or injury to persons and dilutes police and fire protection to other parts of the City.

9.17.020 Definitions. In this Ordinance, the following terms, phrases and words and their derivations have the meanings given herein.

- a. The term “**alarm business**” means any business in which the owners or employees engage in the activity of altering, installing, maintaining, repairing, replacing, selling, or servicing alarm systems.
- b. The term “**alarm system**” means an assembly of equipment and devices or single device such as a solid state unit which plugs directly into 110-volt AC line or otherwise receives electrical energy arranged to signal the presence of a hazard requiring urgent attention and to which the Police and Fire Department is expected to respond. In this Chapter, the term “alarm system” shall include the terms “automatic holdup alarm systems”, “burglar alarm systems”, “holdup alarm systems”, and “manual holdup alarm systems” as those terms are hereinafter defined, and fire alarm systems which monitor temperature, humidity or any other condition directly related to the detection of fire. Excluded from this definition and from the coverage of this Chapter are alarm systems used to alert or signal persons within the premises in which the alarm system is located of an attempted, unauthorized intrusion or holdup attempt or fire.
- c. The term “**annunciator**” means instrumentation of an alarm console at the receiving terminal of a signal line through which both visual and audible signals show when an alarm device at a particular location has been activated or which, in the event of malfunction, may also indicate line trouble.

- d. The term “**answering service**” refers to a telephone answering service providing among its services the service of receiving on a continuous basis, through trained employees, emergency signals from alarm systems, and thereafter immediately relaying the message by live voice to the dispatch center of the Police and Fire Department.
- e. The term “**automatic dialing device**” refers to an alarm system which automatically sends over regular telephone lines by direct connection or otherwise a prerecorded voice message or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.
- f. The term “**automatic holdup alarm system**” means an alarm system in which the signal transmission is initiated by the action of the robber.
- g. The term “**manual holdup alarm system**” refers to an alarm system in which the signal transmission is initiated by the direct action of the person attached or by an observer thereof.
- h. The term “**burglar alarm system**” refers to an alarm system which signals an entry or attempted entry into the area protected by the system.
- i. The term “**direct connect**” means an alarm system which has the capability of transmitting system signals to the Police or Fire Department.
- j. The term “**false alarm**” means the activation of an alarm system through mechanical failure, malfunction, improper installation or the negligence of the owner or lessee of an alarm system or of his employees or agents or other undetermined cause. False alarms do not include alarms caused by tornadoes, other violent climatic conditions, power outages and water pressure drops which activate alarms.
- k. The term “**interconnect**” means to connect an alarm system to a voice grade telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm system.
- l. The term “**central station**” means an office to which remote alarm and supervisory signaling devices are connected, where operators supervise the circuits.
- m. The term “**primary trunk line**” means a telephone line leading directly into the dispatcher center of the Police or Fire Department that is for the purpose of handling emergency calls on a person-to-person basis and which is identified as such by a specific number included among the emergency numbers listed in the telephone directory or numbers in sequence therewith.

n. The term “**subscriber**” means a person who buys or leases or otherwise obtains an alarm system and thereafter contracts with or hires an alarm business to monitor and/or service the alarm system.

9.17.030 Administrative Rules.

The Chief of Police shall promulgate such rules as may be necessary for the implementation of this Chapter. Such rules shall require the approval of the Common Council and shall be open to inspection by the public.

9.17.040 Permits For Private Alarm Systems.

a. Permit Required. A permit shall be required for each alarm system now installed on any premises within the City of Port Washington. Permits shall be required prior to installation of any new private alarm system.

b. Permit Fee. A Fifteen Dollar (\$15.00) permit fee shall be paid to the City Clerk at the time of filing said application.

c. Permit Application. Applications for all permits required under this Chapter shall be filed with the Chief of Police. The Chief of Police shall prescribe the form of the application and request such information as is necessary to evaluate and act upon the permit application. Permits shall not be transferable.

d. Indemnification and Hold Harmless. All applicants for an alarm system permit shall enter into an agreement with the City of Port Washington wherein they shall indemnify and hold the City harmless from any and all claims, suits, actions, damages and expenses, including attorney fees, arising either in law or in equity out of or by virtue of the enactment of this Chapter. The subject agreement shall include, but not be limited to, a release of the City of Port Washington for any loss of any nature whatsoever sustained by the applicant by virtue of the City supplying the facilities contemplated under this Chapter.

9.17.050 Automatic Dialing Devices; Audible Alarms.

a. No person, firm or corporation shall use or cause to be used any telephone or electronic device or attachment that automatically selects the public telephone trunk line of the Police Department, Fire Department, or any other department, bureau, officer or employee of the City of Port Washington, and then reproduces a prerecorded message to report a burglary, fire or other emergency. Any system in operation which is in violation of this Section shall be modified so that it is no longer in violation of this Section or shall be disconnected.

b. Audible alarm systems shall have an automatic shut-off feature after the alarm has sounded for five (5) minutes.

9.17.060 Testing.

a. No alarm business or alarm system designed to transmit emergency messages to the Police or Fire Department shall be tested or demonstrated without prior notification and approval of the Police and Fire Department dispatcher. Alarm businesses or alarm system owners or lessors will be advised on proper test procedure.

b. No alarm system relayed through intermediate services to the Police and Fire Departments will be tested to determine the Police or Fire Department's response without first notifying the appropriate authority. However, the Police or Fire Department may inspect or test on-site alarm systems authorized under this Chapter.

c. Alarm systems shall be in compliance with all pertinent response policies of the Police or Fire Department.

