

# CHAPTER 7

## LICENSES AND PERMITS

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# LICENSES AND PERMITS

## 7.01 MOBILE FOOD ESTABLISHMENT

### **(1) Permit Required**

No person shall operate a mobile food establishment in the City of Middleton without obtaining a permit under this Section.

### **(2) Definitions**

- (a) "Mobile food establishment" means a restaurant or retail food establishment where food is sold to members of the general public from a movable vehicle, push cart, trailer, or boat which periodically or continuously changes location including movable concession stands and similar temporary stations not operating from a permanent building licensed as a restaurant including those designed to operate as temporary food establishments or traveling retail food establishments as those terms are used in Wis. Admin. Code Chap. DHS 196 "Appendix" (the "Wisconsin Food Code"). Mobile food establishment does not include a vehicle which is used solely to transport or deliver food, a common carrier regulated by the state or federal government, or an establishment under hire, contract or special request to provide food service to a private group, organization or business and is not serving to members of the general public provided the establishment is in full compliance with all state and county food and health code requirements.
- (b) "Mobile desserts establishment" means a mobile food establishment that serves individual portions of ice cream, ice milk, frozen custard, frozen yogurt, dessert mix, sundaes, or other frozen desserts that are prepackaged and totally enclosed in a wrapper or container having been manufactured, prepared or wrapped in a licensed food establishment.

### **(3) Application and Fee**

Applications to operate a mobile food establishment unit shall be filed by the owner of the unit with the City Clerk on a form prescribed by the City Clerk.

- (a) Such form shall require the following information be provided:
  - 1. Name, address and telephone number of the person, firm, association or corporation that owns the unit.
  - 2. Birth date, height, weight, color of hair and eyes of the applicant.
  - 3. The length of time for which the right to conduct business is desired.
  - 4. Make, model and license number of any vehicle to be used in the operation of the unit.
  - 5. A statement as to whether the applicant has been arrested or convicted of any crime or ordinance violation as well as the nature of each offense and the place of arrest or conviction, if applicable.
  - 6. The location or locations from which the unit will be operated.
  - 7. A copy of the applicant's valid food and beverage license issued by the State of Wisconsin or agent health department.
  - 8. The three locations where applicant conducted business immediately preceding the application including identification of any licenses or permits required and the governmental entity that issued such license or permit.
  - 9. A copy of any authorization required under subsection.

- (b) At the time of filing the application, the applicant shall present the following to the Clerk for examination:
  - 1. A driver's license or some other proof of identity as may be reasonably required;
  - 2. A photograph approximately 2" X 2" showing the head and shoulders of such person, which was taken no more than one year prior to the application;
  - 3. A copy of the applicant's finger prints taken by any authorized law enforcement agency;
- (c) If any persons other than the applicant will be operating the unit without the presence of the applicant, such persons shall also be licensed as operators and the information required in paragraphs (a)1. through 5. and (b) shall be provided.
- (d) Permits may be issued on an annual basis, effective from January 1 through December 31 of the same year, or on a single event basis. Permits issued on a single event basis, if operating as part of a Special Event permitted under section 7.17 pursuant to a contract with the special event permittee, shall be effective for the duration of the Special Event. Single event permits for operations not contractually connected to a Special Event under section 7.17 may be effective for a period not exceeding 48 consecutive hours.
- (e) The permit fee shall be as established by the Fee Schedule under Section 3.12.

#### **(4) Regulations**

Mobile food establishment units operating within the City of Middleton shall comply with all of the following:

- (a) Mobile food establishments shall comply with all state and county food and health code requirements applicable to the unit and related food and beverage license.
- (b) All state, county and City of Middleton permits shall be conspicuously displayed on the mobile food establishment while in operation.
- (c) Mobile food establishments may operate from any space on private property where permitted by the property owner and which does not otherwise create a traffic hazard provided the zoning regulations applicable to the property do not limit the property to residential and related incidental or accessory uses. No mobile food establishment shall operate on a public street or any City property unless operating as part of a Special Event permitted under section 7.17 pursuant to a contract with the special event permittee and if on a public street, only if the area of the public street is closed for the special event. Notwithstanding the foregoing, a mobile desserts establishment may operate on the public streets within any City zoning district provided it is parked only while serving customers present or approaching for service or while it is not open for service.
- (d) Mobile food establishment units shall not obstruct any public street, sidewalk, trail access or visibility of cross walks, street corners, driveways or intersections and operators shall take affirmative steps to direct unit customers waiting for service to refrain from causing any such obstructions.
- (e) Mobile food establishments shall operate only between the hours of 7:00 a.m. and 10:00 p.m.
- (f) Mobile food establishments shall provide at least one leak proof container for the deposit of waste. Mobile food establishment operators are required to remove or otherwise properly dispose of all waste, liter or garbage generated by their operations and patrons on a daily basis including that which may be reasonably seen from the location of operation on the ground or otherwise not in a proper disposal container.
- (g) Licensed mobile food establishment operator must be present at all times when the unit is in operation.
- (h) All mobile food establishment units must have signage posted, in lettering not less than three inches in height, in plain view to all patrons that provides the name of the operator

and a valid telephone number.

## **(5) Exemptions**

No permit shall be required for a mobile food establishment operating in authorized events as identified in this subsection. Notwithstanding this subsection, mobile food establishments shall comply with all of the regulations set forth in subsection (3) unless the regulation is inconsistent with any approval granted by the City of Middleton for the authorized event triggering the exemption. Mobile food establishments exempt from the permit requirement of this section are those mobile food establishments:

- (a) authorized, in accordance with procedures established by the City of Middleton, to operate at the Terrace Avenue Market Arcade;
- (b) operated by tax-exempt, non-profit organizations granted exemption under Section 501(c)(3) of the Internal Revenue Service Code or other educational institutions, churches, religious, educational or benevolent associations or youth organizations operating not for profit for local benefit for the area including, but not limited to, the City of Middleton, to raise funds for such purposes; or
- (c) operated by the City of Middleton;
- (d) that are mobile desserts establishments provided they apply for and receive a direct sellers permit under section 7.05.

*(O1434, 3/7/17)*

## **7.02, 7.03, 7.04 Repealed 04/05/16 O1408**

## **7.05 REGULATION OF DIRECT SELLERS AND SOLICITORS**

### **(1) Sellers and Solicitors Regulated**

No direct seller or solicitor shall engage in any activity governed by this section without first complying with the registration requirements applicable to the class of activity in which the direct seller or solicitor is engaged.

### **(2) Definitions**

- (a) "Direct Seller" means any individual who, for him or herself, or for a partnership, association, or corporation, travels from house to house, sells goods or takes orders for the later delivery of goods or merchandise, at any location other than the permanent business place or residence of said individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods or merchandise includes donations required by the direct seller for the retention of goods or merchandise by a donor or prospective customer and further includes the sale of services in connection with goods or merchandise even where the sale of services constitutes the greater part of value for the price paid. *(O1486, 3/5/19)*
- (b) "Solicitor" means any person who for compensation or other consideration plans, conducts, manages or carries on any drive or campaign in the City for the purpose of soliciting contributions, travels from house to house for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds him or herself out to persons in this state as independently engaged in the business of soliciting contributions for such purpose. A bona fide officer or employee of a charitable organization is not deemed a solicitor unless his or her salary or other compensation is computed based on the funds to be raised or actually raised.
- (c) "Transient Merchant" is one who engages in the sale of goods and merchandise at any place in this City temporarily, and who is not a permanent merchant. *(O1486, 3/5/19)*
- (d) "Permanent Merchant" means a direct seller who, has:

- i. continuously operated an established place of business in the City for at least one year prior to consideration of the application of this section to said merchant, or (O1486, 3/5/19)
  - ii. continuously resided in the City for at least one year prior to consideration of the application of this section to said merchant and now does business from his or her residence; or (O1486, 3/5/19)
  - iii. operates a place of business in the City upon property owned by the direct seller or under a lease of no fewer than three (3) years. (O1486, 3/5/19)
- (e) "Charitable Organization" means any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.
- (f) "Contribution" means the promise or grant of any money or property of any kind or value, including net proceeds from sales of tickets, and donations required by the solicitor for the retention of goods by a donor or prospective customer.

