

Title 5

BUSINESS LICENSES AND REGULATIONS

Chapters:

- 5.04 General Licensing Requirements
- 5.08 Installation and Operation of Alarm Systems
- 5.18 Adult-Oriented Establishments
- 5.19 Escorts and Escorts Services
- 5.20 Public Exhibition and Tavern Entertainment
- 5.24 Public Dances and Public Dance Halls
- 5.25 Private Teen Dance Club
- 5.26 Entertainment Facility License
- 5.30 Cigarette and Tobacco Products Retailer License
- 5.36 Amusement Devices and Coin-operated Music Machines
- 5.48 Christmas Tree Dealers
- 5.52 Pawnbrokers, Secondhand Article Dealers and Secondhand Jewelry Dealers
- 5.56 Junk Dealers
- 5.60 Direct Sellers
- 5.61 Newsracks in Public Rights-of-Way
- 5.62 Mobile Vending
- 5.63 Obstructions Within the Central Business District Public Rights-of-Way
- 5.64 Alcoholic Beverages
- 5.68 Mobile Homes and Mobile Home Parks
- 5.72 Taxicabs and Drivers
- 5.73 Commercial Quadricycle Licensing
- 5.74 Horse-Drawn Carriage
- 5.76 Gasoline Sales
- 5.78 Cable TV Franchise
- 5.82 Licensing of Garbage Haulers

Chapter 5.04

GENERAL LICENSING REQUIREMENTS¹

Sections:

- 5.04.010 License and permit fees.
- 5.04.020 Application.
- 5.04.030 Investigation of certain applicants.
- 5.04.040 Display of license.
- 5.04.050 Inspection of premises.
- 5.04.060 Revocation—Notice of hearing.
- 5.04.070 Suspension.
- 5.04.080 Appeal.
- 5.04.090 Reinstatement period.
- 5.04.100 Expiration.

5.04.010 License and permit fees. No person shall engage in the following businesses, trades and occupations without having obtained from the clerk a written license or permit and payment of the fees specified in section 3.40.010(a) which shall be an annual fee unless otherwise specified.

- (1) Beer and liquor:
 - (a) Class “A” fermented malt beverage retailer
 - (b) Class “B” fermented malt beverage retailer
 - (c) Class “B” fermented malt beverage “picnic” license (per picnic)
 - (d) Class “C” fermented malt beverage wholesaler
 - (e) Class “A” liquor retailer
 - (f) Class “B” liquor retailer
 - (g) Provisional retail license
 - (h) Reserve Class “B” liquor retailer (new applicant)
 - (i) 1 year operator (bartender) new applicant
 - 1 year operator (bartender) restricted
 - 2 year operator (bartender) renewal
 - 2 year operator (bartender) restricted
 - 2 year operator (bartender) lapsed within 2 licensing periods
 - Temporary operator (event bartender).....
 - (j) Tavern exhibition (per year)
 - (k) Alcoholic beverage application late filing fee.....
 - (l) Publication fee - Group
 - Single

¹ For statutory provisions generally granting the power to license, tax and regulate businesses, see §62.11(5), Wis. Stats.

Class “A” beer, Class “A” liquor, Class “B” beer, Class “B” liquor and Class “C” wine, when a new license is issued, the annual license fee is prorated on the basis of the number of months or fractions thereof remaining in the licensing year. Wholesale beer license and provisional retail license are not subject to proration.

For new operator license applicants and those who have not had a license for at least two licensing periods; provisional license shall be processed without fee at the time of paid application.

Those individuals renewing operator licenses previously held within the previous two licensing periods must pay the provisional license fee already provided for in the two year operator (bartender) lapsed license provided for in section 3.40.010(a).

- (2) Cigarette sales
- (3) Intentionally omitted
- (4) Direct seller-business registration/license 30 days
Direct seller-business registration/license 60 days
Direct seller-business registration/license 90 days
Direct seller-business registration/license 120 days
- (5) Direct seller-employee registration/license 30 days
Direct seller-employee registration/license 60 days
Direct seller-employee registration/license 90 days
Direct seller-employee registration/license 120 days
- (6) Second hand article dealer license
- (7) Second hand jewelry dealer
- (8) Second hand dealer mall
- (9) Flea market license
- (10) Pawn brokers license
- (11) Special event second hand dealer (mall or flea market)
- (12) Taxicabs/limousines/transport
- (13) Taxicab operator
- (14) Mobile home—Per month or portion thereof
- (15) Mobile home park
(for each fifty spaces or fraction thereof within each mobile home park)
- (16) Public amusements:
 - (a) Public exhibitions (per performance)
Public exhibitions (per year)
 - (b) Entertainment facility
 - (c) Entertainment facility operator
 - (d) Temporary entertainment facility
 - (e) Jukebox distributor
 - (f) Amusement device distributor
 - (g) Amusement devices (per unit)
 - (h) Coin-operated music machines (per unit)
 - (i) Public dance hall

- (j) Teen dance hall
- (k) Private teen club
- (l) Theater
- (17) Christmas tree sales
- (18) Adult-oriented establishments
Amended application
- (19) Horse-drawn carriage
- (20) Bituminous concrete license
- (21) Portland Cement license
- (22) Electrical contractors license
- (23) Garbage haulers license
- (24) Newsrack permit

(Ord. 61-5553 §2 (part), 2013, File No. 13-0309; Ord. 61-5511 §1, 2012, File No. 96-0422; Ord. 61-5443 §1, 2010, File No. 10-0215; Ord. 61-5423 §1, 2010, File No. 10-0215; Ord. 61-5384 §1, 2008, File No. 00-1134; Ord. 61-5353 §1, 2007, File No. 00-1134; Ord. 61-5329 §1, 2007, File No. 92-1019; Ord. 61-5314 §1, 2006, File No. 00-1134; Ord. 61-5276 §1, 2005, File No. 00-1134; Ord. 61-5254 §2, 2005, File No. 05-0511; Ord. 61-5243 §1(part), 2004, File No. 00-1134; Ord. 61-5220 §2, 2003, File No. 03-0119; Ord. 61-5219 §1(part), 2003, File No. 00-1136; Ord. 61-5218 §1(part), 2003, File No. 00-1134; Ord. 61-5197 §1(part), 2002, File No. 02-1206; Ord. 61-5159 §1(part), 2002, File No. 02-0131; Ord. 61-5141 §2, 2001, File No. 01-1118; Ord. 61-5096 §1, 2000, File No. 00-1136; Ord. 61-5072 §1, 2000; Ord. 61-5047 §1, 1999; Ord. 61-5019 §1, 1998; Ord. 61-5015 §2, 1998; Ord. 61-5012 §2, 1998; Ord. 61-4993 §1, 1998; Ord. 61-4963 §1, 1996; Ord. 61-4939 §1, 1996; Ord. 61-4926 §1, 1995; Ord. 61-4898 §2, 1995; Ord. 61-4885 §2, 1995; Ord. 61-4857 §1, 1994; Ord. 61-4819 §1, 1993; Ord. 61-4750 §1, 1991; Ord. 61-4742 §1, 1991; Ord. 61-4721 §1, 1990; Ord. 61-4705 §1, 1990; Ord. 61-4704 §1, 1990; Ord. 61-4654 §1(part), 1988; Ord. 61-4623 §1, 1987; Ord. 61-4576 §1, 1985; Ord. 61-4457 §1, 1980; Ord. 61-4340 §1, 1977; Ord. 61-4262 §1, 1974; Ord. 61-4244 §1, 1973; Ord. 61-4132 §1, 1969; Ord. 61-4128 §1, 1969; prior code §9.01(1).)

5.04.020 Application. Except as otherwise provided herein, applicants shall file with the clerk a sworn application furnished by the clerk containing the following information:

- (a) Name and address of applicant;
- (b) The address of the premises at which the business is to be conducted;
- (b) The extent or volume of business to be licensed. (Prior code §9.01(2).)

5.04.030 Investigation of certain applicants. (a) The provisions of this chapter shall apply to applications for beer and liquor licenses, peddler and transient merchant licenses, and taxicab and taxicab operator licenses.

(b) Except as otherwise provided herein, upon receipt of each application it shall be referred to the chief of police, who shall immediately investigate the applicant's business and moral character and the premises sought to be licensed within seventy-two hours after it has been filed with the clerk.

(c) If, as a result of such investigation, the applicant's character or business responsibility are found to be unsatisfactory, or if it is found by the chief of police that it would be against the best interest of the public to license the premises for which a license is sought, the clerk shall refer the same to the license committee of the common council who shall approve or disapprove the same, and return the application to the clerk. The clerk shall notify the applicant that his application is approved or disapproved and if no license is issued, shall remit one-half of the license fees paid, retaining the remainder of the fees as reimbursement to the city for the cost of such investigation.

(d) If as a result of the investigation the character and business responsibility of the applicant and the premises sought to be licensed are found to be satisfactory, the chief of police shall endorse on the application his approval and return the same to the clerk, who shall thereupon deliver to the applicant his license. (Prior code §9.01(3).)

5.04.040 Display of license. No licensee shall conduct the licensed business on the premises unless the unexpired license is posted on the premises in a conspicuous place where it is readily visible to those frequenting the licensed premises. (Prior code §9.01(4).)

5.04.050 Inspection of premises. It shall be a condition of the granting of any license under this chapter that the licensed premises may be entered and inspected at any reasonable hour by any police officer of the city without a warrant, and the application for a license hereunder shall be deemed a consent to this provision. Refusal to permit such inspection shall automatically operate as a revocation of any license issued hereunder and shall be a violation of this chapter. (Prior code §9.01(5).)

5.04.060 Revocation—Notice of hearing. (a) Licenses issued under the provisions of this chapter may be suspended or revoked by the common council after notice and hearing for any of the following causes:

- (1) Fraud, misrepresentation or incorrect statement contained in the application for license;
- (2) Fraud, misrepresentation or incorrect statement made in carrying on of the business of such licensee;
- (3) Any violation of this section or other ordinance of the city applicable to the business of the licensee;
- (4) Conviction of any crime or misdemeanor;
- (5) Conducting the business which the licensee is authorized to conduct by virtue of this chapter, in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

(b) Notice of the hearing for revocation of the license shall be given by the clerk in writing setting forth specifically the grounds of complaint and the time and place of hearing. Such

notice shall be mailed, postage prepaid, to the licensee at his last known address as shown on the license records at least five days prior to the date set for hearing, or shall be served by a police officer in the same manner as a summons in circuit court at least three days prior to the day set for hearing. (Prior code §9.01(6).)

5.04.070 Suspension. A license issued under this chapter may be suspended by the mayor, chief of police or health officer for a period not exceeding ten days upon obtaining reasonable information that a licensee has violated this code or the laws of the state. Such suspension may be appealed to the common council pursuant to section 5.04.080. (Prior code §9.01(7).)

5.04.080 Appeal. Any person aggrieved by action of an officer hereunder shall have the right to appeal to the common council. Such appeal shall be taken by filing with the common council within fourteen days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The common council shall set a time and place for hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as is provided in this chapter for notice of hearing on revocation. (Prior code §9.01(8).)

5.04.090 Reinstatement period. No license which has been revoked hereunder shall be reinstated until at least six months after the date of revocation. (Prior code §9.01 (9).)

5.04.100 Expiration. Except as otherwise provided, all licenses shall be for a term of one year and shall expire on the 30th day of June. (Prior code §9.01(10).)

Chapter 5.08

INSTALLATION AND OPERATION OF ALARM SYSTEMS²

Sections:

- 5.08.010 Definitions.
- 5.08.020 Exceptions to chapter.
- 5.08.030 Installation and operation.
- 5.08.040 Response of city to alarm.
- 5.08.050 Prohibitions.
- 5.08.060 Penalty.
- 5.08.070 False alarm fee.

5.08.010 Definitions. (a) "Alarm system" means any device designated for the detection of an unauthorized entry or other unlawful act on a premises, or for the detection of a fire, or both, which when activated produces a signal, which signal is caused to be transmitted by the system to the city police or fire department, and/or which signal is caused to be transmitted to the city police or fire department by way of an alarm operator, and/or which signal, if produced by a device designed solely to detect fire, is caused to be transmitted in an audible manner to the general area surrounding the premises.

(b) "Alarm system operator" means any person or business that operates a receiving device designed for the detection of an unlawful act or for the detection of a fire, or both, who in turn by telephone or other means transmits such information to the city police or fire department.

(c) "City" means the city of Wausau.

(d) "False alarm" means any of the following:

- (1) The unintentional activation of an alarm system by the owner or lessee of an alarm system or by an employee or agent of either;
- (2) The activation of an alarm system by mechanical failure or malfunction because of improper maintenance of the alarm system;
- (3) The activation of an alarm system because of improper installation and/or use of the equipment;
- (4) The intentional activation of an alarm system where no unauthorized entry, commission of an unlawful act or fire exists;

² Prior history: Ords. 61-4458, 61-4478, 61-4660 and 61-4814.

(5) The above subsections do not include false alarms caused by abnormal weather conditions, act of God or by prior arrangements made for testing of the alarm system.

(e) "Person" includes all partnerships, associations and corporate bodies. (Ord. 61-4991 §1(part), 1997.)

5.08.020 Exceptions to chapter. None of the provisions of this chapter shall prevent the city from providing special alarm monitoring services as may be required because of medical reasons or communicative disorders. (Ord. 61-4991 §1(part), 1997.)

5.08.030 Installation and operation. (a) Alarm System Standards. All alarm systems installed within the city shall have the Underwriters' Laboratories approval and be installed and maintained in compliance with all applicable federal, state and local statutes, rules and regulations.

(b) The chief of police may grant an exception to this requirement when the alarm system is under testing by the Underwriters' Laboratories, in which case the alarm system may be installed for a period of not to exceed six months and shall then be removed or disconnected, unless an extension of time is granted by the chief of police or Underwriters' Laboratories approval has been received. (Ord. 61-4991 §1(part), 1997.)

5.08.040 Response of city to alarm. The installation and/or operation of an alarm system shall not give rise to any cause of action or claim, or attach any liability to the city for any reasons whatsoever, and the city shall be under no duty or obligation to any person having an alarm system for whatever reason including, but not limited to, any defects in an alarm system, any delays in response, or delays in transmissions. (Ord. 61-4991 §1(part), 1997.)

5.08.050 Prohibitions. (a) False Alarm. No person owning, using or possessing an alarm system or transmitting information regarding an alarm system shall cause or permit the giving of a false alarm, whether intentional, accidental or otherwise.

(b) Audible Alarms. No person shall keep, maintain, install or permit to be located on premises owned, occupied or under their control, any system for the detection of unauthorized entries and/or unlawful acts, which system emits an audible signal or any other sound which can be heard outside the premises to which it is affixed, except upon recommendation of the chief of police, and upon the conditions that the sound emanating from the alarm shall not be in operation for a period exceeding fifteen minutes, and that once the system has been approved a list of locations at which the system is to be installed is forwarded to the chief of police at least on a monthly basis.

(c) Prohibited Devices. No person shall use or cause or permit to be used any telephone or electronic device or attachment that automatically selects a public primary telephone trunk line of the police department, fire department or emergency communications center and then reproduces any prerecorded message to report any unlawful act, fire or other emergency. (Ord. 61-5340 §1, 2007, File No. 97-1118; Ord. 61-4991 §1(part), 1997.)

5.08.060 Penalty. The penalty for failing to comply with any provision of this chapter, unless otherwise so stated, shall be a forfeiture of not less than fifty dollars nor more than two hundred dollars. (Ord. 61-4991 §1(part), 1997.)

5.08.070 False alarm fee. (a) A false alarm is any signal, message or other communication transmitted by an alarm system, person or other device which causes police or fire department response and which is determined by the city not to be of an existing emergency or unlawful situation. Any fees payable to the city which are delinquent may be assessed against the property involved as a special charge for current service, without notice, pursuant to Section 66.0627 of the Wisconsin Statutes.

(b) The user of any private alarm system shall pay the city a fee as provided in section 3.40.010(a) for any false alarm occurring in a moving twelve-month period:

- (1) For fire department response:
 - (A) First two false alarms
 - (B) Third and fourth false alarms
 - (C) Fifth through eighth false alarms
 - (D) Ninth and subsequent false alarms
 - (E) There shall be no false alarm fee charged during the thirty-day period immediately following the installation of the new alarm system.

- (2) For a police department response:
 - (A) First two false alarms
 - (B) Third and fourth false alarms
 - (C) Fifth through eighth false alarms
 - (D) Ninth and subsequent false alarms
 - (E) There shall be no false alarm fee charged during the thirty-day period immediately following the installation of the new alarm system.

(Ord. 61-5605 §4(part), 2014; Ord. 61-5192 §1, 2002, File No. 02-1120; Ord. 61-4991 §1(part), 1997.)

Chapter 5.18

ADULT-ORIENTED ESTABLISHMENTS

Sections:

- 5.18.010 Purpose.
- 5.18.020 Definitions.
- 5.18.030 License required.
- 5.18.040 Application.
- 5.18.050 Standards for issuance.
- 5.18.060 Fee.
- 5.18.070 Display of license.
- 5.18.080 Term.
- 5.18.090 Revocation or suspension of license.
- 5.18.100 Physical layout of premises.
- 5.18.110 Prohibition.
- 5.18.120 Violation—Penalty.

5.18.010 Purpose. It is a lawful purpose of the common council of the city to enact regulatory ordinances protecting and promoting the general welfare, health and safety of its citizens. The common council deems it necessary to require licensing and regulation of adult-oriented establishments, namely, adult book stores, because many such establishments install booths with doors in which patrons can view adult-oriented movies or video tapes or film or view other forms of adult entertainment and that it has been found in many localities that viewing booths in such establishments are used by patrons for engaging in sexual acts, particularly between males, which results in unsafe and unsanitary conditions in said booths. Pathogenic agents responsible for sexually transmitted diseases have all been isolated at one time or another from body fluids, which have been found to be frequently present in viewing booths in adult-oriented book stores. It is thereby necessary for the common council to regulate adult-oriented book stores for the protection of the public health, safety and welfare. (Ord. 61-4791 §1(part), 1993.)

5.18.020 Definitions. For the purpose of this chapter, the following words and phrases are defined as set forth herein:

- (a) “Adult bookstore, adult novelty store or adult video store” means:
 - (1) A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
 - (A) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction of description of “specified sexual activities” or “specified anatomical areas”; or

(B) Instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

(2) 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, adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store 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 which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(3) Notwithstanding the foregoing, a commercial establishment which offers for sale or rental any of the items listed in subsection (1)(A) of this section will not be considered to have as one of its principal business purposes the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” provided all of the following conditions are met:

(A) Total gross revenues from the sale or rental any of the items listed in subsection (1)(A) does not exceed fifty percent of the commercial establishment's gross revenue;

(B) Total gross square footage of display space and stock area devoted to the sale or rental of any of the items listed in subsection (1)(A) does not exceed fifty percent of the commercial establishment's total square footage;

(C) Display of any of the items listed in subsection (1)(A) is in a separate room or area restricted only to persons eighteen years old or older and is closely monitored by management and/or employees of the commercial establishment to insure that no individual under the age of eighteen enters the room or area where the items listed in subsection (1)(A) are displayed or stored;

(D) No electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained on the premises of the commercial establishment to show images of items listed in subsection (1)(A) to any customers or potential customers of the commercial establishment;

(E) Only employees or management of the commercial establishment who are eighteen years old or older are permitted to enter the area where the items listed in subsection (1)(A) are stored, processed or displayed for customers or potential customers of the commercial establishment.

(b) "Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

- (1) Persons who appear in a state of nudity or seminude; or
- (2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (3) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas";

and which is required to be licensed under Chapter 5.20 of this code.

(c) "Adult entertainment" means any exhibition of any motion pictures, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated specified sexual activities or specified anatomical areas as defined below, or the removal of articles of clothing to appear totally nude or to display a nude genital area or female nude breast or breasts.

(d) "Health department" means the Marathon County health department, health officer or his designee or authorized agent.

(e) "Minor" means any person who is less than eighteen years old.

(f) "Operator" means any person, firm or corporation operating, conducting, maintaining or owning any adult-oriented establishment.

(g) "Specified sexual activities" means simulated or actual:

- (1) Showing of human genitals in a state of sexual stimulation or arousal; or
- (2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochist abuse, fellatio or cunnilingus; or
- (3) Fondling or erotic touching of human genitals, pubic region, anus or female breasts.

(h) "Specified anatomical areas" means:

- (1) Less than completely and opaquely covered human genitals, pubic region, anus or the areola of a female breast or breasts; or
- (2) Human male genitalia in a discernibly turgid state, even if opaquely covered.

(Ord. 61-4997 §1, 1998; Ord. 61-4791 §1(part), 1993.)

5.18.030 License required. (a) No person, firm or corporation shall operate, conduct, maintain or own an adult-oriented establishment without first obtaining an adult-oriented establishment license, except that an adult-oriented establishment operating on the effective date of this chapter may continue to operate for a period of ninety days after said effective date without such a license. Licenses may be issued only to adult-oriented establishments which are located at a fixed and certain place. Any person, firm or corporation which desires to operate more than one adult-oriented establishment must have a license for each.

(b) No license issued hereunder may be transferred to any person, firm or corporation nor shall such license be transferred to another location.

(c) No person, firm or corporation shall operate, conduct, maintain or own an adult cabaret without first obtaining a public exhibition or tavern entertainment license as required by Chapter 5.20 of this code. (Ord. 61-4997 §2, 1998; Ord. 61-4791 §1(part), 1993.)

5.18.040 Application. Application for such license shall be made to the city clerk. A copy of the application shall be forwarded to the chief of police and the health department for review and recommendation, including review of arrest/conviction records and corporate ownership. The application shall be made upon a form provided by the city clerk and shall contain the following information under oath:

(a) Applicant's full name and address;

(b) Written evidence that the applicant is at least eighteen years of age;

(c) The address and description of the location of the proposed adult-oriented establishment; and

(d) If the applicant is a corporation, the name of the corporation, the date and state of incorporation, the name and address of the registered agents of the corporation, and the name and address of all persons, firms or corporations owning stock in said corporation, and the name, address, age and position of all officers and directors of the applicant corporation. An amended application form shall be filed by any corporate licensee upon any change of officer, director, or agent. Such amended application shall be reviewed in the same manner as a new application. A fee as provided in section 3.40.010(a) shall be paid to the city upon submission of an amended application. (Ord. 61-5605 §5(part), 2014; Ord. 61-4791 §1(part), 1993.)

5.18.050 Standards for issuance. The public health and safety committee of the common council shall review all applications received hereunder within thirty days after filing thereof, and shall consider the review and recommendations of the chief of police and health department. In recommending action on issuance or nonissuance of such licenses to the common council, the committee shall consider the probable impact of the location of the proposed business in the area proposed to be licensed, the fitness of the applicant to operate such an establishment, the history of the operation of the establishment or the history of the applicant in operating such an establishment. In addition, the following requirements must be met:

(a) An individual applicant must be at least eighteen years of age and must not have been found to have violated this chapter or a similar law or ordinance within five years immediately preceding the date of the application.

(b) All officers, directors, and stockholders of a corporate applicant must be at least eighteen years of age, and no officer, director or shareholder thereof must have been found to have violated this chapter or a similar law or ordinance within five years preceding the date of the application. An applicant which is a partnership, joint venture, or other type of organization where two or more persons have a financial interest must demonstrate that no such person is less than eighteen years of age and no such person must have been found to have violated any provision of this chapter or a similar law or ordinance within five years immediately preceding the date of the application.

Within sixty days of receiving an application for a license, the city clerk shall notify the applicant in writing whether the application has been granted or denied by the common council and if denied the reason for the denial. Judicial review of denials of applications by the common council under this section shall be as provided in Section 68.13 of the Wisconsin Statutes. (Ord. 61-4791 §1(part), 1993.)

5.18.060 Fee. The license fee specified in section 3.40.010(a) shall be submitted with the application for a license. If the application is denied, one-half the fee shall be retained as a processing fee and the balance shall be returned to the applicant. No fee shall be prorated except upon such denial. No later than three months after the close of each fiscal year, the city clerk shall reimburse the health department twenty percent of each permit fee charged under this section. If an application is denied, reimbursement shall not be made to the health department. (Ord. 61-5553 §3(part), 2013, File No. 13-0309; Ord. 61-5048 §1, 1999; Ord. 61-4791 §1(part), 1993.)

5.18.070 Display of license. The licensee shall prominently display the license issued hereunder in a conspicuous public place in the licensed premises. (Ord. 61-4791 §1(part), 1993.)

5.18.080 Term. All licenses issued hereunder shall expire on June 30 each year, unless sooner revoked. A new application shall be made each year and renewal applications must be filed not later than April 30. A renewal application shall contain the same information and data, given under oath, as is required for an application for a new license. A late processing fee as provided in section 3.40.010(a) shall be paid with any renewal application which is made following April 30 of any year. If the application is denied, no portion of the late processing fee shall be refunded. (Ord. 61-5605 §6(part), 2014; Ord. 61-4791 §1(part), 1993.)

5.18.090 Revocation or suspension of license. (a) Hearing. The public health and safety committee may hold a hearing to determine whether such license should be suspended or revoked:

- (1) In the event that a licensee or a licensee's agent or any of a licensee's officers, directors or shareholders is convicted of an offense which reasonably relates to the licensed operation hereunder; or

- (2) The discovery that false, misleading information or data was provided on any application or material facts were omitted from any application; or
- (3) The licensee has failed to comply with orders issued under subsections (c) or (d) of this section; or
- (4) Any cost or fee required to be paid by this chapter is not paid; or
- (5) Any intoxicating liquor or fermented malt beverage is served or consumed on the premises of the licensed establishment.

(b) Notice. Notice of such hearing and the grounds therefor shall be provided to any such person, who shall be advised of the time and place of the hearing, of the right to call, examine and cross-examine witnesses, and to have the proceedings recorded at the person's own expense. Such license may be suspended for a period of not more than sixty days or revoked in the event that the committee determines that the public interest so requires. The licensee shall be given at least ten days' written notice of the charges prior to the public hearing. The transfer of a license or any interest in a license shall automatically and immediately revoke said license. Any person, firm or corporation whose license is revoked shall not be eligible to receive another license for a period of one year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for twelve months from the date of revocation of said license. Judicial review shall be provided in Section 68.13 of the Wisconsin Statutes.

(c) Access. Authorized employees or agents of the chief of police or health department, upon presenting proper identification, shall be permitted to enter any adult-oriented establishment at any reasonable time for the purpose of inspection to determine compliance.

(d) Enforcement. If, upon inspection of an adult-oriented establishment by the authorized employee or agent of the chief of police or health department, the employee or agent finds that the establishment is not operated or maintained as required by this ordinance, the employee or agent shall notify the operator in writing. The order shall specify the changes required to make the establishment conform to the standards established in this chapter and the time period in which compliance shall take place.

(e) Immediate Danger to Health. Where there is reasonable cause to believe that any construction, sanitary condition, operation or method of operation of the premises of an establishment or equipment used on the premises creates an immediate danger to health, an authorized employee or agent of the health department may, without advance written notice, issue an order to remove the immediate danger to health. That order shall take effect on delivery to the operator or other person in charge of the establishment. The order shall be limited to prohibiting the continued operation, use or method of operation of specific booths or equipment, requiring the premise to cease other operations or methods of operations, or a combination of these, except if a more limited order would not remove the immediate danger to health the order may direct that all operations authorized by the permit cease. (Ord. 61-4791 §1(part), 1993.)

5.18.100 Physical layout of premises. No adult-oriented establishment shall have available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment unless the following requirements are complied with:

(a) Access. Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult-oriented establishment and shall not be obstructed by any door, lock, blind, curtain or other control type device.

(b) Construction. Every booth, room or cubicle shall:

(1) Be separated from adjacent booths, rooms or cubicles and any nonpublic areas by a wall;

(2) Have at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth, room or cubicle;

(3) Have solid, nonbreakable walls without any openings, extended from the floor to a height of not less than six feet and shall be light colored, with a nonabsorbent, smooth textured and easily cleanable surface;

(4) Have a light colored, nonabsorbent, smooth textured and easily cleanable floor; and

(5) Have at all times when not in use a minimum lighting level of ten foot candles as measured three feet above the floor.

(c) Only one individual shall occupy a booth, room or cubicle at any time.

(d) The operator shall ensure there is conspicuously posted inside each booth, stall, partitioned portion of room, or individual room an unmutated and undefaced sign or poster supplied by the health department which contains information regarding sexually transmitted diseases and the telephone numbers from which additional information can be sought.

(e) The operator shall ensure there is conspicuously displayed at a place near the main entrance of the establishment, or portion thereof, any information, brochures or pamphlets supplied by the health department pertaining to sexually transmitted diseases.

(f) The operator shall ensure there are posted regulations concerning booth occupancy on signs, with lettering at least one inch high, that are placed in conspicuous areas of the establishment and in each of the viewing enclosures. (Ord. 61-4791 §1(part), 1993.)

5.18.110 Prohibition. (a) No person while occupying a booth, room or cubicle or any public area of an establishment licensed hereunder shall engage in any type of specified sexual activity as defined in section 5.18.020 (g), nor shall any such person cause any bodily discharge or litter while in such a booth, room or cubicle. No person shall damage or deface any portion of the booth while occupying that booth.

(b) No operator of an adult-oriented establishment shall permit more than one person to occupy a booth, room or cubicle as described in section 5.18.100, at any time.

(c) No operator shall permit a minor to be in and/or to loiter around an establishment licensed hereunder or allow a minor to view adult entertainment in such an establishment.

(d) The operator shall maintain the adult-oriented establishment in a clean and sanitary condition at all times. The operator shall submit a fixed cleaning and sanitizing schedule to the health department for approval, and once approved adhere to that schedule. All employees and operators shall be required to wear nonpermeable rubber gloves while engaged in the cleaning and sanitation of the booths.

(e) The operator shall maintain a current list of all employees who work in his/her premises, such list shall contain the name, current address, date of birth, sex, telephone number, social security number, position of each employee, date of employment and termination and shall be furnished to any police officer immediately upon request.

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

(g) Any act or omission of any employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(h) No employee of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or to allow any minor to view sexually-oriented adult entertainment as defined herein.

(i) The operator shall ensure compliance of the establishment and its patrons with the provisions of this chapter. (Ord. 61-4791 §1(part), 1993.)

5.18.120 Violation—Penalty. Upon conviction, any person found to be in violation of this chapter shall forfeit not less than fifty dollars nor more than three hundred dollars for each offense. (Ord. 61-4791 §1(part), 1993.)

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Chapter 5.19

ESCORTS AND ESCORTS SERVICES

Sections:

5.19.010	Definitions.
5.19.020	Exemptions.
5.19.030	License required.
5.19.040	Application for license.
5.19.050	Standards for license issuance.
5.19.060	Renewal of license.
5.19.070	Denial of application.
5.19.080	Suspension, revocation, or non-renewal license.
5.19.090	Responsibilities of the operator.
5.19.100	Registration of employees.
5.19.110	Penalties.
5.19.120	Severability.

5.19.010 Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter:

a) “Escort” means any person who, for a fee, commission, salary, hire, profit, payment, or other monetary consideration, accompanies or offers to accompany another person to or about social affairs, entertainment or places of entertainment or places of amusement or consorts with another person about any place of public resort or within any private quarters or agrees to privately model lingerie, perform a striptease or perform in a nude or semi-nude state for any person or persons.

b) “Escort Service” means service provided by any person who, for a fee, commission, salary, hire, profit, payment, or other monetary consideration, furnishes or offers to furnish names of persons who may accompany any person to or about social affairs, entertainment or places of amusement, or who may consort with a person about any place of public resort or within any private quarters or agree to privately model lingerie, perform a striptease or perform in a nude or semi-nude state for another person or persons.

(c) “Person” means any individual and is also extended and applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate.

5.19.020 Exemptions. This section does not apply to businesses, agencies and persons licensed by the State of Wisconsin or the City of Wausau pursuant to a specific statute or ordinance, or employed by a business so licensed and which performs an escort or an escort service function as a service merely incidental to the primary function of such profession, employment or business and which do not hold themselves out to the public as an escort or an escort service.

5.19.030 License required. (a) No escort shall operate or provide service in the City of Wausau without first obtaining an escort service license issued by the City of Wausau.

(b) No person shall escort in the City of Wausau unless employed by an escort service licensed by the City of Wausau and properly registered pursuant to this code.

(c) Any person, partnership or corporation that desires to operate or provide services from more than one (1) location must have a license for each location.

(d) No license or interest in a license may be transferred to any person, partnership or corporation.

(e) No person may advertise indicating that an escort service is available in the City of Wausau unless that service possesses a valid license. No escort service may in any manner advertise its services as licensed by the City of Wausau.

(f) No escort service shall provide a person with the actual services of an escort at its establishment address except when the escort service has met the standards and requirements of adult-oriented establishments and is in possession of an adult-oriented establishment license as required in chapter 5.18.

5.19.040 Application for license. (a) Any person desiring to secure a license under this chapter shall make application to the city clerk.

(b) The application for a license shall be made on a form approved by the city clerk. An applicant for a license (which shall include each partner and limited partner of a partnership applicant, each officer and director of a corporate applicant, each stockholder holding ten percent (10%) or more of the stock or beneficial ownership and every other person who is interested directly in the ownership or operation of the business) shall furnish the following information under oath:

- (1) Name and address, including all aliases;
- (2) Written proof that the individual is at least eighteen (18) years of age;
- (3) All residential addresses of the applicant for the past ten (10) years;
- (4) The business, occupation or employment of the applicant for ten (10) years immediately preceding the date of application;
- (5) Whether the applicant previously operated in this or any other state, county or municipality under an escort service license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefore and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;
- (6) All convictions and pending charges of felony, misdemeanor or ordinance

violations, except minor traffic violations;

- (7) Fingerprints and photograph registration with the Wausau Police Department;
- (8) The address of the escort service to be operated by the applicant;
- (9) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of the incorporation, the name and address of the registered agent and all officers and directors of the corporation.

(c) Additional information. Each service shall furnish the following information under oath at the time of application:

- (1) The trade name of the escort service. An escort service may operate under only one (1) trade name per license.
- (2) The complete address of the proposed business location with a copy of the deed, lease, or other document pursuant to which the applicant occupies or will occupy such premises.
- (3) The service's Federal Employer Identification Number.
- (4) A written plan setting forth:
 - (A) Description of the nature of business to be conducted and services to be offered;
 - (B) Hours that the service will be open to the public;
 - (C) Copies of contracts to be used with escorts and customers;

(d) The completed application shall be accompanied with the fee as provided in section 3.40.010(a). A late fee of two times the application fee, along with the application fee as provided in section 3.40.010(a) shall be collected for every late application.