9.17.070 Fee For Answering Alarms.

a. Generally. Each false alarm requires response of public safety personnel, involves unnecessary expense to the City, increases the risk of injury to persons or damage to property and dilutes the overall public safety protection to the City. Such false alarms constitute a public nuisance and must be abated.

b. Intentional. No person shall intentionally cause the activation of a burglar/fire alarm device knowing that no criminal activity, fire or other emergency exists.

c. 1. False Alarms; Schedule of Administrative Charges. Any person, business, corporation or other entity, except for a private or public school district, having a permissible alarm system with alarm device(s) at one or more locations in accordance with this Chapter shall pay to the City a charge for false alarms responded to by the Police and/or Fire Departments according to the following schedule for each calendar year for each location connected. Separate accounts shall be kept of false alarms for criminal activity, and of false alarms for fire or other emergencies:

A. False alarms responded to by the Police Department:

- i. For the first false alarm per location, no charge
- ii. For the second and subsequent false alarm per location, the sum of \$100 or the total actual cost of wages and benefits paid to members of the department responding to such alarms, whichever is greater.

B. False alarms responded to by the Fire Department (in addition to a police response):

- i. For the first false alarm per location, no charge
- ii. For the second and subsequent false alarm per location, the sum of \$100 or the total actual cost of wages and benefits paid to members of the department responding to such alarms, whichever is greater.

2. The schedule of administrative charges for false alarms set forth in Subsections 9.17.070 c.1.A. and B. of the Municipal Code may be amended from time to time by resolution duly adopted by the Common Council.

3. Failure to pay administrative charges for false alarms under Subsections 9.17.070 c.1.A. and B. of the Municipal Code shall itself constitute a violation of this Section. Such administrative charges shall be collectible as a forfeiture upon prosecution and conviction thereof, together with any additional forfeiture(s) which may be imposed under subsection 9.17.070 d. of the Municipal Code for violation of this Section for allowing or maintaining condition(s) or act(s) which violate the intent of this Section, to-wit: eliminating and minimizing the occurrence of false alarms, together with the costs of prosecution.

d. Other Violations. Any person, corporation or other entity violating this Section in any manner, other than false alarm violations for which administrative charges are imposed under Subsection 9.17.070 c. of the Municipal Code, shall be subject to forfeiture as provided in Section 25.04.000 of the Municipal Code. When any premises located in the City is owned, leased or occupied by two or more persons, corporations or other entities as joint tenants, tenants in common, joint lessees or in any other manner, each such person, corporation and other entity comply with the provisions of this Section, and each such person, corporation or other entity may be subjected to penalties for violation of this Section.

e. Default of Payment of Forfeiture or Costs. On default in payment of any forfeiture or costs imposed under Subsections 9.17.070 c. and/or d. of the Municipal Code, such person or responsible officer of the violating corporation or other entity shall be confined in the County Jail until the same shall be paid but not to exceed the length of time specified by the court, which length of time shall not exceed six (6) months.

9.17.080 City Liability.

The City of Port Washington shall be under no duty or obligation to a subscriber or to any other person concerning any provision of this Chapter, including, but not limited to, any defects in an alarm system or any delays in transmission or response to any alarm; however, this in no way shall be construed that it is not the proper function of law enforcement to respond to alarms.

9.17.090 Revocation of Permits.

a. Hearing. Before a permit issued pursuant to this Chapter may be revoked, a hearing shall be held before the Chief of Police. Notice setting forth the time, place and nature of the hearing shall be sent by mail or delivered to the permittee at the address shown on the permit application not less than seven (7) days prior to the hearing.

b. Ground for Revocation. The Chief of Police may revoke a permit on the following grounds:

1. The application for a permit contains a false statement of a material fact.
2. A licensee has repeatedly failed to comply with the provisions of this Chapter.
3. An alarm system repeatedly actuates false alarms.

c. Appeals. Any permittee may appeal the decision of the Chief of Police by filing a written notice of appeal with the City Clerk within ten (10) days after the decision. Such appeal shall be heard by the Common Council within thirty (30) days after filing the appeal. The Common Council may affirm, amend or reverse the decision or take other action deemed appropriate. An appeal timely taken suspends the revocation until the Council gives its decision. The City Clerk shall give written notice of the time and place of the hearing to the appellant by certified mail or personal delivery not less than seven (7) days before the hearing. In conducting the hearing, the Common Council shall not be limited by the technical rules of evidence.

9.18.000 PAWN BROKERS AND SECOND HAND ARTICLE AND JEWELRY DEALERS.

9.18.010 State Law Adopted. Except as otherwise specifically provided in this ordinance, all provisions of this Section 134.71, Wisconsin Statutes, defining and describing regulations with respect to pawn brokers and second hand article and jewelry dealers, including but not limited to the definitions, licenses, fees, and penalties, as said section may be altered, amended or recreated, is hereby adopted and by reference made a part of this ordinance as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this ordinance.

9.19.000 NON-ISSUANCE OF LICENSE. A. In the event that a license is granted by the Common Council pursuant to the provisions of this Chapter, the Clerk shall hold and not issue the license until the Treasurer certifies that all personal property taxes, room taxes or other assessments are paid pursuant to Port Washington Municipal Code and all assessments, claims and forfeitures resulting from a violation and conviction of any City of Port Washington ordinance due and owing are paid in full.

9.20.000 WEIGHTS AND MEASURES. A. The City of Port Washington Treasurer shall charge to the person receiving such service, and the person receiving such service shall pay any charges directed to the City of Port Washington for calibration or certification services of the State of Wisconsin or other entity provided pursuant to any state or local regulation.

B. Any person who fails to pay, within forty-five (45) days of invoicing, the charges for such calibration or certification shall be charged interest at the rate of 18% per annum. The charge and any interest may be added to the responsible person's property tax bill.

9.21.000 CIGARETTE AND TOBACCO PRODUCTS RETAILER LICENSE.

A. License Required. No person shall in any manner, or upon any pretense, or by any device, directly or indirectly, sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes or tobacco products, as defined in ss. 139.30(1) or 139.75(12), to any person not holding a license or permit as herein provided or as provided in ss 134.65, 139.30 to 134.41 or 139.79, Wis. Stats. without first obtaining a license from the City Clerk.

B. Application and Fee. Application for the license shall be made upon a form approved and provided by the City Clerk. No license shall be issued by the City Clerk unless a fee in the amount of \$100.00 has been paid.