### **(3) Registration of Direct Sellers**

- (a) Applicants for registration as a direct seller shall complete and return to the City Clerk a signed registration form furnished by the Clerk containing the following information:
- i. Name, permanent address and telephone number and temporary address, if any, from which the business will be conducted;
  - ii. Age, height, weight, color of hair and eyes;
  - iii. 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, together with credentials establishing the relationship;
  - iv. Nature of the business to be conducted and a brief description of any goods and any services offered;
  - v. Proposed method of delivery of goods, if applicable;
  - vi. The length of time for which the right to conduct business is desired;
  - vii. Make, model and license number of any vehicle to be used by applicant in the conduct of his or her business;
  - viii. Statement as to whether the applicant has been arrested or convicted of any crime or ordinance violation as well as the nature of each offense and the place of arrest or conviction, if applicable;
  - ix. The three locations including addresses where applicant conducted business immediately preceding the application;
  - x. A place where applicant can be contacted for at least seven days after leaving the City.
- (b) At the time of filing the application, the applicant shall present the following to the Clerk for examination:
- i. A driver's license or some other proof of identity as may be reasonably required;
  - ii. A photograph approximately 2" X 2" showing the head and shoulders of such person, which was taken no more than one year prior to the application;
  - iii. A State certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by State authorities; (O1486, 3/5/19)
  - iv. A State health officer's certificate where applicant's business involves handling of food or clothing and is required to be certified under State law; such



certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date of the application. (O1486, 3/5/19)

- (c) At the time of filing the application, a fee as set forth in the Fee Schedule under Section 3.12 shall be paid to the Clerk to cover the cost of processing and investigating the application. The Clerk shall refuse to register the applicant if the application or supporting documents contain any material omission, if the applicant has been arrested or convicted of a crime or ordinance violation, subject to Wis. Stats. §§ 111.321, 111.322 and 111.335, or if the Clerk determines that complaints of a material nature have been received against the applicant in any of the last three locations of applicant's operation. If the application is apparently complete and lacks any of the above problems, the Clerk shall register the applicant as a direct seller and date the entry. The registrant shall thereupon sign a statement appointing the Clerk his or her agent for receipt of service of process in any civil action brought against the applicant arising out of the performance or nonperformance of any sale or service performed by the registrant in connection with the direct sales activities in the event the registrant cannot, after reasonable effort, be served personally. The registration shall be valid for one year from the date of entry, subject to subsequent summary revocation, as provided below.
- (d) Upon receipt of the application, the Clerk shall refer it immediately to the Chief of Police, who shall complete an investigation of the applicant based on the information in the application. If as a result of such investigation it is determined that any representation of fact in the application is false, the Chief shall summarily revoke or deny the registration.
- (e) Any person denied registration or whose registration is revoked may appeal to the Common Council in writing within 14 days. The procedure for such appeal shall follow Wis. Stat. Chapter 68.

#### **(4) Direct Seller Registration Exemptions**

The following shall not be required to register as direct sellers:

- (a) Any person delivering newspapers, fuel, dairy products or other goods or services to regular customers on established routes;
- (b) Any person selling goods at wholesale to retail dealers;
- (c) 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 the City and who delivers such goods in its regular course of business;
- (d) Any person who has an established place of business where the goods or services being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested a home visit by said person;
- (e) 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;
- (f) Merchants delivering goods in the regular course of business;
- (g) Governmental agents and employees in the performance of their official duties;
- (h) Any veteran holding a state license pursuant to Wis. Stat. s. 440.51;
- (i) Any person authorized, in accordance with procedures established by the City of Middleton, to sell goods and merchandise at the Terrace Avenue Market Arcade;
- (j) Any person operating pursuant to a mobile food establishment permit under section 7.01.
- (k) Any person who is a primary or secondary school student at a public or private school in Dane County, a participant in a Dane County youth sports organization, religious youth program or other non-profit youth organization, including, but not limited to the Boy Scouts or Girl Scouts, who is selling goods for purposes of fundraising for the school at which they are a student or for the organization or program in which they are members.

(O1486, 3/5/19)

- (l) The sale of works art or crafts of created by the seller and offered for sale at locations other than door to door to customers' residences. (O1486, 3/5/19)

#### **(5) Solicitors; Registration Procedure**

- (a) Applicants for registration as a solicitor shall complete and return to the Clerk a signed registration form furnished by the Clerk containing the following information:
  - i. Name, address, and telephone number of the charitable person, firm, association, organization or corporation that the solicitor represents or is employed by, together with credentials establishing the relationship;
  - ii. Purpose of the charitable organization;
  - iii. Names, permanent addresses and telephone numbers of the persons who will actually engage in the soliciting, together with the time periods and routes on which the person will solicit;
  - iv. A statement of whether the charitable organization is registered with the State Department of Regulation and Licensing under Wis. Stat. s. 440.41;
  - v. Amount of commission, fees, wages or emoluments, if any, to be expended in connection with the solicitation.
  
- (b) At the time of filing the application, the applicant shall present the following to the Clerk for examination:
  - i. A driver's license or some other proof of identity as may be reasonably required;
  - ii. A photograph of approximately 2" X 2" showing the head and shoulders of such person, which was taken no more than one year prior to the application;
  - iii. If required to be registered with the State, a complete copy of the charitable organization's registration form and supporting materials under Wis. Stat. s. 440.41(2), the latest annual report under Wis. Stat. s. 440.41(4), and the registration materials, bond and contract under Wis. Stat. ss. 440.41(5), (6), and (7);
  - iv. If not required to be registered with the State, a complete copy of the charitable organization's registration form and latest filed federal tax form.
  
- (c) No fee shall be charged for registration of solicitors. The Clerk shall examine the application and supporting documents. If the application and supporting documents are complete, the Clerk shall register the applicant as a solicitor. The registration shall be valid for one year from the date of issuance.

#### **(6) General Regulations of Direct Sellers and Solicitors**

- (a) No direct seller or solicitor may call at any dwelling during the traditional hours of rest between 9:00 PM and 8:00 AM, and all day on Sundays and legal holidays, unless the direct seller or solicitor has previously arranged an appointment during those times.
- (b) No direct seller or solicitor may call at any dwelling or other place where a sign is displayed bearing the words "No Trespassing", "No Solicitors", "No Peddlers", or words of similar meaning, unless the direct seller or solicitor has previously arranged an appointment on such premises.
- (c) No direct seller or solicitor may call at the rear door of any dwelling except by prior appointment.
- (d) No direct seller or solicitor may remain on any premises after being asked to leave by the owner, occupant or other person having apparent authority over the premises.