(e) A copy of a completed application shall be forwarded to the chief of police or his or her designee for investigation of the applicant for compliance with the standards under section 5.19.050 and the information provided under section 5.19.040 and for his or her recommendation concerning the application for license. No license shall be issued until the chief of police or his or her designee has investigated the applicant's qualifications to be licensed as set forth in this chapter. After completion of the investigation, the application shall be referred to the public health and safety committee of the common council who shall approve or disapprove the same and return the application to the city clerk.

5.19.050 Standards for license issuance. (a) To receive a license to operate an escort service, an applicant must meet the following standards:

- (1) If the applicant is an individual:
 - (A) The applicant shall be at least eighteen (18) years of age;
 - (B) Subject to Ch. 111, Wis. Stats., the applicant shall not have been convicted of or pleaded *nolo contendere*, or no contest, to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction;
 - (C) The applicant shall not have been convicted of a felony, misdemeanor or ordinance violation which substantially relates to the licensed activity;
 - (D) The applicant shall not have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
- (2) If the applicant is a corporation:
 - (A) All officers, directors and others required to be named under section 5.19.040 shall be at least eighteen (18) years of age;
 - (B) Subject to Ch. 111, Wis. Stats., no officer, director or other person to be named under section 5.19.040 shall have been convicted of or pleaded *nolo contendere*, or no contest, to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction;
 - (C) No officer, director or other person required to be named under section 5.19.040 shall have been convicted of a felony, misdemeanor or ordinance violation which substantially relates to the licensed activity.
 - (D) No officer, director or other person required to be named under section 5.19.040 shall have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
- (3) If the applicant is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest:
 - (A) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age;

(B) No persons having a financial interest in the partnership, joint venture or other type of organization shall, subject to Ch. 111, Wis. Stats., have been convicted of or pleaded *nolo contendere*, or no contest, to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction;

(C) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of a felony, misdemeanor or ordinance violation which substantially relates to the licensed activity;

(D) No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have violated any provision of this ordinance within five (5) years immediately preceding the date of the application.

(b) If any charges are currently pending which, if resulting in a conviction, would disqualify the applicant pursuant to subsection (a) above, the public health and safety committee may postpone action on the application until such time as the charge is resolved.

5.19.060 Renewal of license. (a) Every license issued pursuant to this chapter will terminate on December 31st following its issuance, unless sooner revoked. Application for renewal shall be on a form provided by the city clerk.

(b) No renewal application will be considered filed in the office of the city clerk unless it is accompanied by the fee set forth in subsection 5.19.040.

5.19.070 Denial of application. (a) If upon review of an application, the public health and safety committee recommends denial of the license the city clerk shall notify the applicant by mail of the denial and the reason therefor and remit one-half of the license fee paid to the applicant, retaining the remainder of the fee as reimbursement to the city for the cost of the investigation. The letter shall also inform the applicant of his or her right to appear before the public health and safety committee.

(b) The public health and safety committee shall hear any person for or against the granting of the license and shall report its recommendation to the common council which shall grant or deny the license.

5.19.080 Suspension, revocation, or non-renewal license. (a) Any license issued under this chapter may be suspended for not less than ten (10) days nor more than ninety (90) days or revoked by the public health and safety committee after notice and an opportunity to be heard in accordance with the procedures set forth in section 5.04.060(b) for reasons set forth in section 5.04.060(a) or as follows:

(1) Violation by the licensee, his or her agent, or employee of any law of the United States or State of Wisconsin relating to the particular trade, occupation, or

business so licensed.

(2) Violation by the licensee, his or her agent, or employee of this chapter or any city ordinance relating to the particular trade, occupation, or business so licensed, including but not limited to all plumbing, building, electrical, and heating codes and parking lot regulations.

(3) Violation by the licensee, his or her agent, or employee of any statute, ordinance or law when the circumstances of the violation, arrest, or conviction substantially relate to the licensed activity.

(b) The same provisions shall apply to denial of an application for renewal of a license under this chapter.

(c) Any violation of the requirements of this chapter shall be grounds for revocation of a license issued under this chapter.

(d) Appeal of the decision of the public health and safety committee shall be made as provided in chapter 2.21 of this code.

5.19.090 Responsibilities of the operator. (a) The operator of an escort service shall maintain a register of all employees or independent contractors, showing the name and aliases used by the employee, home address, birth date, sex, telephone numbers, social security number and the date of employment and termination. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

(b) Every escort and escort service shall:

(1) Provide to each patron a written contract and receipt of payment for services. The contract shall clearly state the type of services to be performed; the length of time such services shall be performed, the total amount of money such services shall cost the patron, and any special terms or conditions relating to the services to be performed.

(2) Maintain a legible written record of each transaction of any escort furnished to or arranged for on behalf of any person or customer. The record shall show the date and hour of each transaction, the name, address and telephone number of the person requesting an escort, and the name of every escort furnished.

(3) The record required by subsections (1) and (2) shall be kept available and open for inspection by the Wausau Police Department during business hours.

(c) The operator of an escort service shall make the register of employees, along with any other records required to be maintained under this chapter, available immediately for inspection by police upon demand of a member of the Wausau Police Department at all reasonable times.

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

(e) Any act or omission of any employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for the purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(f) No person shall escort or agree to escort a person under the age of eighteen (18) years.

5.19.100 Registration of employees. (a) All operators or employees working for any escort service and independent contractors shall, prior to beginning employment or contracted duties, be required to register with the city clerk. During the registration process, the person shall:

(1) Provide his or her name, address, birth date, any aliases used, telephone numbers, date of employment and name of employer;

(2) Submit to photographs, fingerprinting, and background investigation by the Wausau Police Department.

(b) Upon registration, the Wausau Police Department will provide to each registered employee or independent contractor an identification card, provided by the city clerk, containing the employee's or independent contractor's photograph identifying the persons as such, which shall be kept available for production upon request.

(c) The registrant shall pay a fee as provided in section 3.40.010(a).

(d) Any escort employed by more than one (1) escort service shall submit a separate registration for each service by which the escort is employed.

(e) All registration cards shall expire on December 31 of the year of issuance.

5.19.110 Penalties. Any person found to have violated any provisions of this chapter shall, upon conviction be subject to a forfeiture of not less than two thousand dollars (\$2,000) and not more than five thousand dollars (\$5,000).

5.19.120 Severability. If any provisions of this ordinance are deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions of the same.

(Ord. 61-5620 §1, 2014, File No. 14-0509)

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Chapter 5.20

PUBLIC EXHIBITION AND TAVERN ENTERTAINMENT

Sections:

- 5.20.010 Public exhibition license—Nonliquor licensed establishments.
- 5.20.020 Tavern entertainment license—Liquor licensed establishments.
- 5.20.030 Dancing to instrumental or prerecorded music—Liquor licensed establishments.
- 5.20.040 Licensing.
- 5.20.050 License regulations.

5.20.010 Public exhibition license—Nonliquor licensed establishments. (a) License Required. No person shall exhibit to public view for gain within the corporate limits of the city, any circus, caravan, theatrical performance, sleight of hand performance, or offer any other kind of entertainment or exhibition where admission is gained by the payment of money or any other thing, without first having been licensed therefor as provided in this chapter.

(b) Lists of Performers. Every person who affords his patrons entertainment by, or performance of, any act, stunt, music, song, or dance by performers under his auspices, whether such performances are paid or not, shall maintain a current list of all performers who perform in his premises. Such list shall contain name (both legal and trade name), current address, date of birth and type of performance of each performer, and shall be provided to any police officer upon request.

(c) Applications for licenses under this section shall be made under Chapter 5.04. (Ord. 61-4742 §2(part), 1991.)

5.20.020 Tavern entertainment license—Liquor licensed establishments. (a) License Required. No person licensed to sell alcoholic beverages shall give, permit, produce, present, conduct or offer entertainment or exhibitions consisting of music, dancing, singing, floor shows and/or cabaret performances upon the premises of an establishment which holds a liquor license, unless licensed to do so under this section. This section applies to any premises to which a person may gain admission with or without payment of a fee. This license shall be construed to permit entertainment, exhibitions, instrumental music, prerecorded music, and patron dancing thereto upon the licensed premises that is conducted indoors, if permitted by applicable zoning ordinances. Applications for conducting activities associated with this license outdoors must be made to the Public Health and Safety Committee and approved by Council. This section is promulgated pursuant to Section 125.10(1) of the Wisconsin Statutes.

- (b) (1) Every person holding a tavern entertainment license who affords his patrons entertainment by, or performance of, any act, stunt, music, song, or dance by performers under his auspices, whether such performances are paid or not, shall maintain a current list of all performers who perform in his premises. Such list shall contain name (both legal and trade name), current address, date of birth and type of

performance of each performer, and shall be provided to any police officer upon request.

(2) Every person holding a tavern entertainment license who offers adult cabaret performances as defined in section 5.18.020(b) shall maintain a performer identification form for every performer working in the premises. Such form shall contain name (both legal and trade name and any alias), current residence address, present business address, date of birth, type of performance, picture identification showing proof that the individual is at least eighteen years of age (either driver's license or state identification card) and signature of every performer. A copy of the performer identification form shall be delivered to the Wausau police department at least twenty-four hours prior to any performance by the individual at the licensed establishment.

(Ord. 61-5478 §1, 2011, File No. 98-0318; Ord. 61-4997 §3, 1998; Ord. 61-4742 §2(part), 1991.)

5.20.030 Dancing to instrumental or prerecorded music—Liquor licensed establishments.

Any person, firm or corporation licensed to sell alcoholic beverages that offers only the playing of instrumental music or prerecorded music and permits patron dancing thereto on a designated dance floor at a liquor licensed establishment shall apply for a public dance hall license under section 5.24.020 of this code. (Ord. 61-4742 §2(part), 1991.)

5.20.040 Licensing. (a) Application. The application for such licenses shall be writing upon a form prescribed by and filed with the city clerk. Such application shall designate:

- (1) The name and address of the specific premises intended to be licensed;
- (2) Whether the applicant has, within two years prior to the date of this application, been licensed to conduct a public exhibition or to sell alcoholic beverages, if any such license was suspended or revoked and a statement of the reasons therefor;
- (3) The location where the applicant conducted such licensed premises, if any;
- (4) The name, date of birth, permanent address and telephone number or temporary address, if any, of the person or persons, association or company, owning the premises for which a license permit is requested;
- (5) Any corporation submitting an application under this chapter shall provide the name of the president, vice president, secretary, treasurer and registered agent along with their home address, telephone, and date of birth on the application;
- (6) In order for the common council to determine whether or not the applicant's proposed operations are basically compatible with the normal activity of the neighborhood in which the licensed premises is to be located, the type and general

nature of the entertainment, exhibitions, music, dancing, singing, floor show, or other performances to be held on the premises;

(7) If the applicant, or in the event the applicant is not an individual person, if any member, managing officer or agent of the applicant has been convicted in a court of competent jurisdiction of any offense involving dishonesty or moral turpitude or has been convicted of any violation of law relating to the public health and safety.

(b) Deposit of Fee—Refund.

(1) Required. Each application shall be accompanied by the fee fixed for such license as provided in section 3.40.010(a). The full license fee shall be charged for the whole or fraction of the license year.

(2) Refund. In the event such license is denied, one-half of such fee shall be refunded to the applicant, the city retaining the remainder of the fee as reimbursement for the cost of investigation of the application.

(c) Referral of Application.

(1) Whenever any applicant for a license as provided in this section has complied with the conditions and regulations herein contained relative to the filing of his application, it shall be the duty of the city clerk to forward said application to the proper licensing committee.

(2) It shall be the duty of the department of inspections and engineering, the health department, the fire department and the police department to investigate each original application for all licenses required to be applied for under this chapter. These departments shall furnish to the proper licensing committee the information derived from such investigations, and their respective recommendations as to whether a license should be granted or refused.

(d) Issuance. After receiving and giving consideration to said report of the chief of police, the director of inspections, the health department officer and the fire chief, the said committee shall report their findings and make recommendations for the issuance or denial of the original license to such members of the common council. No such original license shall be issued by the city clerk until favorable action upon the application therefor is first had by the common council. The common council shall approve a license whenever it shall find the following facts to exist:

(1) That all of the statements made in the application are true;

(2) That the applicant is of good moral character and reputation, or if the applicant is not an individual, that every member, managing officer or agent of the applicant is of good moral character and reputation;

- (3) That the premises for which a license is sought will comply with the provisions of this section and all other applicable rules, regulations, ordinances and state laws, specifically including, but not limited to, zoning regulations building code requirements and fire prevention code;
- (4) That the proposed entertainment will comply with all applicable rules, regulations, ordinances and state laws, specifically including, but not limited to, noise limitations and performance standards;
- (5) If the applicant is a corporation, that it is licensed to do business and is in good standing with state of Wisconsin;
- (6) That the applicant is otherwise entitled to a license under the provisions of this section.

Upon approval of the application by the common council, a license shall be issued to the applicant by the city clerk. Any license issued under this section shall be nonassignable and nontransferable, except as provided in subsection (g) of this section. If a license is denied by the common council, the applicant may obtain judicial review of the determination as provided in Section 68.13 of the Wisconsin Statutes.

(e) License Fees. See Chapter 5.04 for the required license fees and terms therefor.

(f) Change in Entertainment. If, after the license has been granted or issued, the licensee wishes to substantially deviate from the type of entertainment that was listed on the original application, the licensee must file a sworn, written request with the city clerk which states the change in the type of entertainment. No changes in entertainment shall take place until the request has been approved by the common council. The common council's approval may be given only if it determines that the new type of entertainment is basically compatible with the normal activity of the neighborhood in which the licensed premises is located and the new entertainment is compatible with the proposed premises. The matter must be approved or denied within sixty days of the filing of the request for change in entertainment with the clerk's office.

(g) Transferability and Lapse.

(1) Every license issued under this chapter shall be issued for a period of one year or part thereof, effective from the date that the license is granted, and shall expire on the same date as the Class "B" retail intoxicating liquor or fermented malt beverage retail establishment license. The fee for each such license shall be payable for the entire year.

(2) Every license issued under this chapter may be transferred from one premises to another within the city of Wausau only upon the approval of the common council and the payment of the transfer fee as provided in section 3.40.010(a). No license shall be entitled to more than one transfer in any one license year. The new premises must comply in all respects with all provisions of this chapter as if a new application were being made.

(3) Any license issued pursuant to this section shall lapse and become void whenever the licensee shall not renew or shall have revoked his retail Class "B" fermented malt beverage or intoxicating liquor license. If any such retail Class "B" license shall be suspended the license issued under this section shall be deemed suspended for a like period, without further action by the common council.

(h) Display of License. Any license issued under this section shall be posted in a prominent place upon the licensed premises.

(i) Renewal.

(1) Application. Applications for renewals of licenses shall be reviewed by the chief of police, director of inspection, the health department officer and the fire chief. The applicant and premises must comply in all respects with all provisions of this chapter as if a new application were being made. If all requirements are met, the license shall be renewed.

(2) Denial. Should nonrenewal be recommended, the public health and safety committee shall promptly conduct a nonrenewal hearing prior to making any recommendation to the common council with respect to the license at issue. The licensee shall receive at least seven working days notice of the specific charges upon which a hearing will be conducted by the public health and safety committee. The licensee shall have an opportunity to appear at the hearing and be represented by counsel and to cross-examine witnesses against the renewal of the license and present evidence in favor of renewal of the license. At the conclusion of the hearing, the committee shall make a recommendation to the common council. Grounds for nonrenewal shall be: Disorderly conduct on or around the premises; noise or music which disturbs the neighbors of the licensed premises; violation of occupancy limitations; and the violation of any ordinance, law or other good cause reasonably related to the protection of health, safety and welfare of the neighborhood in which the licensed premises is operated. The common council must promptly either renew or deny the license. Judicial review of the common council's decision shall be as provided in Section 68.13 of the Wisconsin Statutes.

(j) Revocation or Suspension. All licenses issued under this chapter may be suspended or revoked by the common council for disorderly conduct within the licensed premises or on the adjacent property, or for any violation by the licensee, his agents or employees, of any provision of this section, or any ordinance or law relating to the use or occupation of the licensed premises and for the falsifying of information or the failure to disclose information on the application. If at anytime any license issued under this chapter is revoked, at least twelve months shall elapse before another such license shall be issued to the same person for the same premises. Any revocation or suspension may be in addition to any forfeiture imposed under this chapter. Procedures for revocation of licenses issued under this chapter shall be as provided in sections 5.04.060, 5.04.070, and 5.04.080 of the code. (Ord. 61-5605 §7(part), 2014; Ord. 61-4742 §2(part), 1991.)

5.20.050 License regulations. (a) Hours of Exhibitions and Music. On any premises licensed under this chapter no music, dancing or entertainment of any nature shall be permitted after two a.m., except on Saturdays and Sundays when entertainment is permitted until two-thirty a.m. and before nine a.m. on weekdays and ten-thirty a.m. on Sundays.

(b) Performance Standards. A license holder who offers adult cabaret performances shall comply with the following conditions:

- (1) No performer or entertainer or employee shall, while nude or seminude, be visible from outside the licensed premises.
- (2) There shall be no photograph or other visual representation depicting or displaying specified sexual activities or specified anatomical areas as defined in section 5.18.020 (h) of this code visible from outside the establishment.
- (3) The adult entertainment tavern permit shall be prominently displayed along with the license to sell fermented malt beverages.
- (4) No patron shall be permitted to touch a nude or seminude entertainer nor shall an entertainer while seminude touch any patron or the clothing of a patron while performing in the licensed establishment.
- (5) It shall be a violation of this chapter for a person who knowingly or intentionally in a sexually oriented business appears in a seminude condition unless the person is an employee who, while seminude, shall be at least six feet from any patron or customer and on a stage at least two feet above the floor. No nude or seminude dancing shall be permitted within six feet of or on top of a bar over which patrons are directly served.
- (6) It shall be a violation of this chapter for a person who knowingly and intentionally, in a sexually oriented business, performs acts of or acts which simulate specified sexual activities as defined in section 5.18.020(g) of this code.
- (7) The license holder shall not permit a performance by any adult entertainer who has not registered as required by section 5.20.020(b)(2), nor shall the license holder permit any adult entertainment performance by any person under the age of eighteen years. The performance of adult entertainment by an entertainer under the age of eighteen years shall alone be grounds for nonrenewal or revocation of the licensee's tavern entertainment license. (Ord. 61-4997 §4, 1998; Ord. 61-4742 §2(part), 1991.)

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Chapter 5.24

PUBLIC DANCES AND PUBLIC DANCE HALLS

Sections:

- 5.24.010 Definitions.
- 5.24.020 Public dance hall license required.
- 5.24.030 Public dance hall license regulations.
- 5.24.040 Teen dance hall license required.
- 5.24.050 Teen dance hall license regulations.

5.24.010 Definitions. (a) “Public dance” means any dance to which the public generally may gain admission with or without payment of a fee. Teen dances are specifically excluded from this definition.

(b) “Public dance hall” means any place in which a public dance to live or prerecorded music may be held, or in which classes in dancing are held and instruction in dancing given for hire, or which may be rented to a private party, wedding, etc. This chapter shall not include public dances or public dance halls conducted by charitable, religious or educational organizations where the net proceeds are used exclusively for purposes of the organization, or for those facilities licensed under Chapter 5.26.

(c) “Teen dance hall” means any premises providing dances for those members of the public between the ages of fourteen and eighteen, admission to which may be gained with or without payment of a fee. (Ord. 61-5275 §1, 2005, File No. 91-0437; Ord. 61-4749 §1(part), 1991; Ord. 61-4741 §1(part), 1991.)

5.24.020 Public dance hall license required. (a) No public dance to live or prerecorded music or class in dancing shall be held within the city unless the same is licensed for such purposes. This section also applies to dance or banquet halls where intoxicating or fermented malt beverages are available for consumption on the premises.

(b) Applications for licenses under this chapter shall be made as provided in Chapter 5.04 of this code.

(c) Fees shall be as specified in section 3.40.010(a). (Ord. 61-5553 §4 (part), 2013, File No. 13-0309; Ord. 61-5275 §2, 2005, File No. 91-0437; Ord. 61-4749 §1(part), 1991; Ord. 61-4741 §1(part), 1991.)

5.24.030 Public dance hall license regulations. (a) The licensed premises must comply with all applicable rules, regulations and state laws specifically including but not limited to occupancy restrictions, the zoning regulations, building code requirements, and the fire prevention code.

(b) Any license issued under this chapter shall be nonassignable and nontransferable.

(c) Revocation and suspension of said license shall be for violation of any of the license regulations in this chapter and follow the procedure for such in Chapter 5.04. (Ord. 61-4749 §1(part), 1991; Ord. 61-4741 §1(part), 1991.)

5.24.040 Teen dance hall license required. (a) No teen dance to live or prerecorded music shall be held at any premises within the city unless the same is licensed for such purposes. A teen dance hall license shall not be required if the dance is at any of the following locations: a private residence from which the general public is excluded; a place owned by the federal, state, or local government; a public or private elementary school, secondary school, college, or university; a place owned by a bona fide religious organization; or a private club. Private clubs shall be licensed under Chapter 5.25.

(b) Applications for licenses under this chapter shall be made as provided in Chapter 5.04 of this code.

(c) Fees shall be as specified in section 3.40.010(a). (Ord. 61-5553 §5 (part), 2013, File No. 13-0309; Ord. 61-4749 §1(part), 1991.)

5.24.050 Teen dance hall license regulations. (a) Age Limit on Admissions. No person licensed hereunder shall permit on the premises where a teen dance hall is operated any person under the age of fourteen unless accompanied by his or her parent or legal guardian or any person over the age of eighteen unless they are a licensee or any employee of the dance hall, a parent, or guardian of a person inside the dance hall, or a governmental employee in the performance of his or her duties.

(b) No person licensed hereunder shall permit, under any circumstances, any alcoholic beverages, including nonalcoholic beer, wine coolers, and other similar type beverages to be consumed, sold, furnished, given away, or carried into any premises licensed as a teenage dance hall.

(c) Hours of Operation. No teen dance hall licensed premises shall be open as a teen dance hall prior to three-thirty p.m. or after ten p.m. Sunday through Thursday, or prior to twelve p.m. or after eleven p.m. Friday and Saturday. From Memorial Day to Labor Day, the weekend hours apply. All music shall cease at least one half hour prior to closing.

(d) The license regulations in section 5.24.030 shall apply to teen dance hall license holders. (Ord. 61-4749 §1(part), 1991.)

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Chapter 5.25

PRIVATE TEEN DANCE CLUB

Sections:

- 5.25.010 Definitions.
- 5.25.020 License required.
- 5.25.030 Regulations.

5.25.010 Definitions. Private teen dance club means a private club providing dances for persons between the ages of fourteen and eighteen, admission for which may be gained by membership card and the payment of an admission fee or charge. (Ord. 61-4749 §1(part), 1991.)

5.25.020 License required. No person shall operate a private teen dance club without a license issued hereunder: A license fee specified in section 3.40.010(a) shall be submitted with the application for license. (Ord. 61-5553 §6 (part), 2013, File No. 13-0309; Ord. 61-5049 §1 (part), 1999; Ord. 61-4749 §1 (part), 1991.)

5.25.030 Regulations. (a) Section 5.24.030 (a), (b) and (c) shall apply.

(b) Section 5.24.050 (a), (b) and (c) shall apply. (Ord. 61-4749 §1(part), 1991.)

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Chapter 5.26

ENTERTAINMENT FACILITY LICENSE

Sections:

5.26.010	Definitions.
5.26.020	License required.
5.26.025	Prohibition against gambling machines.
5.26.030	Temporary license.
5.26.040	Exempt organizations.
5.26.050	Facility license.
5.26.060	Facility operator's license.
5.26.070	Procedure for granting license.
5.26.080	Conduct of business.
5.26.090	Suspension, revocation, nonrenewal.
5.26.100	Penalties.

5.26.010 Definitions. (a) Amusement Devices. Any machine, game, table, device, or apparatus which is designed, intended, operated or used as a test of skill or for entertainment, the use or operation of which is made available upon the payment of any valuable consideration except coin operated music machines as defined under Chapter 5.36, and also excepting radios and television sets. Amusement device shall not include any device or contrivance defined as a gambling machine under Wis. Stat. Section 945.01. (Ord. 61-5544 §1(part), 2013.)

(b) Arcade. A commercial premise holding out amusement devices for public use. Arcades shall not include mercantile establishments unless such establishment creates and maintains a separate area designed or intended or reasonably likely to be used primarily by persons under the age of twenty-one for the use of amusement devices. Premises holding a Class "B" liquor license with amusement devices incidental to their primary activities shall be licensed under Chapter 5.36 (Amusement Devices and Coin-operated Music Machines).

(c) Billiard Hall. A commercial premise open to the public upon which the primary purpose is the playing of pool. A premise holding a Class "B" liquor license with pool tables incidental to their primary activities shall be licensed under Chapter 5.36 (Amusement Devices and Coin-operated Music Machines).

(d) Dance Facility. A premise where the principal purpose of which is providing dances, concerts, live music, and/or a dance floor in a nonalcoholic setting. Dances sponsored by an accredited school are not included. Dance facilities in alcohol licensed establishments shall be licensed under Chapter 5.20 (Public Exhibition and Tavern Entertainment). Banquet halls who offer dance floors provided for rental to private parties, weddings, etc., in both alcoholic and nonalcoholic settings shall be licensed under Chapter 5.24 (Public Dances and Public Dance Halls).

(e) Entertainment Facility. An arcade, billiard hall, dance facility, roller rink, or youth facility.

(f) **Roller Rink.** A premises open to public use for the primary purpose of roller skating.

(g) **School Night.** The night preceding a day on which school is in session in the Wausau School District and/or the D.C. Everest Area School District typically Sunday through Thursday.

(h) **Youth Facility.** A commercial premises offering recreational or amusement activities to guests, members, patrons, or customers, the majority of whom can reasonably be expected to be under the age of twenty-one. (Ord. 61-5274 §3, 2005, File No. 05-1114.)

5.26.020 License required. No person, partnership, corporation, or other organization shall operate an entertainment facility without first obtaining a license. No license or interest in a license may be transferred to any person, partnership, or corporation. (Ord. 61-5274 §3, 2005, File No. 05-1114.)

5.26.025 Prohibition against gambling machines. No license issued under this chapter permits any licensee to operate or maintain on its premise any device or contrivance that violates any provision of state law, including the provisions of Chapter 945 of the Wisconsin Statutes. (Ord. 61-5544 §2 (part), 2013)

5.26.030 Temporary license. No person may promote, organize, or otherwise conduct an event the principal purpose of which is providing a dance, concert, live music, and/or a dance floor in a nonalcoholic setting on a premises not licensed unless such person has first obtained a temporary facility license pursuant to this section. The application for such license shall be as provided in section 5.26.050. The fee for such license shall be as specified in section 3.40.010(a) of this code, and the duration of such license shall not exceed twenty-four hours as specified in the license application. (Ord. 61-5553 §7 (part), 2013, File No. 13-0309; Ord. 61-5274 §3, 2005, File No. 05-1114.)

5.26.040 Exempt organizations. Organizations which own real property exempt from taxation pursuant to Sections 70.11(1), (2), (3), (4), (10), and (12) of the Wisconsin Statutes shall be exempt from section 5.25.020 and section 5.26.030. (Ord. 61-5274 §3, 2005, File No. 05-1114.)

5.26.050 Facility license. (a) **Application to Clerk.** Any person, partnership, or corporation desiring to secure a facility license shall make application to the city clerk. The application for a license shall be upon a form approved by the city clerk. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, and all officers or directors of a corporate applicant, and any other person who is interested directly in the control of the business, shall furnish the following information under oath:

- (1) Name, address, and age.
- (2) Whether the applicant holds any interest in any other facility.
- (3) A building plan of the facility to be licensed.

- (4) The ages of patrons to be allowed to enter the facility.
- (5) All convictions or pending charges of felony, misdemeanor or ordinance violations.
- (6) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent, and all officers and directors of the corporation.
- (7) All convictions or pending charges of felony, misdemeanor or ordinance violations of a corporation, partnership or other organization for which the applicant was or is a director, officer, partner or person interested directly in the control of the organization.

(b) **Qualifications.** To receive a facility license, an applicant must meet the following standards:

- (1) All persons required to be named shall be at least eighteen years of age.
- (2) At least one person required to be named, or a registered agent if the applicant is a corporation, shall have continuously resided in the state of Wisconsin for at least ninety days prior to filing the application.
- (3) No person required to be named shall have been convicted of a violation of an ordinance or law which substantially relates to the licensed activity.
- (4) No person required to be named shall have been a director, officer, partner or person interested directly in the control of an organization that has been convicted of a violation of any ordinance or law which substantially relates to the licensed activity.

(c) **License Fee and Duration.** The fee for a facility license shall be as provided in section 3.40.010(a). Such license shall terminate on June 30 of the year it is issued, unless sooner revoked. License fees are not prorated for license start dates in midyear. (Ord. 61-5605 §8part), 2014; Ord. 61-5274 §3, 2005, File No. 05-1114.)

5.26.060 Facility operator's license. (a) Application to Clerk. Any person desiring to secure a facility operator's license shall make application to the city clerk. The application for a facility operator's license shall be upon a form approved by the city clerk and shall include the following information:

- (1) Name, address, and date of birth.
- (2) Information regarding whether the applicant has ever been denied a license to operate a youth facility.

(3) All convictions or pending charges of felony, misdemeanor or ordinance violations.

(b) Qualifications. To receive a facility operator's license, an applicant must meet the following standards:

(1) The applicant shall be at least eighteen years of age.

(2) The applicant shall have continuously resided in the state of Wisconsin for at least ninety days prior to filing the application.

(3) The applicant shall not have been convicted of a violation of an ordinance or law which substantially relates to the licensed activity.

(c) License Fee and Duration. The fee for an facility operator's license shall be as provided in section 3.40.010(a). Such license shall terminate on June 30 of the year it is issued, unless sooner revoked. (Ord. 61-5605 §9(part), 2014; Ord. 61-5274 §3, 2005, File No. 05-1114.)

5.26.070 Procedure for granting licenses. (a) Facility License. The common council shall grant facility licenses under the procedure detailed below:

(1) Investigation. The police department shall investigate the applicant's background and qualifications to be licensed.

(2) Committee review. The public health and safety committee shall consider the application and any recommendation of the police, building inspection, fire, or clerk departments of the city and the Marathon County health department and make a recommendation to the common council as to whether the license shall be granted or denied. In making this determination, the committee shall consider the location of the proposed facility, the qualifications of the applicant, the condition of building or licensed premises, compliance with any relevant laws, the nature of the intended use of the facility and the likelihood of disturbance to surrounding neighborhoods, and any other reason pertaining particularly to the applicant or the premise to be licensed.

(3) Conditional granting. The common council may set additional conditions designed to protect the tranquility of the surrounding neighborhood or the facility patrons. No license shall be issued under this section unless such condition is satisfactorily fulfilled. Violation of any such condition shall be considered a violation of this section and grounds for suspension or revocation of the license.

(4) Administrative approval. Prior to the initial issuance of a license, the police, fire, inspection departments and Marathon County health department shall certify that the premise complies with all applicable laws and regulations on a form to be provided by the city clerk. No license shall be issued for a premises not in compliance with such laws and regulations. The departments may place conditions

upon a license consistent with the provisions of this chapter and the laws of the state of Wisconsin. Violation of any such condition shall be considered a violation of this section and grounds for suspension or revocation of the license.

(b) Operator's License.

(1) Police department review. Upon the filing of a facility operator's license application, the city clerk shall forward the application to the police department for review of the applicant's back ground and qualifications. If the police department determines that any portion of the application is false or that the applicant does not possess the qualifications required for licensing under this title, the police department may recommend denial to the public health and safety committee.

(2) Public health and safety approval. The public health and safety committee shall consider the recommendation of the police department and/or other city or governmental agency and may grant or deny the facility operator's license without further review.

(3) Appeal. Any applicant whose facility operator application has been denied by the public health and safety committee may appeal such determination to the common council. Upon appeal, the common council shall determine if the applicant possesses the qualifications necessary for licensing. After making such determination, the common council may grant or deny the license.

(Ord. 61-5274 §3, 2005, File No. 05-1114.)

5.26.080 Conduct of business. (a) Ages Allowed. A licensee shall indicate the ages of persons to be allowed entry into the licensed premises on the application form. The licensee shall not allow persons outside the ages indicated on its application to enter or remain in the licensed premises. The licensee shall require proof of age by photo identification. All persons eighteen years of age and older shall be required to wear a wrist band provided by the licensee to monitor compliance with laws relating to use of tobacco products. A licensee may choose from the following options:

- (1) Eighteen years of age and older.
- (2) Fifteen years of age and older.
- (3) All ages permitted.

(b) Closing Hours. Licensed premises shall close during the times indicated below based upon the ages of persons allowed on the premises and indicated by the licensee on the application:

- (1) Eighteen years of age and older. The licensed premises shall close between the hours of two a.m. and eight a.m.

(2) Fifteen years of age and older. The licensed premises shall close between the hours of ten p.m. and eight a.m. on a school night and between the hours of twelve thirty a.m. and eight a.m. on nights other than a school night.

(3) All ages permitted. The licensed premises shall close between the hours of ten p.m. and eight a.m. on a school night and between the hours of eleven p.m. and eight a.m. on nights other than a school night.

(c) Loitering During School Hours. No premises licensed hereunder shall permit juveniles to loiter thereon during school hours on days when the Wausau and the D.C. Everest area schools are in regular session.

(d) Police Entry. The licensee hereby consents to the entry of the police or other duly authorized representative of the city, at all reasonable times for the purpose of inspection and search, and consents to the removal from said premise of all things and articles therein had in violation of the city ordinances or state laws, and consents to the introduction of such things as evidence in any proceeding that may be brought for such offenses.

(e) Maintaining Order. The licensee shall maintain peace and order in and around the licensed premises. This duty shall extend to and include any adjacent parking lot or facility adjacent to and servicing the licensed premises. The police department may order any disorderly house closed until eight a.m. the following day when, in the reasonable view of the department, the licensee failed to maintain order.