9.22.000 SEXUALLY ORIENTED BUSINESSES

Sections:

9.22.010	Purpose and Findings
9.22.020	Definitions
9.22.030	Classification
9.22.040	License
9.22.050	Application for License
9.22.060	Standards for Issuance of License
9.22.070	Fees
9.22.080	Display of License
9.22.090	Renewal of License
9.22.100	Inspection
9.22.110	Suspension
9.22.120	Revocation
9.22.130	Administrative Review Procedure
9.22.140	Transfer of License
9.22.150	Physical Layout of Sexually Oriented Business
9.22.160	Location
9.22.170	Responsibilities of the Licensee
9.22.180	Additional Regulations for Escort Agencies
9.22.190	Additional Regulations Concerning Sexually Oriented Businesses
9.22.200	Prohibition Against Children in a Sexually Oriented Business
9.22.210	Hours of Operation
9.22.220	Exclusions
9.22.230	Enforcement

9.22.240	Penalties and Prosecution
9.22.250	Severability
9.22.260	Conflicting Ordinances Repealed

9.22.010 Purpose and Findings.

(a) Purpose: It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of citizens of the City of Port Washington, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City of Port Washington. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

(b) Findings: Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the City, and on findings incorporated in the cases of *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *FW/PBS Inc. v. City of Dallas*, 493 U.S. 215 (1990), *Barnes v. Glen Theatre, Inc.* 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), *East of River Enterprises v. City of Hudson*, Case No. 99-1801 (Unpublished)(Wis. Ct. App., April 11, 2000), *East of River Enterprises v. City of Hudson*, Case No. 99-2667 (Unpublished)(Wis. Ct. App., Aug. 1, 2000) and *Ben's Bar, Inc. v. City of Somerset*, 316 F.3d 702 (7th Cir. 2003), and on studies in other communities including, but not limited to: Phoenix, Arizona; Houston, Texas; Minneapolis, Minnesota; St. Paul, Minnesota; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; and St. Croix County, Wisconsin, and the Report of the Attorney General's Working Group on Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, the Common Council finds that:

(1) Sexually oriented businesses lend themselves to ancillary and unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of sexually oriented businesses, defined in this Ordinance as adult theaters and adult cabarets, engage in higher incidences of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented business, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purposes of engaging in sex within the premises of such sexually oriented businesses.

(6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to, syphilis, gonorrhea, human immunodeficiency virus

infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B, amebiasis, salmonella infections and shigella infections.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS (acquired immunodeficiency syndrome) caused by the HIV virus in the United States: 600 in 1982; 2,200 in 1983, 4,600 in 1984; 8,555 in 1985, and 253,448 through December 31, 1992.

(8) The State of Wisconsin Division of Health indicated that on July 25, 1986, there was 96 cases of AIDS reported in the state, including 54 cases that resulted in death and that a ten-fold increase in reported cases was expected between 1986 and 1991.

(9) The number of cases of early (less than 1 year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982, and 45,200 through November 1990.

(10) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(11) In his report of October 22, 1986, the Surgeon General of the United States has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components and from an infected mother to her newborn.

(12) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(13) Sanitary conditions in some sexually oriented businesses are unhealthy in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(14) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult oriented films.

(15) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented business are located.

(16) Studies of the relationship between sexually oriented business and neighborhood property values have found a negative impact on both residential and commercial property values.

(17) There is an increase in the potential for infiltration by organized crime for the purpose of unlawful conduct.

(18) The consumption of alcoholic beverages on the premises of sexually oriented businesses exacerbates the deleterious secondary effects of such businesses on the community. In fact, the Supreme Court has gone so far as to assert that “[common sense indicates that any form of nudity coupled with alcohol begets undesirable behavior.” *Ben’s Bar*, 316 F.3d 702, citing *New York State Liquor Auth. v. Bellanca*, 452 U.S. 714, 718 (1981).

(19) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect the substantial government concerns addressed in the above subsections.

(20) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons

and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(21) The disclosure of certain information by those persons ultimately responsible for the day to day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(22) In the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the conduct which this Ordinance is designed to prevent, or who are likely to witness such conduct.

(23) The general welfare, health, morals and safety of the citizens of the City of Port Washington will be promoted by the enactment of this Ordinance.

9.22.020 Definitions.

(a) "Adult Arcade" means any place in or to which the public is permitted or invited, wherein coin-operated or slug operated or electronically, electrically, or mechanically controlled or still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matters exhibiting "specified sexual activities" or "specified anatomical areas."

(b) "Adult Bookstore" or "Adult Video Store" means a commercial establishment that has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

(1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, compact discs, slides or other visual representations, which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas;" or

(2) instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

This definition shall expressly exclude films, motion pictures, videocassettes, slides or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

(c) "Adult Cabaret" means a nightclub, dance hall, bar, tavern, restaurant, or similar commercial establishment which regularly features:

(1) persons who appear nude or semi-nude; or

(2) live performances that are characterized by the exposure of “specified sexual activities” or “specified anatomical areas;” or

(3) films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

This definition shall expressly exclude films, motion pictures, videocassettes, slides or other similar photographic reproductions given an “R” rating by the Motion Picture Association of America.

(d) “Adult Motel” means a hotel, motel or similar commercial establishment, which:

(1) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions, which are characterized by the depiction of “specified sexual activities” or “specified anatomical areas;” and has a sign visible from the public right of way which advertises the availability of this adult type or photographic reproductions; or

(2) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(3) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(e) “Adult Motion Picture Theater” means a commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.” This definition shall expressly exclude films, motion pictures, videocassettes, slides or other similar photographic reproductions given an “R” rating by the Motion Picture Association of America.

(f) “Adult Theater” means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live

performances which are characterized by the exposure of “specified sexual activities” or “specified anatomical areas.”

(g) “Council” means the Common Council of the City of Port Washington, Ozaukee County, Wisconsin.

(h) “Directly” means to require physical contact. For instance, when this Ordinance prohibits an employee to receive a gratuity “directly” from a patron, it prohibits the direct touching of skin, other body parts or clothing.