- (e) No direct seller or solicitor may impede the free use of sidewalks or streets by pedestrians or vehicles.
- (f) No direct seller or solicitor may make any loud noises or use any sound amplifying device to attract persons if the noise produced is capable of being plainly heard outside a 100 foot radius from the source.
- (g) Upon making contact with an individual while attempting to make a sale or solicit a contribution, the direct seller or solicitor shall immediately disclose his or her name, the name of the company or organization with which he or she is associated or affiliated, and the purpose of the contact. Each such seller or solicitor shall carry proof that the individual represents the company or organization he or she purports to represent, as well as a copy of the registration issued by the Clerk. The direct seller or solicitor shall produce such proof and registration for inspection by the individual immediately upon demand by the individual.

### **(7) Additional Regulations of Direct Sellers**

- (a) A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of goods or services offered for sale, or the purpose of the visit, or the identity of the organization represented.
- (b) If a sale of goods is made, or any sales order for the later delivery of goods is taken, the buyer shall have the right to cancel the transaction if it involves the extension of credit or is a cash transaction in which the amount the customer pays exceeds \$25.00, in accordance with the procedure set forth in Wis. Stat. ss. 423.202-203; the direct seller shall furnish the buyer with two copies of a typed or printed notice conforming with all of the requirements of Wis. Stat. s. 423.203(1).
- (c) If the direct seller takes a sales order for the later delivery of goods or services, he or 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 none, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and if so, the terms thereof.

### **(8) Revocation of Registrations**

- (a) Licenses or registrations issued under the provisions of this section may be revoked by the License and Ordinance Committee of the City after notice and hearing, for any of the following causes:
  - i. Fraud, misrepresentation, or incorrect statement contained in the application;
  - ii. Fraud, misrepresentation or incorrect statement made in the course of carrying on business as solicitor, canvasser, peddler, transient merchant, itinerant merchant, or itinerant vendor;
  - iii. Any violation of this section;
  - iv. Conviction of any crime, misdemeanor or ordinance violation, subject to Wis. Stats. 111.321, 111.322 and 111.335;
  - v. Conducting the business of peddler, canvasser, solicitor, transient merchant, itinerant merchant, or itinerant vendor, as the case may be, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- (b) Notice of the hearing for revocation of a license or registration shall be given by the City Clerk in writing, setting forth specifically the grounds of complaint, the time and place of hearing, the right to counsel, right to confrontation, cross examination and the right to produce witnesses. Such notice shall be mailed, postage prepaid, to the licensee at his or

her last known address at least five (5) days prior to the date set for hearing, or shall be delivered to the licensee by a police officer in the same manner as a summons at least three days prior to the date set for hearing.

- (c) The hearing for revocation shall be held before the License and Ordinance Committee for determination as to revocation of a license or registration. The licensee may be represented by legal counsel. The complainant or licensee may appeal the determination of the Committee to the Common Council within five (5) days, by filing a written notice of appeal with the City Clerk; otherwise the Committee's determination becomes final.
- (d) When notice of appeal is filed, the City Clerk shall notify the Chair of the License and Ordinance Committee who shall within five (5) days prepare or cause to be prepared a written summary of the testimony and evidence, findings of fact and the decision of the Committee. A copy of this summary shall be served on the appellant in the same manner as provided for service of notice of the revocation hearing as provided herein. Appellant may file with the Clerk a written response of objections or corrections to the summary within five (5) days of receipt of the summary but the response shall not contain any new evidence or testimony. If the action of the Committee was by a divided vote, a representative of the majority view may file a written response in like manner. The summary and responses, if any, shall constitute the appeal record, copies of which shall be furnished to the Common Council. The appeal shall be placed on the next council agenda after action of the License and Ordinance Committee. The appellant or his or her representative and the City's Attorney or his or her designee may orally argue to the Common Council; however there shall be no attempt to supplement the appeal record by testimony, evidence, or by another manner or means. A majority vote of the Common Council shall be determinative.

### **(9) Penalty**

Any person convicted of violating any provision of this section shall be subject to a forfeiture under section 30.04 of this Code, as well as revocation of all registrations held by the person or any organization with which he or she is affiliated by the City Council upon reasonable advance written notice and hearing as provided herein.

## **7.06 BICYCLES**

### **(1) Purpose**

The purpose of bicycle registration is to assist with tracking and recovery of missing bicycles.

### **(2) Registration of Bicycles**

No person shall operate or knowingly permit the operation of a bicycle upon any street within the City unless such bicycle shall have been properly registered.

### **(3) Registration Form**

Every owner or operator of any bicycle within the City shall, within ten (10) days of the acquisition of such bicycle file with the Chief of Police a complete description of such bicycle, upon an online form located on the police department website. Such filing shall constitute a registration of such bicycle for the purposes of this section. Such registration shall be serially numbered and kept on file by the Chief of Police. Registration shall not be required under this section if the bicycle is registered in another municipality. The City of Middleton bicycle registration system is for the use of Middleton residents only. Registration in the City of Middleton by non-residents is prohibited.

#### **(4) Cancellation of Registration**

The Chief of Police may cancel the registration from any bicycle being operated upon any street in the City in an unsafe manner, or in violation of any state law or local ordinance; and such cancellation of registration shall be in addition to other penalties provided in this Code.

#### **(5) Change of Ownership**

Within ten (10) days after any bicycle registered hereunder shall have changed ownership, or been dismantled and taken out of operation, such information shall be reported to the Chief of Police by the person in whose name the bicycle has been registered.

#### **(6) Penalty**

Any person, firm, or corporation who violates any provision of this section shall be subject to a penalty as prescribed by section 30.04 of this Code.

### **7.07 DOGS AND CATS**

#### **(1) Dog Licenses Required**

It is unlawful for any person to harbor or permit to remain about his or her premises any dog for which no license has been issued and for which one is required pursuant to Wis. Stat. Chapter 174, and the fact that a dog is without a license attached to its collar shall be presumptive evidence that the dog is unlicensed. The fee for a dog license shall be as set forth in the Fee Schedule under Section 3.12.

#### **(2) Dogs and Cats Shall Not Run at Large**

It is unlawful for the owner or keeper of any dog or cat to permit the same to run at large in the City. A dog or cat shall be deemed to be at large unless under the control of a person by means of a chain, rope or harness of sufficient strength to control the action of such dog or cat, or confined on the premises of the owner or keeper.

#### **(3) Dogs and Cats to be Impounded**

The Chief of Police, other police officer or a deputy sheriff shall seize and impound any dog for the keeping of which no license has been issued and for which one is required, or seize and impound any dog or cat running at large in the City. When any such dog or cat is seized pursuant to this section the officer seizing the same shall notify the owner personally through the US mail, if such owner be known to the officer, but if such owner is unknown, the officer shall post written notice in three public places in the City giving the description of the dog or cat, stating where it was impounded and the conditions for its release. If after seven (7) days the owner does not claim such dog or cat and pay to the City Treasurer the required license fee in the case of dogs and cats, the cost of seizure and impounding said dog or cat in the amount of \$10.00, the care of the dog or cat, and the damage caused by such animal, if any, such officer shall dispose of the dog or cat in a proper and human manner.

#### **(4) Penalty**

Any person who violates any of the provisions of this section shall be subject to a penalty as provided in section 30.04 of this Code.

### **7.08 ALCOHOL BEVERAGE LICENSES**

#### **(1) Conformity with Regulations Required**

It shall be unlawful for any person, firm, association or corporation to sell, keep for sale, give away, deal in, traffic in, or permit to be sold or kept for sale, given away, dealt in or trafficked in to consumers within the City an alcoholic beverages except in strict conformance with this section.