(f) Alcohol Prohibited. No person may possess or consume alcoholic beverages on the licensed premises or in the parking lot, nor may any person procure, sell, dispense or give away alcoholic beverages to any person on the licensed premises during the period of licensed activity.

(g) Licensed Operator. The licensee or a facility operator licensed pursuant to this ordinance shall be present on the licensed premises at all times that the facility is open to the public.

(h) Readmission Prohibited. During events on a licensed premises for which a cover charge, entry fee, or other fee is charged as a condition of entering the premises, no person shall be allowed to reenter the premises without paying such fee each time they enter the premises.

(i) Compliance. The licensee shall ensure the compliance of its premises, patrons, customers, employees, agents, and staff with the provisions of this section and all applicable state, federal or municipal laws.

(j) Extended Operating Hours. The public health and safety committee, subject to the approval of the common council, may grant extended operating hours not to exceed two a.m. upon finding that the licensee has presented a written plan which will ensure compliance with this subsection. No person under the age of fifteen may enter, remain on, or loiter in the licensed premises after the times outlined in section 5.26.080(b). No person under the age of eighteen may enter, remain on, or loiter in the licensed premises after the times outlined in section 5.26.080(b).

The licensee shall be responsible for ensuring the compliance of the licensed premises with the conditions. Noncompliance with the plan or any condition placed upon the extended operating hours shall terminate the extension and subject the licensee to the provisions of subsection.

(k) Display of License. All licenses to conduct the licensed business on the premise shall be posted on the premise in a conspicuous place where it is readily visible to those frequenting the licensed premises. (Ord. 61-5274 §3, 2005, File No. 05-1114.)

5.26.090 Suspension, revocation and nonrenewal of licenses. (a) Grounds for Action. Licenses under this section may be suspended, revoked, or nonrenewed for any of the following reasons:

- (1) Any violation of any provision of this section.
 - (2) Any violation of any state statute, ordinance, or regulation occurring at the licensed premise.
 - (3) Violation of any municipal health, building, zoning, fire prevention, plumbing, or electrical codes occurring at the licensed premise.
 - (4) Any other reason which creates in the minds of reasonable people any apprehension or concern that the premises licensed hereunder is not promoting a safe and wholesome environment for youth patrons.
- (b) Procedure.
- (1) Complaint. Upon a complaint filed by any municipal department or any citizen that grounds for suspension, revocation, or nonrenewal exist, the city attorney shall issue a summons directed to any peace officer commanding the licensee to appear before the public health and safety committee on a day and at a place named in such summons, not less than three nor more than ten days from its date, and show cause why the license should not be suspended, revoked, or nonrenewed. Such summons shall be served at least three days before the time in which such person is commanded to appear and shall be served as provided in Chapter 801 of the Wisconsin Statutes.
 - (2) Hearing. The hearing shall be conducted before the public health and safety committee. The complainant and licensee may be represented by counsel and present and cross-examine witnesses. A copy of the recorded hearing may be provided at the licensee's expense.
 - (3) Recommendations. At the conclusion of the evidentiary hearing, the public health and safety committee, following deliberation in open or executive session, shall recommend to the common council that the license be suspended for not less than ten days nor more than ninety days or revoked if it finds the complaint to be true.

(4) Council Action. The common council shall consider and take action on the recommendation of the public health and safety committee within forty-five days after the committee adjourns the hearing. The common council may adopt, reject, modify, or remand the recommendation of the committee for further deliberations.

(5) Appeal. Appeal from a decision of the common council shall be to the circuit court for Marathon County.

(Ord. 61-5274 §3, 2005, File No. 05-1114.)

5.26.100 Penalties. (a) Definitions.

(1) Licensee. The person to whom the license has been issued or such person's agents, employees, or assigns.

(2) Violation. Any violation of this chapter.

(b) Forfeiture. Any person violating a provision of this chapter where no penalty is specified shall be subject to a deposit of not less than one hundred dollars nor more than one thousand dollars for each offense.

(c) License Suspension. A court shall revoke any license or permit issued under this chapter for not less than ten nor more than thirty days if the court finds that the licensee committed a violation within twenty-four months after committing one previous violation.

(d) License Revocation. A court shall revoke any license or permit issued under this chapter if the court finds that the licensee committed a violation within twenty-four months after committing two previous violations.

(e) Counting. For purposes of counting previous violations under (c) and (d) above, multiple violations arising out of the same incident and on the same date shall be considered a single violation.

(f) Chapter 68 of the Wisconsin Statutes Not to Apply. Chapter 68 of the Wisconsin Statutes shall not apply to the administrative process outlined above. (Ord. 61-5274 §3, 2005, File No. 05-1114.)

Chapter 5.30

CIGARETTE AND TOBACCO PRODUCTS RETAILER LICENSE

Sections:

- 5.30.010 Definitions.
- 5.30.020 License required.
- 5.30.030 Fees.
- 5.30.040 License regulations.
- 5.30.050 Penalties.

5.30.010 Definitions. (a) "Cigarette" shall have the meaning provided in section 9.04.022(1)(a).

(b) "Identification card" shall have the meaning set forth in Section 134.66(1)(c) of the Wisconsin Statutes.

(c) "Retailer" means any person required to be licensed under section 5.30.020.

(d) "Tobacco products" shall have the meaning provided in section 9.04.022(a).

(e) "Vending machine" shall have the meaning given in Section 139.30(14) of the Wisconsin Statutes.

(f) "Vending machine operator" shall have the meaning given in Section 139.30(15) of the Wisconsin Statutes. (Ord. 61-4883 §1(part), 1995.)

5.30.020 License required. No retailer shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes or tobacco products to any person not holding a license as herein provided or a permit under Sections 139.30 to 139.44 or Section 139.79 of the Wisconsin Statutes, without first obtaining a license from the city clerk. (Ord. 61-4903 §1(part), 1995; Ord. 61-4883 §1(part), 1995.)

5.30.030 Fees. The fee for the license shall be as specified in section 3.40.010(a) of this code, which shall be paid to the city treasurer before the license is issued. (Ord. 61-5553 §8 (part), 2013, File No. 13-0309; Ord. 61-5015 §1, 1998; Ord. 61-4883 §1(part), 1995.)

5.30.040 License regulations. (a) Each license shall name the licensee and specifically describe the premises where such business is to be conducted. Such license shall not be transferable from one person to another nor from one premises to another.

(b) Every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes and tobacco products. Such records shall be preserved on the licensed

premises for two years in such a manner as to insure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized law enforcement officials.

(c) No licensed retailer, or the agent or employee thereof, may sell or give cigarettes or tobacco products or any electronic delivery device as defined in W.M.C. §2.90.010(c) to any person under the age of eighteen, except as provided by section 9.04.022(c) of this code. A vending machine operator is not liable under this section for the purchase of cigarettes or tobacco products from his or her vending machine by a person under the age of eighteen if the vending machine operator was not aware of the purchase.

(d) A licensed retailer shall post a sign in areas within his or her premises where cigarettes or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of eighteen is unlawful.

(e) A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of eighteen is unlawful and that the purchaser is subject to a forfeiture.

(f) No retailer may keep a vending machine in any public place that is open to persons under the age of eighteen unless all of the following apply:

(1) The vending machine is in a place where it is ordinarily in the immediate vicinity, plain view and control of an employee;

(2) The vending machine is in a place where it is inaccessible to the public when the premises are closed.

(g) The person who ultimately controls, governs or directs the activities within the premises where the vending machine is located shall ensure that an employee of the retailer remains in the immediate vicinity, plain view and control of the vending machine whenever the premises are open.

(h) No person may place a vending machine within five hundred feet of a school.

(i) Defense of Retailer. Proof of all of the following facts by a retailer, or the agent or employee thereof, who sells cigarettes or tobacco products to a person under the age of eighteen is a defense to any prosecution for a violation of subsection (3) of this section:

(1) That the purchaser falsely represented that he or she had attained the age of eighteen and presented an identification card;

(2) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of eighteen;

(3) That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of eighteen.

(Ord. 61-5694 §4(part), 2016; Ord. 61-5166 §§1 & 2, 2002, File No. 95-0120; Ord. 61-4903 §1(part), 1995; Ord. 61-4883 §1(part), 1995.)

5.30.050 Penalties. (a) In this section, "violation" means a violation of section 5.30.020 or 5.30.040(c) through (f).

(b) A person who commits a violation is subject to a forfeiture of:

(1) Not more than fifty dollars if the person has not committed a previous violation within twelve months of the violation; or

(2) Not less than two hundred dollars nor more than five hundred dollars if the person has committed a previous violation within twelve months of the violation.

(c) A court shall suspend any license or permit issued under section 5.30.020 to a person for:

(1) Not more than three days, if the court finds that the person committed a violation within twelve months after committing one previous violation;

(2) Not less than three days nor more than ten days, if the court finds that the person committed a violation within twelve months after committing two other violations; or

(3) Not less than fifteen days nor more than thirty days, if the court finds that the person committed the violation within twelve months after committing three or more other violations.

(d) The court shall promptly mail notice of a suspension under subsection (c)(3) of this section to the department of revenue and to the city clerk. (Ord. 61-4883 §1(part), 1995.)

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Chapter 5.36

AMUSEMENT DEVICES AND
COIN-OPERATED MUSIC MACHINES

Sections:

- 5.36.010 Definitions.
- 5.36.020 Distributor license required.
- 5.36.030 Amusement device license required—Fee.
- 5.36.035 Prohibition against gambling machines.
- 5.36.040 Coin-operated music machine license required—Fee.
- 5.36.050 Exceptions.

5.36.010 Definitions. (a) “Amusement device” means any machine, game, table, device, or apparatus which is designed, intended, operated, or used as a test of skill or for entertainment, the use or operation of which is made available upon the payment of any valuable consideration, except coin-operated music machines as defined in this section, and also excepting radios and television sets. Amusement device shall not include any device or contrivance defined as a gambling machine under Wis. Stats. Section 945.01. (Ord. 61-5543 §1(part), 2013.)

(b) “Coin” includes any token, slug, as well as coins minted by any sovereign government.

(c) “Building, public or private,” includes any tent, stand, roof, shelter, or other full or partial shelter.

(d) “Amusement device distributor” means any person in the business of leasing or renting amusement devices to others, and/or in the business of placing for operation amusement devices on any premises or in any building, public or private.

(e) “Coin-operated music machines” means phonographs, soundies and any other devices for the reproduction of music, sound or other audible entertainment operated by the insertion of a coin or by other means, whether or not the particular entertainment is selected mechanically, electronically, manually, or by an operator upon request, excepting radios and television sets.

(f) “Distributor of coin-operated music machines” means any person in the business of leasing or renting coin-operated music machines to others, and/or in the business of placing for operation coin-operated music machines on any premises or in any building, public or private. (Ord. 61-4504 §2(part), 1982.)

5.36.020 Distributor license required. No person shall engage in the business of an amusement device distributor and/or distributor of coin-operated music machines without being first licensed as required under this chapter. (Ord. 61-4504 §2(part), 1982.)

5.36.030 Amusement device license required—Fee. No person within the city shall operate or place or keep or have in his or her possession, under his or her control or on his or her premises for operation, any amusement device without having posted on the premises, in a conspicuous place, plainly visible to all persons, an unexpired license in such form and substance as shall have been issued by the clerk for the current year. Such license shall be issued by the clerk upon payment of the sum specified in section 3.40.010(a) for each amusement device operated on the premises. (Ord. 61-5553 §9(part), 2013, File No. 13-0309; Ord. 61-4963 §3(part), 1996; Ord. 61-4504 §2(part), 1982.)

5.36.035 Prohibition against gambling machines. No license issued under this chapter permits any licensee to distribute or to operate or maintain on its premises, any device or contrivance that violates any provision of state law, including the provisions of Chapter 945 of the Wisconsin Statutes. (Ord. 61-5543 §2 (part), 2013.)

5.36.040 Coin-operated music machine license required—Fee. No person shall operate or place or keep or have in his or her possession or under his or her control or on his or her premises for operation, any coin-operated music machine without having posted on the premises, in a conspicuous place, plainly visible to all persons, an unexpired license in such form and substance as shall have been issued by the clerk for the current year. Such license shall be issued by the clerk upon payment of the sum specified in section 3.40.010(a) for each coin-operated music machine operated on the premises. (Ord. 61-5553 §10 (part), 2013, File No. 13-0309; Ord. 61-4963 §3(part), 1996; Ord. 61-4504 §2(part), 1982.)

5.36.050 Exceptions. This chapter does not include operations as a part of carnivals, or exhibitions otherwise licensed by the city, or shows, carnivals or exhibitions operated at any agricultural fair held within the city and receiving state aid. This chapter shall not be held to prohibit operations required by statutes or by order of any court. (Ord. 61-4504 §2 (part), 1982.)

Chapter 5.48

CHRISTMAS TREE DEALERS

Sections:

5.48.010 License required—Fee.

5.48.010 License required—Fee. No person shall sell in any one year more than ten Christmas trees at retail to the public without a license as required in this title. The fee for such license shall be as provided in section 3.40.010(a). (Ord. 61-5605 §10(part), 2014; Ord. 61-4602 §1, 1986; prior code §9.18.)

Chapter 5.52

PAWNBROKERS, SECONDHAND ARTICLE DEALERS AND SECONDHAND JEWELRY DEALERS

Sections:

- 5.52.010 Authority
- 5.52.020 Purpose
- 5.52.030 Definitions
- 5.52.040 License Required
- 5.52.050 License Application
- 5.52.055 Secondhand article dealer mall or flea market
- 5.52.060 Investigation of License Applicant
- 5.52.070 License Issuance
- 5.52.080 Fees
- 5.52.090 Records Required
- 5.52.100 Inspection of Records
- 5.52.110 Daily Reports to Police
- 5.52.120 Receipt Required
- 5.52.130 Redemption Period
- 5.52.140 Holding Period
- 5.52.150 Police Order to Hold Property
- 5.52.160 Inspection of Items
- 5.52.170 Label Required
- 5.52.180 Prohibited Acts
- 5.52.190 License Denial, Suspension or Revocation
- 5.52.200 Business at Only One Place
- 5.52.210 Penalty
- 5.52.220 Severability

5.52.010 Authority. (a) This ordinance is adopted by the common council under the authority granted by Section 134.71 of the Wisconsin Statutes.

5.52.020 Purpose. (a) The city council finds that use of services provided by pawnbrokers provides an opportunity for the commission of crimes and their concealment because pawn businesses have the ability to receive and transfer property stolen by others easily and quickly. The city council also finds that consumer protection regulation is warranted in transactions involving pawnbrokers. The city council further finds that the pawn industry has outgrown the city's current ability to effectively or efficiently identify criminal activity related to pawn shops. The purpose of this chapter is to prevent pawn businesses, secondhand stores, and secondhand jewelry dealers from being used as facilities for the commission of crimes, and to assure that such businesses comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the citizens of the city.

(b) To help the police department better regulate current and future pawn businesses,

secondhand article dealers, and secondhand jewelry stores decrease and stabilize costs associated with the regulation of the pawn industry, and increase identification of criminal activities in the pawn industry through the timely collection and sharing of pawn transaction information, this chapter also implements and establishes the required use of an automated pawn tracking system as designated by the police department. (Ord. 62-5568 §1 (part), File No. 96-0422.)

5.52.030 Definitions. When used in this article, the following words shall mean:

- (a) “Article” means any item of value.
- (b) “Billable transaction” means every reportable transaction conducted by a pawnbroker and secondhand article and secondhand jewelry dealer except renewals, redemptions or extensions of existing pawns, secondhand articles or secondhand jewelry articles on items previously reported and continuously in the licensee's possession, voided transactions, and confiscations.
- (c) “Charitable organization” means a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- (d) “Customer” means a person with whom a pawnbroker, secondhand article dealer or secondhand jewelry dealer, or an agent thereof, engages in a transaction of purchase, sale, receipt, or exchange of any secondhand article.
- (e) “Pawnbroker” means any person who engages in the business of lending money on the deposit or pledge of any article or purchasing any article with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price. To the extent that a pawnbroker’s business includes buying personal property previously used, rented, leased, or selling it on consignment, the provisions of this chapter shall be applicable. A person is not acting as a pawnbroker when engaging in any of the following:
 - (1) Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem, or antique show, or a convention.
 - (2) Any transaction entered into by a person engaged in the business of junk collector, junk dealer, or scrap processor, as described in Section 70.995(2)(x), Wis. Stats.;
 - (3) Any transaction while operating as a charitable organization or conducting a sale, the proceeds of which are donated to a charitable organization;
 - (4) Any transaction between a buyer of a new article and the person who sold the article when new that involves any of the following:
 - (A) The return of the article;

(B) The exchange of the article for a different, new article.

(5) Any transaction as a purchaser of a secondhand article from a charitable organization if the secondhand article was a gift to the charitable organization;

(6) Any transaction as a seller of a secondhand article that the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

(f) “Reportable transaction” means every transaction conducted by a pawnbroker, secondhand article dealer or secondhand jewelry dealer in which an article or articles are received through a pawn, purchase, consignment, or trade, or in which a pawn is renewed, extended, voided, or redeemed, or for which a unique transaction number or identifier is generated by their point-of-sale software, or an item is confiscated by law enforcement, is reportable except:

(1) The bulk purchase or consignment of new or used articles from a merchant, manufacturer, or wholesaler having an established permanent place of business, and the retail sale of said articles, provided the pawnbroker, secondhand article dealer or secondhand jewelry dealer must maintain a record of such purchase or consignment that describes each item, and must mark each item in a manner that relates it to that transaction record;

(2) Retail and wholesale sales of articles originally received by pawnbrokers, secondhand article dealers or secondhand jewelry dealers by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

(g) “Secondhand” means owned by any person, except a wholesaler, retailer, or licensed secondhand article dealer or secondhand jewelry dealer, immediately before the transaction at hand.

(h) “Secondhand article dealer” means any person, other than an auctioneer, who engages in the business of purchasing or selling secondhand articles, with exceptions as stated in Wis. Stats. Sec. 134.71(g).

(i) “Secondhand jewelry dealer” means any person, other than an auctioneer, who engages in the business of any transaction consisting of purchasing, selling, receiving or exchanging secondhand jewelry, with exceptions as stated in Wis. Stats. Sec. 134.71(h).

5.52.040 License required. No person may operate as a pawnbroker, secondhand article dealer, secondhand jewelry dealer or secondhand article dealer mall or flea market in the city unless the person first obtains a pawnbroker, secondhand article dealer, secondhand jewelry dealer or secondhand article dealer mall or flea market license under this chapter. (Ord. 61-5510 §1(part), 2012)

5.52.050 License application. A person wishing to operate as pawnbroker, secondhand article dealer or secondhand jewelry dealer shall apply for a license to the city clerk. The clerk shall furnish application forms approved by the police department that shall require all of the following:

(a) The applicant's name, place and date of birth, residence address, and residence addresses for the 10-year period prior to the date of the application.

(b) The name and address of the business and of the owner of the business premises.

(c) Whether the applicant is a natural person, corporation, limited liability company, or partnership, and:

(1) If the applicant is a corporation, the state where incorporated and the names and addresses of all officers and directors;

(2) If the applicant is a partnership, the names and addresses of all partners;

(3) If the applicant is a limited liability company, the names and addresses of all members;

(4) The name, place and date of birth, residence address, and residence addresses for the 10-year period prior to the date of the application of the manager or proprietor of the business;

(5) The name, address and date of birth of all employees of the business;

(6) Any other information that the clerk may reasonably require.

(d) A statement as to whether the applicant, including an individual, agent, officer, director, member, partner, manager, proprietor, or employee has been convicted of any crime, statutory violation punishable by forfeiture, or county or municipal ordinance violation. If so, the applicant must furnish information as to the time, place, and offense of all such convictions.

(e) Whether the applicant or any other person listed in subsection (d) of the section has ever used or been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places used.

(f) Whether the applicant or any other person listed in subsection (d) of this section has previously been denied or had revoked or suspended a pawnbroker, secondhand article dealer or secondhand jewelry dealer license from any other governmental unit. If so, the applicant must furnish information as to the date, location, and reason for the action.

(g) When a licensee places a manager in charge of a business, or if the named manager(s) in charge of a licensed business changes, the licensee must complete and submit the appropriate application within fourteen (14) days. The application must include all appropriate information required in this section.

5.52.055 Secondhand article dealer mall or flea market. (a) The owner of any premises or land upon which two or more persons operate as secondhand article dealers may obtain a

secondhand article dealer mall or flea market license for the premises or land if the following conditions are met:

- (1) Each secondhand article dealer occupies a separate sales location and identifies herself or himself to the public as a separate secondhand article dealer.
- (2) The secondhand article dealer mall or flea market is operated under one name and at one address, and is under the control of the secondhand article dealer mall or flea market license holder.
- (3) Each secondhand article dealer delivers to the secondhand article dealer mall or flea market license holder, at the close of business on each day that the secondhand article dealer conducts business, a record of his or her sales that includes the location at which each sale was made.

(b) The secondhand article dealer license holder and each secondhand article dealer operation upon the premises or land shall comply with all other provisions of this chapter and all applicable zoning provisions. (Ord. 61-5510 §2 (part), 2012, File No. 96-0422.)

5.52.060 Investigation of license applicant. The police department shall investigate each applicant and any other person listed in Section 5.52.050 (c) or (g) or section 5.52.055, pursuant to Section 134.71(6) of the Wisconsin Statutes. The department shall furnish the information derived from that investigation in writing to the city clerk. The investigation shall include each agent, officer, member, partner, manager, proprietor or employee. (Ord. 61-5510 §3 (part), 2012, File No. 96-0422.)

5.52.070 License issuance. The city may grant the license if all of the following apply:

(a) The applicant, including an individual, a partner, a member of a limited liability company, a manager, a proprietor, an employee, or an officer, director, or agent of any corporate applicant, does not have an arrest or conviction record, subject to Sections 111.321, 111.322 and 111.335 of the Wisconsin Statutes.

(b) The applicant provides to the city clerk a bond of \$2,500 with not less than 2 sureties for the observation of all municipal ordinances or state or federal laws relating to pawn and secondhand article and secondhand jewelry dealers. The bond must be in full force and effect at all times during the term of the license.

(c) No license issued under this subsection may be transferred. (Ord. 61-5164 §1, 2002, File No. 96-0422; Ord. 61-5049 §1(part), 1999; Ord. 61-4940 §1 (part), 1996.)

(d) Each license is valid from July 1st until the following June 30th.

(e) A special event secondhand dealer mall or flea market license shall be for a period of no more than three consecutive days. The license shall set forth the exact days on which such a

business or event may be carried on. (Ord. 61-5510 §4 (part), 2012, File No. 96-0422.)

(f) Display of license. Each license issued under this chapter shall be displayed in a conspicuous place visible to anyone entering a licensed premise.

5.52.080 Fees. (a) License fee. The annual license fee for licenses issued under this chapter shall be as specified in Section 3.40.010(a) of the municipal code. (Ord. 61-5553 §1(part), 2013, File No. 13-0309)

(b) Billable transaction fee. A licensee will be charged for each billable transaction reported to the police department. The transaction fee for pawnbrokers, secondhand article dealers or secondhand jewelry dealers shall be \$1.50 for each billable transaction.

(c) The billable transaction license fee shall reflect the cost of processing transactions and other related regulatory expenses as determined by the city council, and shall be reviewed and adjusted, if necessary, annually. Licensees shall be notified in writing thirty (30) days before any adjustment is implemented.

(d) Billable transaction fees shall be billed monthly and are due and payable within thirty (30) days. Failure to do so is a violation of this chapter.

5.52.090 Records required. At the time of any reportable transaction other than renewals, extensions, redemptions or confiscations, every licensee must immediately record, in English, the following information by using ink or other indelible medium on forms or in a computerized record approved by the police department:

(a) A complete and accurate description of each item including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item.

(b) The purchase price, amount of money loaned upon, or pledged therefore.

(c) The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.

(d) Date, time and place the item of property was received by the licensee, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records.

(e) Full name, current residence address, current residence telephone number, date of birth and accurate description of the person from whom the item of the property was received, including: sex, height, weight, race, color of eyes and color of hair.

(f) The identification number and state of issue from any of the following forms of identification of the seller:

(1) Current valid Wisconsin driver's license;

- (2) Current valid Wisconsin identification card;
 - (3) Current valid photo identification card issued by another state;
 - (4) Current valid military identification card;
 - (5) Current valid passport.
 - (6) Any current valid photo identification card or motor vehicle operator's license issued by a tribal or foreign government, if the pawnbroker, secondhand article dealer or secondhand jewelry dealer obtains a clear imprint of the customer's right index finger.
- (g) The signature of the person identified in the transaction.
- (h) Effective sixty (60) days from the date of notification by the police department of acceptable photographic or video standards, the licensee must take a color photograph or color video recording of:
- (1) Each customer involved in a billable transaction;
 - (2) Every item pawned, purchased, received or exchanged in trade, consigned for sale, or sold that does not have a unique serial or identification number permanently engraved or affixed;
 - (3) If a photograph is taken, it must be at least two (2) inches in length by two (2) inches in width and must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate. Such photographs must be available to the chief of police, or the chief's designee, upon request. The major portion of the photograph must include an identifiable facial image of the person who pawned or sold the item. Items photographed must be accurately depicted. The licensee must inform the person that he or she is being photographed by displaying a sign of sufficient size in a conspicuous place in the premises. If a video photograph is taken, the video camera must focus on the person pawning or selling the item so as to include an identifiable image of that person's face. Items photographed by video must be accurately depicted. Video photographs must be electronically referenced by time and date so they can be readily matched and correlated with all other records of the transaction to which they relate. The licensee must inform the person that he or she is being videotaped by displaying a sign of sufficient size in a conspicuous place on the premises. The licensee must keep the exposed videotape for three (3) months.
- (i) Digitized photographs. Effective sixty (60) days from the date of notification by the police department licensees must fulfill the color photograph requirements in subsection (h) of this

section by submitting them as digital images, in a format specified by the issuing authority, electronically cross-referenced to the reportable transaction with which they are associated. Notwithstanding the digital images may be captured from required video recordings, this provision does not alter or amend the requirements in subsection (h).

(j) Renewals, extensions, redemptions and confiscations. For renewals, extensions, redemptions and confiscations the licensee shall provide the original transaction identifier, the date of the current transaction, and the type of transaction. (Ord. 61-5568 §2, (part), 2013, File No. 96-0422)

5.52.100 Inspection of records. Records must at all reasonable times be open to inspection by the police department. Data entries shall be retained for at least three (3) years from the date of transaction. Entries of required digital images shall be retained a minimum of ninety (90) days.

5.52.110 Daily reports to police. Effective no later than fourteen (14) days after the police department provides a licensee with the information concerning the automated pawn tracking system designated by the police department, licensee must submit every reportable transaction to the police department daily in the following manner:

(a) A licensee must provide to the police department all reportable transaction information by transferring it from their computer to the automated pawn tracking system via the internet using the current version of the automated pawn tracking software. All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the issuing authority.

(b) Any transaction that does not meet the automated pawn tracking system specifications and is not successfully transferred must be corrected and resubmitted the next business day.

(c) The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs patrons that all transactions are reported to the police department daily.

(d) If a licensee is unable to successfully transfer the required reports via the internet for that day, the licensee must provide the police department, upon request, printed copies of all reportable transactions along with the video recording(s) for that date, by noon the next business day.

(e) If the problem is determined to be in the licensee's system or with the licensee's internet connection, and is not corrected by the close of the first business day following the failure, the licensee must continue to provide the required reports as detailed in subsection (d) of this section, and shall be charged a \$100.00 reporting failure penalty, daily, until the error is corrected; or

(f) If the problem is determined to be outside the licensee's system, the licensee must continue to provide the required reports in subsection (d) of this section, and resubmit all such transactions via the internet when the error is corrected.

(g) If a licensee is unable to capture, digitize or transmit the photographs required in Section 5.52.090(i), the licensee must immediately take all required photographs with a still camera, cross-reference the photographs to the correct transaction, and make the pictures available to the police department upon request.

(h) Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed.

(i) Notwithstanding subsections (d), (e) and (f) of this section, the police department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty. (Ord. 61-5568 §3, (part) 2013, File No. 96-0422.)

5.52.120 Receipt required. Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three (3) years. The receipt must include at least the following information:

- (a) The name, address and telephone number of the licensed business.
- (b) The date and time the item was received by the licensee.
- (c) Whether the item was pawned or sold, or the nature of the transaction.
- (d) An accurate description of each item received including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item.
- (e) The signature or unique identifier of the licensee or employee that conducted the transaction.
- (f) The amount advanced or paid.
- (g) The monthly and annual interest rates, including all fees and charges imposed by the licensee.
- (h) The last regular day of business by which the item must be redeemed by the pledger without risk that the item will be sold, and the amount necessary to redeem the pawned item on that date.
- (i) The full name, current residence address, current residence telephone number, and date of birth of the pledger or seller.
- (j) The identification number and state of issue from any of the following forms of identification of the seller:

- (1) Current valid Wisconsin driver's license;

- (2) Current valid Wisconsin identification card;
 - (3) Current valid photo driver's license or identification card issued by another state or province of Canada;
 - (4) Current valid military identification;
 - (5) Current valid passport.
- (k) Description of the pledger or seller including sex, height, weight, race, color of eyes and color of hair.
- (l) The signature of the pledger or seller.

5.52.130 Redemption period. Any person pledging, pawning or depositing an item for security must have a minimum of sixty (60) days from the date of that transaction to redeem the item before it may be forfeited and sold. During the sixty (60) day holding period, items may not be removed from the licensed location except as provided in Section 5.52.200. Licensees are prohibited from redeeming any item to anyone other than the person to whom the receipt was issued or, to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledger at the time of the initial transaction and signed by the pledger, or with approval of the chief of police, or chief's designee. Written authorization for release of property to persons other than original pledger must be maintained along with the original transaction record in accordance with Section 5.52.090(j). An individual may redeem an item seventy-two (72) hours after the item was received on deposit, excluding Sundays and legal holidays.

5.52.140 Holding period. (a) Except for secondhand articles consigned to a licensee, any secondhand article purchased or received for security shall be kept on the premises or other place for safekeeping for not less than 30 days after the date of purchase or receipt unless the person known by the pawnbroker to be the lawful owner of the article redeems it. Any item purchased or received by a secondhand article dealer or secondhand jewelry dealer shall be kept on the premises or other place of safekeeping for not less than 10 days after the date of purchase or receipt.

(b) During the period set forth in subsection (a) of this section, the article shall be held separate from saleable inventory and may not be altered in any manner. The licensee shall permit any law enforcement officer to inspect the article during this period.

(c) Within 24 hours after a request of a law enforcement officer during this period, the licensee shall make available for inspection any article which is kept off the premises for safekeeping.

5.52.150 Police order to hold property. (a) Investigative Hold. Whenever a law enforcement official from any law enforcement agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the

originating agency within seventy-two (72) hours and will remain in effect for fifteen (15) days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, pursuant to subsection (b), whichever comes first.

(b) Order to hold. Whenever the chief of police, or the chief's designee, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the chief or the chief's designee. The order to hold shall expire ninety (90) days from the date it is placed unless the chief of police or the chief's designee determines the hold is still necessary and notifies the licensee in writing.

(c) Order to Confiscate. If an item is identified as stolen or evidence in a criminal case, the chief or chief's designee may physically confiscate and remove it from the shop, pursuant to a written order from the chief or the chief's designee, or place the item on hold or extend the hold as provided in subsection (b) of this section, and leave it in the shop.

(d) When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

(e) When an order to hold/confiscate is no longer necessary, the chief of police or chief's designee shall so notify the licensee.

5.52.160 Inspection of items. At all times during the terms of the license, the licensee must allow law enforcement officials to enter the premises where the licensed business is located, including all off-site storage facilities, as authorized in Section 5.52.200, during normal business hours, except in an emergency, for the purpose of inspecting such premises and inspecting the items, ware and merchandise and records therein to verify compliance with this chapter or other applicable laws.

5.52.170 Label required. Licensees must attach a label to every item at the time it is pawned, purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item and the description or the model and serial number of the item as reported to the police department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used.

5.52.180 Prohibited acts. No person under the age of 18 years may pawn or sell or attempt to pawn or sell goods with any licensee, nor may any licensee receive any goods from a person under the age of 18 years, except as permitted by subsection (a).

(a) A licensee may engage in a transaction with a minor if the minor is accompanied by his or her parent or guardian at the time of the transaction and the parent or guardian signs the transaction form and provides identification as required by this section.

(b) No licensee may receive any goods from a person of unsound mind or an intoxicated person.

(c) No licensee may receive any goods, unless the seller presents identification in the form of a current valid driver's license, a current valid State of Wisconsin identification card, or current valid photo driver's license or identification card issued by the state or province of residency of the person from whom the item was received.

(d) No licensee may receive any item of property that possesses an altered or obliterated serial number or operation identification number or any item of property that has had its serial number removed.

(e) No person may pawn, pledge, sell, consign, leave, or deposit any article of property not their own; nor shall any person pawn, pledge, sell, consign, leave, or deposit the property of another, whether with permission or without; nor shall any person pawn, pledge, sell, consign, leave, or deposit any article of property in which another has a security interest, with any licensee.

(f) No person seeking to pawn, pledge, sell, consign, leave, or deposit any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of date address of residence or telephone number; nor present a false or altered identification, or the identification of another, to any licensee.

5.52.190 License denial, suspension or revocation. In addition to any other penalty provided by these sections, any license issued under this chapter may be suspended for a stated period of time, revoked or non-renewed by the public health and safety committee, after notice and hearing in accordance with the procedures in section 5.04.060(b), for fraud, misrepresentation or false statement contained in the application for a license or for any violation of this chapter or Sections 134.71, 943.34, 948.62 or 948.63 of the Wisconsin Statutes or for any other violation of local, state, or federal law substantially related to the businesses licensed under this chapter. (Ord. 61-5510 §5 (part), 2012, File No. 96-0422.)

5.52.200 Business at only one place. A license under this chapter authorizes the licensee to carry on its business only at the permanent place of business designated in the license. However, upon written request, the chief of police, or chief's designee, may approve an off-site locked and secured storage facility. The licensee shall permit inspection of the facility in accordance with this chapter. All provisions of this chapter regarding record keeping and reporting apply to the facility and its contents. Property shall be stored in compliance with all provisions of the city code. The licensee must either own the building in which the business is conducted, and any approved off-site storage facility, or have a lease on the business premise that extends for more than six (6) months.