(i) “Distinguished” or “characterized by” means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas,” the films so described are those whose dominant or principal character and theme are the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

(j) “Employee,” “employ” and “employment” describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

(k) "Escort" means a person who, for consideration, and for another person, agrees or offers to privately model lingerie or to privately perform a striptease.

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

(m) "Establish" or "establishment" means and includes any of the following:

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

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

(3) the addition of any sexually oriented business to any other existing sexually oriented business; or

(4) the relocation of any sexually oriented business.

(n) "Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

(o) "Nude", "nudity" or "state of nudity", means the showing of the human male or female genitals, pubic area, vulva or anus, with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or areola, or the showing of the covered male genitals in a discernibly turgid state.

(p) "Operate" or "cause to be operated" means to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who is authorized to exercise operational control of or over the business, or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

(q) "Person" means an individual, proprietorship, partnership, corporation, limited liability company, limited liability partnership, association, or other legal entity.

(r) "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to: the sexually oriented business, the grounds, the private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the owner or operator of the business.

(s) "Regularly features" or "regularly shows" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as part of the ongoing business of the sexually oriented business.

(t) "Semi-nude" or "semi-nude condition" means the showing of the human male or female genitals, pubic area, vulva or anus, with not more than a complete opaque covering, or the showing of the female breast with not more than a complete opaque covering of any part of the nipple or areola.

(u) "Sexual encounter center" means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, a place where two (2) or more

persons may congregate, associate, or consort for the purpose of "specified sexual activities." The definitions of "sexual encounter center" or any "sexually oriented business" shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(v) "Sexually oriented business" means an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, or sexual encounter center.

(w) "Specified Anatomical Areas" means

(1) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(2) less than completely and opaquely covered human genitals, pubic region, vulva, anus or the nipple and areola of the human female breast.

(x) "Specified sexual activity" means:

(1) the fondling of another person's genitals, pubic region, anus, or female breasts;

(2) actual sex acts, normal or perverted, including intercourse, oral copulation, masturbation, or sodomy; or

(3) excretory functions as part of, or in connection with, any of the activities set forth in (1) through (2) above.

(y) "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent, as the floor areas exist on the date this Ordinance takes effect.

(z) "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

(1) the sale, lease, or sublease of the business;

(2) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

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

9.22.030 Classification.

"Sexually oriented businesses" are classified as follows:

(a) adult arcades;

(b) adult bookstores or adult video stores;

(c) adult cabarets;

(d) adult motels;

(e) adult motion picture theaters;

- (f) adult theaters;
- (g) escort agencies;
- (h) sexual encounter centers.

9.22.040 License.

(a) Except as provided in subsection (d) below, from and after the effective date of this Ordinance, no sexually oriented business shall be operated or maintained in the City of Port Washington without first obtaining a license to operate issued by the City of Port Washington.

(b) A license may be issued only for one (1) sexually oriented business located at one (1) fixed and certain place. Any person, partnership, or corporation which desires to operate more than one sexually oriented business must have a license for each such business.

(c) No licensee may transfer ownership or control of the sexually oriented business to any other person, partnership or corporation.

(d) All sexually oriented businesses existing at the time of the passage of this Ordinance must submit an application for a license within sixty (60) days of the effective date of this Ordinance.

9.22.050 Application for License.

(a) Any person, partnership or corporation desiring to secure a license shall submit an application to the City Clerk. The application shall be filed in triplicate and dated by the City Clerk. A copy of the application shall be distributed promptly by the City Clerk to the City of Port Washington Police Department and to the applicant.

(b) If the City of Port Washington Police Department is aware of any information bearing on the applicant's qualifications, that information shall be filed in writing with the City Clerk.

(c) An application for a license must be made on a form provided by the City of Port Washington. All applicants must be qualified according to the provisions of this Ordinance.

(d) An application shall be considered complete if it includes all of the information required in this Section.

(e) An applicant for a license shall furnish the following information under oath:

(1) Name and address.

(2) Written proof that the individual is at least eighteen (18) years of age. Written proof of age may be in the form of either: (i) a copy of a birth certificate and current photo-graph, (ii) a current driver's license with photograph, or (iii) other photographic identification document issued by a governmental agency and demonstrating proof of age.

(3) The name, business location, business mailing address and telephone number of the proposed sexually oriented business.

(4) A statement as to whether the licensee of the sexually oriented business intends to serve, sell, use, provide or consume any intoxicating liquor, cereal malt beverage or any type of alcoholic beverage on the premises of the sexually oriented business.

(5) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the names, addresses and ages of all share-holders of the corporation owning more than five percent (5%) of the stock in said corporation and of all officers and directors of the corporation, and the names and addresses of the registered agents.

(6) If the applicant is a partnership, joint venture, or any other type of organization or entity where two (2) or more persons have a financial interest, the application shall state the names, addresses and ages of all persons having a financial interest in the partnership, joint venture or other type of organization or entity.

(f) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business, shall accompany the application for a sexually oriented business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(g) If the person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as applicant. If the person who wishes to operate a sexually oriented business is other than an individual (such as a corporation, partnership or other entity), each officer, director, general partner, member or other person identified in Subsections 9.22.050(e)(5) and (6) shall sign the application for a license as the applicant. Each applicant must be qualified under this section and each applicant shall be considered as a licensee if the license is granted.

(h) Within twenty-one (21) days of receiving an application for a license, the City Clerk shall notify the applicant whether the application is granted or denied.

(i) Whenever an application is denied, the City Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held within ten (10) days thereafter, as hereinafter provided.

(j) Failure or refusal of the applicant to give any information relevant to the application or his or her refusal to submit to or cooperate with regard to any information required by this Ordinance shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Common Council.

9.22.060 Standards for Issuance of License.

(a) The Common Council shall approve the issuance of a license unless one or more of the following is found to be true:

(1) An applicant (including all individuals, officers, directors, shareholders, or persons with a financial interest in the organization) is less than eighteen (18) years of age.

(2) An applicant is delinquent in a payment owed to the City of Port Washington for taxes, fees, fines or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.

(3) An applicant has failed to provide information as required in Section 9.22.050 for issuance of the license.