**(2) Provisions of Wisconsin Statutes Incorporated into Code**

- (a) The provisions of the Wisconsin Statutes as listed herein, or any successor sections thereto, exclusive of any provisions thereof relating to the penalty to be imposed or the punishment for violation of such statutes are hereby incorporated by reference. A violation of any such provision shall constitute a violation of this ordinance:

<b>Statutory Citation</b>	<b>Description of Section</b>
125.02	Definitions
125.04	General Licensing Requirements
125.05	Local Option; Remonstrances
125.06	License and Permit Applications
125.07	Restrictions on Sales to Minors and Intoxicated Persons; Presence of Minors in Places of Sale and Possession by Minors; Penalties
125.08	Proof of Age
125.09	General Restrictions
125.12	Revocations, Suspensions, Refusals to Issue and Review
125.15	Furnishing Bail
125.17	Issuance of Operator's Licenses
125.18	Issuance of Manager's Licenses
125.25	Class "A" Licenses - Fermented Malt Beverages
125.26	Class "B" Licenses - Fermented Malt Beverages
125.28	Wholesaler's Licenses
125.31 (2)	Multiple Licenses and Permits
125.32	General Restrictions and Requirements
125.51	Retail Licenses and Permits - Intoxicating Liquors
125.57	Pharmacist's License

- (b) Pursuant to Wis. Stats. 125.10(5)(a), the prohibition against consumption of alcohol beverages on the premises of a public place without an appropriate retail license or permit set forth in Wis. Stats. 125.09(1) shall apply to the consumption of fermented malt beverages on commercial quadricycles.

### **(3) License Fees**

- (a) Fees for licenses under this section shall be as set forth in the Fee Schedule under Section 3.12.

*(O1439, 5/16/17, 7.08(3)(b) repealed c became b)*

- (b) Holders of a Class “B” fermented malt beverage license or “Class B” intoxicating liquor license may apply to the City Clerk for a temporary expansion of the premises description for special events. Such application shall be referred to the License & Ordinance committee for a recommendation to the Common Council. A temporary expansion of the premises shall be permitted only where and under such conditions as may be consistent with the public health, safety and welfare. Such application shall be accompanied by a fee as set forth in the Fee Schedule under Section 3.12. Such application shall include whatever information that may be reasonably requested by the City Clerk or other City officials necessary to review the application, including, but not limited to, site plans, security plans, sanitation plans and event details.

### **(4) Application**

- (a) The application for such licenses shall be in writing on forms furnished by the Wisconsin Department of Revenue, and shall contain the following information verified under oath by the applicant:
  1. Address of the building for which the license is desired and description including a diagram of overall dimensions, seating arrangements, capacity and bar size of the premises therein where fermented malt beverages or intoxicating liquors are to be sold. If the premises have yet to be constructed and final plans are not available at the time of the license application, the application may be processed and a license granted on the condition that the diagram required under this paragraph shall be filed at least 60 days prior to issuance of an occupancy permit. Upon receipt, the City shall review the diagram as if a new application were filed; however, unless the license is up for renewal, or as otherwise required or authorized by statute or ordinance, no other application materials need be submitted or reviewed.
  2. A statement that the applicant is a citizen of the United States, or a domestic corporation.
  3. A statement that the applicant or registered agent has resided continuously in the State of Wisconsin for not less than one (1) year prior to the date of such application, except that a Class B license or permit may be issued to a person who has been a resident of the State continuously for 90 days prior to the date of application.
  4. A statement as to whether the applicant has ever been convicted of a felony or of a violation of any Federal or State act, or ordinance of the City of Middleton or other jurisdiction regulating or prohibiting the sale of intoxicating or non-intoxicating liquor, and if so, the number and dates of such convictions and the penalty imposed.
  5. A statement as to whether the applicant holds or has applied for any other Class A or Class B licenses for any other location within the State and if so the number of such licenses held or applied for by such applicant.
  6. A statement as to whether any other business other than the sale of fermented malt beverages, intoxicating liquor and soft drinks as herein defined is to be conducted on the premises sought to be licensed, and if so a description of the nature of such business, but such information shall not be required in an application for an operator's license.

7. A statement that the applicant is not acting as agent for or in the employ of another.
  8. If the application be for a Class B license a statement as to whether any brewer, bottler, wholesaler, or corporation, a majority of whose stock is owned by any brewer, bottler or wholesaler, has or intends to supply, furnish, lease, give, pay for, or take any chattel mortgage on any furniture, fixture, fitting, or equipment to be used in or about the premises covered by the application.
  9. If the application be made for a Class B license, a statement as to whether any brewer, bottler or wholesaler is financially interested in, directly or indirectly, the license for which application is made.
  10. If the application be made for a Class B license, a statement as to whether any brewer, bottler, or wholesaler, is financially interested in, directly or indirectly, the license for which application is made.
  11. The name, residence, age of the applicant, if an individual, or the name of the principal officers, their residence, ages, if the applicant is an association or corporation, together with the state of incorporation. It shall also contain the name(s) of one or more persons whom such corporation or association shall designate as manager or person in charge, with the address(es) of same.
  12. A statement that the applicant consents to the entry of duly authorized representatives of the City at all reasonable hours for the purpose of inspection and search and consents to the removal from said premises of all things and articles in evidence in any prosecution and such statement shall be signed and sworn to by the applicant, if an individual, and if a corporation, then by the president and secretary thereof, before a notary public or other officer authorized to administer oaths. Such application shall also contain such other reasonable and pertinent information as the Common Council may from time to time require. Such application shall be referred by the Clerk to the Common Council which shall thereupon make any investigation as it may deem necessary or desirable. The application shall also be referred by the Clerk to the Chief of Police, who shall inspect the premises sought to be licensed and shall report in writing to the Common Council as required. Such reports shall deal with any and all incidents relating in any manner to the premises sought to be licensed, whether or not the incident led to any official action against the premises or its licensee.
- (b) Applications for renewal of "Class A" and "Class B" Intoxicating Liquor, Class "A" and Class "B" Fermented Malt Beverage, and "Class C" Wine Licenses shall be filed with the City Clerk no later than April 15. The Clerk shall send notice of such deadline each year to holders of such licenses no later than March 15. Any licensee filing a renewal application after April 15 shall pay and additional fee as set forth in the fee schedule under Section 3.12.

### **(5) Transfer of Licenses**

No license issued pursuant to this ordinance may be transferred from place to place or from person to person except pursuant to the rules set forth in Wis. Stat. §. 125.04(12). Any application for transfer pursuant to said statute shall be accompanied by payment of a fee as set forth in the Fee Schedule under Section 3.12.

### **(6) Issuance of Licenses**

#### **(a) Hearing and Council Approval**

Opportunity shall be given by the Common Council to any person to be heard for or against the issuance of any license. Upon the approval of the application by the Common



Council, the City Clerk shall, upon payment of the license fee herein provided, issue to the applicant a license. Each license shall be numbered in the order in which issued and shall specifically state the premises for which issued, the date of issuance, the fee paid, and the name of the licensee. All licenses shall remain in force until the 30th day of June next following the issuance thereof unless sooner revoked or suspended.