5.52.210 Penalty. (a) Upon conviction for a first offense under this section, a person shall forfeit not less than fifty dollars nor more than one thousand dollars, plus the costs of prosecution.

(b) Upon conviction for a second or subsequent offense under this section, a person shall forfeit not less than five hundred dollars nor more than two thousand dollars, plus the costs of prosecution. (Ord. 61-4940 §1 (part), 1996.)

(c) Each day of violation shall constitute a separate offense.

5.52.220 Severability. Should any section, subsection, clause or other provision of this chapter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole or any part other than the part so declared invalid.

(Ord. 61-5442 §1, 2010, File No. 96-0422)

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Chapter 5.56

JUNK DEALERS

Sections:

- 5.56.010 Business restricted.
- 5.56.020 Storage restricted.

5.56.010 Business restricted. No person shall operate or maintain the business of a junk dealer within the fire limits of the city. (Prior code §9.08(1).)

5.56.020 Storage restricted. No person who is regularly engaged in the business of a junk dealer shall keep, place or store, or cause to be kept, placed or stored any junk or old and worn out machinery and automobiles within the fire limits of the city. (Prior code §9.08(2).)

Chapter 5.60

DIRECT SELLERS³

Sections:

- 5.60.010 Registration required.
- 5.60.020 Definitions.
- 5.60.030 Exemptions.
- 5.60.040 Registration and licensing.
- 5.60.050 Investigation.
- 5.60.060 Appeal.
- 5.60.070 Regulation of direct sellers.
- 5.60.080 Records.
- 5.60.090 Revocation of registration.
- 5.60.100 Penalty.
- 5.60.110 Effective date.
- 5.60.120 Severance clause.

5.60.010 Registration required. It is unlawful for any direct seller to engage in direct sales within the city without being registered and issued a license for that purpose as provided in this chapter. (Ord. 61-5071 (part), 2000.)

5.60.020 Definitions. In this chapter:

(a) “Charitable organization” includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, but shall not include religious organizations.

(b) “Clerk” means the city clerk.

(c) “Direct seller business” means any individual, partnership, corporation or business entity of any type whatsoever, which employs direct sellers as defined above either on a full-time, part-time or commission basis and is not a permanent merchant as defined in this section.

(d) “Direct seller employee” means any individual who, for him/herself, or for another (including but not limited to partnership, association or corporation) sells goods, or takes sales orders for the later delivery of goods, at any location other than the permanent business place or residence of the individual, partnership, association or corporation, and includes, but is not limited to peddlers, solicitors and transient merchants. For purposes of this chapter, the acceptance of a “donation” in exchange for goods, or an order for goods, shall be deemed an act requiring

³ Prior ordinance history: Ordinance Nos. 61-4372, 61-4377, 61-4842 and 61-5019.

compliance with all of the regulatory provisions of this chapter, including registration and posting of a bond.

(e) "Goods" include personal property of any kind, and goods provided incidental to services offered or sold.

(f) "Permanent merchant" means a direct seller who, for at least one year prior to the consideration of the application of the ordinance to the merchant:

- (1) Has continuously operated an established place of business in this city; or
- (2) Has continuously resided in this city, and now does business from his/her residence.

(g) "Person" means all humans of any age or sex, partnerships, corporations, associations, groups, organizations, and any other description of a collection of human beings working in concert, or for the same purpose or objective. (Ord. 61-5071 (part), 2000.)

5.60.030 Exemptions. The following shall be exempt from all provisions of this chapter:

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

(b) Any person selling goods at wholesale to dealers in such goods;

(c) Any person selling agricultural products which such person has grown;

(d) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county, and who delivers such goods in their regular course of business;

(e) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested a home visit by, such person;

(f) Any person who has had, or one who represents a company which has had, a prior business transaction such as a prior sale or credit arrangement, on other than a one-time basis, with the prospective customer;

(g) Any person selling, or offering for sale, a service unconnected with the sale, or offering for sale, of goods;

(h) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;

(i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of the organization; provided, that there is submitted to the clerk proof that such charitable organization is registered under Section 440.41 of the Wisconsin Statutes.

Any charitable organization not registered under Section 440.41 of the Wisconsin Statutes or which is exempt from that statute's registration requirements, shall be required to register under this chapter.

(j) Any person who claims to be a permanent merchant, but against whom complaint has been made to the clerk that such person is a transient merchant; provided, that there is submitted to the clerk proof that such person has leased for at least one year, or purchased the premises from which he/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.

(k) Any vendor participating in a special event licensed by the city under the rules and procedures outlined in the special events policy. (Ord. 61-5083, 2000; Ord. 61-5071 (part), 2000.)

5.60.040 Registration and license. (a) Direct seller (employee) and direct seller businesses must complete all registration requirements with the city clerk no less than thirty days prior to commencing any and all selling activities in the city of Wausau. Registration shall include the following information:

- (1) Direct Seller Master (Business):
 - (A) Business name, permanent address, telephone number, name of business contact person, contact person's date of birth, driver's license or identification number and issuing state;
 - (B) Nature of business to be conducted and a brief description of the goods offered, and any services offered;
 - (C) Proposed method of delivery of goods, if applicable;
 - (D) Total number of employees selling during business operations covered by this license;
 - (E) Dollar value of most expensive merchandise or service offered;
 - (F) Dates in which selling activity shall occur;
 - (G) Names of cities, villages and towns, not to exceed three, where business has conducted similar business just prior to making this registration;
 - (H) Place where business contact person can be personally contacted for at least sixty days after leaving this city;

- (2) Direct Seller Employees (Applicants):
 - (A) Name, permanent address, telephone number, and temporary address, if any;
 - (B) Date of birth, driver's license or identification number, issuing state, height, weight, color of hair and eyes;
 - (C) 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;
 - (D) Location address and telephone number from which business will be conducted, if any, and written permission from the owner of the property for the applicant to conduct business on the property, which statement shall be submitted with the registration form;
 - (E) Nature of business to be conducted and a brief description of the goods offered, and any services offered;
 - (F) Proposed method of delivery of goods, if applicable;
 - (G) Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;
 - (H) Place where applicant can be personally contacted for at least seven days after leaving this city;
 - (I) Statements as to whether applicant has ever been convicted of any crime or ordinance violation related to applicant's transient merchant business; the nature of the offense and the place of conviction.
 - (J) Dates in which selling activity will occur.

(b) Applicants shall present to the clerk for examination:

- (1) A driver's license or some proof of identity as may be reasonably required by the clerk;
- (2) Any application for a direct seller's permit to engage in the sale of food or beverages shall be referred to the Marathon County health department for approval and issuance of a certificate of health inspection. The applicant's equipment shall be subject to inspections by the Marathon County health department at the time of application and at periodic intervals thereafter.

(c) At the time of registration or additional licensing within a current registration period, a nonrefundable fee as specified in section 3.40.010(a), License and permit fees, shall be paid to the

clerk to cover the administrative costs of the registration and licensing. (Ord. 61-5553 §12 (part), 2013, File No. 13-0309)

(d) The applicant shall sign 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 or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally.

(e) Upon payment of the fee and the signing of the registration statement, the clerk shall register the applicant as a direct seller and date the entry. Sales may take place only within the time period permitted by a license; there shall be four license periods of thirty, sixty, ninety, and one hundred twenty days, respectively. The information submitted on the registration application shall be valid for the licensing period not to exceed one hundred twenty days, subject to subsequent refusal as provided in section 5.60.050 of this chapter, or forfeiture as provided in section 5.60.070. Applicants shall obtain a license to conduct sales activities and shall pay a licensing fee as provided in section 3.40.010(a). Direct sellers who are sole proprietor business owners and they themselves are conducting sales, shall be required to purchase only the direct seller business license. (Ord. 61-5605 §11(part), 2014; Ord. 61-5071 (part), 2000.)

5.60.050 Investigation. (a) Upon receipt of each application, the clerk may refer it immediately to the chief of police who may make and complete an investigation of the statements made in such registration.

(b) The clerk shall refuse to license the applicant if it is determined, pursuant to the investigation above, that:

- (1) The registration 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 cities, villages and towns, not exceeding three, in which the applicant conducted similar business;
 - (3) Complaints of a material nature have been received against the applicant by residents of Marathon County, in which the applicant had previously conducted similar business in the city of Wausau;
 - (4) The applicant was convicted of a crime, statutory violation or ordinance violation, the nature of which is directly related to the applicant's fitness to engage in direct selling; or
- (4) The applicant failed to comply with any applicable provision of section 5.60.040 of this chapter. (Ord. 61-5071 (part), 2000.)

5.60.060 Appeal. Any person denied a license to conduct sales may appeal the denial through the appeal procedure provided by ordinance or resolution of the common council or, if none

has been adopted, under the provisions of Sections 68.07 through 68.16 of the Wisconsin Statutes. (Ord. 61-5071 (part), 2000.)

5.60.070 Regulation of direct sellers. (a) Prohibited Practices.

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

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

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

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

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

(6) No direct seller shall conduct sales in a period not specifically noted on the license.

(b) Disclosure Requirements.

(1) After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his/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 is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel the transaction if it involves the extension of credit of more than twenty-five dollars, or is a cash transaction, in accordance with the procedure as set forth in Section 423.203

of the Wisconsin Statutes; the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Sections 423.203(1)(a)(b) and (c), (2) and (3) of the Wisconsin Statutes.

(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.

(4) **Possession/Display of License.** Direct sellers shall at all times when engaging in direct sales activities, have on their person and visibly display to the public, the license issued pursuant to this section, as well as photo identification. Direct sellers shall show their license to sell issued by the city of Wausau, as well as photo identification upon request.

(c) **Bond.** A direct seller shall post either a cash bond in lawful money of the United States or a corporate surety bond in the amount required in subsection (d) of this section, with the clerk at the same time the registration form is filed with the clerk. The direct seller shall name all persons upon whose behalf the bond shall be posted. Buyers or donees who wish to cancel their transactions or claim a refund as permitted in subsection (b)(2) of this section, may do so by presenting within the time limits in subsection (b)(2) of this section to the clerk the goods purchased or the credit papers, and the clerk shall refund to the donee or the buyer the amount paid to the seller. The clerk shall deduct from the bond any amounts so refunded plus twenty-five dollars for each refund made as a handling charge. The clerk shall store the goods and papers upon which the refund was grounded, notify by first class mail the seller at the address provided in the registration form. Twenty days after such notice is mailed the clerk may sell or destroy such goods and papers, crediting any money received therefor to seller's bond account. Once the bond has been depleted below its original amount, direct seller shall upon written notice thereof by first class mail, within ten days after mailing of such notice, replenish the bond or forfeit the registration. No direct seller shall conduct activities within the city after forty-eight hours have expired since the mailing of such notice until such time as the fund is replenished unless the registration is revoked, in which case no further sales shall take place. If the city clerk has received no written notice of complaint, outstanding claims or issues resulting from the sale of goods in the city of Wausau, the bond shall be returned or canceled sixty days after expiration of the last license issued. If such notice has been received by the clerk, the bond shall be returned or canceled sixty days after expiration of written notification by the complainant that the issue or complaint has been satisfactorily settled.

(d) **Bond Schedule.** The amount of the bond required in subsection (c) of this section shall be determined by the highest price of any individual item to be sold by direct seller in accordance with the following schedule:

<u>Price of Goods</u>	<u>Bond Required</u>
Less than \$1.00	\$ 1,000.00

<u>Price of Goods</u>	<u>Bond Required</u>
\$1.01 - \$49.99	2,500.00
\$50.00 - \$99.99	5,000.00
\$100.00 - \$249.99	7,500.00
In excess of \$250.00	10,000.00

(Ord. 61-5071 (part), 2000.)

5.60.080 Records. The chief of police shall report to the clerk all convictions for violation of this chapter, and the clerk shall note any such violation on the record of the registrant convicted. (Ord. 61-5071 (part), 2000.)

5.60.090 Revocation of registration. (a) License may be revoked by the public health and safety committee after notice and hearing, if the registrant made any material omission or materially inaccurate statement in the application for license, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales; violated any provision of this chapter; or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.

(b) Written notice of the hearing shall be mailed to the seller at the permanent address shown on the registration at least ten days, or shall be served personally on the registrant at least seventy-two hours, prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the facts upon which the hearing will be based. (Ord. 61-5071 (part), 2000.)

5.60.100 Penalty. Any person convicted of violating any provision of this chapter shall forfeit not less than one hundred dollars nor more than five hundred dollars, plus costs of prosecution, for the first offense and not less than five hundred dollars, nor more than one thousand dollars for a second or subsequent offenses. Each violation shall constitute a separate offense. (Ord. 61-5071 (part), 2000.)

5.60.110 Effective date. The ordinance codified in this chapter shall take effect June 15, 2000. (Ord. 61-5071 (part), 2000.)

5.60.120 Severance clause. The provisions of this chapter are declared to be severable; and if any section, sentence, clause or phrase of this chapter 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 chapter; they shall remain in effect, being the legislative intent that this chapter shall stand notwithstanding the invalidity of any part. (Ord. 61-5071 (part), 2000.)

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Chapter 5.61

NEWSRACKS IN PUBLIC RIGHTS-OF-WAY

Sections:

- 5.61.010 Intent and purpose.
- 5.61.020 Definitions.
- 5.61.030 Permit required.
- 5.61.040 Application for permit.
- 5.61.050 Conditions for permit.
- 5.61.060 Standards for maintenance and installation.
- 5.61.070 Location and placement of newsrack.
- 5.61.080 Violations of chapter.
- 5.61.090 Appeals.
- 5.61.100 Director of inspections' designated representative.
- 5.61.110 Abandonment.

5.61.010 Intent and purpose. (a) The uncontrolled placement of newsracks in public rights-of-way presents an inconvenience and danger to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services.

(b) Newsracks so located as to cause an inconvenience or danger to persons using public rights-of-way, and unsightly newsracks located therein, constitute public nuisances.

(c) The provisions and prohibitions contained and enacted in this chapter are in pursuance of and for the purpose of securing and promoting the public health, safety, and general welfare of persons in the city in their use of public rights-of-way. (Ord. 61-4809 §1(part), 1993.)

5.61.020 Definitions. As used in this chapter:

(a) "Boulevard" means that area between the sidewalks and the curb of any street, and where there is no sidewalk that area between the edge of the roadway and property lien adjacent thereto. Boulevard shall also include any area within a roadway that is not open to vehicular travel.

(b) "Distributor" means the person responsible for placing and maintaining a newsrack in a public right-of-way.

(c) "Newsrack" means any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or other news periodicals.

(d) "Roadway" means that portion of a street improved, designed, or ordinarily used for vehicular travel.

(e) "Sidewalk" means all that area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, boulevards, alleys and sidewalks. (Ord. 61-4809 §1(part), 1993.)

5.61.030 Permit required. It is unlawful for any person, firm or corporation to erect, place, maintain or operate, on any public street or sidewalk, or in any other public way or place in the city any newsrack without first having obtained a permit from the director of inspections specifying the exact location of such rack(s). One permit may be issued to include any number of newsrack(s), and shall be signed by the applicant. (Ord. 61-4809 §1(part), 1993.)

5.61.040 Application for permit. Application for such permit shall be made, in writing, to the city clerk upon such form as shall be provided by him, and shall contain the name and address of the applicant, the proposed specific location of said newsrack or newsracks, and shall be signed by the applicant. Upon receipt of the application by the city clerk, the city clerk shall immediately forward the application to the director of inspections for approval. The applicant shall update the list of locations of newsracks upon new placement or removal of same within ten days of the date of the change. (Ord. 61-4809 §1(part), 1993.)

5.61.050 Conditions for permit. (a) As an express condition of the acceptance of such permit, the permittee thereby agrees to indemnify and save harmless the city, its officers, directors, and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as the result of the installation, use, or maintenance of a newsrack within the city.

(b) Permits shall be issued by the director of inspections for the installation of a newsrack or newsracks without prior inspection of the location but such newsrack or newsracks and the installation, use or maintenance thereof shall be conditioned upon observance of the provisions of this chapter. Permits shall be issued within twenty-four hours (excluding Saturday and Sunday and legal holidays) after the application has been filed. A permit fee as specified in section 3.40.010(a) is required.

(c) Such permits shall be valid for one year and shall be renewable pursuant to the procedure for original applications referred to in section 5.61.040 and upon payment of the fee as provided in section 3.40.010(a). (Ord. 61-5605 §12(part), 2014; Ord. 61-5553 §13 (part), 2013, File No. 13-0309; Ord. 61-5165 §1, 2002, File No. 93-0921; Ord. 61-4809 §1(part), 1993.)

5.61.060 Standards for maintenance and installation. Any newsrack which in whole or in part rests upon, in or over any public sidewalk or boulevard shall comply with the following standards:

(a) No newsrack shall exceed fifty inches in height, thirty inches in width, or two feet in thickness. These specifications shall apply to individual newsracks and vertical stacking of newsracks shall not constitute a violation of the height restriction.

(b) No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the newspaper or news periodical sold therein;

provided, however, that references displayed on the newsrack relating to news stories and advertising contained within the newspaper or news periodical sold therein shall not be a violation of this subsection.

(c) Each newsrack shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event he is unable to receive the publication paid for. The coin-return mechanisms shall be maintained in good working order.

(d) Each newsrack shall have affixed to it in a readily visible place so as to be seen by anyone using the newsrack a notice setting forth the name and address of the distributor and the telephone number of a working telephone service to call to report a malfunction, or to secure a refund in the event of a malfunction of the coin-return mechanism, or to give the notices provided for in this chapter.

(e) Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, each newsrack shall be serviced and maintained so that:

- (1) It is reasonably free of dirt and grease;
- (2) It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof;
- (3) It is reasonably free of rust and corrosion in the visible unpainted metal areas thereon;
- (4) The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration;
- (5) The paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading;
- (6) The structural parts thereof are not broken or unduly misshapen.

(Ord. 61-4818 §1(part), 1993; Ord. 61-4809 §1(part), 1993.)

5.61.070 Location and placement of newsrack. Any newsrack which rests in whole or in part upon, or on any portion of a public right-of-way or which projects onto, into, or over any part of a public right-of-way shall be located in accordance with the provisions of this section:

(a) No newsrack shall be used or maintained which projects onto, into, or over any part of the roadway of any public street, or which rests, wholly or in part upon, along, or over any portion of the roadway of any public street.

(b) No newsrack shall be chained, bolted, or otherwise attached to any fixture located in the public right-of-way, except to other newsracks.

(c) Newsracks may be placed next to each other, provided that no group of newsracks shall extend for a distance of more than eight feet along a curb, and a space of not less than three feet shall separate each group of news-racks.

(d) No newsrack shall be placed, installed, used or maintained:

(1) At any marked or unmarked crosswalk in such a manner that its placement impedes the normal flow of pedestrian traffic at such locations or impairs visual observation of drivers of vehicles at such locations;

(2) Within ten feet of any fire hydrant, fire call box, police call box or other emergency facility;

(3) Within five feet of any driveway;

(4) Within three feet of the outer end of any bus bench;

(5) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six feet;

(6) Within three feet of or on any public area improved with lawn, flowers, shrubs, trees or other landscaping;

(7) Within one hundred feet of any other newsrack on the same side of the street in the same block containing the same issue or edition of the same publication;

(8) On any handicap access ramp.

(Ord. 61-4818 §1(part), 1993; Ord. 61-4809 §1(part), 1993.)

5.61.080 Violations of chapter. (a) Upon determination by the director of inspections that a newsrack has been installed, used or maintained in violation of the provisions of this chapter, an order to correct the offending condition will be issued to the distributor of the newsrack. Such order shall be in writing to the distributor and mailed by certified mail, return receipt requested.

(b) The order shall specifically describe the offending condition, suggest actions necessary to correct the condition, and inform the newsrack distributor of the right to appeal. Failure to properly correct the offending condition within five days (excluding Saturdays, Sundays, and legal holidays) after the mailing date of the order or to appeal the order within three days after its receipt shall result in the offending newsrack being summarily removed and processed as unclaimed property. If the offending newsrack is not properly identified as to owner under provisions of section 5.61.060, it shall be removed immediately and processed as unclaimed property. An impound fee, which shall be measured by the city's cost and expense of impounding, shall be assessed against each newsrack summarily removed. The director of inspections shall cause

inspection to be made of the corrected condition or of a newsrack reinstalled after removal under this section. The distributor of said newsrack shall be charged an inspection fee as provided in section 3.40.010(a) for each newsrack so inspected. This charge shall be in addition to all other fees and charges required under this chapter. (Ord. 61-5605 §13(part), 2014; Ord. 61-4809 §1(part), 1993.)

5.61.090 Appeals. Any person or entity aggrieved by a finding, determination, notice, order or action taken under the provisions of this ordinance may appeal and shall be appraised of his right to appeal to the administrative review board. An appeal must be perfected within three days after receipt of notice of any protested decision or action by filing with the office of the city clerk a letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held on a date no more than ten days after receipt of the letter of appeal. Appellant shall be given at least five days notice of the time and place of the hearing. The administrative review board shall give the appellant, and any other interested party, a reasonable opportunity to be heard, in order to show cause why the determination of the director of inspections should not be upheld. At the conclusion of the hearing, the administrative review board shall make a final and conclusive decision. This decision shall be immediately appealable to a court of competent jurisdiction. (Ord. 61-4809 §1(part), 1993.)

5.61.100 Director of inspections' designated representative. "Director of inspections," as used in this chapter, shall include his designated representative. (Ord. 61-4809 §1(part), 1993.)

5.61.110 Abandonment. In the event a newsrack remains empty for a period of thirty continuous days, the same shall be deemed abandoned, and may be treated in the manner as provided in section 5.61.080 for newsracks in violation of the provisions of this chapter. (Ord. 61-4809 §1(part), 1993.)

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Chapter 5.62

MOBILE VENDING

Sections:

5.62.010	Definitions.
5.62.020	License required.
5.62.030	Exemptions.
5.62.040	Mobile vending licenses.
5.62.045	Special youth vending license.
5.62.050	License denial, revocation, and appeals.
5.62.060	Restrictions on vending.
5.62.070	Fixed site vending.
5.62.080	Vending from vehicles or other on-street units.
5.62.090	Effect on direct sellers.
5.62.100	Penalties.
5.62.110	Severability

5.62.010 Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter:

- (a) “Block-face” means one side of a city block between two consecutive streets.
- (b) “Charitable organization” means any patriotic, philanthropic, social service, welfare, benevolent, educational, civic or fraternal, person, partnership, association or corporation that is validly registered under Wis. Stat. §440.42.
- (c) “Health department” means the Marathon County Health Department.
- (d) “Licensee” means an applicant who has obtained a license to conduct a mobile vending operation pursuant to this chapter.
- (e) “Mobile vending unit” means any motorized or non-motorized vehicle, trailer, kiosk, push or pedaled cart, stand, display, carried container, blanket, ground covering or other device designed to be portable and not permanently attached to the ground from which food, beverages, goods, wares, or merchandise are being peddled, vended, sold, served, displayed, offered for sale or given away. Mobile vending unit does not include a mobile wholesale delivery unit, a vehicle which is used solely to transport or deliver food, or a common carrier regulated by the state or federal government.
- (f) “Mobile vendor” means a person who peddles, vends, sells, serves, displays, offers to sell or give away food, beverages, goods, wares, or merchandise from a mobile vending unit.
- (g) “Public streets” as used in this chapter means any highway, street, or alley, located within the corporate limits of the City of Wausau.

(h) “School Property” means all property owned or operated by a public school as defined in Wis. Stat. §115.01(1) or owned or operated by a private school as defined in Wis. Stat. §118.165, grades kindergarten through twelve (12).

(i) “Sidewalk” includes sidewalks and paved boulevards located within the corporate limits of the City of Wausau.

(j) “Vend” means to peddle, vend, sell, serve, display, offer to sell, or give away food, beverages, goods, wares, or merchandise.

5.62.020 License Required. (a) No mobile vendor shall vend from a mobile vending unit on sidewalks or public streets without first obtaining a license as set forth in this chapter.

(b) No license issued under this chapter authorizes the holder to vend in any public park including driveways, parking areas, and public rights of way within city parks.

(c) The license issued under this chapter is in addition to any other local, state, or other federal approvals, permits, or licenses required by applicable law.

5.62.030 Exemptions. The following mobile vendors may vend without a license:

(a) A person, on behalf of a charitable organization, selling individually wrapped, sealed food items that are prepared and packaged by a licensed processor.

(b) Mobile vendors vending from mobile vending units that are approved participants of a Special Event under the city’s Special Events Policy and Procedures.

(c) Mobile vendors vending from mobile vending units located on private property with the approval of the property owner or its authorized agent. (Ord. 61-5619 §1, 2014, File No. 13-0612)

5.62.040 Mobile Vending Licenses. (a) Application. All applicants shall submit a sworn application on a form provided by the city clerk which shall give the following minimum information:

(1) Name, address, telephone number and date of birth of the applicant.

(2) Name, address, and telephone number of the person, firm, association, or corporation that the applicant represents or is employed by, or whose products are being vended.

(3) A photograph or drawing, including dimensions, of the mobile vending unit along with identification and depiction of all supporting features including, but not limited to, umbrella, chair and waste receptacle.

- (4) A description of the product(s) to be vended.
- (5) A drawing or map of the single fixed vending site under section 5.62.070, if applicable.
- (6) Make, model and license number of any vehicle to be used by applicant in the conduct of the business.
- (7) Statement of whether the applicant has been arrested or convicted of any crime or ordinance violation together with the nature of the offense and the place of conviction.
- (8) Copy of a current State of Wisconsin or health department license for the vending of any food items.
- (9) Copy of a current State of Wisconsin Seller's Permit.
- (10) If an applicant intends to use more than one mobile vending unit in the operation of its business, the information required in subsections (3) and (6) must be provided for each mobile vending unit.

(b) A licensee may be a corporation, cooperative or partnership; however, the application and license shall designate a primary individual who is regularly involved in all phases of the production process and who is responsible for the vending operation. Such corporation, cooperative or partnership shall be liable for the acts or omissions of its supplemental vendors, but such liability shall not relieve any individual supplemental vendor from liability from his/her own acts or omissions.

(c) Age. All applicants must be at least 18 years of age.

(d) Insurance. An applicant must have in force adequate liability insurance and must agree to indemnify, defend, and hold the city, its employees and agents harmless against all claims, liability, loss, damage, or expense incurred by the city as a result of any injury to or death of any person or damage to property caused by or resulting from the activities for which a license may be granted. As evidence of liability insurance, the applicant shall furnish a Certificate of Insurance, on a form acceptable to the city, evidencing the existence of commercial general liability insurance naming the City of Wausau, its employees and agents as additional insureds with minimum limits of one million dollars (\$1,000,000.00) in the aggregate. Whenever such policy is cancelled, not renewed, or materially changed, the insurer and the licensee shall notify the city by certified mail.

(e) Fees. The applicant shall pay a fee as set forth in section 3.40.010(a). The license fee shall be paid at the time the application is filed with the city clerk. The license fee will be returned to the applicant if the license is not approved.

(f) Term. Licenses shall be issued on an annual basis beginning on April 1 and expiring on March 31, or a 6 month basis beginning on April 1 and expiring on September 30, or beginning

on October 1 and expiring on March 30, subject to the provisions of subsection (i). There will be no pro rata or other reduction for applications.

(g) [This subsection is intentionally left blank]

(h) Investigation.

(1) Upon receipt of an application and fee, the city clerk shall refer the application to the chief of police or his/her designee. The chief of police or his/her designee shall make an investigation of the accuracy of the statements made in the application and determine whether the applicant has been convicted of a felony, misdemeanor, statutory violation punishable by forfeiture, or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor, or other offense substantially relate to the circumstances of the permitted activity and, if so, the nature and date of the offense and the penalty assessed.

(2) If, as a result of an investigation, the chief of police or his/her designee discovers that any representation on the application contains a material omission or inaccuracy, or the chief of police or his/her designee is of the opinion that the applicant is not a fit person to conduct such sales, the chief of police or his/her designee shall return the application to the city clerk for referral to the public health and safety committee of the common council who shall approve or disapprove the same and return the application to the city clerk. Upon return of a disapproved application, the city clerk shall notify the applicant by mail and in writing that the permit has been denied, along with the reasons therefore.

(3) If as a result of an investigation, the chief of police or his/her designee is of the opinion that the applicant is a fit person to conduct such sales, the chief of police or his/her designee shall endorse on the application his/her approval and return the same to the city clerk who shall issue a license to the applicant.

(i) License.

(1) Upon compliance with the provisions of this chapter and any other applicable ordinance, a license will be issued to a mobile vendor. The possession of a license by a mobile vendor does not in and of itself entitle a vendor to the use of any specific vending site on a specific day or entitle a vendor to a minimum number of vending days during the licensing period.

(2) Licenses shall include information deemed necessary by the city clerk and shall contain at a minimum, the name, address, telephone number and contact person for the mobile vendor, type of vending allowed, and the date of issuance and expiration of the license. Any license issued for a single fixed vending site under section 5.62.070 shall set forth the location of the fixed vending site approved for such mobile vendor.

(3) Every mobile vendor shall prominently display his/her license at all times and in plain view to the public on the mobile vending unit. No license issued under this chapter may be transferred by the licensed mobile vendor. A mobile vendor may transfer its license to another mobile vending unit owned and operated by that mobile vendor provided such other mobile vending units are approved under section 5.62.040. A mobile vendor may not operate more than one mobile vending unit within the city at any one time. (Ord. 61-5746 §2, 2017, File No. 17-0707)

5.62.045 Special Youth Vending License. (a) Purpose. The City desires to encourage the entrepreneurial spirit in City youth interested in creating their own unique opportunities for economic success and thereby promote work and marketplace skills in its young citizens. To this end the City desires to create a special youth vending license which is unencumbered by certain provisions relevant to the operation of large scale mobile vending units and vendors within the City limits, but is also limited in scope appropriate to youth vendors. The provisions of this section are not intended to permit the employment of minors in circumvention or violation of any state or federal law, including but not limited to the provisions of Wis. Stat. s. 103.64 through 103.83, and WI Admin Code, DWD 270. The provisions of this section are also not intended to permit larger scale mobile vending units and vendors who would otherwise be required to obtain a mobile vending license under the provisions of this chapter to avoid obtaining a regular license.

(b) Application. An application for a special youth vending license shall be submitted jointly by the minor and the parent or legal guardian of the minor on a form provided by the city clerk which provides the name, address, telephone number and date of birth of the applicants, a photograph or drawing of the mobile vending unit, if any, a description of the product(s) to be vended and a copy of a current State of Wisconsin or health department license for the vending of any food items. No minor applicant may be under the age of twelve (12). The application shall be signed by the parent or legal guardian and shall provide that the parent or guardian assumes all liability for the activities of the minor and the vending operations and further indemnifies the City in accordance with the provisions of Section 5.62.040(d). A special youth vending license may be approved and issued by the City Clerk upon compliance with the requirements of this section and issued in the name of the parent or legal guardian and the minor.

(c) Fee. The applicants shall pay an application fee as set forth in section 3.40.010(a).

(d) Term. The license shall be issued for a period from April 1 through September 30.

(e) License.

(1) A special youth vending license shall only permit a youth vendor to vend and operate in residential areas. No vending under a special youth vending license shall be permitted on the 400 Block or during an approved Special Event under the city's Special Events Policy and Procedures where the Special Event has been approved within a residential area.

- (2) A special youth vending license shall only permit the sale of food or beverage items that are individually wrapped and sealed and prepared and packaged by a licensed processor, or goods, wares, or merchandise.
 - (3) A special youth vending license shall permit a youth vendor who is vending products from a bicycle to operate the bicycle on city sidewalks while engaged in the activity of vending notwithstanding the provisions of Section 10.40.050 of this Code.
 - (4) A youth vendor shall be permitted to vend only during those times and hours as provided by Wis. Stat. s. 103.68 and WI Admin Code, DWD 270.11.
 - (5) A youth vendor engaged under the terms set forth in Wis. Stat. s. 103.21(1) shall obtain any necessary permit that may be required by Wis. Stat. s. 103.25.
 - (6) The parent or legal guardian of a youth vending under a special youth vending license shall be responsible and liable for ensuring compliance with any applicable state or federal law governing the employment of minors, including but not limited to any applicable provisions of Wis. Stat. s. 103.64 through 103.83, and WI Admin Code, DWD 270.
 - (7) The holder of a special youth vending license shall comply with the provisions of Section 5.62.060(b) through (r), (u) and (v) applicable to mobile vendors generally.
 - (8) No vending under a special youth vending license shall be permitted to occur from a motor vehicle or other on-street unit.
 - (9) The parent or legal guardian shall be responsible for any violation of this section and subject to the penalties of section 5.62.100. A special youth vending license may also be subject to suspension, revocation or non-renewal in accordance with section 5.62.050.
- (f) No special youth vending license is required under the circumstances as set forth in section 5.62.030. (Ord. 61-5750 §1, 2017; Ord. 61-5746 §1, 2017, File No. 17-0707)

5.62.050 License Denial, Revocation, and Appeals. (a) License Denial. Appeal of a denial of a license under this chapter shall be made as provided in chapter 2.21 of this code.

(b) Suspension, Revocation or Non-renewal. (1) The public health and safety committee may suspend, revoke, or fail to renew a license issued under this chapter. Cause for suspending, revoking, or non-renewal of a license shall include one or more of the following reasons:

(A) Violation by licensee, its manager, or an employee of a provision of this chapter or other ordinance of the city applicable to the business of the licensee.

- (B) Violation of health department or state food or health regulations.
 - (C) Fraud, misrepresentation, or false statement contained in the license application submitted under this chapter or made in carrying on of the business of the licensee.
 - (D) Conviction of the licensee, its manager, or an employee of a felony or misdemeanor substantially related to mobile vending operations.
 - (E) Conducting mobile vending operations in such a manner as to constitute a menace to the health, safety, or general welfare of the public.
- (2) Appeal of the decision of the public health and safety committee shall be made as provided in chapter 2.21 of this code.
 - (3) No applicant who has had a license denied, or licensee who has had his/her license suspended, revoked or non-renewed may make further application for a license under this chapter for one year.