(4) The license application fee required by this Ordinance has not been paid.

(5) An applicant has given false or misleading answers, information or data on any license application, or material facts were omitted from the application.

(6) The proposed sexually oriented business is not in compliance with the location restrictions established or physical layout restrictions established for sexually oriented businesses in this Ordinance.

(7) The applicant states or the Common Council subsequently discovers that the applicant intends to serve, sell, use, provide or consume any intoxicating liquor, cereal malt beverages, or any other type of alcoholic beverages on the premises of the sexually oriented business.

(b) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and the address of the sexually oriented business.

9.22.070 Fees.

A license fee of \$250.00 shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned to the person who posted such fee, and the remainder shall be applied toward processing and administrative costs.

9.22.080 Display of License.

The license shall be displayed in a conspicuous public place, at or near the entrance of the sexually oriented business, so that it may be easily read at any time.

9.22.090 Renewal of License.

(a) Every license issued pursuant to this Ordinance will terminate at the expiration of one (1) year from the date of issuance, unless sooner suspended or revoked. A license must be renewed before operation is allowed to continue. A license may be renewed only by making an application as provided for in Section 9.22.050. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be upon a form provided by the City of Port Washington and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

(b) A license renewal fee of \$250.00 shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty in the amount of \$100.00 shall be charged to any applicant who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the fee shall be returned to the person who posted such fee, and the remainder shall be applied toward processing and administrative costs.

(c) If the City of Port Washington Police Department is aware of any information bearing on an applicant's qualifications, that information shall be filed in writing with the City Clerk.

9.22.100 Inspection.

(a) For the purposes of ensuring compliance with this Ordinance, an applicant, operator or licensee shall permit law enforcement officers, and any other federal, state, county or City agency in the performance of any function connected with the enforcement of this Ordinance normally and regularly conducted by such agencies, to inspect, at any time the business is occupied or open for business, those portions of the premises of a sexually oriented business which patrons or customers are permitted to occupy.

(b) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

9.22.110 Suspension.

(a) The Common Council shall issue a written intent to suspend a license for a sexually oriented business for a period not to exceed thirty (30) days if it makes an initial determination that a licensee, operator or employee of a licensee has:

- (1) violated or is not in compliance with any section of this Ordinance; or
- (2) refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance.

(b) The Common Council, before suspending any license, shall give the licensee ten (10) days' written notice of: the charges against him or her, the Council's initial determination and intent to suspend a license, the opportunity to request a review of that initial determination, and the right to an administrative appeal and hearing, as provided in Sec. 9.22.130 hereof.

9.22.120 Revocation.

(a) The Common Council shall issue a written intent to revoke a license for a sexually oriented business if it makes an initial determination that a cause for suspension in Sec. 9.22.110 has occurred and the license has been suspended within the preceding twelve (12) months.

(b) The Common Council shall revoke by written notice a license if it determines that any of the following reasons exist:

(1) Discovery that false or misleading answers, information or data were given on any license application, or material facts were omitted from the application;

(2) The licensee, operator or any employee of the licensee, violates any provisions of this Ordinance or any rules or regulations adopted by the Council pursuant to this Ordinance; provided, however, that in the case of a first offense by a licensee where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the Council shall find that the licensee had no actual or constructive knowledge of such violation, and could not by the exercise of due diligence have had such actual or constructive knowledge;

(3) The licensee becomes ineligible to obtain a license or permit;

(4) Any fee or charge required to be paid by this Ordinance is not paid;

(5) Any intoxicating liquor, cereal malt beverage or other alcoholic beverage is served or consumed on the premises of the sexually oriented business;

(6) A licensee has knowingly allowed possession, use or sale of controlled substances on the premises;

(7) A licensee has knowingly allowed prostitution on the premises;

(8) A licensee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended or revoked;

(9) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual act to occur in or on the licensed premises. This Sub-section will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either: (i) in exchange for money, or (ii) in a public place or within public view.

(c) The Common Council, before revoking any license, shall give the licensee ten (10) days' written notice of: the charges against him or her, the Council's initial determination and intent to revoke a license, the opportunity to request a review of that initial determination, and the right to an administrative appeal and hearing , as provided in Sec. 9.22.130 hereof.

(d) The transfer of ownership or control of a license shall automatically and immediately revoke the license.

(e) Any licensee whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation.

9.22.130 Administrative Review Procedure.

Chapter 68 of the Wisconsin Statutes (2001-02 and as amended), concerning municipal administrative procedure shall govern the administrative procedure and review concerning the granting, denial, renewal, non-renewal, suspension or revocation of a license. A written request for review of an initial determination shall be made by an aggrieved person to the City Clerk pursuant to the provisions of Secs. 68.08 and 68.09, Stats. The Council shall review an initial determination within 15 days of receipt of a request for review. An administrative appeal may be made by an aggrieved person to the City Clerk pursuant to the provisions of Sec. 68.10, Stats. Within 15 days of receipt of a notice of appeal, the Zoning Board of Appeals shall hold a hearing pursuant to the provisions of Sec. 68.11, Stats. Any party to a proceeding resulting in a final determination under Sec. 68.12, Stats. may seek judicial review of such final determination pursuant to the provisions of Sec. 68.13, Stats.

9.22.140 Transfer of License.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

9.22.150 Physical Layout of Sexually Oriented Business.

(a) Any sexually oriented business having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any specified anatomical areas or specified sexual activity must comply with the following requirements:

(1) Access. Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the sexually oriented business and, except as provided in Subsection (2)(B) hereof, shall be unobstructed by any door, lock or other control-type devices.

(2) Construction. Every booth, room or cubicle shall meet the following construction requirements:

(A) Each booth, room, or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a wall.

(B) Each booth shall have at least one side totally open to the public lighted aisle which may be secured when the booth is in use by a door which extends from a height of not less than two feet above the floor.

(C) All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent, smooth textured and easily cleanable.

(D) The floor must be light colored, non-absorbent, smooth textured and easily clean- able.