(b) Issuance of Temporary Licenses

1. Notwithstanding the forgoing paragraph (a), or any other provision of this Section, the License and Ordinance Committee, pursuant to Wis. Stats. §§125.26(1) and 125.51(1)(a), may issue Temporary Class “B” and “Class B” licenses without public hearing except that the City Clerk is authorized to issue such licenses without hearing if the same applicant has previously had such license approved by the License and Ordinance Committee and the license will be subject to the same, or more restrictive conditions, as the prior license.
2. The City Clerk may decline to exercise the authority granted under this Section and refer any such application to the License and Ordinance Committee if the Clerk determines, in his or her discretion, that changes of circumstances, the passage of time since the last approved license, a change in the officers, agents or employees of the licensee, or other policy considerations relevant to consideration of the license suggest, that License and Ordinance Committee review of the application is appropriate.
3. Any decision to deny a Temporary License, in whole or in part, may be appealed by filing a written request for hearing, including a brief description of the grounds of the appeal, within fifteen (15) days of mailing the decision to the applicant. If the decision appealed from is the City Clerk’s, the appeal shall be heard by the License and Ordinance Committee at its next regular meeting. If the decision appealed from is the License and Ordinance Committee’s, including any decision on appeal from the decision of the City Clerk, such appeal shall be heard by the Common Council.

**(7) General Licensing Requirements**

In addition to the requirements set forth in subsection (2) hereof, all license applicants and licensees shall strictly comply with the following provisions:

(a) Conformity to Statutes and Ordinances

No license shall be issued or renewed unless the premises conforms to the sanitary, safety and health requirements of the State Building Codes, the State Plumbing Code, the rules and regulations of the State Department of Health and Social Services applicable to restaurants as well as conform to all ordinances and regulations adopted by the City.

- (b) No license shall be issued unless it is issued to a specific premises as identified pursuant to subsection (4)(a) above. Any existing licenses not applied to a specific premises by June 30, 2006 shall not be renewed pursuant to the procedures of Wis. Stat. §. 125.12(3) as adopted by reference by subsection (2) above.

(c) Non-operational premises

1. Except as provided under subparagraph 2 below and subsection (7)(e) above, no license shall be maintained unless the premises to which it applies begins regular operation within (12) months from the issuance of the license or fails to be in operation for any consecutive six (6) month period while holding a license and may be revoked or non-renewed pursuant to the procedures of Wis. Stat. §§. 125.12(1) or (3) respectively as adopted by reference by subsection (2) above.
2. Upon the filing of a complaint with the City Clerk alleging a violation of this paragraph, the License and Ordinance Committee shall hold a hearing to show

cause why the license should not be revoked or non-renewed. The Committee may postpone revocation or non-renewal proceedings for up to but not to exceed six (6) months from the date of the hearing in its discretion upon consideration of the following factors:

- (a) the reasons why the licensed premises has not been in operation including but not limited to the degree of control the licensee has had over the circumstances leading to non-operation and efforts the licensee has undertaken in order to commence or resume operations.
- (b) the likelihood that the premises will commence or resume operations within the three months subsequent to the hearing.
- (c) the licensee's investment backed expectations in the license.
- (d) the number of licenses available for issuance.
- (e) any other factors the Committee deems relevant in balancing the licensee's interests in retaining the license against the City's interest in licenses being held by functioning and productive businesses.

3. If after the period of time granted by the License & Ordinance Committee under subparagraph 2 the licensed premises is still not in regular operation, revocation or non-renewal proceedings shall continue subject to the discretion of the Common Council.

(d) Class "A" and "Class A" License Quota

1. Number of Licenses

At the time of the enactment of this section, there were nine Combination Class "A" and "Class A" license holders and 13 Class "A" license holders. As part of a comprehensive effort to decrease the incidence of alcohol-related problems, to protect the safety and welfare of the community from increasing rates of alcohol-related crime and violence and to reduce the strain on public resources, the common council seeks to reduce the number of "Class A" and Class "A" alcohol beverage licenses in the City in accordance with the following prospective quotas:

- (a) The total number of Combination Class "A" and "Class A" licenses shall not exceed 12.
- (b) The total number of Class "A" fermented malt beverage licenses issued alone or in combination with a "Class A" intoxicating liquor license shall not exceed 20.
- (c) No "Class A" intoxicating liquor license shall be issued except in combination with a Class "A" license.

2. Public Hearing

The Common Council shall hold a public hearing upon every Class "A" and "Class A" license application and shall notify all property owners within a radius of one-half of a mile of the proposed site of the date of the hearing. The notice shall be given at least five days before the hearing and may be given by mail or other publication.

3. Exceeding Quota

Notwithstanding the quotas and geographic restrictions established under this paragraph, the Common Council may, by a two-thirds vote of all the members present of the Common Council, grant a new retail Combination Class "A" and "Class A" or a new retail Class "A" fermented malt beverage license in excess of the quota or geographic concentration restrictions. Any license issued under this subparagraph shall not operate to permanently increase the quota, but

rather to temporarily exceed the quota for reasons of benefiting the community pursuant to the following considerations:

- (a) In addition to the license application, the applicant shall submit a business plan of operation and the relevant experience, background and signatures of the individual, partners or directors, officers and agent of a corporation or limited liability company, as well as the signature of the owner or owners of the building or land;
- (b) The applicant shall supply proof of ownership, lease or options to purchase or lease the proposed land or building which shall be properly zoned for the proposed venture;
- (c) The applicant shall show that the proposed establishment will have a beneficial economic impact upon the community apart from any that would naturally occur as the result of the mere addition of another tavern, liquor store, convenience store or restaurant;
- (d) The applicant shall show that the proposed establishment will benefit the community by substantially improving the tax base of the City by extensively rehabilitating a blighted or deteriorated building, constructing a new building on vacant land, or will benefit the community by conferring some other tangible and substantial improvement for the area; and
- (e) The Council, as part of its analysis under paragraphs c and d, shall consider the proposed establishment's proximity to other establishments holding a Class A license and to schools, youth centers, licensed day care centers or places of worship. Where the proposed establishment is greater than 1000 feet away from another Class A establishment and 300 feet away from such other listed uses as measured from nearest property line to nearest property line, this criterion shall be deemed satisfied.

4. Exemptions

When an establishment with a valid Class "A" or "Class A" as of June 30, 2012 is thereafter sold, the subsequent buyer shall not be subject to either the quota or geographic restrictions set forth in this article when applying for a new license. New licenses may be granted in such instances, contingent upon surrender of the existing license by the seller and upon the buyer's meeting all other requirements established by the City. An establishment whose license has been non-renewed, revoked or has otherwise expired, does not qualify for this exemption. Any conditions previously placed on the seller's licensed premises transfer to the buyer's licensed premises in addition to any new conditions that may be imposed.

**(8) Operation by License Under Class A or B License; Additional City Regulations**

(a) View of Interior to be Unobstructed

- i. Blinds, Screens, and Partitions. No holder of a retail Class B license hereunder shall permit the interior of the premises to be obstructed provided that partitions, etc., not exceeding 48" in height may be permitted within the interior, and provided further this section shall not apply to a licensed premises where the principal business conducted is that of a restaurant or hotel.
- ii. Windows and Doors. Windows and doors of any licensed premises shall not be obstructed by screens, blinds, paints or other articles, provided articles not higher than 48" from the sidewalk level shall be permitted, provided further this section does not apply to a licensed premises where the principal business conducted is that of a hotel or restaurant.

(b) Alcoholic Beverages to be Sold and Consumed Only in Authorized Parts of Premises

No alcoholic beverage may be sold, dispensed or consumed under a Class B license in any portion of the building or premises not authorized in said license, or outside the building on the premises or within any temporary shelter or tent on the premises. Areas outside the building may be included under the definition of licensed premises if adequate security and enclosures are provided.