5.62.060 Restrictions on Vending. The following restrictions apply to all mobile vendors operating within the city:

(a) Vending shall only be permitted between the hours of 7:00 a.m. and that time which is 30 minutes after closing hours for Class “B” licensed alcohol premises as provided in Wis. Stat. §125.32(3).

(b) Connection of a mobile vending unit to a public source of electricity, water or sewer at a mobile vending site is prohibited.

(c) No mobile vendor may use any public property such as light poles or other utility poles, flower planters, trees, or other amenities to attach any ropes, posters, signs, electrical cords, or other objects used in his/her operations.

(d) All mobile vending units shall be removed from their location and returned to their mobile base within 30 minutes of the cessation of vending hours as provided in subsection (a) and 7:00 a.m. and during any other time such unit is not actively operational.

(e) Vending and adjoining areas shall be kept clean and free from litter, garbage, rubble, and debris at all times. All mobile vending units shall be equipped with at least one leak-proof container for the deposit of waste, garbage, litter, and refuse. All such containers shall be kept covered with tight-fitting lids. When leaving vending area, the mobile vendor and his/her employee(s) shall be responsible for the removal of all litter resulting from the vending operations.

(f) Seating for consumer consumption or use of products sold is not allowed at a vending site occupied by the mobile vending unit. One chair, stool, or seat for use by the operator will be allowed.

(g) Mobile vendors shall provide a minimum 4 foot clearance on sidewalks and rights-of-way for pedestrian access and traffic.

(h) No mobile vendor shall sell food that is unwholesome, tainted, unclean, or that has been handled in an unclean manner, or has been exposed to unclean, contaminating things or conditions, or contrary to any local or state law, rule or regulation.

(i) The size of any mobile vending unit and operating area, accommodated on sidewalks, shall not exceed 32 square feet. The height of any mobile vending unit, excluding canopies, umbrellas, or transparent enclosures, shall not exceed 6 feet.

(j) All equipment used at the vending site shall be in a clean, sanitary, hazard free condition and maintained in a presentable appearance and in good repair, without noticeable holes or other structural defects.

(k) The licensee or other operator of a mobile vending unit shall be present with the mobile vending unit at all times during which products are displayed or sold, except that a licensee or other operator may leave his/her vending location and mobile vending unit unattended during lawful vending hours for a maximum of 60 minutes per day, provided the mobile vending unit does not impede pedestrian or vehicular access or traffic. (Ord. 61-5619 §2, 2014, File No. 13-0612)

(l) Noise levels emanating from the vending site shall be kept to a minimum, shall not be directed toward the street or sidewalk, and shall be reasonable so as not to disturb the peace and quiet of those in the vicinity, including but not limited to residents, merchants and customers. No person may make any loud, unreasonable noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to his or her wares.

(m) The Wausau Police Department shall have the authority to remove or cause the removal of any vending equipment, mobile vending unit, food, beverages, goods, wares or merchandise found on the highway, street, alley, sidewalk, public right of way or other vending location in violation of this chapter. In addition to any forfeiture that may be imposed, the violator shall also be liable for any removal, towing and storage charges incurred by the city as a result.

(n) No mobile vendor shall conduct business within seventy five (75) feet of the main entrance of any business selling same or similar products during the hours said business is open for the sale of said products, unless written permission is granted by said business and such documentation is placed on file with the city clerk.

(o) No mobile vendor shall conduct business within two hundred (200) feet of school property during school hours, unless written permission is granted by the school superintendent or other equivalent authority and such documentation is placed on file with the city clerk.

(p) To encourage the integrity, comprehensiveness and success of Special Events no vending shall be permitted on public streets, sidewalks or in any city parks:

(1) Within two (2) blocks of the event premise where the City of Wausau has issued a Class I Special Events permit during the hours approved for the Special Event.

(2) Within one (1) block of the event premise where the City of Wausau has issued a Class II Special Events permit during the hours approved for the Special Event.

Mobile vendors are responsible for determining dates and times of Special Events held within the city.

(q) No mobile vendor shall conduct business within ten (10) feet of a fire hydrant or ten (10) feet of a bus shelter or bus stop.

(r) A mobile vending unit shall maintain clear access and visibility of cross walks and street corners.

(s) Vending on the 400 Block is limited to the exterior sidewalks. Vending within the interior walkways, grassy areas, seating plaza, stage and fountain is prohibited.

(t) During the hours of 7a.m. and 9:00 p.m. no more than two food mobile vending units and two non-food mobile vending units may occupy a block face at any one time.

(u) No mobile vendor may sell secondhand goods or articles from a mobile vending unit as its primary business operation. A mobile vendor selling secondhand goods, articles or jewelry may also require a license under chapter 5.52.

(v) The director of public works may designate public streets and sidewalks temporarily unavailable due to construction, special events, or other unforeseen events.

5.62.070 Fixed Site Vending. (a) Each licensee has the opportunity to elect to vend from a single fixed vending site identified by the licensee.

(b) Each fixed vending site shall meet all applicable restrictions of this ordinance and shall be approved in advance by the director of public works.

(c) A fixed vending site shall be awarded to licensees on a “first come/first serve” basis.

(d) Any licensee shall be allowed to request one (1) change to his/her fixed vending site during each license year which shall be subject to the approval of the director of public works.

(e) The location and dimensions of a licensee’s fixed vending site are not guaranteed to remain available. Public construction, sidewalk, street or other right of way improvements or redesign may result in a fixed vending site being moved, reduced in size, eliminated, or otherwise altered, at any time.

(f) If the fixed vending site becomes temporarily or permanently unavailable as provided in subsection (e) or due to special events, or other unforeseen circumstances, the licensee may apply to the director of public works for an alternate fixed vending site.

(g) The mobile vendor has exclusive rights to vend from the approved fixed vending site whenever such mobile vendor is present to vend.

5.62.080 Vending from Vehicles or Other On-Street Units. (a) Any vehicle or other on-street unit used for vending food in any public street must be designed and constructed specifically for the purpose of vending such food products. A mobile vendor vending food products from a vehicle or other on-street unit must obtain all necessary approvals from the city fire department.

(b) Any motor vehicle used in vending on public streets shall have valid vehicle registration as required under chapter 341 of the Wisconsin Statutes, and its operator shall have and maintain a valid Wisconsin driver's license at all times.

(c) In addition to the insurance requirements of section 5.62.040(d), the operator of any motor vehicle used for vending in any public street shall have in effect motor vehicle liability insurance as required under Wis. Stat. §344.62 and in a minimum amount of one million dollars (\$1,000,000.00). Proof of such insurance shall be provided at the time of application for a vending license. Whenever such policy is cancelled, not renewed, or materially changed, the insurer and the licensee shall notify the city by certified mail.

(d) No vending shall be made in a public street from a vehicle or other on-street unit except from the curbside of said vehicle or on-street unit.

(e) A mobile vendor and any vehicle or other on-street unit vending in any public street shall comply with all state and municipal traffic and parking laws at all times.

5.62.090 Effect on Direct Sellers. A person who obtains a valid license under this chapter shall not be required to also obtain a direct sellers license under the provisions of chapter 5.60 of this code.

5.62.100 Penalties. (a) Any person violating this chapter shall, upon conviction for a first offense, forfeit not \$100.00, together with the costs of prosecution. Each and every day during which any such violation continues shall constitute a separate violation.

(b) Any person violating this chapter shall, upon conviction for a second offense or subsequent offense, forfeit \$200.00, together with the costs of prosecution. Each and every day during which any such violation continues shall constitute a separate violation.

5.62.110 Severability. If any provision or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected thereby. (Ord. 61-5574 §1, 2013, File No. 13-0612)

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Chapter 5.63

OBSTRUCTIONS WITHIN THE CENTRAL BUSINESS DISTRICT
PUBLIC RIGHTS-OF-WAY

Sections:

5.63.010	Intent and purpose
5.63.020	Definitions
5.63.030	Permit required
5.63.040	Application for permit
5.63.050	Permit fees
5.63.060	Sidewalk café standards
5.63.070	Liability and insurance
5.63.080	Committee action
5.63.090	Transfer of permit
5.63.100	Revocation
5.63.105	Appeal of denial of permit
5.63.110	Existing permits
5.63.120	Penalty

5.63.010 Intent and purpose. The City of Wausau supports a vibrant central business district and recognizes the social and economic benefit in allowing certain activities to take place within the public right of way. Such uses include sidewalk cafes and other obstructions including, but not limited to self-supporting signs, sandwich board signs, works of art, planters, potted plants, statues, and other similar types of object. Specifically, the City finds and determines:

(a) That there exists a need for outdoor eating facilities within the central business district to provide for a unique environment for relaxation, social interaction and food consumption.

(b) That sidewalk cafes will permit enhanced use of the available public rights of way, will complement the restaurants operating from fixed premises, and will promote economic activity in the Central Business District.

(c) Regulating the use of public rights-of-way through permitting will ensure that a high quality appearance is maintained and that sidewalks remain safe and accessible to pedestrians.

5.63.020 Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter.

(a) “Central business district” shall mean the qualifying properties lying with the area on the east side of the Wisconsin River bounded by 5th Street on the east, 1st Street on the west, Grant Street on the north and Washington Street on the south and on the west side of the Wisconsin River bounded by 1st Avenue on the east, 3rd Avenue on the west, Elm Street on the north and Stewart Avenue on the south. The permitted area includes sidewalk on both sides of a described boundary street except for Stewart Avenue which includes only the north side of the sidewalk.

(b) “Sidewalk café” means an expansion of a full service restaurant creating an outdoor dining facility on part of the public right of way that immediately adjoins the licensed premises for the purpose of consuming food or beverages prepared at the full service restaurant adjacent thereto.

(c) “Full service restaurant” means an establishment requiring a State of Wisconsin restaurant license and whose food sales are greater than 50 percent of its gross receipts. Upon request of the city, owners of establishments shall substantiate the percentage of their gross receipts devoted to food.

5.63.030 Permit required. (a) It is unlawful for any person, firm, or corporation to erect, place, maintain, or operate on any public street or sidewalk or in any other public way in the central business district any sidewalk café, sign, work of art, planters, statues or other such obstruction without first having obtained a permit from the public health and safety committee of the Wausau common council.

(1) No obstruction permit shall be required in the Central Business District for one period not to exceed five (5) days to conduct an annual sidewalk sale.

(b) Each permit shall be effective for one year from July 1 until the following June 30.

(c) The permit issued may be transferred to a new owner only for the location and area listed in the permit. The transferred permit shall be valid only for the remainder of the period for which it was originally issued. A new certificate of insurance must be filed with the city within 30 days of the permit transfer.

5.63.040 Application for permit. (a) An initial application for an obstruction or sidewalk café permit, a renewal or transfer shall be made, in writing, to the Inspections Division of the Department of Public Works upon such form as shall be provided by the department and shall contain the following:

(1) The name and address of the applicant.

(2) A detailed description of the proposed obstruction.

(3) The proposed specific location of said obstruction.

(4) A current certificate of insurance as required by subsection 5.63.070 of this section.

(b) An application for a sidewalk cafe permit shall also require in addition to those requirements of subsection (a) above:

(1) A copy of a valid restaurant license.

- (2) The initial application shall contain such information which the department may prescribe and require.
- (3) A non-refundable application fee, as stated in the City of Wausau Fees and Licenses Schedule, Section 3.40.010(a).
- (4) If the applicant intends to sell or serve alcohol beverages to patrons of the sidewalk cafe, the applicant shall first obtain a retail alcohol beverage license describing the outdoor area where alcohol beverages will be sold, served or consumed pursuant to Chapter 5.64.

(c) Upon receipt of an obstruction permit application by the Inspections Division of the Department of Public Works, the zoning administrator shall review the application for completeness and provide a copy of the application to the fire chief, police chief, city attorney, community development director, director of public works, chairperson of the preservation commission and chairperson of the public health and safety committee.

5.63.050 Permit Fees. (a) The initial application fee for an obstruction permit or sidewalk cafe permit with or without alcohol license expansion shall be as stated in the City of Wausau Fees and Licenses Schedule, Section 3.40.010(a).

(b) The annual renewal fee for an obstruction permit or sidewalk cafe permit with or without an alcohol license expansion shall be as stated in the City of Wausau Fees and Licenses Schedule, Section 3.40.010(a).

5.63.060 Sidewalk Cafe Standards. The following standards, criteria, conditions and restrictions shall apply to all sidewalk cafes, provided, however, that the director of public works or designee may impose additional conditions and restrictions to protect and promote the public health, safety, or welfare, to prevent a nuisance from developing or continuing, and to comply with this section, the city ordinances, and all applicable state and federal laws.

(a) Sidewalk cafes are restricted to the public right of way immediately adjacent to the licensed full service restaurant to which the permit is issued.

(b) Tables, chairs, umbrellas or other fixtures in the sidewalk cafe:

- (1) Shall not block designated ingress, egress, or fire exits from or to the establishment of any other structure.
- (2) Shall be readily removable and shall not be physically attached, chained, or in any manner affixed to any structure, tree, post, sign or other fixture.
- (3) Shall be removed when the sidewalk cafe is not in operation.
- (4) Must remain within the designated boundaries when seating is filled to capacity.

- (c) Sidewalk cafes shall be located in such a manner that a distance of not less than four feet is maintained at all times as a clear and unobstructed pedestrian path. For the purposes of minimum clear path, trees, plantings, parking meters, traffic signs and similar obstacles shall be considered obstructions.
- (d) No portion of any sidewalk cafe may encroach on the sidewalk adjacent to any other property other than the property that is permitted in this chapter.
- (e) The sidewalk cafe and the sidewalk and roadway immediately adjacent to it, shall be maintained in a clean, sanitary and safe manner. Debris shall be removed as required throughout the day and at close of each business day.
- (f) Umbrellas or other shade materials shall be treated canvas, cloth or similar material that is manufactured to be fire-resistant. No portion of an umbrella or other shade material shall be less than seven feet above the sidewalk.
- (g) No food preparation, food storage, refrigeration apparatus, or equipment shall be allowed in the sidewalk cafe.
- (h) No amplified entertainment shall be allowed in the sidewalk cafe unless authorized as part of a special event. Amplified entertainment means any type of music or other entertainment, whether live or recorded, delivered through and by an electronic system including related equipment such as speakers, microphones, televisions or other audio or video devices.
- (i) The sidewalk cafe permit covers only the public right of way described in the permit. Tables and chairs on private property will be governed by other applicable regulations.
- (j) The use of a portion of the public right of way as a sidewalk cafe shall not be an exclusive use. All public improvements, including, but not limited to trees, light poles, traffic signals, manholes, or any public initiated maintenance procedures shall take precedence over said use at all times. The director of public works or his/her designees may temporarily order the termination of sidewalk cafes for the following reasons, but not limited to, special events, including construction, parades, sponsored run walks, or for any reason to maintain health, safety, welfare of the public.
- (k) Molded plastic tables and chairs are not permitted.
- (l) No smoking is allowed within the limits of a sidewalk cafe during the hours of operation.
- (m) Sidewalk cafes shall not operate after 10 p.m. or before 6 a.m.
- (n) Table and chairs and other components of the sidewalk cafe shall be removed nightly.

(o) A copy of the site plan, as approved in conjunction with the current sidewalk cafe permit shall be maintained on the permittee's premise and shall be available for inspection by city personnel at all times.

(p) The city, its officers and employees, shall not be responsible for sidewalk cafe fixtures that are relocated or damaged.

5.63.070 Liability and Insurance. The permittee shall provide the city with an original certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations.

(a) Commercial liability insurance in the amount of at least \$1,000,000 per occurrence for bodily injury and property damage, with the city of Wausau named as an additional insured, shall show that the coverage extends to the area used for the sidewalk cafe, and shall provide that the policies of insurance shall not be cancelled, nonrenewed, or altered without 30 days prior written notice to the city.

(b) The permittee agrees to indemnify, defend, save, and hold harmless the City, its officers and employees, from any and all claims, liability, lawsuits, damages, and causes of action, which may arise out of the permit or the permittee's activity on the sidewalk cafe.

5.63.080 Committee action. (a) The public health and safety committee shall, within thirty days of receipt of a completed permit application, act to approve, approve conditionally, or reject the permit application. Failure of the committee to act within this time period shall be deemed a denial of the requested permit.

(b) The committee may place any conditions it deems appropriate on approval of the obstruction permit application, including special provisions for maintenance of the obstruction and any other requirements.

(c) Any requirements placed on issuance of the obstruction permit shall be acknowledged as acceptable by the permit applicant prior to issuance of the obstruction permit by the Inspections Division of the Department of Public Works.

5.63.090 Transfer of Permit. Except as provided under 5.63.030(c), permits issued under this chapter may not be transferred to another individual, business, corporation, or other entity.

5.63.100 Revocation. (a) An obstruction permit may be suspended or revoked by the director of public works or designee where necessary to protect the public health, safety and welfare, to prevent a nuisance from developing or continuing, in emergency situations, or due to noncompliance with this section, the city code of ordinances, or applicable federal or state laws. If the obstruction poses an immediate threat to the public, the director of public works may have the obstruction removed immediately.

(b) A sidewalk cafe permit may be revoked, suspended or not renewed for a violation of any provision of city ordinances, or applicable state law by the Public Health and Safety Committee,

upon the complaint of the police chief or designee, or director of public works or designee according to the following procedure:

- (1) A hearing shall be held before the Public Health and Safety Committee upon at least three (3) days' written notice to the permittee of the hearing date and time and of the charges alleged.
- (2) At the hearing, the police chief or designee or director of public works or designee shall present evidence of any alleged violations. The permittee may appear in person with or without counsel and shall be allowed to question witnesses and present evidence.
- (3) At the conclusion of the hearing, the committee shall make a recommendation to the Common Council whether there exists cause for non-renewal, suspension or revocation, which recommendation shall be considered at its next regularly scheduled meeting.

5.63.105 Appeal of Denial of Permit. The appeal of a denial of an obstruction or sidewalk cafe permit under this chapter shall be made as provided in chapter 2.21 of this code.

5.63.110 Existing Permits. Permits in existence on the date of enactment of this ordinance shall expire on March 31, 2014.

5.63.120 Penalty. The penalty for violation of this section shall be a forfeiture of not less than \$50 or more than \$500 per day for each violation, together with the costs of prosecution. (Ord. 61-5572 §1, 2013, File No. 01-0832; Ord. 61-5383 §3 (part), 2008, Ord. 61-5125 §1, 2001, File No. 01-0832.)

Chapter 5.64

ALCOHOLIC BEVERAGES⁴

Sections:

- 5.64.010 State statutes adopted.
- 5.64.020 When license required.
- 5.64.030 Separate license required for each place of sale.
- 5.64.034 Restriction on servers.
- 5.64.035 Alcohol licensing and serving of alcoholic beverages – sidewalk cafes
- 5.64.040 Hearing.
- 5.64.050 License fees.
- 5.64.055 Late filing fees.
- 5.64.060 Restrictions generally.
- 5.64.065 Sale of Class “B” packaged goods.
- 5.64.070 Corporations.
- 5.64.075 Violations by agents and employees.
- 5.64.076 Revocation and suspension of licenses.
- 5.64.077 Nonrenewal of licenses.
- 5.64.078 Point values for alcohol beverage violations and revocations and suspensions.
- 5.64.080 Effect of revocation of license.
- 5.64.084 Provisional retail licenses.
- 5.64.085 Provisional operator's licenses.
- 5.64.090 Inspection of application and premises.
- 5.64.110 Health and sanitation.
- 5.64.120 Tax delinquencies.
- 5.64.130 Obstructing view of premises.
- 5.64.140 Closing hours.
- 5.64.150 Enclosure required—Picnic license.
- 5.64.160 Abandonment or Non-use of License.
- 5.64.170 Repossession of license or permit.
- 5.64.180 Penalty for violation.

5.64.010 State statutes adopted. All provisions of Chapter 125 of the Wisconsin Statutes relating to the sale, regulation and licensing of alcoholic beverages, as they are now written or may be subsequently amended, repealed, created, or recreated or renumbered, except sections 125.09(6), 125.14(2), (3), (4), 125.56(2), 125.60, 125.61, 125.62, and 125.66(3), exclusive of any provisions relating to the penalty to be adopted or the punishment for violation of such statutes, are adopted and made a part of this section by reference. Sections 125.07(4)(c), (cd), (cg), (cm), (d) providing penalties for violations of sections 125.07(4)(a) and 125.07(4)(b) are specifically adopted as they are now written or may be subsequently amended, repealed, created or recreated or renumbered and

⁴ For statutory provisions regulating intoxicating liquor generally, see §125, Wis. Stats.

incorporated herein by reference. A violation of any such provisions shall constitute a violation of this section. (Ord. 61-4493 §2, 1998; Ord. 61-4760 §1, 1991; Ord. 61-4529 §1, 1983.)

5.64.020 When license required. No person, except as provided by section 5.64.010, 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 or fermented malt beverage, or cause the same to be done, without having procured a license or permit as provided in this section, nor without complying with all the provisions of this section and all statutes, ordinances and regulations of the state and city applicable thereto. (Prior code §9.02 (2(a).)

5.64.030 Separate license 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. (Prior code §9.02(2)(b).)

5.64.034 Restrictions on servers. (a) Prohibition. It shall be unlawful for a licensee or an agent or employee of the licensee to serve or supervise the service of alcohol beverages in a licensed premises while under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog. Controlled substance and controlled substance analog shall have the meaning as these terms are defined in section 9.04.026. Under the influence means not only all the well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging to any degree in alcohol beverages and which tends to deprive a person of the clearness of intellect and control of himself or herself which he or she would otherwise possess.

(b) Presumption. A test of the person's breath, blood, or urine, including a preliminary breath test, that shows the person has an alcohol concentration of 0.04 or more is prima facie evidence that he or she is under the influence. Law enforcement officials shall be allowed to ask for a preliminary breath test upon reasonable suspicion. Refusal to submit to a requested test may be considered by the Common Council as grounds for revocation, non-issuance, or non-renewal of the server's operator's license.

(c) Effect of Violation on Premises. If the principal business of the licensed premises is the sale of alcohol beverages, law enforcement officials will order it closed until such time as another licensed server or the licensee who is not in violation of this section shall take charge of such premises. It shall be a violation of this subsection for any licensed premises to be open contrary to such order of law enforcement officials. (Ord. 61-5604 §1, 2014, File No. 14-0107)

5.64.035 Alcohol Licensing and Serving of Alcohol Beverages. (a) Alcohol beverages are not allowed on the public sidewalk at any time. Such activity is governed by 5.64 of the city code of ordinances and by state laws. Notwithstanding the foregoing, the sale and service of alcohol beverages by full service restaurants located in the central business district may be permitted

provided an expansion of the premises is approved by the City Council for the area described in the sidewalk cafe permit.

(b) A request for expansion of the licensed premises to include a sidewalk cafe shall be made in writing to the city clerk. The request shall include the completed application along with the additional required documents per 5.63.040.

(c) In addition, the following standards, criteria, conditions and restrictions shall apply:

(1) The entire outdoor area utilized for service and consumption of food and beverages shall be visible from the restaurant establishment.

(2) Alcoholic beverages must be sold and served by the licensee or licensee's employees who have operator's licenses and sold, served and consumed by patrons seated at tables in the sidewalk cafe.

(3) Alcohol beverages may only be served at the sidewalk cafe when food service is available through the licensed establishment.

(4) The service and consumption of alcohol beverages in the sidewalk cafe shall be limited to the hours of operation of the sidewalk cafe.

(5) The permittee shall not allow patrons of the sidewalk café to bring alcohol beverages into the sidewalk cafe, nor to carry open containers of alcohol beverages about in the sidewalk cafe area, nor to carry open containers of alcohol beverages served in the sidewalk cafe outside the sidewalk cafe area.

(6) The licensee may only serve alcohol in single service cups for consumption in the sidewalk cafe.

(7) The permittee shall display a 8"x11" sign on the restaurants front door or other prominent location communicating that alcohol may only be consumed by patrons seated at tables in the sidewalk cafe.

(8) The bar from which the alcohol beverages are dispensed shall be located inside the establishment and shall not be located in the sidewalk cafe area.

(9) The license holder shall, in addition to all other requirements of the law, the city liquor license, and this section, take reasonable steps to ensure that alcohol beverages are consumed only by patrons of the establishment who are of legal drinking age, and not by passersby or persons who are not of age or who are obviously intoxicated and beverages are not removed from the premises. Failure to take reasonable steps and use them at all times in the sidewalk cafe is grounds for suspension or revocation of the sidewalk cafe permit.

(10) In the event a sidewalk cafe permit is suspended or revoked under section 5.63.100, service of alcohol in the sidewalk cafe area shall not be permitted.

(11) Approval by the common council of the sidewalk cafe as part of the license premise shall not be granted or renewed under this section without a valid sidewalk cafe permit. (Ord. 61-5575 §1, 2013, File No. 13-0611)

5.64.040 Hearing. Opportunity shall be given by the common council to any person to appear for or against the granting of any license. (Prior code §9.02(2)(c).)

5.64.050 License fees. The fees for licenses issued under this chapter shall be as specified in section 3.40.010(a). All fees deposited with the city treasurer for licenses covered by this chapter shall be nonrefundable. Fees for licenses must be paid fifteen (15) days prior to issuance. Licenses not paid within sixty (60) days of approval are deemed expired. (Ord. 61-5553 §14 (part), 2013, File No. 13-0309; Ord. 61-5133, 2001, File No. 01-1008; Ord. 61-4795 §1, 1993; prior code §9.02(3).)

5.64.055 Late filing fees. The city shall charge a late filing fee as specified in section 3.40.010(a) for alcoholic beverage license applications filed after the filing deadline as provided in Wisconsin Statutes 125.51(1)(c)1. (Ord. 61-5553 §15 (part), 2013, File No. 13-0309; Ord. 61-5075 §1(part), 2000.)

5.64.060 Restrictions generally. In addition to the requirements imposed by provisions of the Wisconsin Statutes adopted by reference in section 5.64.010, the restrictions in this chapter shall apply to the issuance of licenses or permits. (Prior code §9.02(4)(part).)

5.64.065 Sale of Class “B” packaged goods. (a) Sale Restrictions. Pursuant to Section 125.51(3)(b) of the Wisconsin Statutes, no person may sell intoxicating liquor in an original unopened package, container or bottle for consumption away from the premises in excess of four liters at any one time on any premises for which any Class “B” intoxicating liquor license or combination Class “B” alcohol beverage license has been issued. However, packaged goods sales of fermented malt beverages and wine from such premises may be made in any quantity.

(b) Hours of Sale. Between the hours of twelve midnight and eight a.m., no person may sell packaged goods from any Class “B” licensed premises. (Ord. 61-4631 §1, 1988.)

5.64.070 Corporations. No license shall be granted to any corporation when more than fifty percent of the voting stock interest, legal interest, or beneficial interest is held by any person or persons not eligible for the license under this section. (Ord. 61-4529 §2, 1983.)

5.64.075 Violations by agents and employees. A violation of this chapter by an authorized agent or employee of a licensee shall constitute a violation by the licensee. (Ord. 61-5449 §1, 2010; Ord. 61-4529 §3, 1983.)

5.64.076 Revocation and suspension of licenses. Whenever the holder of a license under this chapter violates any provision of this chapter, proceedings for the revocation or suspension of such license may be instituted in the manner and under the procedure established by Section 125.12

of the Wisconsin Statutes, and the provisions therein relating to granting a new license shall likewise be applicable. (Ord. 61-4708 §1(part), 1990.)

5.64.077 Nonrenewal of licenses. Proceedings for the refusal to renew a license issued under this chapter may be instituted in the manner and under the procedure established in Section 125.12 of the Wisconsin Statutes. (Ord. 61-4708 §1(part), 1990.)

5.64.078 Point values for alcohol beverage violations and revocations and suspensions.

(a) Purpose and definitions.

(1) The purpose of this subsection is to administratively interpret those portions Chapter 5.64 of the Wausau Municipal Code relating to establishing an alcohol beverage demerit point system to assist in determining which license holders should be subject to suspension or revocation procedures.

(2) The Public Health and Safety Committee of the City of Wausau Common Council is the committee which reviews alcohol licenses.

(b) Point schedule. The scale of demerit points is listed according to the type of alcohol beverage violation. This demerit point system is used to identify habitually troublesome license holders for the purpose of recommending suspension or revocation of their alcohol beverage licenses.

Type of Violation	Point Value
Sale or serve underaged person 2-5 (50) 6-10 (75) 10 (100) WMC 5.64.010 [125.07(1)]	1 = 25
Sale or serve intoxicated person WMC 5.64.010 [125.07(2)]	25
Underaged person on premises WMC 5.64.010 [125.07(3)]	25
No-alcohol night violations WMC 5.24 & 5.25	25
Failure to be licensed WMC 5.64.010 [125.09(1) & 125.66(1)]	50
Altering premises or changing location without permission WMC 5.64.010 [125.04(12) & 125.51(3)(d)]	25
False statement on application WMC 5.04.060(a)(1)	75
Transfer of license without permission WMC 5.64.010 [125.04(12)]	25

Type of Violation	Point Value
Failure to frame and post license WMC 5.64.010 [125.04(10)]	25
Conducting unlawful business WMC 5.64.010 [125.12(2)]	50
No licensed bartender WMC 5.64.010 [125.68(2)]	50
Server under the influence WMC 5.64.034(a)	25
Failure to close licensed premises WMC 5.64.034(3)	25
Sell fermented malt beverage after hours WMC 5.64.010 [125.32(3)(am)]	50
Open after hours WMC 5.64.140	25
Sell intoxicating liquor after hours 5.64.010 [125.68(4)(c)3]	25
Violation of any provision of alcohol licensing and serving of alcohol beverages (sidewalk cafes) provided in Sec. 5.64.035 which is not otherwise specifically provided for in this subsection WMC 5.64.035	50
Leaving with open container	25
Adult entertainment without permit WMC 5.20.020(a)	50
Nude or semi-nude entertainer or employee visible outside WMC 5.20.050(b)(1)	75
Refusal to cooperate with Fire Chief, Police Chief, or designee	75
Exceeding posted occupancy	50
Exceeding posted occupancy by more than 30 %	75
Operating while license is suspended	100
Unauthorized transfer or use of license	75
Owner or employee selling controlled substances on premises	75
Illegal drug paraphernalia on premises	50
Failure to maintain orderly premises, disorderly conduct within premises, failing to summon police or intervene to	50

Type of Violation	Point Value
prevent future violations, subject of noise complaints	
Penalty enhancer for severe offenses: Enhanced penalty for conduct which results in <ol style="list-style-type: none"> 1) Bodily harm to any individual 2) Creates a substantial risk of death or bodily harm 3) Involves the use of a firearm or other dangerous weapon Demonstrates an ongoing disregard for the requirements of state law or municipal ordinances	50

(c) Violations, how calculated. In determining the accumulated demerit points against a license within twelve (12) months, the City shall use the date each violation was committed as the basis for the determination.

(d) Suspension or revocation of license.

(1) The Public Health and Safety Committee shall call before it for purposes of a revocation or suspension hearing all licensees who have accumulated 100 points in a twelve-month period as a result of court imposed convictions or who have had referred to it reports from the City Attorney which, if believed, would result in 100 demerit points in twelve (12) months.

(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 points but not more than 200 points, the Public Health and Safety Committee 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 Public Health and Safety Committee in any subsequent suspension/revocation hearing which may result from the alleged violations which are the subject of the formal expression of concern. If the licensee fails to appear after service of the notice to appear, the matter shall be scheduled for a suspension/revocation hearing. Service of the notice to appear shall be by first class mail sent to the agent, if the licensee is a corporation or a limited liability company, to the licensee if an individual, or to any partner if the licensee is a partnership. If the notice is returned by the Post Office as undeliverable, the notice may be left with any employee found on the licensed establishment at least 24 hours before the date and time of the scheduled appearance before the Public

Health and Safety Committee. A formal expression of concern in lieu of the assessment of demerit points may only occur once within a one-year period.

This ordinance amendment shall apply only to violations that would trigger a formal expression of concern which occur after this ordinance is adopted.

(B) Any alcohol beverage violation not enumerated herein may still subject the license holder to suspension or revocation of the license pursuant to Wis. Stat. 125.12 procedure.

(C) Any suspension or revocation longer than ten (10) days shall result in a license eligible for immediate reissuance.

(2) If the demerit point accumulation, calculated from the date of violation, meets or exceeds: 150 points in a 12-month period, the suspension shall be for three (3) business days; 175 points in a 12-month period, the suspension shall be for seven (7) business days; 200 points in a 12-month period, the suspension shall be for twelve (12) months. If the license(s) is revoked, no other license shall be granted to such licensee for a period of twelve (12) months from the date of revocation. The period of suspension shall be the number of days the establishment is regularly open for business.

(3) Pursuant to Wis. Stat. 125.12 procedure, the license or permit issued under this chapter to a person for:

(A) bartending, shall be suspended for 14 days, if the committee finds that the person committed a violation within 6 months after committing one previous violation;

(B) bartending, shall be suspended for 12 months, if the committee finds that the person committed a violation within 12 months after committing 2 other violations;

(C) operating, shall be suspended for 3 days, if the committee finds that the person committed a violation within 6 months after committing one previous violation.

(4) Only once in each 12-month period, for any violation of 50 points, 25 points can be earned back if the tavern owner at his/her expense sends the offending bartender to responsible beverage course and the bartender completes the course; however, upon appeal, the committee may reduce points after a public hearing before the Public Health and Safety Committee.

(5) The procedure to be used for suspension or revocation shall be that found in section 5.64.076.

(6) Penalties. In this section, “violation” means a violation of this subsection if the violation results in court-imposed conviction or is the subject of a report referred to the public health and safety committee, which, if believed, would result in 100 demerit points in twelve (12) months. For purposes of determining previous violations, the period shall be measured from the dates of violations that resulted in an imposition of a forfeiture or a conviction. For the purpose of determining whether or not a previous violation has occurred, if more than one violation occurs at the same time, all those violations shall be counted as one violation. The assignment of points is delegated to the Chief of Police or his designee.

(e) Severability. The several terms and provisions of this section shall be deemed severable, and any provision hereof or the application hereof to any person or circumstances is held invalid remainder of the section and the applicability of such provisions to other persons circumstances shall not be affected thereby. (Ord. 61-5608 §1, 2014, File no. 03-0425; Ord. 61-5582 §1, 2013, File No. 03-0425; Ord. 61-5501 §1 & 2, 2012, File No. 03-0425; Ord. 61-5484 §1 & 2, 2011, File No. 03-0425; Ord. 61-5224 §1, 2004, File No. 03-0425; Ord. 61-5202, 2003, File No. 03-0425.)