(E) The lighting level of each booth, room, or cubicle, when not in use shall be a minimum of five (5) foot candles at all times, as measured from the floor.

(3) Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupant shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

9.22.160 Location.

(a) No sexually oriented business shall be located:

(1) Within 500 feet of an existing sexually oriented business;

(2) Within 500 feet of any residential dwelling, including, but not limited to, houses, apartments, condominiums, or flats;

(3) Within 500 feet of any pre-existing place of worship, including, but not limited to, any church, synagogue, mosque, temple or building which is primarily used for religious worship and related religious activities;

(4) Within 500 feet of any public or private educational facility, including, but not limited to, any child day care establishment, nursery school, preschool, kindergarten, elementary school, junior high school, middle school, high school, vocational school, secondary school, continuation school, special education school, junior college and/or university. "School" includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

(5) Within 500 feet from any public park or recreational area which has been designated for park or recreational activities, including, but not limited to, a park, playground, trail, swimming pool, reservoir, athletic field, basketball or tennis court, pedestrian/bicycle path or way, wilderness or nature area or preserve, or other similar public land within the City which is under the control, operation or management of the City and recreational authorities; or

(6) Within 500 feet of any premise that in any manner sells or dispenses alcohol or is licensed pursuant to the alcoholic beverage control regulations of the City or State.

(b) For purposes of this Section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Subsection (a) hereof. The presence of a county, city, village, town or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

9.22.170 Responsibilities of the Licensee.

(a) Every act or omission by an employee constituting a violation of the provisions of this Section shall be deemed the act or omission of the licensee if such act or omission occurs either with the authorization, knowledge, or approval of the licensee, or as a result of the licensee's negligent failure to supervise the employee's conduct, and the licensee shall be punishable for such act or omission in the same manner as if the licensee committed the act or caused the omission.

(b) 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 licensee for the purposes of determining whether the licensee's license shall be suspended, revoked, or renewed.

(c) No employee of a sexually oriented business shall allow any minor to loiter in, around or to frequent a sexually oriented business. It shall be the duty of the licensee of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during its regular business hours, and to prevent any person under the age of eighteen (18) years of age from entering the sexually oriented business. It shall be presumed that an attendant knew that a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

(1) a valid operator's, commercial operator's or chauffeur's driver's license; or

(2) a personal identification card issued by the State of Wisconsin indicating that such person is eighteen (18) years of age or older.

(d) The licensee shall maintain the premises in a clean and sanitary manner at all times.

(e) The licensee shall maintain at least five (5) foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles is necessary to enable a patron to view any activity in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisle, provided, however, that at no time shall there be less than one (1) foot candle of illumination of said aisles, as measured from the floor.

(f) The licensee shall insure compliance of the sexually oriented business and its patrons with the provisions of this Ordinance.

(g) The licensee shall insure that no alcoholic beverages are served, sold, used, provided or consumed on the premises of a sexually oriented business.

9.22.180 Additional Regulations for Escort Agencies.

(a) An escort agency shall not employ any person under the age of eighteen (18) years.

(b) A person commits an offense under this Section if the person acts as an escort, or agrees to act as an escort, for any person under the age of eighteen (18) years.

9.22.190 Additional Regulations Concerning Sexually Oriented Businesses.

(a) It shall be prohibited in a sexually oriented business for a person to appear in a state of nudity or engage in specified sexual activities.

(b) It shall be prohibited in a sexually oriented business for a person to appear in a semi-nude condition, unless the person is an employee, who, while semi-nude, is at least five (5) feet from any patron or customer and on a stage at least two (2) feet in height from the floor.

(c) It shall be prohibited for an employee, while semi-nude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, while that employee is semi-nude in a sexually oriented business.

(d) It shall be prohibited in a sexually oriented business to serve, sell, use, provide or consume any intoxicating liquor, cereal malt beverage or any other alcoholic beverage.

9.22.200 Prohibition Against Children in a Sexually Oriented Business.

It shall be prohibited for a person under the age of eighteen (18) years to be on the premises of a sexually oriented business.

9.22.210 Hours of Operation.

No sexually oriented business shall be open between the hours of 2:00 a.m. and 8:00 a.m. Monday through Saturday, or between the hours of 2:00 a.m. and 12:00 noon on Sundays.

9.22.220 Exclusions.

The provisions of this Ordinance do not apply to the following establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis, and in which the predominant business or attraction is not the offering of entertainment which is intended for sexual interests or titillation of customers, and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances. While expressive live nudity or semi-nudity may occur within these establishments, this ordinance seeks only to minimize and prevent the secondary effects of sexually oriented businesses on the community. Negative secondary effects have not been associated with the establishments referenced in this Section.

9.22.230 Enforcement.

The City of Port Washington Police Department and Building Inspector shall have the authority to enter a sexually oriented business at any time the business is occupied or open for business and at all reasonable times to inspect the premises and enforce this Ordinance.

9.22.240 Penalties and Prosecutions.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this Ordinance is subject to a suit for injunction as well as municipal prosecution. Such violation shall be punishable by a forfeiture of \$500.00 plus court costs and assessments. Each day a sexually oriented business so operates shall be deemed a separate offense or violation.

9.22.250 Severability.

Each section and provision of this Ordinance is hereby declared to be an independent division and subdivision and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of said Ordinance, or the application thereof to

any person or circumstance, is found to be invalid by a court of competent jurisdiction, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been enacted independently of such section or provision found to be invalid.

9.22.260 Conflicting Ordinances Repealed.

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

9.23.000 HORSE AND CARRIAGE RIDES.

9.23.010 Definitions. The following words, when used in Sections 9.23.000, et. seq., shall have the following meanings, except where the context clearly indicates a different meaning:

- (1) *Carriage* means a horse-drawn private passenger vehicle for hire with four wheels or runners, two or four fixed seats installed by the vehicle manufacturer, used for short pleasure trips, and operated by a driver who may be accompanied by an assistant. "Carriage" shall include a buggy or sleigh, but shall not include a cart or wagon used primarily for carrying goods or as a farm vehicle.
- (2) *Driver* means the person in control of and in the actual operation of a carriage and shall include any assistant driver operating a carriage.
- (3) *Fixed route* means authorized trips on designated city streets from predetermined passenger pick-up points to predetermined destinations.
- (4) *Owner* means the title holder of any carriage, horse, license or equipment, or an owner's lessee, or an assignee of any license.
- (5) *Stands* means street curb or other places which are designated by the Chief of Police, as directed by the Common Council, for the stopping, standing or parking of a carriage and the loading or unloading of passengers.