(c) Posting

Every license issued pursuant to this section shall be posted in a conspicuous place, while in force, in the room or place where alcoholic beverages are kept for sale. It shall be unlawful for any person to post such license, or to be permitted to post same upon premises other than those designated in the application, or knowingly to deface or destroy such license, or to remove such license without the permission of the licensee. Whenever a license shall be lost or destroyed without fault on the part of the holder or his or her employee or agent, a duplicate in lieu thereof under the original application shall be issued by the City Clerk if the Clerk is satisfied to the facts required herein, upon payment of a fee as set forth in the Fee Schedule under Section 3.12.

(d) Credit Restrictions

No licensee shall sell or offer to sell any alcoholic beverage to any person on credit except credit extended by a hotel to a resident guest or a club to a bona fide member, and by grocers and druggists who maintain a credit system in connection with other purchases as well. It is unlawful for such licensee to sell alcoholic beverages to any person on a pass book or store order, or to receive from any person any goods, wares, merchandise or other articles in exchange for alcoholic beverages.

(e) Gambling Prohibited

It is unlawful to permit gambling or devices used for gambling upon any premises licensed under this section.

(f) Operator Licenses

1. The City Clerk may issue a manager or operator license, which, license may be granted only upon application in writing on forms to be obtained from the City Clerk and only to persons 18 years of age or older. Operator Licenses shall be operative only within the limits of the city.
2. All applicants are subject to an investigation by the Chief of Police and/or other appropriate authority to determine whether the applicant and/or premises to be licensed comply with all regulations, ordinances and laws applicable thereto. The Police Department shall conduct an investigation of the applicant, including but not limited to, requesting information from this State, surrounding municipalities and/or any communities where the applicant has previously resided concerning the applicant's conviction. Based upon such investigation, the Chief of Police shall recommend to the City Clerk approval or denial of the application. If the Chief of Police recommends denial, the chief of Police shall provide the reason(s) for such recommendation.
3. Operator Licenses shall be issued and numbered in the order that they are granted and shall give the applicant's name, address and the date of the expiration of such license.
4. If the application for an Operator License is denied by the City Clerk, the City Clerk shall in writing inform the applicant of the denial, the reason(s) therefore and of the opportunity to request a reconsideration of the application by the License & Ordinance Committee. Such notice must be sent by mail to or served upon the applicant at least 10 days prior to the License Committee's reconsideration of the matter. At such reconsideration hearing, the applicant may present evidence and testimony as to why the license shall be granted.

5. If upon reconsideration, the License & Ordinance Committee again denies the application, the City Clerk shall notify the applicant in writing of the reasons therefore. An applicant who is denied any license under consideration of the matter, may apply to the Common Council for review. If upon reconsideration by the Common Council the applicant is again denied, they may apply to the Circuit Court pursuant to Section 125.12(2)(d) Wisconsin Statutes for review.
6. Consideration for granting or denial of a license will be based upon (a) the conviction record of the applicant subject to the limitation imposed by 111.321, 111.322 and 111.335 Wisconsin Statutes; (b) the financial responsibility of the applicant; (c) location and the premises where the license business is to be conducted and; (d) the applicant's fitness for the trust to be reposed.
7. An application for any alcohol license may be denied based upon the applicant's conviction record if the applicant has been convicted of a felony (unless duly pardoned) or if the applicant has habitually been a law offender. For purposes of this licensing procedure "habitually been a law offender" is generally considered substantially related to the license activity within the five years immediately preceding the license application. Because a license is a privilege, the Council and its designees, the Common Council and City Clerk reserve the right to consider the severity, facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further the Common Council and City Clerk at their discretion may be based upon a conviction record of two or more offenses which are substantially related to the license activity within the five years immediately preceding the act to suspend such license for a period of one year or more.
8. The License and Ordinance Committee shall be responsible for hearing and deciding all complaints and revocation or suspension hearings relating to operator's licenses.
9. Licensee, manger or other operator required to be on premises. There shall be upon premises operated under a retail Class A, Class B or Class C License at all times that the premises are open for business the licensee or some person who is responsible for acts of all persons serving, in any manner, any alcoholic beverages to customers. No person other than the licensee shall serve alcoholic beverages in any place operated under a Retail Class A, Class B or Class C license unless he/ she possesses a manager or operator's license unless he/she under the immediate supervision of the licensee or a person holding a manager or operator's license who shall be at the time of such service upon the premises.

(g) Consent to Inspection of Premises

Any holder of any license issued hereunder shall be deemed to have given consent to entry and inspection at any time by any City police officer or Alderman without any warrant. Any refusal by the license holder or holder of a manager's or operator's license to permit such inspection shall be deemed a violation of this section.

(h) Presence on Premises After Hours Under Retail Class B License

No person shall be permitted to be present on any premises licensed under a Class "B" or "Class B" alcohol beverage license between 2:00 AM & 6:00 AM Monday through Friday and 2:30 AM & 6:00 AM Saturday and Sunday except that on New Year's Day the premises may be open as provided in Wis. Stat. Chapter 125. The prohibition on presence on such premises shall not apply to the licensee, employees of the licensee, salespersons, employees of wholesalers licensed under Wis. Stat Chapter 125.28(1) or 125.54(1) or service personnel if those persons are performing job-related activities. Under no circumstances shall the consumption of intoxicating liquor be permitted between

2:00 AM & 6:00 AM Monday through Friday, or 2:30 AM & 6:00 AM on Saturday or Sunday except for New Year's Day. The premises shall be well lighted during any closed hours occupancy.

(i) Open Container Restrictions

No licensee, manager or operator shall permit any patron to leave the licensed premises with an open container containing any intoxicating beverages or fermented malt beverage.

(j) Health Rules

Each premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used. The Board of Health of Dane County is authorized and empowered to make reasonable and general rules for the sanitation of all places of business possessing licenses under this section. Such rules or regulations may be classified and made applicable according to the class of business conducted. All such rules and regulations shall have the same force as this section and infractions thereof may be punished as a violation of this section.

(k) Miscellaneous Rules

i. Consent to Inspection

Every applicant procuring a license hereunder consents to the entry of any City Officer or his or her designee at any time for the purpose of inspection and search, and consents to the removal from the premises of all things and articles they had in violation of City ordinances or State laws and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offense.

ii. Employment of Minors

No retail Class B licensee shall employ any person under eighteen (18) years of age but this provision shall not apply to hotels, restaurants, or combination grocery stores and taverns where forty nine (49%) percent or less of the gross revenue is derived from the sale of intoxicating liquors, nor to bona fide clubs.

iii. Clubs

No club shall sell intoxicating liquors except to members and to guests invited by members.

iv. Premises Order

Each licensed premises shall at all times be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.

v. Alcoholic Beverage's Content

No beverages of an alcoholic content prohibited by the laws of the United States or of the State shall be kept in or about licensed premises.

(l) 9:00 Carryout Ban; Applicable to Class A and B Licensed Premises

No person shall sell or keep for sale or permit to be sold or kept for sale in or about any premises for which a Class A license has been issued any fermented malt beverage except in original unopened packages, containers or bottles, not to be consumed in or about the premises where sold. No fermented malt beverage shall be sold upon any premises for which a Class "A" or "B" license has been issued between the hours of 9:00 PM and 8:00 AM, no seller shall permit nor shall any person carry out or remove from the Class A or B licensed premises, any fermented malt beverages or intoxicating liquors in an original unopened package, container or bottle or for consumption away from the premises.