5.64.080 Effect of revocation of license. No license shall be issued for any premises if a license covering such premises has been revoked within six months prior to application. No license shall be issued to any person who has had a license issued pursuant to this chapter revoked within twelve months prior to application. (Prior code §9.02(4)(b).)

5.64.084 Provisional retail licenses. The city clerk may issue provisional retail licenses in accordance with Section 125.185 of the Wisconsin Statutes, and the requirements of this section. Such licenses shall be issued within ten days of application.

(a) Provisional retail licenses may be issued only to persons applying for Class “A” beer, Class “B” beer, Class “A” liquor, Class “B” liquor, or Class “C” wine authorizing only the activities allowed that type of license.

(b) The fee for the provisional retail license shall be as specified in section 3.40.010(a) of this code.

(c) The provisional retail license shall expire sixty days after issuance or when the person is issued a retail license described in section 5.64.020. The provisional retail license may be revoked by the city clerk or police chief if it is discovered that the holder of the license made any false statement in the application for the license.

(d) Prior to issuing the provisional retail license, the police chief, or his/her designee, shall conduct a background check on the applicant. Such a background check shall occur within ten days of application under this section. The city clerk shall not issue the provisional license until receiving the results of any background check.

(e) The city clerk may not issue any provisional license under this section if such issuance will violate the city's quota under Chapter 125 of the Wisconsin Statutes.

(f) No person may hold more than one provisional retail license for each type of license applied for per year. (Ord. 61-5553 §16 (part), 2013, File No. 13-0309; Ord. 61-5012 §1, 1998.)

5.64.085 Provisional operator's licenses. (a) Pursuant to the authorization within Section 125.17 of the Wisconsin Statutes, there is created a provisional operator's license.

(b) The standards under which these licenses shall be issued shall be the same standards utilized for regular operator's licenses.

(c) The chief of the police department shall be authorized to issue a provisional operator's license.

(d) A provisional operator's license may be issued only to a person who has applied for a regular operator's license. A provisional operator's license may not be issued to any person who has been denied a regular operator's license by the city.

(e) The fee for a provisional operator's license shall be specified in section 3.40.010(a).

(f) A provisional operator's license expires sixty days after its issuance or when a regular operator's license is issued to the holder, whichever is sooner.

(g) The chief of the police department may revoke the license if he or she discovers that the holder of the license made a false statement on the application. (Ord. 61-5553 §17 (part), 2013, File No. 13-0309; Ord. 61-5050 §1, 1999; Ord. 61-4554 §1, 1984.)

5.64.090 Inspection of application and premises. The clerk shall notify the health officer, chief of police and director of inspections and electrical systems of all license and permit applications, and these officials shall inspect or cause to be inspected each application and premises to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto and the applicant's fitness for the trust to be imposed. These officials shall furnish to the common council in writing the information derived from such investigation. No license or permit provided for in this chapter shall be issued without the approval of a majority of the common council, and no license shall be renewed without a reinspection of the premises and report as required in this chapter. (Prior code §9.02(4)(c).)

5.64.110 Health and sanitation. No license shall be issued for any premises which do not conform to the sanitary, safety and health requirements of the Marathon County health department and to all such ordinances and regulations adopted by the city. (Ord. 61-5019 §2, 1998; prior code §9.02(4)(e).)

5.64.120 Tax delinquencies. No license shall be granted for operation on any premises upon which taxes or assessments or other financial claims of the city are delinquent or unpaid. (Prior code §9.02(4)(f).)

5.64.130 Obstructing view of premises. No premises licensed for the sale of intoxicating liquor at retail shall, during the days they are required to close or during the hours in which the sale

of liquor 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 liquor is permitted the premises shall be properly and adequately lighted. There shall be no partition, box, stall, screen, curtain or other device which shall obstruct the view of said room from the general observations of persons; provided, however, that partitions, subdivisions or panels not higher than forty-eight inches from the floor shall not be construed as in conflict with the foregoing; and provided, however, retail Class “B” licenses shall entitle the holder thereof to serve such beverages in a separate room at banquets or dinners. (Prior code §9.02(4)(g).)

5.64.140 Closing hours. Closing hours of Class “A” and Class “B” premises shall be as provided in Chapter 125 of the Wisconsin Statutes. (Ord. 61-5507 §1, 2012; Ord. 61-4529 §4, 1983.)

5.64.150 Enclosure required—Picnic licenses. (a) The license holder of a special temporary Class “B” (picnic) beer license or a special temporary “Class B” (picnic) wine license shall cause to be installed around the main point of sale a fence or fences at least seven feet in height measured from ground level, or two fences at least four feet high and eight feet apart, in order to control ingress and egress of persons and consumption of fermented malt beverages or wine; and shall station an adult at the entrance to the area for the purpose of checking age identification. The herein described fence regulations shall not apply to a licensed area within an enclosed building, Athletic Park, The 400 Block, Isle of Ferns Park, or the Wausau Downtown Airport.

(b) No fermented malt beverage or wine shall be served to or consumed by anyone outside of the fenced-in area.

(c) All license holders issued a special temporary Class “B” (picnic) beer license or a special temporary “Class B” (picnic) wine license shall post in a conspicuous location at the main point of sale and at all entrances to the facility a sufficient number of signs disclosing that no fermented malt beverage or wine shall be served to any underage person.

(d) A licensed operator shall be stationed at all points of sale at all times.

(e) Except as noted in paragraph (a), licensed events may apply for a waiver of the enclosure requirement by submitting an alcohol control plan to the public health and safety committee. The committee shall seek a recommendation from the police chief prior to taking action on the plan. In addition, the committee may place additional restrictions or conditions on the plan before granting a waiver. Each event requires a separate application for a waiver of the enclosure requirement.

(f) When the enclosure requirement is waived in accordance with (e) above, operators shall not sell alcohol beverage servings or containers larger than 20 ounces, nor shall multiple servings be sold to an individual on behalf of others without the operator ascertaining that those receiving the beverages are of legal age. A visible device or wristband that is tamper-resistant and nontransferable may be applied after the operator has ascertained that a purchaser and/or anyone receiving alcohol beverages are of legal age. (Ord. 61-5759 §1, 2018, File No. 86-0442; Ord 61-5373 §1, 2008, File No. 86-0442; Ord. 61-5318 §1, 2007, File No. 86-0442; Ord. 61-5271 §1, 2006,

File No. 86-0442; Ord. 61-5261 §1, 2005, File No. 86-0442; Ord. 61-5247 §1, 2005, File No. 86-0442; Ord. 61-5225 §1, 2004, File No. 86-0442; Ord. 61-4591 §1, 1986.)

5.64.160 Abandonment of Premises. Any license to sell alcohol beverages authorized by this Chapter may be subject to revocation, suspension or non-renewal pursuant to the procedures in Wis. Stats. 125.12 under the following circumstances:

- (a) It has not been issued following granting by the governing body contingent upon compliance with city requirements.
- (b) The subject premises is not open for business with stock and equipment within 90 days of the granting of such license; the public health and safety committee, for good cause, may extend said 90 day period of time for an additional 90 days if all of the following conditions have been met:
 - (1) At the time of application, the real property sought to be licensed does not have a permanent structure on it; and
 - (2) At the time of application, the real property sought to be licensed is either owned by the applicant, or is under lease to the applicant for a period greater than one year from the date of application, or is subject to an accepted offer to purchase, not conditioned on a future event. The deed, lease or offer to purchase must be presented to the public health and safety committee for review; and
 - (3) At the time of application, the applicant submits a floor plan for the structure intended to be constructed on the real property, said floor plan specifying that portion of the structure which is to be licensed; and
 - (4) The applicant agrees in writing, as part of the application, to submit to the public health and safety committee within 90 days of granting of the license or licenses a copy of the building permit and, if the applicant is not the owner or lessee of the property at the time of the application, a copy of the deed showing present ownership of the real property by the applicant; and
 - (5) The applicant agrees in writing, as part of the application to be diligent in all efforts to get the structure built and stocked within 180 days of the granting of the license.
- (c) The subject premises is not open for business at least 50% of the days within any 12-month period, either within a licensing year, or overlapping two licensing years.
- (d) The licensee does not own or lease a premises from which business may be conducted.

- (e) The licensee suspends or ceases doing business for a period of at least thirty (30) consecutive days; the public health and safety committee, for good cause, may extend said period of time for 90 additional days. An establishment is deemed to have ceased regular operations when any of the following occurs:
 - (1) The alcohol beverage license is surrendered to the city clerk absent the issuance of a newly-granted license; or
 - (2) The establishment is no longer open to the public; or
 - (3) The establishment is open to the public only intermittently in an attempt to circumvent the provisions of this subsection; or
 - (4) The establishment fails to maintain open and active accounts with its food and/or alcohol distributors; or
 - (5) The alcohol beverage license holder fails to submit a renewal application to the city clerk before the last possible submittal date.

(Ord. 61-5479 §1, 2011, File No. 01-1008; Ord. 61-5133, 2001, File No. 01-1008.)

5.64.170 Repossession of license or permit. Whenever any license or permit under this chapter shall be revoked or suspended by the common council, mayor, chief of police or action of any court or section 5.64.160, it shall be the duty of the clerk to notify the licensee or permittee of such suspension or revocation and to notify the chief of police, who shall take physical possession of the license or permit wherever it may be found and file it in the clerk's office. (Prior code §9.02(6).)

5.64.180 Penalty for violation. The penalty for violation of any of the provisions of this chapter shall be a penalty as provided in section 1.01.110, provided that no penalty imposed shall exceed the maximum allowed by Chapter 125 of the Wisconsin Statutes. A separate offense shall be deemed committed on each day on which a violation occurs or continues. (Ord. 61-4529 §6, 1983; prior code §9.02(7).)

Chapter 5.68

MOBILE HOMES AND MOBILE HOME PARKS⁵

Sections:

- 5.68.010 State statutes adopted.
- 5.68.020 Parking permit fee.
- 5.68.030 Park license required.
- 5.68.040 Reports required.
- 5.68.050 Penalty for violation.

5.68.010 State statutes adopted. The provisions of Section 66.0435 of the Wisconsin Statutes, and the definitions therein are hereby adopted by reference. (Ord. 61-4157 §1(part), 1970.)

5.68.020 Parking permit fee. There is hereby imposed on each occupied, nonexempt mobile home located in the city a monthly parking fee as determined in accordance with Section 66.0435 of the Wisconsin Statutes. Said fees shall be paid to the city treasurer on or before the tenth day of the month following the month for which such fees are due. (Ord. 61-4157 §1(part), 1970.)

5.68.030 Park license required. It is unlawful for any person to establish or operate upon property owned or controlled by him within the city a mobile home park without having first secured a license therefor from the city clerk. The application for such license shall be accompanied by a fee as provided in section 3.40.010(a) for each fifty spaces or fraction thereof within each mobile home park. The license shall expire one year from the date of issuance. Such parks shall comply with Wisconsin Administrative Code H 77, which is adopted by reference. (Ord. 61-5605 §14(part), 2014; Ord. 61-4885 §1, 1995; Ord. 61-4157 §1(part), 1970.)

5.68.040 Reports required. (a) Licenses of mobile home parks and owners of land on which are parked any occupied, nonexempt mobile homes shall furnish information to the city clerk and city assessor on such homes added to their park or land within five days after arrival of such home on forms furnished by the city clerk in accordance with Section 66.0435(3)(c) and (e) of the Wisconsin Statutes.

(b) Occupants or owners of nonexempt mobile homes parked outside of a mobile home park shall remit such fees directly to the city treasurer as provided in section 5.68.020. It shall be the full and complete responsibility of the licensee of a mobile home park to collect such fees from each occupied, nonexempt mobile home therein and to remit such fees to the city treasurer as provided in section 5.68.020.

⁵ Prior history: Prior code §9.11.
For statutory provisions providing board and general licensing and regulatory powers over mobile homes and mobile home parks, see § 66.0435, Wis. Stats.

(c) Owners of nonexempt, occupied mobile homes, upon receipt of notice from the city clerk of their liability for the monthly parking permit fee, shall remit to the city clerk a cash deposit of twenty-five dollars to guarantee payment of such fees when due to the city treasurer. It shall be the full and complete responsibility of the licensee of a mobile home park to collect such cash deposits from each occupied, nonexempt mobile home therein and remit such deposits to the city clerk. Upon receipt of a notice from the owner or licensee that the nonexempt, occupied mobile home has been or is about to be removed from the city, the city clerk shall direct the city treasurer to apply said cash deposit to reduce any monthly parking permit fees for which said owner is liable and refund the balance, if any, to said owner. (Ord. 61-4157 §1(part), 1970.)

5.68.050 Penalty for violation. Any person, firm or corporation who fails to comply with any provisions of this chapter shall, upon conviction thereof, forfeit not less than twenty dollars nor more than one hundred dollars together with the costs of prosecution for each violation and in default of payment thereof shall be imprisoned in the county jail of Marathon County, Wisconsin, until payment of such forfeiture and costs, but not exceeding five days, provided that the maximum forfeiture for violation of section 5.68.040 (a) shall be twenty-five dollars. (Ord. 61-4157 §1(part), 1970.)

Chapter 5.72

TAXICABS AND DRIVERS⁶

Sections:

- 5.72.010 License required.
- 5.72.020 Insurance required.
- 5.72.030 Public health and safety committee to approve licenses.
- 5.72.040 License fee.
- 5.72.050 Register.
- 5.72.060 Coverage.
- 5.72.070 Condition of vehicles—Operation.
- 5.72.080 Marking of taxicabs.
- 5.72.090 Permit required.
- 5.72.100 Qualifications.
- 5.72.110 Revocation.
- 5.72.120 Permit to be posted.
- 5.72.130 Operating restrictions and conditions.

5.72.010 License required. No person shall operate a public vehicle, taxicab, van or public livery or automobile for hire upon the streets of the city, without first obtaining a license from the city. Vehicles operated by volunteers or by public or not-for-profit agencies are excluded from the provisions of this chapter. (Ord. 61-4818 §2, 1987; prior code §9.09(1).)

5.72.020 Insurance required. Such license shall be issued and granted only upon the condition that the person applying therefor shall first obtain, from a reliable insurance company licensed to do business in Wisconsin, and keep in force during the continuance of the license, a policy of liability insurance with a minimum combined single limit of not less than \$1 million dollars of liability per occurrence for bodily injury and property damage, and shall further furnish the city a Certificate of Insurance, on a form acceptable to the city, naming the City of Wausau, its employees and agents, representatives, and elected and appointed officials as additional insureds. Whenever such policy is cancelled, not renewed, or materially changed, the insurer and the licensee shall notify the city by certified mail. As a further condition the person applying for the license, by applying for the license, agrees to permit the police department of the city to regularly inspect any vehicle used as a taxicab at any time the police department may require an inspection and agrees to correct any defect found in the mechanical or other equipment of the automobile, as may be required by the department during the period for which the license is to be issued. Failure to correct any defect found by the police department in the mechanical equipment or otherwise of any vehicle used for taxicab purposes shall be cause for revocation of the license. (Ord. 61-5740 §1, 2017; Ord. 61-4788 §1, 1993; Ord. 61-4678 §1, 1989; Ord. 61-4231 §1, 1973; prior code §9.09 (2).)

⁶ For statutory provisions authorizing the licensing of taxis and taxicabs, see § 349.24, Wis. Stats.

5.72.030 Public health and safety committee to approve licenses. All applications for licenses for the operation of taxicabs or other public vehicles under this chapter shall be approved by the public health and safety committee before a license is issued. The committee shall require the applicant to furnish proof that public convenience and necessity require the licensing of the applicant. The committee may require proof of financial responsibility of the applicant in addition to the insurance provided in section 5.72.020. The applicant shall also file with this application the number of vehicles to be operated under the license, together with a complete description of each vehicle to be operated under the license, and the data shall be filed with the clerk. Should an applicant desire to add to the vehicles or to make a change in the vehicle operated under the license, he shall make and file any additions or substitutions with the clerk. The committee, on receipt of the application, shall fix a date for the hearing thereof and shall notify the applicant of the date. (Ord. 61-4963 §5(part), 1996; Ord. 61-4231 §1, 1973; prior code §9.09(3).)

5.72.040 License fee. An application for a license hereunder shall contain the name of the insurance company carrying the insurance, the policy number and the amount of the insurance carried. After the committee has held a hearing on the application and has recommended that the license be granted, then upon the payment of the license fee specified in section 3.40.010(a) to the city clerk, the license shall be issued by the clerk and, when so licensed, there shall be delivered to the licensee a license card containing the official license number of the license. Should the committee determine that the public convenience and necessity does not require an additional taxi service within the city, the committee may refuse to issue a license to any applicant, even though the applicant is otherwise qualified to receive a license. (Ord. 61-5553 §18 (part), 2013, File No. 13-0309; Ord. 61-4963 §5(part), 1996; Ord. 61-4857 §2, 1994; Ord. 61-4231 §3, 1973; prior code §9.09(4).)

5.72.050 Register. The clerk shall keep a register of the name of each person owning a vehicle license under this chapter, together with the license number. (Prior code §9.09(5).)

5.72.060 Coverage. "Taxicab," "automobile" or "public vehicle," as used in this chapter, includes and means vehicles propelled by motor power engaged for the purpose of carrying persons for hire upon the streets of the city, and which is operated by the owner, his or its agent or employee. Nothing in this section shall be deemed or construed as being applicable to any inter-city bus line, hotel bus line, street railway car or bus line, hospital ambulance, hearse or motor vehicle operated by the undertakers of this city in their usual business. (Prior code §9.09(6).)

5.72.070 Condition of vehicles—Operation. All licensees under this chapter shall keep all vehicles used in the taxi service, or for the conveyance of passengers, in a clean and sanitary condition at all times and shall keep the vehicles in proper repair and maintenance and operate the vehicles upon the streets of the city in a safe and careful manner. (Prior code §9.09(7).)

5.72.080 Marking of taxicabs. Every vehicle used for carrying of passengers for hire shall be conspicuously marked on the right and left side of the vehicle with the name of the owner of the vehicle, together with the owner's number of the vehicle, the letters and numbers not to be less than three inches in length, and such letters and numbers to be of a light color on a dark background, or dark color on a light background. A card containing the name of the owner, license number and the number of the vehicle shall be placed and at all times kept in a conspicuous place inside of such

vehicle. No vehicle shall be used for carrying passengers until the foregoing provisions have been complied with. (Prior code §9.09(8).)

5.72.090 Permit required. No person shall operate any vehicle for the transportation of passengers for hire within the limits of the city until he or she has obtained a taxicab driver's permit from the city clerk's office. (Ord. 61-5760 §1, 2018; Ord. 61-5740 §2(part), 2017; Ord. 61-4963 §5(part), 1996; prior code §9.10(1).)

5.72.100 Qualifications. Such permit shall not be granted to any person under the age of eighteen years or to any person who has been convicted by a court of competent jurisdiction for any offense involving moral turpitude or for driving a motor vehicle as a conveyance of persons for hire while under the influence of intoxicating liquor, or other controlled substance, while such conviction remains of record and is not reversed; provided, however, that a permit to a person within such prohibited class may be granted under such circumstances within the discretion and upon approval of the chief of police for good cause shown where more than five years have elapsed from the date of expiration of sentence, except as to persons convicted of rape, murder, manslaughter or sex offenses. A person shall not be issued a permit unless he or she currently holds a valid Class D Wisconsin driver's license. (Ord. 61-5734 §1, 2017; Ord. 61-4722 §1, 1990; Ord. 61-4231 §4, 1973; prior code §9.10(2).)

5.72.110 Revocation. (a) Any taxicab driver's permit issued hereunder shall be revoked by the committee if the operator has been convicted by a court of competent jurisdiction of an offense involving moral turpitude or for driving while under the influence of intoxicating liquor, or other controlled substance, when such sentence remains of record unrevoked.

(b) Any taxicab driver's permit issued hereunder may be revoked by the committee upon the conviction of the operator by a court of competent jurisdiction for speeding or reckless driving when such sentence remains of record unrevoked. (Ord. 61-4231 §5, 1973; prior code §9.10(3).)

5.72.120 Permit to be posted. Upon granting of such permit pursuant hereto, the applicant shall receive a written permit stating the date of expiration to which shall be attached a photograph of the applicant, which permit shall be placed in a conspicuous place in the vehicle operated by such driver.

5.72.130 Operating restrictions and conditions. (a) No person operating a public vehicle, taxicab, van or public livery or automobile for hire service upon the streets of or within the City shall allow any person, agent or employee to operate any of its vehicles without the proper permit.

(b) No person operating a public vehicle, taxicab, van or public livery or automobile for hire service shall allow any person, agent, or employee to operate any of its vehicles unless that person holds a valid Wisconsin driver's license.

(c) No person shall operate any vehicle for the transportation of passengers for hire while such person's Wisconsin driving privileges are suspended or revoked. (Ord. 61-5761 §1, 2018, File No. 11-1008; Ord. 61-5214 §1, 2003, File No. 90-1037; Prior code §9.10(4).)

Chapter 5.73

COMMERCIAL QUADRICYCLE LICENSING

Sections:

- 5.73.010 Definitions.
- 5.73.020 License required.
- 5.73.030 License fee.
- 5.73.040 License term.
- 5.73.050 License application.
- 5.73.060 Insurance.
- 5.73.070 Approved assembly sites and routes required.
- 5.73.080 Operating restrictions and conditions.
- 5.73.090 Vehicle safety and equipment standards.
- 5.73.100 Commercial quadricycle business licensee responsibilities.
- 5.73.110 Revocation or suspension.
- 5.73.120 Commercial quadricycle passengers.
- 5.73.130 Penalties.

Section 1. That Chapter 5.73 Commercial Quadricycle Licensing is hereby created to read as follows:

5.73.010 Definitions. For purposes of this chapter, the following definitions shall apply:

- (a) “Commercial Quadricycle” has the meaning given in Wis. Stat. s. 340.01(8m).
- (b) “Commercial Quadricycle Business” means any person, entity or other enterprise that owns a commercial quadricycle or manages the operation of a commercial quadricycle for profit or not for profit.
- (c) “Commercial Quadricycle Driver” means any person who operates a commercial quadricycle.

5.73.020 License required. (a) No person may engage in the activity of operating a commercial quadricycle business without first obtaining a license from the city clerk as required under this chapter.

(b) No person shall operate a commercial quadricycle without obtaining a commercial quadricycle driver’s license from the city clerk as required under this chapter.

5.73.030 License fee. (a) The annual fee for a commercial quadricycle business license shall be as set forth in section 3.40.010(a).

(b) The annual fee for a commercial quadricycle driver’s license shall be as set forth in section 3.40.010(a).

(c) The license fee for any license issued under this chapter shall be paid at the time the application is filed with the city clerk. License fees are non-refundable.

5.73.040 License term. Licenses issued under this chapter shall be issued on an annual basis beginning on January 1 and expiring December 31.

5.73.050 License application. (a) Applicants for a commercial quadricycle business license shall submit a sworn application on a form provided by the city clerk which shall give the following minimum information:

- (1) Name, address, and telephone number of the applicant; indicate whether the applicant is a natural person, partnership, corporation, unincorporated association or limited liability company; and, the names and addresses of all partners, members or officers and directors of the entity or enterprise as the case may be.
- (2) If the applicant is a natural person, the date of birth and driver's license number of the applicant. If the applicant is a partnership, corporation, unincorporated association or limited liability company; the names and addresses of all partners, members, or officers and directors of the entity or enterprise as the case may be.
- (3) A statement of whether the applicant or any partner, member, officer or director has been arrested or convicted of any crime or ordinance violation together with a description of the nature of the offense and the place of conviction.
- (4) The number of quadricycles to be operated or controlled by the applicant, the serial number of each vehicle, the number of persons the vehicle is designed to carry and a photograph of the quadricycle unit(s) to be operated.
- (5) A detailed description or map of the proposed route on which the quadricycle is to be operated.
- (6) The location of proposed depots or terminals where passengers will be picked up or dropped off and written permission from the property owner where such depots or terminals will be located.
- (7) Such further information as the city may require.

(b) Applicants for a commercial quadricycle driver's license shall submit a sworn application on a form provided by the city clerk which shall give the following minimum information:

- (1) Full name, address, phone number, and date of birth of the applicant.
- (2) Driver's license number.
- (3) An acceptable passport sized photograph of the applicant.
- (4) A statement of whether the applicant has been arrested or convicted of any crime or ordinance violation together with a description of the nature of the offense and the place of conviction.
- (5) Such further information as the city may require.

(c) Every quadricycle driver shall meet and maintain the following requirements in order to hold a commercial quadricycle driver's license:

- (1) A valid driver's license issued by the state in which they reside and be eligible to drive in the State of Wisconsin.
- (2) Be at least 18 years of age.
- (3) Shall not have an arrest or conviction record subject to Wis. Stat. §§111.321, 111.322, and 111.335.
- (4) Have successfully completed within the 2 years prior to the date of application the responsible beverage server training course set forth in Wis. Stat. §125.04(5)(a)5.
- (5) Any time a quadricycle driver's automobile driver's license is suspended, revoked, or canceled, the quadricycle driver's license shall likewise be immediately suspended, revoked or canceled until such time as his or her automobile driver's license is reinstated, at which point he person may reapply to the City for a quadricycle driver's license.

5.73.060 Insurance. A commercial quadricycle business must have in force at all times, adequate liability insurance and must agree to indemnify, defend, and hold the city, its employees and agents harmless against all claims, liability, loss, damage, or expense incurred by the city as a result of any injury to or death of any person or damage to property caused by or resulting from the activities for which a license may be granted. As evidence of liability insurance, the commercial quadricycle business shall furnish a Certificate of Insurance, on a form acceptable to the city, evidencing the existence of commercial general liability insurance naming the City of Wausau, its employees and agents as additional insureds with minimum limits of two million dollars (\$2,000,000.00) in the aggregate. The policy of insurance or insurance certificate shall identify each commercial quadricycle covered by the policy. Whenever such policy is cancelled, not renewed, or materially changed, the insurer and the licensee shall notify the city by certified mail. No license shall be issued until the applicant provides proof of insurance in compliance with this section.

5.73.070 Approved assembly sites and routes required. (a) All commercial quadricycle businesses shall operate tours only from approved commercial locations on private property approved by the city. These sites shall be used by the licensed business as the locations for patrons to gather and assemble prior to embarking on a commercial quadricycle tour and to disembark at the conclusion of the tour. Approved sites shall provide patron access to restroom facilities.

(b) Commercial quadricycles shall operate only on routes approved by the chief of police or his or her designee, the public health and safety committee and the common council. Any new route must be applied for and approved by the common council in advance. Temporary routes must be applied for and approved by the chief of police or his or her designee. A temporary route application must be submitted in writing and include a proposed map no later than three (3) business days prior to the applicant's proposed first date of operation of the temporary route. No quadricycle driver may operate a commercial quadricycle on a street closed off to public traffic regardless of whether the street has been included in an approved route.

5.73.080 Operating Restrictions and Conditions. (a) Commercial quadricycles shall only be operated on routes specified in the approved application.

(b) No person may drive a commercial quadricycle occupied by passengers after 10:30 p.m. or before 10:00 a.m.

(c) No commercial quadricycle shall use any public street or other public property as a waiting area unless such area is a legal motor vehicle parking area or as otherwise permitted pursuant to this code.

(d) No driver shall stop to load or unload passengers or their belongings in the intersections of any street, in a crosswalk or in any manner or other location that would be considered unsafe. No driver shall load or unload in any such manner that will in any way impede or interfere with the orderly flow of traffic on the streets.

(e) No commercial quadricycle shall be operated or parked on a public sidewalk.

(f) No commercial quadricycle business or driver shall allow any person to drive a commercial quadricycle unless that person holds a valid commercial quadricycle driver's license and a valid Wisconsin driver's license or valid driver's license issued by any other state. No person may drive a commercial quadricycle while such person's Wisconsin driving privileges are suspended or revoked.

(g) The driver of a commercial quadricycle shall operate the quadricycle at all times in compliance with applicable city and state traffic and parking laws. A commercial quadricycle driver shall not permit or cause a commercial quadricycle to be operated in any unsafe manner or operating condition.

(h) Each passenger on a commercial quadricycle is permitted to carry on to the

commercial quadricycle no more than 36 ounces of fermented malt beverages as defined in Wis. Stat. §125.02(6). No other alcohol beverages as defined in ch. 125, Wis. Stats. may be possessed on, carried upon, or consumed upon a commercial quadricycle.

(i) No alcohol beverages, including fermented malt beverages shall be possessed, carried on, or consumed on a commercial quadricycle if any passenger on the commercial quadricycle has not attained the legal drinking age as defined in Wis. Stat. §125.02(8m) unless that person is accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age.

(j) No driver or employee riding on a commercial quadricycle may consume alcohol or have a blood alcohol concentration of more than 0.0 while hired to transport passengers.

(k) No glass containers may be carried on a commercial quadricycle.

(l) No person may drive a commercial quadricycle on which any alcohol beverages are carried or consumed other than fermented malt beverages under this section.

(m) All commercial quadricycles shall be clean and maintained in a good state of repair. All commercial quadricycles shall be well painted, have an appearance free of damage or deterioration and be in a safe operational condition. Passenger compartments shall be free of trash and refuse and free of odor. Seats shall be kept clean and free of stains and tears. Commercial quadricycles shall be inspected daily by the commercial quadricycle business and the driver for daily wear and tear and any adjustments and repairs shall be made before transporting passengers.

(n) No commercial quadricycle driver shall permit more passengers to be carried in a commercial quadricycle other than the normal seating capacity and no more than two persons in addition to the driver shall be in the center aisle while quadricycle is in motion.

(o) No commercial quadricycle driver shall text or use a cell phone or any other type of electronic device while driving a commercial quadricycle.

(p) No driver shall drive or be permitted to drive a commercial quadricycle for more than a period of ten hours in any twenty-four hour day.

(q) No music or amplified sound shall be played, nor yelling or conversation conducted in such a manner that the sound carries to nearby residences or properties and is audible above the level of conversational speech at a distance of 50 feet or more from the point of origin of the sound.

(r) It is the responsibility of the driver to actively and affirmatively manage the behavior of the passengers so that their behavior remains law abiding during the excursion, both while the vehicle is in motion and at a stop. Behavior which shall be prohibited and prevented includes specifically, but is not limited to, violations of state law and local ordinances regarding indecent exposure, disorderly conduct, public urination and littering.

(s) All commercial quadricycles shall be, at all reasonable times, subject to inspection by the city police department.

(t) All commercial quadricycles shall have the trade name and telephone number of the commercial quadricycle business conspicuously displayed on the commercial quadricycle. A commercial quadricycle shall conspicuously display the commercial quadricycle business license.

(u) It is the responsibility of the commercial quadricycle driver to properly dispose of all trash.

(v) Any commercial quadricycle not in compliance with the minimum requirements of this chapter may be cited and placed immediately out of service. Any quadricycle which has been so removed from service shall not be returned to service until such vehicle has been approved by the chief of police for resumption of service.

5.73.090 Vehicle Safety and Equipment Standards. No commercial quadricycle business licensee or driver shall operate or allow the operation of a commercial quadricycle on any street unless the commercial quadricycle meets the following equipment and safety standards:

(a) Tires. Tires shall be of a size appropriate for the vehicle with no mismatched tires per the design of the vehicle. There shall be no cuts to the tire, localized worn spots that expose the ply, or visible tread wear indicators.

(b) Operational horn. The commercial quadricycle shall be equipped with a fully operational horn or bell.

(c) Brakes. The commercial quadricycle shall be equipped with a front and rear braking system capable of being manipulated by the driver from the driver's normal position of operation and capable of causing a commercial quadricycle with a loaded passenger compartment to come to a complete stop in a linear path of motion when each wheel of the vehicle is in contact with the ground on dry, level, clean pavement. The braking system controlling the rear wheels shall be a hydraulic disc braking system, which are unaffected by rain or wet conditions. An emergency brake shall also be provided in addition to the hydraulic disc braking system.

(d) Headlights, taillights, mirrors, turn signals, and other requirements. Every commercial quadricycle shall be equipped with the operational equipment set forth in the subsections below:

- (1) A headlight capable of projecting a beam of white light for a distance at a minimum of 300 feet which shall be clearly visible during darkness and must be illuminated at all times during darkness.
- (2) A side-mounted mirror or a wide-angle rearview mirror affixed to the commercial quadricycle to reflect to the operator a view of the street for a

distance of at least 200 feet from the rear of the commercial quadricycle.

- (3) A red light and brake light affixed to the rear of the commercial quadricycle which must be visible for a distance of at least 200 feet from the rear of the commercial quadricycle and must be illuminated at all times during darkness. Turn signals must be affixed to the front and rear of the vehicle.
- (4) All commercial quadricycles shall have reflectors on the frame and a red reflector mounted on each side of the rear of the vehicle, at least one inch from the outer edge and centered. In addition, the international slow-moving triangle must be displayed on the rear of the commercial quadricycle.

5.73.100 Commercial quadricycle business licensee responsibilities. Every licensed commercial quadricycle business shall:

- (a) Take affirmative measures to ensure that all of its owners and drivers comply with the terms of this chapter.
- (b) Be responsible for ensuring that all commercial quadricycles are operated by a commercial quadricycle driver with a valid commercial quadricycle driver's license issued under this chapter.
- (c) Ensure that no commercial quadricycle is operated in an unsafe mechanical condition or continues to operate after it has been ordered out of service.

5.73.110 Revocation or suspension. In addition to all other penalties, any violation of the terms of this chapter shall be grounds for revocation, suspension, or nonrenewal of the license pursuant to the provisions of chapter 5.04.

5.73.120 Commercial quadricycle passengers. No passenger on a commercial quadricycle shall disembark from the commercial quadricycle while it is in motion, while it is located in the intersection of any street, or other location that would be considered unsafe.

5.73.130 Penalties. (a) Any person violating this chapter shall, upon conviction for a first offense, forfeit \$100.00, together with the costs of prosecution. Each and every day during which any such violation continues shall constitute a separate violation.

(b) Any person violating this chapter shall, upon conviction for a second or subsequent offense, forfeit \$200.00, together with the costs of prosecution. Each and every day during which any such violation continues shall constitute a separate violation. (Ord. 61-5756 §1, 2017, File No. 17-1105.)