9.23.020 License required; exception. Except as otherwise provided in this section, no person owning or operating any horse and carriage for hire shall operate, or permit to be operated, any such vehicle on any street, alley, sidewalk, park, field or other public way or public property in the City of Port Washington without a license issued as provided in Sections 9.23.000, et seq., and in compliance with the regulations hereinafter set forth. No license shall be issued without written proof of compliance with such regulations. No horse and carriage license shall be required to operate a horse-drawn carriage, buggy, sleigh, cart or wagon carrying passengers within the city as part of an annual celebration, festival, parade or special event.

9.23.030 Regulations.

- (1) Routes. All proposed fixed routes must be in writing and receive prior written approval of the Chief of Police. A copy of an approved fixed route must be submitted to the City Clerk at the time of application for a license. New or temporary routes must be applied for, approved by the Chief of Police, and filed with the City Clerk before a licensee may use a new or temporary route. No licensee shall deviate from an approved route.
- (2) Hours of Operation. No carriage may operate before 10:00 a.m. or after 10:00 p.m.
- (3) Soliciting. Soliciting of prospective passengers by carriage drivers, owners, or their agents shall be done in an orderly manner that will not create a public nuisance.

- (4) Driver Age and License Status. No carriage shall be driven by any person under age 18. Every driver shall hold a valid Wisconsin driver's license whenever operating a carriage.
- (5) Operation by Owner or Employee or Lessee Required. No carriage shall be operated except by the owner thereof, or the owner's employee or lessee, and it shall be unlawful for any owner, employee or lessee to permit operation of a carriage by any other person.
- (6) Attendance of Vehicle. No carriage shall be left unattended at any time when such vehicle is hitched to one or more horses.
- (7) Carriage Stands. Carriages shall occupy such stands as designated by the Chief of Police, as directed by the Common Council, and shall at all times maintain orderly alignment at the stands so as not to obstruct traffic or endanger the safety of pedestrians. Carriages shall be loaded and unloaded in such a way as to provide safety to the public.
- (8) Conduct of Drivers. Carriage drivers shall at all times while on duty be clean and neat in appearance, courteous to the public, and shall be free from the influence of any alcohol beverages or controlled substances, and the odor of alcohol beverages on the breath of any such driver shall be prima facie evidence of a violation hereof. No person shall operate a carriage in violation of state or local traffic laws or regulations.
- (9) Speed at which Vehicles to be Operated. No driver shall operate any carriage faster than a slow trot, and shall reduce its speed and/or stop whenever appropriate due to road, weather or traffic conditions, or when pedestrians, children or emergency vehicles are present. At no time shall carriages be used for racing or be driven at imprudent speeds.
- (10) Maximum Number of Passengers. No carriage shall carry more passengers than can be seated comfortably on the seats without exceeding the seating capacity of the carriage specified by the manufacturer and as posted pursuant to subsection (16) hereof, except that children under seven (7) years of age may be carried on the laps or in the arms of separate passengers who are each age 18 years or older.
- (11) Alcohol Beverages Prohibited. No driver or passenger shall sell, serve, possess or consume any alcohol beverage while in a carriage upon a street or other public way.
- (12) Equipment; Signals. Each carriage shall be equipped with rubber tires, brakes, a "slow moving vehicle" emblem as provided in sec. 347.245, Stats., and lighted lamps, lanterns or reflectors as provided in sec. 347.24, Stats. No driver shall turn or stop a carriage without giving hand and arm signals as provided in secs. 346.34 and 346.35, Stats.
- (13) Maintenance. Every carriage shall be kept in good mechanical condition by its owner for the protection of the public. Every carriage driver prior to the beginning of each shift shall inspect each horse and carriage to ensure that all carriage equipment and each horse are operable and in good working condition and that the carriage is maintained in a reasonably clean condition. All carriages shall be washed at least once per week.
- (14) Safety Inspection. All carriages shall be subject to inspection and approval by the Chief of Police (or designee) to insure adequate safety measures. Any carriage found to be in a defective condition shall be immediately withdrawn from service and shall not be used for carrying passengers until such vehicle has been repaired, inspected and approved by the Chief of Police (or designee). The Chief of Police (or designee) shall indicate on the inspection report the seating capacity of the carriage specified by the manufacturer. Written proof of inspection and approval by the Chief of Police (or designee) shall be submitted to the City Clerk prior to issuance of a license.
- (15) Sanitation. Each horse and carriage shall be equipped with adequate sanitation devices to prevent excrement from falling on the street. Should excrement fall on the street, it shall be the sole responsibility of the driver to remove the same as soon as practicable, by shovel or like instrument, and dilute and flush the urine. No driver of a carriage shall permit excrement to remain on any street, alley, gutter, sidewalk, lawn, field, park, public way or private property. All excrement shall be promptly placed into a sealed