(m) Provisional License

The City Clerk may issue provisional operator licenses in accordance with Section

125.17(5) Wisconsin Statutes. The provisional operator license shall expire 60 days after its issuance or when an operator's license is issued to the holder, whichever is sooner, the City Clerk may upon receiving an application for a temporary provisional license, issue such a license without requiring the successful completion of a responsible beverage server training course. However, such temporary license shall be used only for the purpose of allowing such applicant the privilege of being licensed as a beverage operator pending his/her successful completion of the responsible beverage server training course. A provisional license may not be issued to any person who has been denied an operator's license by the City Clerk or who has had his/her operator's license revoked or suspended within the preceding 12 months. The City Clerk shall provide an appropriate application form to be completed in full by the applicant. Failure to adequately complete the application shall be grounds for denial. Upon receipt of such application, the City Clerk shall refer it to the Chief of Police who shall immediately institute such investigation of the applicant business and character as he/she deems necessary for the protection of the public good and shall endorse his/her approval or disapproval with reasons thereof, upon said applications with three business days and return the application to the Clerk who shall issue or deny the license to the application in accordance with the Chief's recommendation. The City Clerk may revoke the provisional license issued if he/she discovers that the holder of the license made a false statement on the application. Following completion of the responsible beverage server training course and notification by the school, the license application will be presented to the City Clerk with the appropriate fee for the operator license.

(n) Video Games of Chance Prohibited

It shall be unlawful for any Class "A", "Class A", Class "B" or "Class B" alcohol beverage license holder to have located on the premises a video game of chance. A video game of chance is a game or device that stimulates one or more games commonly referred to as poker, blackjack, craps, hi-lo, roulette, any game in which winners are selected based on the results of a race or sporting event, any banking card game, baccarat or chemin de fer, any game that involves rolling dice, keno, bingo 21, bingo jack, bingo let, bingo craps, any game of chance that is placed on a slot machine or any mechanical, electro-mechanical or electronic device that is generally available to be played at a gambling casino, or other common gambling forms, regardless of whether the video game of chance offers any type of pecuniary award or gain to players. Any license holder violating this ordinance shall forfeit not more than \$1,000. Each video game shall be considered a separate violation and each day such video game is on a licensed premises also shall be a separate violation.

**(10) Encouraging or Contributing to Underage Alcohol Violations**

- (a) In conformity with Wis. Stats. § 125.07(1)(a)4., no adult may intentionally encourage or contribute to a violation of Wis. Stats. §§ 125.07(4)(a) or (b). Acts which violate this subsection include, but are not limited to:
1. Knowingly permitting underage persons not accompanied by their parent, legal guardian or adult spouse, to consume or possess alcohol on property owned or under the control of the adult or by otherwise managing, overseeing, supervising, organizing, facilitating or hosting underage persons engaged in such activity. Presence on the subject property at the time of the unlawful consumption or possession or at any other time is unnecessary to establish a violation of this subsection.
  2. Participating in any way, either by providing payment, signature or other action, a hotel, motel or other room or property for rent where it is known that underage persons not accompanied by their parent, legal guardian or adult spouse will consume or possess alcohol. Presence on the subject property at the time of

the unlawful consumption or possession or at any other time, is unnecessary to establish a violation of this subsection.

- (b) Encouraging or contributing to a violation of Wis. Stats. §§125.07(4)(a) or (b) shall include the failure to take reasonable action to prevent such violation or violations if the adult has information that would lead a reasonable person to conclude that such violations will occur or are occurring under circumstances described in subsection (a) and reasonable alternatives for action, including, but not limited to contacting law enforcement, are available to prevent or put a stop to such violation or violations.
- (c) Each underage person committing a violation of Wis. Stats. §§ 125.07(4)(a) or (b) as a result of any adult action found to have encouraged or contributed to such violation shall constitute a separate violation of this subsection. It is not necessary that the adult be aware of the presence of each individual underage person if it is proved that the circumstances of the adult person's intentional act or failure to act with respect to at least one underage person would be reasonably likely to lead to unlawful consumption or possession by other underage persons.
- (d) Penalties for violation of this subsection shall be as set forth under Wis. Stats. § 125.07(1)(b).

### **(11) Severability**

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

### **(12) Penalty Provision**

Any licensee who personally or through his or her managers, operators, agents or employees violates any of the provisions of this section shall be subject to a penalty as provided in s. 30.04 of this Code. In addition, the licensee's license or licenses shall be subject to revocation, suspension or nonrenewal pursuant to Wis. Stat. s. 125.12, or if the violation involves one or more minors, the penalties shall be as set forth in Wis. Stat. s. 125.07.

## **7.09 SIDEWALK CAFÉ PERMITS**

### **(1) Sidewalk Cafes Regulated**

It shall be unlawful for any person to sell or offer to sell any food at a sidewalk café located upon any street, alley, sidewalk, public square, street terrace, or other public property, unless such person shall have first applied for an obtained a sidewalk café permit.

### **(2) Definition**

- (a) "Sidewalk Café" a sidewalk café shall mean any group of tables, chairs, benches, barriers or partitions, trash containers and suitable decorative devices maintained upon any part of the public right-of-way for use by an establishment with a valid restaurant permit for the sale to the public of food, refreshments and beverages of all kinds.

### **(3) Permit, Fee**

The fee for an annual permit shall be as set forth in the Fee Schedule under Section 3.12 which shall be paid to the City Clerk. Such license shall be issued on the 15<sup>th</sup> day of April each year, or thereafter when applied for, and shall expire on the 14<sup>th</sup> day of April following its issuance. An additional one-time fee as set forth in the Fee Schedule under Section 3.12 shall be paid for applications for a fixture license under subsection (6).



#### **(4) Permit Procedure**

- (a) Application for any sidewalk café permit shall be filed with the City Clerk. The application shall contain such information as the Clerk may require. The application shall include a scale drawing of the site, including the location of all trees, poles, benches, grates, and other amenities or obstructions, and the exact type, size and location of the proposed furniture, fences, and other vending equipment.
- (b) All applications for sidewalk café permits shall also be subject to design review by the Plan Commission pursuant to the procedures and standards set forth in Sections 10.98 through 10.102, Middleton General Ordinances.
- (c) An applicant for a sidewalk café permit who wishes to sell alcoholic beverages must also follow the procedures set forth in Section 7.08 of the Middleton General Ordinances for obtaining an alcoholic beverage license.
- (d) Upon receipt of an application for a sidewalk café permit, the Clerk shall review the information in the application for conformity with the provisions of this Ordinance and other City Ordinances. If the application appears complete, the Clerk shall refer the application to the License and Ordinance Committee. The Committee shall meet with the applicant and determine whether to recommend the approval of the permit to the Common Council.
- (e) Following approval of the sidewalk café permit by the Common Council, the applicant must produce evidence of having adequate liability insurance in full force and effect. "Adequate liability insurance" is insurance holding the City and its employees and agents harmless, and which indemnifies the City, its employees and agents against any and all claims, liability, loss, damage, or expense incurred by the City, with adequate policy liability limits on account of any damage caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform this condition of the permit, the applicant shall furnish a certificate of insurance, on a form acceptable to the City, evidencing the existence of comprehensive general liability insurance (including contractual liability insurance) with the City of Middleton being named as an additional insured. Adequate liability limits means minimum limits of \$500,000 combined single limits per occurrence. The certificate of insurance shall provide 30 days written notice to the City prior to cancellation, non-renewal or material change to the policy.
- (f) Renewal of Permit  
In order to renew an existing sidewalk café permit each year, the permit-holder who meets all applicable requirements need only submit a completed renewal application and the applicable fees. If the applicant proposes changes for the site, the application shall be processed in the same manner as an initial granting of the sidewalk café permit.