Chapter 5.74

HORSE-DRAWN CARRIAGE

Sections:

- 5.74.010 License required.
- 5.74.020 Insurance required.
- 5.74.030 Application for license.
- 5.74.040 Conditions of license.
- 5.74.050 License fee.
- 5.74.060 Suspension and revocation.

5.74.010 License required. No person shall operate a horse-drawn carriage for hire upon the streets of the city without first obtaining a license from the city. (Ord. 61-4939 §2(part), 1996.)

5.74.020 Insurance required. Such license shall be issued and granted only upon condition that the person applying therefor shall first obtain from a reliable insurance company licensed to do business in the state of Wisconsin, and keep in force during the continuance of the license, a policy of liability insurance with limits of one hundred thousand dollars per person and three hundred thousand dollars per occurrence for bodily and personal injury and one hundred thousand dollars for damage to property, resulting from the negligence of the operator of the vehicle of the carriage, during the period for which the license is to be issued. (Ord. 61-4939 §2(part), 1996.)

5.74.030 Application for license. Application for such license shall be made in writing to the city clerk, upon such form as shall be provided by the clerk, and shall contain the name and address of the applicant, the number of carriages to be operated under the license together with a complete description of each carriage to be operated. An application shall also contain the name of the insurance company carrying the insurance, the policy number and the amount of the insurance carried by the applicant. Upon receipt of the application by the city clerk, the city clerk shall forward the application to the chief of police for review and approval. The clerk shall then forward the recommendation of the chief of police to the public health and safety committee along with the license application for the committee's review and approval. (Ord. 61-4939 §2(part), 1996.)

5.74.040 Conditions of license. (a) All carriage licensees shall comply with Chapter 8.08 and Section 12.60.010(c) of the Wausau Municipal Code.

(b) Routes and Hours of Operation. Licensees shall submit proposed hours and routes of operation to the traffic lieutenant for review and approval. Horse-drawn carriages shall operate only within hours and upon routes approved by the traffic lieutenant. If the operator does not operate a regular route but operates for a specific event, the route must be submitted to the traffic lieutenant for approval at least fifteen days prior to the event under the annual licensure requirements contained in this chapter.

(c) **Maximum Number of Passengers.** No horse-drawn carriage shall be allowed to carry more than six adult passengers and no more children than can be seated on the seats, except children under five years of age who may be carried by an adult.

(d) **Riding With Driver Prohibited.** A driver of any horse-drawn carriage shall not permit any passenger to sit along side the driver while the driver is engaged in the operation of the horse-drawn carriage service. Only the licensee and/or an employee of the licensee shall be permitted to drive a horse-drawn carriage and/or be seated in the drivers seat.

(e) The operator and driver of a horse-drawn carriage shall insure that the carriage complies with all regulations for operation of carriages on the roadways as set forth in Chapters 340 through 347 of the Wisconsin Statutes.

(f) Such license shall be valid for a period of one year. License year runs July 1 to June 30.

(g) **Condition of Vehicles.** All licensees under this chapter shall keep all carriages used in the horse-drawn carriage service in a clean and sanitary condition at all times and shall keep the carriage in proper repair and maintenance. All horse-drawn carriages shall be equipped with operative brakes. The harness attachment shall be such so that the horse cannot break away from its harness or carriage. The licensee for the horse-drawn carriage business shall insure that the carriage has been properly fitted with safety measures to ensure that any key parts will not accidentally loosen.

(h) For each animal that will be pulling a permitted carriage, licensees shall provide a current veterinary certification that the animal is in good health.

(i) The operator and driver of a horse-drawn carriage shall keep all routes and carriage stands clean and free of animal excrement. (Ord. 61-5284 §1, 2006, File No. 89-0124; Ord. 61-4939 §2(part), 1996.)

5.74.050 License fee. An applicant for a license hereunder shall submit payment of the license fee as specified in section 3.40.010(a) to the city clerk along with the yearly license application. (Ord. 61-5553 §19 (part), 2013, File No. 13-0309; Ord. 61-5051 § 1, 1999; Ord. 61-4939 §2(part), 1996.)

5.74.060 Suspension and revocation. The provisions of sections 5.04.060, 5.04.070, 5.04.080, and 5.04.090 shall apply to all licenses issued under this chapter. (Ord. 61-4939 §2(part), 1996.)

Chapter 5.76

GASOLINE SALES

Sections:

5.76.010 Deceptive advertising in gasoline sales.

5.76.010 Deceptive advertising in gasoline sales. All advertising which shows or in any manner relates to the price at which motor fuel is offered for sale at retail shall show only a single gallon unit price including all applicable taxes in one amount. All numerals in any advertising which represent prices shall be of the same type and size except that numerals designating fractions of a cent shall be shown in figures not less than one-half the height, width and prominence of the whole numbers. Any and all pumps or other devices from which delivery of the advertised motor fuel is made shall be so adjusted as to compute such deliveries at the lowest advertised price for such motor fuel. (Ord. 61-4028 §1, 1965; prior code §12.06.)

Chapter 5.78

CABLE TV FRANCHISE

Sections:

5.78.010	Purpose.
5.78.020	Definitions.
5.78.030	Service of notice.
5.78.040	No liability or warranty.
5.78.050	Length of franchise.
5.78.060	Cable communications committee.
5.78.070	Franchise territory.
5.78.080	Construction.
5.78.090	Installation and extension of service.
5.78.100	Service to customers.
5.78.110	Service standards.
5.78.120	Channels to be provided.
5.78.130	Technical performance and standards.
5.78.140	Local regulatory framework.
5.78.150	Selection of the franchisee.
5.78.160	Bonds.
5.78.170	Franchise fee.
5.78.180	Transfer or sale of franchise.
5.78.190	Obscenity.
5.78.200	Indemnity and insurance.
5.78.210	Rates.
5.78.220	Police powers.
5.78.230	Use of streets and pole attachments.
5.78.240	Transfers and assignments.
5.78.250	Breach.
5.78.260	Reports.
5.78.270	Review, renewal, termination, and cancellation.
5.78.280	Renewal.
5.78.290	Termination.
5.78.300	Miscellaneous.
5.78.310	Penalty.

5.78.010 Purpose. The purpose of the chapter is:

(a) To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of the cable communications system in, upon, along, across, above, over, under or in any manner connected with the streets, public ways, or public places within the corporate limits of the city, as now or in the future may exist; and

(b) To provide for payment of a fee and other valuable consideration to the city for construction and operation of cable communications system; and

(c) To provide for the regulation by council of rates to be charged to subscribers for basic service; and

(d) To provide for the development of the cable communications system and for other public purposes; and

(e) To provide remedies and prescribed penalties for the violation of this chapter. (Ord. 61-4568 §2(part), 1984.)

5.78.020 Definitions. For the purposes of this chapter and any agreement awarding a franchise in accordance with this chapter, the following terms, phrases, words and their derivations, shall have the meaning given in this chapter unless otherwise specifically provided in this chapter, unless the context clearly indicates otherwise or unless such meaning would be consistent with the manifest intent of council.

(1) “Agency” means any department of city government.

(2) “Additional service” means any communications service other than basic service, provided directly over its cable communications system by the franchisee directly or as a carrier to its parent, subsidiary or affiliated corporations, or any other person engaged in communications service including, but not limited to, burglar alarm, data or other electronic intelligence transmission, facsimile reproduction, meter reading, subscription programming, market surveying and home shopping.

(3) “Affiliated corporation” means:

(A) Any person directly or indirectly owning, controlling or holding with power to vote, ten percent or more of the outstanding voting securities of the franchisee;

(B) Any person ten percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by the franchisee;

(C) Any person directly or indirectly controlling, controlled by, or under common control, with the franchisee;

(D) Any officer, director, partner, copartner or employee of the franchisee;

(E) If the franchise is an investment company, any investment adviser thereof or any member of an advisory board thereof; and

(F) If the franchisee is an unincorporated investment company not having a board of directors, the depositor thereof.

(4) “Basic service” means the complement of programming and services distributed by the cable communications system to all subscriber terminals to all locations within the city, for a basic monthly charge and includes:

- (A) Television broadcast signals required to be carried under federal or local law;
- (B) Community communications;
- (C) Programming or services on channels designated for special purposes by council and incorporated in any franchise agreement; and
- (D) Any other services or programming at the option of the franchisee as set forth in the franchise agreement, provided, however, that subscription programming shall not be considered part of basic service.

(5) “Book value” means the original cost of the cable communications system less book depreciation and exclusive of the value of the franchise as certified by a certified public accountant selected by the city council at the expense of the franchisee.

(6) “Cablecasting” means transmission of programming, exclusive of live broadcast signals and community communications, via the cable communications system to subscribers.

(7) “Cable communications system” means a nonbroadcast facility consisting of a set of transmission paths with associated signal generation, reception and control equipment, under common ownership and control which distributes or is designed to distribute to subscribers, the sign of one or more television broadcast stations.

(8) “Channel” means a frequency band which is capable of carrying a standard broadcast audio-video television signal.

(9) “City” means the city of Wausau.

(10) “City clerk” means the clerk of the city.

(11) “Channel lessee” means a person leasing a cable channel for the presentation and distribution of video-audio programs or other video-audio communications over a cable channel for a specified fee.

(12) “Leased channel” means a channel leased by the franchisee to permit the presentation and distribution of video-audio programs or other video-audio communications over a cable channel for a specified fee.

(13) “Committee” means the public health and safety committee of the common council which acts as the advisory body to it on matters pertaining to cable communications.

(14) "Community access" means programming, exclusive of broadcasting signals, produced by persons, organizations or institutions other than the franchisee at designated centers or otherwise for cablecast over any designated community access channels.

(15) "Council" means the council of the city.

(16) "Discrete services" means services available on the cable communications system which may be provided to subscribers on an individual and/or group basis and which may be particular to that subscriber and/or group and not available system-wide. Discrete services are cable communications services which are delivered by means of a technically segregated signal.

(17) "Downstream channel" means a channel through which an electronic or other signal, originated or converted at the headend or subheadends, may be transmitted to and received at the location of the subscriber's receiver.

(18) "Fair market value" means that price which a seller, dealing at arms length, ready and willing to sell and not compelled to sell, would accept for the cable communications system when offered by a buyer, ready and willing but not compelled to buy, exclusive of the value of the franchise.

(19) "FCC" means the Federal Communications Commission or its legally appointed successor.

(20) "Franchise" means the right granted through a contractual agreement between the city and a person by which the city authorizes such person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a cable communications system in the city. Any franchise awarded by an agreement in accordance with the provisions of this chapter shall be a nonexclusive franchise.

(21) "Franchisee" means the person or its legal successor in interest who executes an agreement in accordance with the provisions of this chapter for the erection, construction, reconstruction, operation, maintenance, dismantling, testing, repair and use of a cable communications system in the city and who obtains appropriate waivers from the FCC to do the same and who otherwise complies with the requirements of Federal Law.

(22) "Franchisee origination" means programming, exclusive of broadcast signals and community communications, carried on a cable communications system over one or more channels and subject to the exclusive contract of the franchisee, including but not limited to, leased channels.

(23) "Headend" means electronic equipment including, inter alia, antennae, preamplifiers, frequency converters, demodulators, modulators and related equipment used to amplify, filter and/or convert television signals for distribution over the cable communications system's channels, including antenna tower, satellite earth stations, and any building housing any of the above equipment.

(24) "Inception of service" means providing service to a subscriber in any separately programmable area.

(25) "Law" means any federal or state constitution or statute, local resolution or ordinance, including, but not limited to those of the city, and all rules and regulations promulgated pursuant to any of the same, now existing or hereafter adopted or amended and interpretations of the same by a court of competent jurisdiction.

(26) "Parent corporation" means any corporation, other than the franchisee, in an unbroken chain of corporations ending with the franchisee if, at the time of the execution of the franchise agreement, each of the corporations other than the franchisee owns stock comprising fifty percent or more total combined voting power of all classes of stock in one of the other corporations in such chain.

(27) "Person" includes individual natural persons, firms, partnerships, joint ventures, societies, organizations, clubs, associations, trustees, trusts, corporations, companies or organizations of any kind, or any officers, agents, employees, factors of any kind of person representative of the above, in any capacity, acting either for himself, or for any other person, under either personal appointment or pursuant to law. Whenever used in any clause prescribing a penalty, the term "person" as applied to partnerships or associations includes the partners or members thereof, and if applied to corporations, the officers thereof. "Person" shall not include a municipal corporation.

(28) "Single drop" means the connection between the cable communications system and the subscriber's location and receiver therein.

(29) "Street" means any area established for vehicular use or the entire width between the boundary lines of every way publicly maintained when any part thereof is open for public purposes. "Street" includes, but is not limited to, highway, avenue, road, alley, right-of-way, lane, boulevard, concourse, bridge, tunnel, parks, parkways, waterways, docks, overheads, wharves and piers.

(30) "Subscriber" means a person who connected to any signal or service provided or distributed by the cable communications system.

(31) "Subscription programming" means programming for which a per program, per channel per day, per time period or other per unit charge is made.

(32) "Subsidiary corporation" means any corporations, other than the franchisee in an unbroken chain of corporations beginning with the franchisee if, at the time of the execution of the franchise agreement, each of the corporations other than the last corporation in the unbroken chain owns stock comprising fifty percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(33) "Total local revenues" means all cash, credits, property of any kind or nature or other consideration whatsoever in any form arising from or attributable to the sale or exchange of cable communications services by the franchisee within the city or in any way derived from the operation of its cable communications system, including, but not limited to, any interconnection between its system in the city and any system whatsoever or the sale, exchange or cablecast of any programming developed on or for community communications channels of the franchisee's system. Such sum

shall not include any sales, service, occupation or other excise tax to the extent that such taxes are charged separately from normal service charges and are remitted by the franchisee directly to the taxing authority.

(34) "Upstream channel" means a channel through which television signals emanating from a subscriber's location and/or the location of any other entity except the main transmitting facility of the franchisee is transmitted via the cable communications system to the system headend or other appropriate point.

(35) "User" means a person utilizing a cable communications channel and/or production facilities for purpose of production and/or transmission of electronic or other signals as opposed to receipt thereof as subscriber.

The singular includes the plural and the plural includes the singular. Words used in the past or present tense include the future.

Unless otherwise provided in this chapter and unless the context or the manifest intent of council clearly indicates otherwise, terms, phrases, words and their derivations not defined in this chapter shall have the meanings ascribed to them in the rules and regulations of the FCC.

Any word not specifically defined shall be construed according to its common usage unless the context or the manifest intent of council clearly indicates otherwise. (Ord. 61-5185 §1, 2002, File No. 02-0717; Ord. 61-4752 §1(part), 1991; Ord. 61-4568 §2(part), 1984.)

5.78.030 Service of notice. (a) All notices required to be given to the city under any provisions of this chapter shall be deemed served:

(1) When delivered by hand in writing to the city clerk's office during normal business hours.

(b) All notices required to be given to the franchisee under any provision of this chapter shall be deemed served:

(1) When delivered by hand in writing to the person designated in the agreement awarding a franchise made in accordance with the provisions of this chapter; or

(2) When regularly mailed to the person so designated.

(Ord. 61-4568 §2(part), 1984.)

5.78.040 No liability or warranty. This chapter shall not be construed to create or hold the city responsible or liable for any damage to persons or property by reason of any inspection or reinspection authorized in this chapter or failure to inspect or reinspect, nor shall the issuance of any permit or license nor the approval or disapproval of any equipment authorized in this chapter nor any agreement executed pursuant to this chapter constitute any representation, guarantee or warranty of

any kind by, nor create any liability upon, the city or any official, agent or employee thereof. (Ord. 61-4568 §2 (part), 1984.)

5.78.050 Length of franchise. Any franchise awarded by the city by an agreement in accordance with this chapter shall be a nonexclusive franchise for the use of the streets, public ways or public places within the city for negotiated term of not more than ten years for the erection, construction, reconstruction, operation, maintenance, dismantling, testing and use of a cable communications system. (Ord. 61-4568 §2(part), 1984.)

5.78.060 Public health and safety committee. The public health and safety committee shall make recommendations to the common council on:

- (a) All matters associated with the franchise agreement between the city and the franchisee;
- (b) The operation and use of the public access channel;
- (c) The use of cable communications for broadcast of community and public meetings;
and
- (d) Perform such other functions as council may direct. (Ord. 61-5185 §2, 2002, File No. 02-0717; Ord. 61-4752 §1(part), 1991; Ord. 61-4568 §2(part), 1984.)

5.78.070 Franchise territory. (a) Any agreement awarding a franchise to operate a cable communications system in accordance with this chapter shall apply to its operation throughout the city's corporate limits as now or in the future may exist.

(b) The franchise cannot offer service to any other community until service is available to ninety-nine percent of the citizens within the city unless otherwise exempted by this chapter or the committee.

(c) The franchisee shall endeavor to offer cable communications service to all residents of the city. To the extent that the franchisee intends not to provide service to any specific area, street, building or other location, the franchisee shall designate them and clearly indicate in its proposal to enter into an agreement awarding a franchise in accordance with this chapter the technical, legal or economic reason for its inability to provide service in the enumerated locations. The franchisee shall file a copy of its extension policy for approval by the council.

(d) The right is specifically reserved to the council to grant variances to the franchise territory portion of this chapter for reasonable cause.

(e) The franchisee shall commence operation of its cable communications system within six months of the date of the execution of any agreement awarding a franchise in accordance with this chapter. For purposes of this subsection, operation shall be deemed to have commenced with the retransmission and simplification of television signals on a regular basis to residences or other structures.

(f) Upon a request for service from any person residing in the city, the franchise shall, within sixty days of such request, furnish the requested service, provided, however, that the location to be serviced is within the construction guidelines of sections 5.78.070, 5.78.080, and 5.78.090 of this chapter.

(g) The committee may extend, in writing, the time period for the performance of any act required under sections 5.78.070, 5.78.080, and 5.78.090 of this chapter. (Ord. 61-4568 §2(part), 1984.)

5.78.080 Construction. (a) In the event that the franchisee asserts that any of the occurrences listed in section 5.78.290(a) of this chapter has taken place, the franchisee shall notify the committee within five days of any expected reasonable delay in complying with the construction schedule in this chapter. If the committee determines that such events in fact have occurred, the franchisee's delay shall not be deemed to be a violation of this chapter. Otherwise it shall be deemed a material breach of any agreement awarding a franchise in accordance with this chapter and shall subject the franchisee to the provisions of section 5.78.290 of this chapter and to all of the penalties and remedies prescribed in such agreement as well as all other remedies, both legal and equitable, which are available to the city.

(b) Within six months of the date of execution of any agreement awarding a franchise in accordance with this chapter, the franchisee shall offer to install, make operational and render cable communications services to all residences within the city in accordance with this chapter and any agreement awarding a franchise in accordance with this chapter.

(c) The franchisee shall apply to the FCC for all waivers and otherwise comply fully with FCC regulations and federal law within thirty days of the execution of any agreement awarding a franchise in accordance with this chapter. Franchisee shall apply for all other permits required to commence construction or operate its cable communications system within thirty days of the receipt of notification by the commission to do so. Failure to apply for such waivers or permits and to comply with federal law within the time specified in this chapter shall be deemed to be a violation of this chapter and a material breach of any agreement awarding a franchise in accordance with this chapter and shall subject the franchisee to the procedure in section 5.78.290 of this chapter and to all penalties and remedies prescribed in such agreement as well as all other remedies, both legal and equitable, which are available to the city. (Ord. 61-4568 §2(part), 1984.)

5.78.090 Installation and extension of service. (a) The franchisee shall extend cable to new developments and subdivision and to other areas, including, but not limited to, blocks or streets, simultaneously with the installation of electric power and telephone utility facilities, subject to the extension policy.

(b) In all cases where new developments and subdivision are to be constructed and to be served in whole or in part by both underground power and telephone utilities, the owner or developer of such areas shall provide the franchisee the trench, backfill and all necessary substructures for television cables in order that the franchisee may install all necessary electronic cable communications facilities. In no event, shall such underground be at any cost or expense to the city.

(c) Failure to install cable in accordance with the construction timetable as provided in sections 5.78.070 and 5.78.080 of this chapter, or to extend cable within ninety days of a subscriber's request for service to new developments, subdivision or other areas in instances controlled by subsections (a) and (b) of this section shall constitute a violation of this chapter and a material breach of any agreement awarding a franchise in accordance with this chapter and shall subject the franchisee to the provisions of section 5.78.290 and to all the penalties and remedies prescribed in such agreement as well as all other remedies, both legal and equitable, which are available to the city. Continued failure to install or extend cable communications service during any subsequent ninety day period shall constitute a separate violation and breach and shall subject the franchisee to the remedies provided hereinbefore.

(d) Basic service and such cable communications service as may be provided for any agreement awarding a franchise in accordance with this chapter shall be made available to individual dwellings, residences, including apartment, condominium, cooperative or association building, institutions, organizations, businesses and all other entities within the corporate limits of the city as the same now or in the future may exist, in accordance with the provisions of sections 5.78.070(e) and 5.78.080(b) and all laws governing rights of property and privacy.

(e) An owner or operator of an apartment, condominium, nursing home, hospital, mobile home park or another multiple dwelling housing facility which other persons reside may require:

(1) Installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises.

(2) The cable operator shall notify owner or operator of intent to install cable TV service and the cable operator shall therefore coordinate such installation during reasonable business hours.

(3) The cable operator, occupant or tenant to agree to indemnify the owner or operator for any damages caused by the installation, operation or removal of such facilities.

(f) A person may not request or accept payment in any form for permitting cable services on his or her property or premises, may not discriminate in rental charges or otherwise between tenants or occupants who receive cable services and those who do not. This subsection shall not prohibit single point billing.

(g) Neither a cable operator or an owner of property may take actions which would diminish or interfere with the privilege of the owners, tenant or other occupant or the owners building to use or avail himself or herself of master or individual antenna equipment or cable services.

(h) The franchisee shall provide, upon request, at no charge, within the franchise area, one connection for basic service to city buildings, as the city may hereafter designate. The city reserves the right at its expense to extend service to as many areas within such buildings as it deems

desirable without payment of any additional fee to the franchisee. All such extensions, however, shall be accomplished in such a way so as not to affect the technical integrity of the telecommunications network.

(i) Residential installation, including multiple drops, shall be offered as the feeder line passes the dwelling unit.

(j) All installation other than residential shall be initially confined to a single drop at the port as requested by subscribers and shall occur as the feeder line passes the dwelling unit.

(k) All the franchisee's cable equipment shall be removed within a reasonable time, such time not to exceed one month, from a subscriber's property at the subscriber's request.

(l) Where such removal interferes with the provision of cable communications services to another subscriber, it shall be the obligation of the subscriber so affected to secure a legal agreement which will enable the franchisee to provide the subscriber the cable communications service the subscriber desires.

(m) Where attachment to or use of a nonsubscriber's property is necessary for the provision of cable communications services to a subscriber, it shall be the obligation of such subscribers to secure a legal agreement which will enable the franchisee to provide the subscriber the cable communications service the subscriber desires.

(n) Nothing in this chapter shall be construed as a representation, promise or guarantee by the city that any permit or other authorization required under any city law for the construction or installation of a cable communications system shall be issued. (Ord. 61-4568 §2(part), 1984.)

5.78.100 Service to customers. (a) Cable System Office Hours and Telephone Availability.

(1) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty-four hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(2) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty seconds. These standards shall be met no less than ninety percent of the time under normal operating conditions, measured on a quarterly basis.

(3) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(4) Under normal operating conditions, the customer will receive a busy signal less than three percent of the time.

(5) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(b) Communications Between Cable Operators and Cable Subscribers.

(1) Notifications to Subscribers.

(A) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (i) Products and services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (ii) Installation and service maintenance policies;
- (iv) Instructions on how to use the cable service;
- (v) Channel positions to programming carried on the system; and
- (vi) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty days in advance of any significant changes in the other information required by the preceding paragraph.

(2) Billing.

(A) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all

activity during the billing period, including optional charges, rebates and credits and shall include the grantee's toll free or collect telephone number for subscriber use.

(B) Late Charges. The bill sent by grantee to a subscriber shall include a date certain for timely receipt of payment by grantee. The following provisions shall apply to the imposition of late charges on subscribers:

(i) The grantee shall not impose a late charge on a subscriber unless the subscriber's account is delinquent, the grantee has given the subscriber written notice of the delinquency in a clear and conspicuous manner.

(ii) A late charge not more than five dollars may be imposed monthly.

(iii) No late charge may be assessed on the amount of a bill in dispute if found in favor of the subscriber.

(C) In case of a billing dispute, the cable operator must respond to a written complaint from the subscriber within thirty days.

(3) Refunds. Refund checks will be issued promptly, but no later than either:

(A) The customer's next billing cycle following the resolution of the request or thirty days, whichever is earlier; or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(4) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(c) Definitions.

Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours. (Ord. 61-4960 §1, 1996; Ord. 61-4856 §1, 1994.)

5.78.110 Service standards. (a) Installations, Outages and Service Calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent of the time measured on a quarterly basis:

- (1) Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five feet from the existing distribution system.
- (2) Excluding conditions beyond the control of the operator, the cable operator will begin working on service interruptions promptly and in no event later than twenty-four hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
- (3) The appointment window alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
- (4) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- (5) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(b) Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(c) Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable channels. (Ord. 61-4856 §2, 1994.)

5.78.120 Channels to be provided. (a) The cable system, as a part of any conglomerate of commonly owned and technically integrated cable television systems having subscribers, or any system having subscribers which is not part of such a system conglomerate, shall comply with the following requirements respecting the number and designation of access channels:

- (1) Each such system shall, to the extent of its available activated channel capability, comply with the following requirements:
 - (A) Public Access Channel. Each such system shall maintain at least one specially designated, noncommercial public access channel available on a first-come nondiscriminatory basis;

(B) Educational Access Channel. Each such system shall maintain at least one specially designated channel for use by local educational authorities. Educational authorities shall include but shall not be limited to North Central Technical Institute and University of Wisconsin, Marathon Center;

(C) Local Government Access Channel. Each such system shall maintain at least one specially designed channel for local government uses.

(2) Until such time as there is demand for each channel full-time for its designated use, public, educational, government and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefor, access channels may also be used for other broadcast services.

(3) Each such system shall, in any case, maintain at least one full channel for shared access programming; provided, however, that, in the case of systems in operation on the effective date of the ordinance codified in this chapter, if insufficient activated channel capability is available to provide one full channel for shared access programming it shall provide whatever portions of channels are available for such purposes. Each such system in meeting its access obligations shall make reasonable efforts in programming its bandwidth to avoid the displacement of access service.

(4) Each such system shall make available all other unused channels, in addition to those which are part of the system's activated channel capability, for the purposes specified in subsection (a)(1) of this section; provided, however, that in making available such additional channels, the system operator shall be under no obligation to install converters.

(b) The cable system, as a part of any conglomerate of commonly owned and technically integrated cable television systems having subscribers, or any system having subscribers which is not part of such a system conglomerate, shall comply with the following requirements respecting the provision of access services:

(1) Equipment Requirement. Each such system shall have available equipment for local production and presentation of cablecast programs other than automated services and permit its use for the production and presentation of public access programs. No such system shall enter into any contract, arrangement or lease for use of its cablecasting equipment for a substantial portion of time for public access programming.

(2) Program Content Control. Each such system shall have no control over the content of access cablecast programs; however, this limitation shall not prevent it from taking appropriate steps to insure compliance with the operating rules described in subsection (b)(4) of this section.

- (3) Assessment of Cost.
- (A) The channels described in subsection (a) of this section shall be made available free of charge until five years after the system first offers channel time for such cablecasting purposes except educational and government channels.
- (B) One of the public access channels described in subsection (a) of this section shall always be made available without charge.
- (C) Charges for equipment, personnel and production of public access programming shall be reasonable and consistent with the goal of affording users and low-cost means of television access. No charges shall be made for live public access programs not exceeding five minutes in length.
- (4) Operating Rules.
- (A) The cable system shall prohibit the presentation of any material on the public access channel that is in violation of local, state or federal law. The cable system shall promulgate and publish for review by the appropriate regulatory authorities its rules and regulations for the use of the public access channel. The rules shall specifically provide for first come nondiscriminatory access. The cable system shall maintain a log of public access use for a period of two years. The cable system shall keep confidential the names and addresses of all persons requesting use of or using the channel.
- (B) The cable system shall prohibit the presentation of any material on the education access channel that is in violation of local, state or federal law. The cable system shall in conjunction with the educational authorities draft and promulgate rules of operation for the use of the educational access channel. These rules shall be reviewed with the appropriate regulatory authorities. The cable system shall maintain a log of the use of the channels for a period of two years.
- (C) The cable system shall prohibit the presentation of any material on the leased access channel that is in violation of local, state or federal law. The cable system shall promulgate and publish rules regarding the use of the leased channel. The cable system shall maintain a log of the use of the channel for a period of two years. The names and addresses of all persons or groups requesting use or using the channel shall be kept confidential.
- (D) All operating rules governing the access channel shall be filed with the city and shall be available for public inspection.

(c) The franchisee shall make available its facilities for an emergency override audio alert whereby a designee of the city in times of crisis, may introduce an audio message on all telecommunications networks appropriate channels simultaneously. (Ord. 61-4568 §2(part), 1984.)

5.78.130 Technical performance and standards. All performances and technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance and dismantling of the cable communications system provided for in this chapter shall be in accordance with all applicable FCC and other federal, state and local laws and regulations, provided, however, that the city may require such standards as it deems necessary unless specifically prevented from doing so by law. (Ord. 61-4568 §2(part), 1984.)

5.78.140 Local regulatory framework. The city council expressly reserves the right and shall be allowed by franchisee to amend this chapter or any other ordinances of the city at any time. (Ord. 61-4752 §§2 and 3, 1991; Ord. 61-4568 §2(part), 1984.)

5.78.150 Selection of the franchisee. (a) It shall be unlawful for any person to commence or engage in the business of constructing or operating a cable communications system within the city without having been awarded and having duly executed an agreement awarding a franchise in accordance with this chapter.

(b) Any person submitting a proposal to enter into an agreement for the award of a franchise in accordance with this chapter shall provide all information required by this chapter and such other information as may be solicited in the request for proposals or otherwise required. Each proposal shall be responsive to the questions soliciting the information, and shall substantially and materially supply all of the information so solicited. The failure, neglect, or refusal to provide any of such information shall render a proposal invalid and it shall be given no consideration. (Ord. 61-4568 §2(part), 1984.)

5.78.160 Bonds. (a) Proposed Bond. Each applicant for a franchise under this chapter shall submit a proposal bond in a form acceptable to the city clerk or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the city in the amount of fifteen thousand dollars.

(b) Performance Bond.

(1) A franchise shall maintain, and by his acceptance of any franchise granted under this chapter, agrees that he will maintain through the term of the franchise, or any renewal or extension thereof, a faithful performance bond running to the city, with at least two good and sufficient sureties and other financial guaranties approved by the city clerk, in the penal sum total of four hundred thousand dollars conditioned upon the faithful performance of the franchisee and upon the further condition that in the event the franchisee shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the franchisee, plus a reasonable allowance for

attorney's fees and costs, up to the full amount of the bond. The bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew be stated until thirty (30) days after receipt by the City Clerk by registered mail of two (2) copies of a written notice of such intent to cancel or not renew.

(2) For each year the franchisee has operated a cable television system in the city, the performance bond shall be reduced by twenty-five thousand dollars up to a maximum reduction of two hundred fifty thousand dollars.

(c) Forfeit of Proposal Bond. Should the applicant fail or refuse to accept a franchise under this chapter or fail or refuse to furnish the performance bond as set forth in this chapter within thirty days after written notification of the award of a franchise by the city, said applicant will be considered to have abandoned its proposal and the city shall enforce the proposal bond in accordance with its terms or retain the proceeds of the certified check.

(d) Return of Proposal Bond. Proposal bonds or certified checks received in lieu thereof from applicants whose proposals are not accepted by the city or successful applicants unless forfeited shall be returned to the applicant as soon as the successful applicant is determined.

(e) Bond Evidence to be Filed with the City. Two copies of all bonds or certified copies thereof and written evidence of payment of required premium, shall be filed and maintained with the city clerk during the term of any franchise granted under this chapter, or any renewal thereof. (Ord. 61-4568 §2(part), 1984.)

5.78.170 Franchise fee. (a) There shall be a franchise fee which shall be the maximum allowable by federal and state law. The fee shall be collected as directed by the committee.

(b) If gross revenues are a factor in determining the fee paid or if for any other reason they are deemed necessary by the city, reports, audits, books, records and/or anything else which the city deems helpful to it shall be provided to the city by the franchisee, in forms approved by the committee.

(c) Each of such reports shall contain a notarized verification by the chief financial officer of the franchisee and such reports shall be verified annually, within ninety days of the close of business on the last day of the calendar year, by a certified public accountant selected by the city at the expense of the franchisee.

(d) The acceptance of any payment required under this chapter by the city shall not be construed as an acknowledgment that the amount paid the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the city may have for additional sums due and payable.

(e) All fee payments shall be subject to audit by the city treasurer and to assessment or refund if the payment is found to be in error.

(f) In the event that an audit results in an assessment by and an additional payment to the city, such additional payment shall be subject to interest at the rate of eighteen percent per year and to a penalty of eighteen percent per year, which shall be due and payable immediately.

(g) The council shall have the authority to waive all or any portion of the fee for any period of time it wishes.

(h) Franchisee shall, upon request, install without charge, and provide and maintain for the entire term of the franchise agreement, a single drop and basic service to city hall.

(i) Any person submitting a proposal to enter into an agreement for the award of a franchise may offer to the city any consideration that it wishes.

(j) Failure to comply strictly with this section shall be deemed to be a violation of this chapter and a material breach of the agreement awarding a franchise in accordance with this chapter, and shall subject the franchisee to the provisions of section 5.78.290 of this chapter and to all penalties and remedies prescribed in the agreement as well as all other remedies, both legal and equitable which are available to the city.

(k) Nothing in this chapter shall be construed to limit the liability of the franchisee for all applicable federal, state and local taxes, including inter alia, applicable local charges and/or local assessments and/or local taxes. (Ord. 61-4568 §2(part), 1984.)