- (16) Posting of Signs. Each owner shall securely post and maintain a sign in the passenger compartment of each carriage, in a conspicuous place plainly visible to all occupants thereof, indicating the seating capacity of the carriage which has been specified by the manufacturer and stating "NO STANDING WHILE VEHICLE IS IN MOTION."
- (17) Riding with Driver Prohibited. The driver of any carriage shall not permit any passenger, except an assistant driver, to sit alongside the driver while the driver is engaged in the operation of the carriage.
- (18) Refusal to Carry Passengers Prohibited. No carriage owner, driver, licensee, nor any owner's employee or lessee, shall refuse to carry passengers unless a passenger or prospective passenger engages in violent, abusive, loud, profane, vulgar, indecent or otherwise disorderly conduct or refuses to pay the fare for such service.
- (19) Certification of Animal Health. For each horse that will draw a carriage, a licensee shall provide to the City Clerk a certificate issued by a veterinarian licensed in the state of Wisconsin finding such animal to be free from infectious disease, in good health and fit for carriage service under this section. Each horse shall thereafter be re-examined at intervals of no more than six (6) months, and a new certificate shall be issued by such veterinarian and filed with the City Clerk in order for each horse to remain in service.
- (20) Animal Temperament, Care and Maintenance. Every horse used to draw a carriage shall be mild-mannered and kept under the immediate supervision and control of a driver having experience with horse management. Each licensee shall assure adequate rest periods, feeding and watering schedules, health and related performance and well-being for each horse under the licensee's ownership, care or control. This responsibility shall include carriage load limits, hours of operation and daily hours of animal usage, except that no horse shall be required to work more than twelve (12) hours per day.
- (21) Proof of Insurance. Each owner or lessee of a horse and carriage operated for hire within the city shall procure and maintain public liability insurance in an amount of not less than One Million Dollars (\$1,000,000) in the aggregate insuring the owner, lessee and the City from any claims or damages for bodily injuries or death, and in an amount of not less than Five Hundred Thousand Dollars (\$500,000) for property damage, arising from the operation of horse-drawn vehicles carrying passengers for hire. Said insurance shall name the City of Port Washington as an additional insured thereon, and a certificate evidencing such insurance coverage shall be filed with the City Clerk at the time a license application is submitted under this section.
- (22) Indemnification. Notwithstanding the insurance requirements set forth in subsection (21) hereof, each owner, licensee and lessee shall indemnify and hold the City of Port Washington harmless from any claims, demands, damages and/or losses of any kind or nature arising from the operation of horse-drawn vehicles within the city by the owner, licensee, lessee, or their employees or agents. Such indemnification agreement shall be filed with the City Clerk at the time a license application is submitted under this section.
- (23) Accident Reporting. Every owner, driver, licensee and lessee shall report to the City police department, within twelve (12) hours of its occurrence, any accident or incident of any kind and nature resulting in injury to any horse, carriage or property of others, or any personal injury to a passenger or other person that in any manner involves or relates to the entry into, exit from, use or operation of a horse-drawn carriage within the city.

9.23.040 Licenses.

- (1) Applications; Issuance Standards. License application forms shall be obtained from the City Clerk and shall state the name, residence and telephone number of the applicant and

- (a) The number of licenses available.
 - (b) The adequacy of the applicant's financial resources for the establishment and operation of a carriage business.
 - (c) The adequacy of the physical facilities from which the carriage business would be conducted.
 - (d) The knowledge and experience of the applicant in handling horses.
 - (e) The applicant's prior service to the public in the carriage business.
 - (f) The ability of the applicant to maintain sanitary conditions in and around the applicant's trailer(s) and stand(s).
 - (g) The locations of the proposed stand(s) as it relates to convenience to the public and the effect on local health and traffic conditions.
 - (h) The applicant's compliance with the provisions of this section.
 - (i) The applicant's compliance with applicable federal, state and local safety, sanitation, traffic and health laws and ordinances.
 - (j) The effect of the issuance of licenses on the public health, safety and welfare.
- (2) Requirements; Fees; Term of License. All licenses authorized by the Common Council shall be issued by the City Clerk upon receipt from the applicant of a certificate of liability insurance and a signed indemnification agreement which comply with the provisions of this section and are in such form as approved by the City Clerk. A description of the approved route(s) shall be attached to the license. The license fee shall be \$110.00 for each owner or lessee of a horse and carriage service operated for hire within the city. Such fees shall be paid prior to issuance of a license. A license is valid only for the calendar year in which it is issued.
- (3) Form and Display of License. Upon approval of an application by the Common Council and compliance with the requirements of this section, the City Clerk shall issue a license which shall be signed by the Mayor and countersigned by the City Clerk. The license shall be securely attached to, and displayed in plain view in the licensed carriage.
- (4) Transferability. No license issued under this section shall be transferred or assigned to a new owner without such license first being returned to the City Clerk for consideration of re-issuance to a prospective licensee upon compliance with all of the terms of this section, and any other regulations applicable to such carriage operation.

9.23.050 Police Authority; Suspension or Revocation; Common Council Action; Penalty

- (1) Police Authority. The Chief of Police shall have the authority to review routes, manner of operation and condition of equipment at any time and to modify or temporarily suspend any license or restrict any route if he deems it necessary for the protection of the

- (2) Suspension or Revocation. Licenses issued under this section may be suspended or revoked for cause by the Common Council after notice to the licensee and a hearing as provided herein. Suspension or revocation proceedings for violations under this section may be instituted by the Chief of Police upon written charges made and filed with the City Clerk, or upon a sworn written complaint filed with the City Clerk by any person.
- (3) Common Council Action. Upon receipt of an appeal of a modification or temporary suspension, or upon receipt of written charges or a written complaint, the City Clerk shall schedule a hearing before the Common Council and shall send, by first class mail, a copy of the charges or complaint, together with a notice of hearing, to the licensee or the person against whom the charges or complaint were made. Such notice shall be sent at least ten (10) days prior to the scheduled hearing. At such hearing, the Chief of Police or the complainant, and the licensee or person against whom the charges or complaint were made, shall have an opportunity to present evidence and/or make a statement regarding the grounds for the modification, suspension or revocation and the charges or complaint. The Common Council shall, based upon the evidence and/or statements, take action to affirm, reverse or modify such modification, dismiss the charges or complaint, uphold the charges or complaint and suspend or revoke the license, or take such other action as it deems appropriate. Such action is not a penalty and shall not prevent other enforcement action for violations of this section, including, without limitation, court action to enforce forfeitures or an injunction.

Penalty. Any person who violates any provision of this section shall, where no other provisions are expressly made for the enforcement of any forfeiture or penalties under this section or under state law, be subject to a penalty under § 25.04.000 of this Code

9.25.000 PENALTY. Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in 25.04.00 of this code.