5.78.180 Transfer or sale of franchise. (a) If the city determines not to reissue the franchise for reasons other than material breach of the franchise or reasons unrelated to the performance of the franchise holder or upon receipt of an application for assignment of the franchisee, the franchisee shall first offer the telecommunications network for sale to the city at a fair and just market value, which value shall include the fair market value of the system as a going concern including the franchise itself and the rights and privileges granted by the city.

(b) When a franchise is revoked pursuant to this section or expires and is not renewed because of a material breach of the franchise, the franchisee shall first offer the telecommunications network for sale to the city at a fair and just market value, which value shall not include any value for the franchise itself or for any of the rights or privileges granted by the city.

(c) In the event "fair market value" becomes an issue, and the determination of fair market value cannot be negotiated or determined, the value shall be determined by an impartial appraisal procedure wherein the franchisee and the city shall each choose an appraiser and the valuation determined by the appraisers shall be considered the fair market value at which the system shall be offered to the city. The cost of the appraisal shall be shared equally by the city.

(d) The city shall have ninety days to exercise the right of first refusal to purchase the network, the ninety days commencing on the day the fair market value of the system is determined either through negotiation or the arbitration procedure. If the city does not exercise its option to

purchase and the telecommunications network is not sold to another operator who has obtained a franchise from the city in a reasonable time, the grantee, upon request by the city, shall promptly remove all its plant. If the city determines not to exercise its right of first refusal, it shall not unreasonably refuse to renew or grant a cable television franchise during a reasonable interim period. While transfer of the system and franchise is being negotiated, arranged or ordered the franchisee may be required to continue service to the public unless for reason beyond the control of the franchisee the operation will be economically infeasible to the franchisee.

(f) If for any reason the franchisee is required to terminate its franchise and remove its plant, structures, etc., then in removing its plant, structures and equipment, the franchisee shall refill at its own expense any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the company's removal of its equipment and appliances without affecting the electric and telephone cables, wires or attachments. The city shall inspect and approve the restoration after removal. Liability insurance and indemnity and the performance bond shall continue in full force and effect during the period of removal. (Ord. 61-4568 §2(part), 1984.)

5.78.190 Obscenity. (a) The franchisee and all other persons using or making use of the cable communications system shall comply in all respects with all federal, state and local laws regarding obscenity.

(b) Failure to comply strictly with this section shall be deemed to be a violation of this chapter and a material breach of the agreement awarding a franchise in accordance with this chapter, and shall subject the franchisee to the provisions of section 5.78.290 of this chapter and to all penalties and remedies prescribed in the agreement as well as all other remedies, both legal and equitable which are available to the city. (Ord. 61-4568 §2(part), 1984.)

5.78.200 Indemnity and insurance. (a) The city shall not at any time be liable for any injury or damage occurring to a person or property from any cause whatsoever arising from the use, operation or condition of the franchisee's cable communications system.

(b) The franchisee shall indemnify, save and hold harmless and defend the city from all liens, charges, claims, including but not limited to libel, slander, invasion of privacy and unauthorized use of any trademark, trade name or service mark, demands, suits, actions, fines, penalties, losses, costs including but not limited to legal fees and court costs, judgments, injuries, liabilities or damages, in law or equity, of any and every kind and nature whatsoever, except when caused by or arising out of any negligence of the city, its officers, servants, agents, employees or contractors, or otherwise, arising out of or in any way connected with the installation, operation, maintenance or condition of the franchisee's cable communications system.

(c) The franchisee shall obtain and keep in force and effect during the entire term of any agreement awarding a franchise in accordance with this chapter or any extension thereof, insurance coverage in a minimum amount of two million dollars insuring the above indemnification requirements for the benefit of the city. The franchisee shall deliver to the city on the date of execution of any agreement awarding a franchise in accordance with this chapter, a policy of insurance duly executed by the officers or authorized representatives of a responsible and

nonassessable insurance company, evidencing this coverage for the benefit of the city, which policy of insurance shall be noncancellable and provide for at least ninety days prior written notice to the city of the insurer's intention not to renew such policy, or to cancel, replace or materially alter or change the same, such notice to be given as provided in section 5.78.040 of this chapter.

(d) The franchisee shall obtain, effective from the date of execution of any agreement awarding a franchise in accordance with this chapter, and shall keep in force and effect during the entire term of such agreement or any extension thereof, a policy of comprehensive general liability insurance, duly executed by the officers or authorized representative of a responsible and nonassessable insurance company evidencing the following minimum coverages for the benefit of the city as an additional insured, which insurance shall be noncancellable except upon ninety days prior written notice to the city, such notice to be given in accordance with section 5.78.040 of this chapter.

MINIMUM LIMITS

Bodily injury, including death:

\$5,000,000 each occurrence

\$5,000,000 aggregate

Property damage:

\$2,500,000 each occurrence

\$2,500,000 aggregate

(1) A copy of such policy shall be delivered to the city upon the execution of such agreement.

(2) At least ninety days prior written notice shall be given to the city of the insurer's intention not to renew such policy, or not to replace the same, or materially to alter or change the same, such notice to be given in accordance with section 5.78.040 of this chapter. All premiums on such policy shall be at the expense of the franchisee. None of the provisions of this chapter or of any insurance policy required by the city under this chapter, not the receipt of any proceeds, recovered by the city under any such policy, nor any term or condition of any agreement awarding a franchise in accordance with this chapter, shall be construed to excuse the franchisee from the faithful performance of its obligation or limit its liability under any of the provisions of this chapter or of any agreement awarding a franchise in accordance with this chapter.

(e) The franchisee shall obtain, effective from the date of execution of any agreement awarding a franchise in accordance with this chapter, and shall keep in full force and effect during the entire term of such agreement or any extension thereof, physical damage insurance covering losses arising in respect of the following realty and personalty incident to the franchisee's cable communications system, all buildings, offices, studios or other realty and the equipment contained therein, the headend and subheadends, the transmission tower, and all earth stations and all vehicles. No physical damage insurance shall be required for trunk, distribution, feeder or associated drop lines, converters or amplifiers. For the initial five years of the term of any franchise agreement, the

amount of such physical damage insurance shall not be less than the replacement value of the property required to be covered in this chapter, subject to a deductible established in the franchise agreement. For each succeeding calendar year during the term of the franchise agreement, or any extension thereof, such physical damage insurance shall be in such amounts as the committee shall reasonably determine to be adequate to provide the replacement value of the property required to be covered in this chapter, subject to such deductible amount as the committee may determine to be reasonable, for any loss arising from and all damage to or destruction of the property insured. Each policy of physical damage insurance shall name the city as an additional insured, as its interest may appear. For purposes of this chapter "physical damage insurance" means insurance covering loss arising from fire, lightning, windstorm, hail, snow, explosion, riot and civil commotion, smoke and such other perils as are customarily covered by extended coverage insurance, including vandalism and malicious mischief. The policy of insurance required under this subsection shall be noncancellable except upon ninety days prior written notice to the city such notice to be given in accordance with section 5.78.030 of this chapter. At least ninety days prior written notice shall be given to the city of the insurer's intention not to renew such policy or not to replace or materially to alter or change the same, such notice to be given in accordance with section 5.78.030.

(f) With respect to each policy of insurance required to be obtained and kept in force by the franchisee and described in this section, the franchisee shall be solely responsible for the payment of premiums due for the insurance thereunder. The franchisee shall furnish written proof of the payment of such premiums to the city on or before the due date.

(g) No policy of insurance required under the provisions of this section shall be replaced, renewed, canceled or materially changed or altered in any way except upon the express written authorization of the city. No change shall be authorized which would violate the provisions of the section or which would materially affect the protection such policies afford the city.

(1) The unauthorized cancellation, replacement, renewal or material change of any policy of insurance required under this section shall subject the franchisee to the provisions of section 5.78.290 of this chapter and shall be deemed a material breach of any agreement awarding a franchise in accordance with this chapter and shall subject the franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the city.

(2) At any time any policy of insurance required under this chapter is replaced, renewed or intended by the insurer not to be renewed or replaced, or materially altered or changed with or without the express written authorization of the city, the franchisee shall obtain and furnish to the city, within five days of such action, such policy, or copies of such policy, as the case may be, or the insurer's notification of its intent not to renew or replace such policy.

(Ord. 61-4568 §2(part), 1984.)

5.78.210 Rates. (a) The council reserves the right to regulate rates as it has done by ordinance from 1976 to 1984 and as allowed by law.

(b) The franchisee shall file with the city on December 31 of each year, a full schedule of all subscriber and user rates and all other charges including, but not limited to, pay television and discrete services, made in connection with the cable communications system.

All rates shall be published and on file in the office of the city clerk.

(c) Nothing in this chapter shall be construed to prohibit the reduction or waiving of charges.

(d) The franchisee may require all subscribers to pay for basic service not more than two months in advance. The franchisee shall require no other advancement of payment for basic service, provided, however, that nothing in this chapter shall be construed to prohibit an advancement of payment for installation of cable communications services.

(e) In the event that a subscriber fails to pay a properly due and owing fee or charge, the franchisee may disconnect the subscriber's service outlet, upon giving ten days written notice thereof.

(f) The franchisee shall establish and conform to the following policy regarding refunds to subscribers and users:

(1) If the franchisee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the franchisee shall provide such service or equipment within thirty days of the collection of the deposit or charge or it shall refund such deposit or charge within five days thereafter.

(A) Nothing in this chapter shall be construed to relieve the franchisee of any responsibility to subscribers or users under any contractual agreements into which it enters with them.

(B) Nothing in this section shall be construed as limiting the franchisee's liability for fines or penalties which may be imposed under this chapter or any agreement awarded in accordance with this chapter for the violation or breach of any of their provisions.

(C) Nothing in this section shall be construed to limit the franchisee's liability for damages because of its failure to provide the service for which the deposit or charge was made.

(2) In the event that a subscriber terminates basic service during the first twelve months of service because of the failure of the franchisee to render the service in accordance with the requirement set forth in this chapter, or in any agreement awarded in accordance with this chapter, as determined by the committee, the franchisee shall refund to such subscriber an amount equal to the initial applicable installation or reconnection charge paid by the subscriber.

In the event that such subscriber has made an advance payment, the amount so advanced shall be refunded to such subscriber by the franchisee. Nothing in this section shall be construed to relieve the franchisee of any liability established under any agreement awarding a franchise in accordance with this chapter.

(3) In the event that a subscriber terminates basic service prior to the end of a prepaid period, the prorata portion of any prepaid subscriber fee which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than thirty days after receipt of the request for termination.

(g) The franchisee shall not charge a converter security deposit greater than such converter's actual cost to the franchisee.

Any converter security deposit collected by the franchisee shall be returned to the subscriber upon termination of service by the subscriber and return of such converter undamaged, with allowance for reasonable wear and tear, and payment of any outstanding balance due and payable whichever occurs first. (Ord. 61-4568 §2(part), 1984.)

5.78.220 Police powers. Nothing in this chapter or in any agreement awarding a franchise in accordance with this chapter shall be construed as an abrogation by the city of any of its police powers. (Ord. 61-4568 §2(part), 1984.)

5.78.230 Use of streets and pole attachments. (a) Before commencing construction of its cable communications system in, above, over, under, across, through or in any way connected with the streets, public ways or public places of the city, the franchisee shall first obtain the written approval of all appropriate agencies, including but not limited to all city departments and public utilities.

(1) Applications for such approval shall be made in the form prescribed by the appropriate agency.

(b) Upon obtaining such written approval, the franchise shall give the appropriate agency written notice within a reasonable time of proposed construction, but in no event shall such notice be given less than ten days before such commencement.

(c) Any person who submits a proposal to enter into an agreement for the award of a franchise in accordance with this chapter shall include therein proposed agreements for the use of utility poles with all utility companies whose poles shall be used in or affected by the construction of the proposed cable communications system, which agreement shall become effective on the date of execution of this agreement awarding a franchise in accordance with this chapter in the event that such person is selected to be the franchisee.

(d) It shall be unlawful for the franchisee or any other person to open or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without obtaining proper approval to do so and after proceeding in the manner prescribed in subsections (a) and (b) of this chapter. Violation of this section shall subject the

franchisee to the provisions of section 5.78.290 of this chapter and shall be deemed a material breach of the agreement awarding a franchise in accordance with this chapter and shall subject the franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the city.

The franchise shall restore any street it has disturbed in accordance with the provisions of this code, and shall at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities to as good as the condition such property was in immediately prior to the disturbance, damage or injury or pay the fair market value of such property to its owner, at the option of the owner.

(e) The franchisee shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place or remove from such street or other public place, any of its property when required to do so by the city because of street or other public excavation, construction, repair, regrading or grading, traffic conditions, installation of sewers, drains, water pipes, city-owned power or signal lines, tracks, vacation or relocation of streets or any other type of structure or improvements of a public agency, or any other type of improvement necessary for the public health, safety and welfare.

(f) Nothing in this chapter or any agreement awarding a franchise in accordance with this chapter shall be construed as authorizing the franchisee to erect and maintain new poles in areas serviced by existing poles. The franchisee shall obtain written approval from appropriate agencies, such approval not be withheld unreasonably, before erecting any new poles underground conduits where none exist at the time the franchisee seeks to install its cable communications system.

(g) The franchisee shall maintain all wires, conduits, cables and other real and personal property and facilities in good condition, order and repair.

(h) The franchisee shall keep accurate, complete and current maps and records of its system and facilities and shall furnish as soon as they are available, two complete copies of such maps and records to the committee and two complete copies of the maps and records to the city engineering department.

Such maps and records shall be available for inspection by the public during normal business hours.

(i) The franchisee shall not place, or cause to be placed, poles or other equipment in such a manner as to interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric or telephone utilities fixtures or property, nor shall the franchise place, or cause to be placed, such poles or equipment in the right-of-way between the carway and the right-of-way boundary except with the written approval of the appropriate city agency.

(j) The franchisee shall comply with all FCC rules and regulations governing the construction and installation of cable communications systems. In addition:

- (1) All cables and wires shall be installed parallel with existing telephone and electric utility wires whenever possible;
 - (2) Multiple configurations shall be in parallel arrangement and bundled, in accordance with engineering and safety considerations; and
 - (3) All installations shall be underground in those areas of the city where both telephone and electric utilities' facilities are underground at the time of the installation of the franchisee's cable communications system.
 - (4) In areas where either telephone or electric utilities' facilities are aboveground at the time of the installation of the franchisee's cable communications system, the franchisee may install its service aboveground only upon the condition, which shall be included in any agreement awarding a franchise in accordance with this chapter, that at such time as those facilities are placed underground by the telephone and electric utility companies or are required to be placed underground by the city, the franchisee shall likewise place its facilities underground at its sole cost and expense.
- (k) The city engineering department may, when it feels it is necessary, notify the franchisee of street improvements where paving, regrading, grading or resurfacing of a permanent nature is involved.
- (1) Such notice shall describe the nature and character of the improvements, the streets upon which they shall be made, the extent of the improvements, and the work schedule for the project.
 - (2) The city shall allow the franchisee to make additions, alterations or repairs to its facilities in advance of the city's commencement of such improvements so as to permit the franchisee to maintain continuity of service and so as not to hinder or in any way delay the city's work.
- (l) The franchisee shall, at the request of any person holding a permit to move a building, temporarily raise or lower its wires to permit the moving of such building.
- (1) Such temporary removal, raising or lowering of wires shall be at the cost and expense of the person requesting the same, and the franchisee shall have the authority to request payment for the same in advance before complying with such request.
 - (2) Any person making such a request from the franchisee shall give not less than five days notice of the contemplated move.
 - (3) Any interruption in service occasioned by the temporary removal, raising or lowering of the franchisee's wires in accordance with this section shall not subject the franchisee to any penalty provided under section 5.78.310 of this chapter.

Any interruption in service occasioned under the provisions of this subsection (1) of this section shall be done, as far as is practicable in the opinion of the committee, during nonpeak viewing hours.

(4) The franchisee shall restore any wires moved in accordance with this chapter to the former position as soon as possible after the building is moved.

(m) The franchisee may trim trees or other vegetation owned by the city to prevent their branches or leaves from touching otherwise interfering with its wires, cables or other structures.

(1) All trimming or pruning provided for in this chapter shall be done only under the supervision and direction of the appropriate city agency and only with its prior written approval.

(2) All trimming or pruning shall be at the expense of the franchisee.

(3) The franchisee may contract for such trimming or pruning services with any person approved by the city prior to the rendering of such services.

Any person engaged by the franchisee to provide tree trimming or pruning services shall be deemed for the purposes of this chapter and any agreement made in accordance with this chapter to be an employee of the franchisee when engaged in such activity.

(n) The franchisee shall obtain the written permission of the owner of any privately owned tree or other vegetation before it trims or prunes the same.

(o) The franchisee shall comply with all laws concerning city property. (Ord. 61-4568 §2(part), 1984.)

5.78.240 Transfers and assignments. (a) The franchise granted under this chapter shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, either by the act of the franchisee or by operation of law, without the consent of the city. The granting, giving or waiving of any one or more such consents shall not render unnecessary any subsequent consent or consents.

(b) The consent or approval of the city to any assignment, lease, transfer, sublease or mortgage of the franchise granted to the franchisee shall not constitute a waiver or release of the rights of the city in and to its streets.

(c) The franchisee shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party, of control of the franchisee. The word "control" as used in this section is not limited to majority stock ownership but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent of the voting shares of the franchisee in any one transaction. Every change, transfer or acquisition of

control of the franchisee shall make the franchise subject to cancellation unless and until the city shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the city may inquire into the qualifications of the prospective controlling party, and the franchisee shall assist the city in any such inquiry. If the city does not schedule a hearing on the matter within sixty days after notice of the change or proposed change and the filing of a petition requesting its consent, it shall be deemed to have consented. In the event that the city adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the city may cancel the franchise unless control of the franchisee is restored, or the franchisee gains a status which is acceptable to the city.

(d) Nothing in this subsection shall be deemed to prohibit a mortgage or pledge of the cable television system, or any part thereof, for financing purposes or otherwise, nor prohibit the disposition of facilities or equipment no longer required in the conduct of the business. Any such mortgage, pledge or lease shall be subject and subordinate to the rights of the city under this chapter or other applicable law.

(e) Any proposed transferee shall execute an agreement in the form and containing the conditions approved by the city attorney that it will assume and be bound by all of the provisions, terms and conditions of this chapter and any agreement awarding a franchise in accordance with this chapter and all applicable federal, state and local laws, and further that it shall be primarily liable and obligated under such documents without, however, relieving the franchisee from its obligations to the city under franchisee from its obligations to the city.

(f) No transfer of a franchise shall be made within thirteen months of the termination date of the term of the agreement.

(g) Nothing in any approval by council or execution by the mayor or an authorization of any transfer or assignment of any ownership interest shall be construed to waive or release any rights of the city in and to the streets, public ways, and public places of the city or as a release of any of the city's police powers. (Ord. 61-4568 §2(part), 1984.)

5.78.250 Breach. (a) The occurrence of any of the following listed events shall be deemed a material breach and default of any agreement awarding a franchise, and shall subject the franchisee to all penalties and remedies prescribed in the agreement and to all other remedies, legal and equitable which are available to the city: The following shall be deemed an unauthorized transfer and assignment under the provisions of this section:

- (1) Concealed, removed or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property, fraudulent under any provisions of law; or
- (2) Made or suffered a preferential transfer; or
- (3) Suffered or permitted, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint and not having vacated or

discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or

- (4) Made a general assignment for the benefit of its creditors; or
- (5) While insolvent or unable to pay its debts as they mature, procured, permitted or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of its property; or
- (6) Admitted in writing its inability to pay its debt and its unwillingness to be adjudged a bankrupt, or an adjudication that franchisee is bankrupt, or placement or franchisee into receivership or the issuance of any order to franchisee or any of its stockholders by a government agency or court of competent jurisdiction to divest any interest related to the cable communications system under this chapter, or the entry of any judgment against franchisee's credit;
- (7) Shown a willful failure, refusal or neglect to do or comply with any material requirements or limitation contained in this chapter or any material rule or regulation of the council validly adopted pursuant to this chapter, or any amendment to this chapter.

(b) The occurrence of an unauthorized transfer of assignment may, at the option of the city, terminate the agreement and accelerate all of the obligations and rights thereunder including, inter alia, the right of the city to purchase the cable communications system at book value or to award a franchise to another person.

(c) From and after any of the occurrences enumerated in subsection (a) of this section, the franchisee shall not make, execute or enter into any deed, deed of trust, mortgage, contract conditional sales contract or any loan, lease, pledge, sale, pole agreement or any other agreement or hypothecation concerning any of the facilities or property, real or personal, of the cable communications system without the written approval of council and the mayor.

(d) The franchisee shall execute a security agreement subordinate to primary financing to secure payment of the fee made in accordance with this chapter in the form and containing the conditions approved by the city attorney under which the city shall have a security interest in the equipment, whenever acquired, of the franchisee's cable communications system equipment, whenever acquired, or the franchisee's cable communications system business in the city, the accounts receivable of the franchisee and the stock, if any, of the franchisee.

(e) The city shall file, or otherwise record as required by law a financing statement to perfect such security interest and the franchisee shall cooperate fully in furnishing all information, records or other documents requested by the city to enable it to prepare and file such statement. The security agreement provided for in this chapter shall be executed simultaneously with the agreement awarding a franchise in accordance herewith and no such agreement shall be of any force or effect unless and until the security agreement is executed as provided in this chapter and the financing statement is filed or otherwise recorded. The city attorney shall cause the financing statement to be

filed or otherwise recorded as required by law to perfect the city's interest after the execution of the franchise agreement and security agreement. (Ord. 61-4568 §2(part), 1984.)

5.78.260 Reports. (a) On or before March 31 of each year, during the term of any agreement awarding a franchise in accordance with this chapter, the franchisee shall submit a written report to the city, in a form approved by the city, including, but not limited to, the following information:

- (1) A summary of the previous year's or, in the case of the initial reporting year, the initial year's activities in development of the cable communications system, including, but not limited to, services begun or discontinued, total number of subscribers, subscribers added or discontinued during the reporting year, and user participation;
- (2) A financial statement including a statement of income, revenues, operating expenses, original cost of the system retired from service during the previous year, the original cost of the system added to service during the previous year, the total original cost of the system in service and used and useful at the end of the previous year, all other annual capital expenditures, book depreciation with an attached depreciation schedule, interest paid, taxes actually paid, historic and pro forma balance sheets, and a statement of sources and application of funds, covering all years since the beginning of the franchise;
- (3) A current statement of costs of construction by component categories;
- (4) A projected income statement, balance sheet, statement of sources and applications of funds and statement of projected construction for the next two years;
- (5) A reconciliation between previously projected construction and/or financial estimates as the case may be and actual results;
- (6) A summary of complaints, identifying the number and nature of complaint and their disposition;
- (7) A list of officers and members of the board of directors of the franchisee, and its parent, subsidiary or affiliated corporations, if any;
- (8) A list of its stockholders holding more than fifty percent of the voting stock of the franchisee, or its parent, subsidiary and affiliated corporations, if any;
- (9) A copy of its annual report and those of its parent, subsidiary and affiliated corporations;
- (10) Such other information or reports as council or the committee may request, including, but not limited to, the following special reports:

(A) Any opinion survey reports which identify dissatisfaction among subscribers with cable communications services offered by the franchise.

Surveys required to make such reports shall be conducted in conformance with such requirements, including supervision, as the city may prescribe.

(B) An annual plant survey report which shall be a complete survey of the franchisee's plant and a full report thereon and which shall be submitted to the city. The purpose of such report is declared to be to assure the city that the technical standards of the FCC or the city, whichever are applicable, are achieved and maintained. Such report shall include, but not be limited to, an appropriate engineering evaluation including suitable electronic measurements and shall be conducted in conformance with such requirements, including supervision, as the city may prescribe.

(C) General reports shall be prepared and furnished to the city at the time and in the form prescribed. Through these reports the city shall obtain information concerning the franchisee's operation, business affairs and transactions or property as may be reasonably necessary for the performance of any of the committee's duties.

(11) Copies of all reports and documents required by the FCC or other state or federal agencies shall be submitted to the city and copies shall be available for inspection by the general public at the franchisees office during regular business hours.

(12) It shall be unlawful for the franchisee to refuse, fail or neglect to file the reports required under this section. The refusal, failure or neglect of the franchisee to file any of the reports required under this section or as the committee may direct shall be deemed a violation of this chapter and shall subject the franchisee to the provisions of section 5.78.290 of this chapter and shall be deemed a material breach of any agreement awarding a franchise to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the city.

(13) Any material misrepresentation made knowingly by the franchise in any report required under this section shall subject the franchisee to the provisions of section 5.78.290 of this chapter and shall be deemed a material breach of any agreement awarding a franchise in accordance with this chapter and shall subject the franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the city.

(14) The city may waive any portion of the documentation at its discretion.

(Ord. 61-4568 §2(part), 1984.)

5.78.270 Review, renewal, termination and cancellation. (a) To provide for technological changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable communications system and to achieve a continuing, advanced, modern system for the city, the city and the franchisee shall comply with the following review provisions:

(1) The committee may, at its option, hold review sessions from time to time. All such review sessions shall be open to the public and notice shall be given by advertisement in a newspaper of general circulation at least one week before each session. In addition, the franchisee shall announce the date and time of each such session on each of at least five days immediately preceding each session at a minimum of six regularly scheduled intervals daily.

(2) Topics for discussion and review at the review sessions shall include, but not be limited to, the following:

Service, rate structure, free services, application of new technologies, system performance, service provided, programming, subscriber complaints, user complaints, right of privacy, amendments to this chapter, undergrounding process and developments in the law.

(3) Either the city or the franchisee may select additional topics for discussion at any review session.

(4) Any topic proposed for discussion at any review session by a resident of the city and supported by a petition bearing the signatures of one hundred city residents shall be included in the list of topics for discussion.

(Ord. 61-4568 §2(part), 1984.)

5.78.280 Renewal. The procedure for considering the renewal of any agreement awarding a franchise in accordance with this chapter shall be as follows unless preempted by federal and/or state law.

(a) Thirteen months prior to the expiration of the term of any agreement awarding a franchise in accordance with this chapter:

(1) The committee shall review the provisions of the chapter and shall make recommendations, if any, to council for its amendment.

(2) The committee shall proceed to determine whether the franchisee has performed its obligations under this chapter and the agreement awarding a franchise in accordance with this chapter. In making this determination, the commission shall consider several factors including, but not limited to, the following:

- (A) Technical development and performance of the franchisee's cable communications system;
- (B) Programming;
- (C) Additional services offered by the franchisee;
- (D) Cost of service;
- (E) All obligations of the franchisee as prescribed by this chapter or the agreement awarding a franchise in accordance with this chapter, including, but not limited to, programming, equipment and personnel available to users for all forms of community communications;
- (F) Cable industry performance nationwide;
- (G) Comments from residents and representatives of community organizations submitted in a manner to be determined by the committee.

(3) The committee shall make recommendations to the mayor and to the council as to the franchisee's eligibility for renewal of the agreement awarding the franchise in accordance with this chapter, in no less than four nor more than ten months from the date of the committee's first consideration of such renewal as provided in subsection (a) of this section.

- (A) The committee, in the recommendations shall address the following matters:
 - (i) Renewal of the agreement awarding a franchise in accordance with this chapter;
 - (ii) Charges to the agreement; and
 - (iii) Amendments to this chapter.

(b) After review of the committee's recommendations and such recommendations as council may solicit from the committee, and after holding a public hearing on the same, the council shall take such action as it deems appropriate, which may include any of the following:

- (1) Council may authorize the mayor to renew the agreement awarding a franchise in accordance with this chapter upon such conditions as it may direct; or
- (2) Council may authorize the mayor to exercise the city's option provided in section 5.78.180 of this chapter to purchase the cable communications system from the franchisee; or

- (3) Council may authorize the franchisee to transfer the cable communications system in accordance with section 5.78.240 of this chapter; or
- (4) Council may direct the franchisee to dismantle its cable communications system; or
- (5) Council may authorize the mayor to solicit proposals for and execute a new agreement awarding a franchise in accordance with this chapter and any amendments to this chapter; or
- (6) Council may determine not to authorize the award of any further franchise. If the franchisee determines not to renew the agreement awarding a franchise in accordance with this chapter, the council shall proceed to follow one of the courses of action under subsections (b)(2), (3), (4), (5) or (6) of this section. (Ord. 61-4568 §2(part), 1984.)

5.78.290 Termination. (a) The city may terminate any agreement awarding a franchise in accordance with this chapter in the event of the violation of any provision of this chapter or of any rule and regulation promulgated pursuant to this chapter or of any federal, state or local law as adjudicated by a court of competent jurisdiction, or the breach or other failure, refusal or neglect by the franchisee to perform its obligations under the terms and conditions of any agreement awarding a franchise in accordance with this chapter, except when such violation, breach, failure, refusal or neglect is caused by the following:

- (1) Acts of God;
- (2) Riots; or
- (3) Emergencies declared by the President of the United States of America, the Governor of the state or the mayor.

(b) In the event that a court of competent jurisdiction determines that the franchisee has violated any provision of this chapter, any rule or regulation promulgated pursuant to this chapter, any federal, state or local law, or any term of any agreement awarding a franchise, except as noted in subsection (a) of this section the city may make a written demand on the franchisee that it comply with the law or such agreement. If the violation, breach, failure, refusal or neglect is not remedied to the satisfaction of the mayor within thirty days following such demand, the mayor shall determine whether or not such violation, breach, failure, refusal or neglect by the franchisee was excusable or inexcusable as provided in subsection (a) of this section.

- (1) If the city determines such violation, breach, failure, refusal or neglect by the franchisee was excusable as provided by subsection (a) of this section the mayor shall direct the franchisee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the mayor may direct.
- (2) If the city determines such violation, breach, failure, refusal or neglect by the franchisee was inexcusable as provided in subsection (a) of this section then the

mayor may declare the agreement awarding a franchise in accordance with this chapter breached or terminated and may pursue any and all remedies available to the city.

Termination of any agreement awarding a franchise in accordance with the provisions of this chapter shall in no way limit the rights of the city under such agreement or any other remedies, legal or equitable, available to the city.

(c) If the city declares the agreement is breached pursuant to subsection (a) of this section, the mayor may pursue any remedies available to the city pursuant to the agreement or any other remedy, legal or equitable, available to the city. In addition, the mayor may request the council to take any action listed in subsection (b)(2), (3), (4), (5) or (6) of section 5.78.280.

(d) If any agreement awarding a franchise in accordance with this chapter is cancelled by reason of the default of the franchisee, the city may exercise its option to purchase any portion of the cable communications system then connect in any manner with the streets, public ways, public places or other property of the city as well as all books and records, private easements, and contractual rights to programming, all of which are essential parts of the system at a cost not to exceed its then book value less any amount for any damages incurred by the city in connection with such cancellation. Damages incurred by the city shall include, but shall not be limited to, any payment made by the city authorizing or directing the continued operation of the system. (Ord. 61-4568 §2(part), 1984.)

5.78.300 Miscellaneous. (a) This chapter shall be made to conform in style to any codification of city ordinances hereinafter adopted by council.

(b) Interconnection.

(1) Neither the franchisee nor any other person shall connect or permit the connection of the franchisee's cable communications system electronically or in any other manner whatsoever with any other type of system whatsoever including, but not limited to, a cable communications system without the authorization and the written approval of the committee, upon such conditions as the committee may direct.

(2) If the franchisee connects or permits the connection of its cable communications system in violation of the provisions of subsection (b)(1) of this section, the franchisee shall be subject to the provisions of section 5.78.290 of this chapter and shall be deemed to have materially breached the agreement awarding a franchise in accordance with this chapter. The franchisee shall be subject to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the city.

(3) Any connection whatsoever of the franchisee's cable communications system with any other kind of system including, but not limited to, a cable communications system shall not relieve the franchisee of any of its obligations under this chapter and any agreement awarding a franchise in accordance with this chapter.

(c) This chapter and any agreement made in accordance with this chapter shall in all respects be governed by the laws of the state of Wisconsin.

(d) The city shall have the authority to reject any and all proposals for any agreement awarding a franchise in accordance with this chapter.

(e) The franchisee shall comply with all federal, state and local laws.

(f) It shall be unlawful for any person to make or use any unauthorized connection, whether physically, electrically or in any other manner, with any part of a cable communications system operated by a franchisee under any agreement in accordance with this chapter for the purpose of enabling anyone to receive or use any signal or service without payment to the franchisee.

(g) The provisions of this chapter are severable, and if any provision or application is held illegal, unconstitutional or invalid, such holding shall not affect the remaining provisions. It is the legislative intent of the council that this chapter would have been adopted if such illegal provision had not been included or any illegal application had not been made. (Ord. 61-4568 §2(part), 1984.)

5.78.310 Penalty. (a) Where this chapter provides alternative penalties or remedies, they shall be cumulative and the imposition of one penalty or remedy shall not prevent the appropriate city officer from invoking any other penalty or remedy provided for.

(b) Unless otherwise provided, any person specifically (including the franchisee) convicted of violating any provision of this chapter or any rule or regulation promulgated under this chapter, shall, upon conviction, be fined not more than five hundred dollars and costs for each offense, and in default of payment, thereof, may be imprisoned for not more than thirty days. Each day of a continuing violation shall constitute a separate and distinct offense.

(c) In addition to any penalty provided or imposed, any condition caused or permitting to exist in violation of any provision of this chapter shall be deemed to be a public nuisance and may be abated by the city as provided in law or equity. Each day such condition continues shall constitute a separate and distinct offense. (Ord. 61-4568 §2(part), 1984.)

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Chapter 5.82

LICENSING OF GARBAGE HAULERS

Sections.

- 5.81.010 Garbage and trash truckers and haulers.
- 5.82.020 Fee.

5.82.010 Garbage and trash truckers and haulers. No person or firm may operate for hire trucks, trailers or other vehicles whose use or purpose is to pick up, collect, convey or haul garbage or trash from any class of customer without first licensing each vehicle. The city clerk shall annually issue a license for each vehicle upon application. Each vehicle shall be watertight and of such construction and design the contents thereof be contained entirely within and surrounded by the body.

5.82.020 Fee. The fee per year for a license shall be as specified in section 3.40.010(a) and shall be paid in advance upon application under section 5.82.010. (Ord. 61-5553 §20 (part), 2013, File No. 13-0309; Ord. 61-5141 §1, 2001, File No. 01-1118.)