#### **(5) General Restrictions**

Any sidewalk café permitted hereunder shall be subject to the following restrictions and limitations:

- (a) No portion of the sidewalk café shall be permitted within a 10 foot radius of a fire hydrant, nor within a five foot radius of standpipe.
- (b) No portion of a sidewalk café shall be permitted within a five feet of the sides of bus shelters or bus stops, nor in any manner which interferes with the use of the bus stops or with ingress and egress from any bus shelter.
- (c) No portion of a sidewalk café shall be permitted within 10 feet of a curb-out or a marked crosswalk.
- (d) All activities at the sidewalk café shall be conducted so as to maintain a minimum width of six feet or unobstructed public pedestrian walkway adjacent to the sidewalk café.
- (e) No portion of the sidewalk café may be placed on any portion of a public sidewalk between the edge of the sidewalk closest to the property line if clearly defined or, if not so

defined, the face of the abutting building or structure, and an imaginary line six feet therefrom. "Sidewalk" has the meaning given in Wis. Stats. 340.01(58).

- (f) No portion of a sidewalk café shall be permitted adjacent to any truck, freight, or passenger loading zone, or adjacent to any handicap parking space or loading zone.
- (g) No person holding a sidewalk café permit may use any public property, such as, light poles or other utility poles, flower planters, trees, or other amenities as a point of attachment for any ropes or as part of the sidewalk café.
- (h) All sidewalk cafes shall remain within the approved boundaries of the sidewalk café site as set forth on the approved application.
- (i) All tables, chairs and other materials and equipment forming part of the sidewalk café shall be removed from the site from close of business until normal opening of business each day except as provided under subsection (6) below.
- (j) No sidewalk café shall be open for business between the hours of 1:00 a.m. and 6:00 a.m.
- (k) All sidewalk cafes shall be maintained in a clean and hazard-free condition, so as not to attract any vermin or other pests.

### **(6) Fixtures License**

In the sole discretion of the Common Council, a license may be granted in addition to the sidewalk café permit to allow materials and equipment forming part of the sidewalk café to be affixed to the public right-of-way. The terms of such license shall be determined by the Common Council on a case by case basis. Any license granted under this section shall specify what materials and equipment may be affixed, the manner in which they shall be affixed, and whether tables, chairs or other materials and equipment need to be removed under subsection (5)(i) above. The license shall further establish that the license may be terminated and all fixtures removed upon no greater than six (6) months' notice to be licensee and that the City reserves the right to enter upon the sidewalk café and remove any fixtures without notice in the event of an emergency. Security for costs of removal in the form of a cash deposit, bond, letter of credit or other form satisfactory to the Common Council shall be posted before the license may be granted. Further terms of licensure may be established by the Common Council to protect the public health, safety and welfare. Applications for such license shall follow the same procedure as the sidewalk café permit.

### **(7) Additional Regulations for Sidewalk Cafes Holding Alcohol Beverage Licenses**

The issuance of a sidewalk café permit does not authorize the holder thereof to permit the sale of consumption of alcoholic beverages in the area of the sidewalk café unless the permit holder also holds a Class "B" or "Class B" alcohol beverage license from the City. If a holder of such a license obtains a sidewalk café permit from the City, such permit shall act to exempt the area of a sidewalk café from the applicability of Section 16.05(11), Middleton General Ordinances. In addition, the following regulations shall apply to sidewalk cafes holding alcoholic beverage licenses:

- (a) All such sidewalk cafes shall be required to have staff of the establishment owning such sidewalk café serve all food, beverages or other items in the sidewalk café area.
- (b) Service of alcoholic beverages in all such sidewalk cafes shall be limited to persons seated at tables in the sidewalk café area. Food service shall be required to be available at all times such sidewalk café is open.
- (c) Each such sidewalk café shall be responsible for policing the area of the sidewalk café to be sure that customers are of the age to legally consume alcohol beverages, and that alcohol beverages are not removed from the premises.
- (d) All containers of alcoholic beverages shall be removed from the sidewalk café area during times when consumption of alcoholic beverages is prohibited. In no case shall this time be later than 1:00 AM.
- (e) The License and Ordinance Committee may specify whether fencing is necessary around the perimeter of the area of the sidewalk café.

## **(8) Procedure for Revocation, Suspension, or Non-Renewal of License**

### **(a) General Procedure**

In addition to any other penalty provided under this Ordinance, any sidewalk café permit issued hereunder may be revoked, suspended, or not renewed for a specific period of time after notice and hearing as provided herein for violation of any provisions of this Ordinance, or of any other City Ordinance.

- (b) Any such hearing shall be held before the License and Ordinance Committee. The permittee shall be notified in writing of the charges at least 10 calendar days prior to the hearing. At the hearing, the Chief of Police, or the Chief's designee, shall present evidence of the alleged violation. The party shall have the opportunity to question witnesses, may call witnesses on their own behalf, or may be represented by counsel. At the conclusion of the hearing, the License and Ordinance Committee will make findings and recommendations, and shall direct the Chief of Police to report its findings and recommendations to the Common Council and to the alleged violator within five working days.
- (c) The Common Council shall consider the report and recommendations of the License and Ordinance Committee within 30 days after the Committee's recommendation. If the Chief of Police or alleged violator wishes to present additional evidence, they may do so, or the Common Council may, upon its own motion, consider additional evidence as necessary to fairly decide the issue.
- (d) After due consideration of the License and Ordinance Committee recommendation and any additional evidence presents, the Common Council may suspend the permit for a period of time not to exceed six months, or revoke or non-renew the permit for a period not to exceed one year. The violator shall be notified within five working days of the findings and determination of the Common Council.
- (e) The decision of the Common Council shall be a final determination and shall be subject to judicial review as may be provided by law. Any person aggrieved by the Common Council decision may seek judicial review thereof within 30 days of the date of the final decision.

## **(9) Penalty for Violations**

Any person violating any provision of this Ordinance shall be subject to a forfeiture as provided in Section 30.04 of the Middleton General Ordinances.

### ***7.11 Repealed 4/5/16 O1408***

## **7.12 TAXICAB LICENSE**

### **(1) License Required**

No person shall operate a public vehicle, taxicab or automobile for the conveyance of passengers, with or without baggage, for hire or reward, without having first obtained a license therefor from the Common Council. Such license shall entitle such person, firm or corporation to operate such public vehicle, taxicab or automobile for hire or reward until the first day of January of the year subsequent to the issuance thereof. This section shall apply to all vehicles conveying persons or baggage for hire or offering taxicab or cab or similar transportation service to the public except such vehicles as operate over a regular route or between fixed termini; excepting, also, such vehicles as are rented to be driven by the renter or his or her agent, commonly known as rental cars, and except vehicles operated solely as funeral cars.

## **(2) License Fee**

Every person required to be licensed by subsection (1) shall pay an annual license fee for the first vehicle operated in such business or under the management and control or under the name of such person, and a further annual fee for each additional vehicle so operated. Both fees shall be as set forth in the Fee Schedule under Section 3.12. Whenever a license shall be issued under the provisions of this Code for a part of a year, the fee required to be paid upon the issuance of such license shall be a pro rate part of a full year's fee.

## **(3) Application**

Application for the license required by subsection (1) shall be made to the Council for filing same with the City Clerk. The application shall contain the name and address of the applicant, the rates to be charged, the number of vehicles to be licensed, a description of each such vehicle by factory number, maker's name, number of adult persons the vehicle is designed to carry, number of the state license under which the vehicle is operated, name of the insurance carrier, name of the insured, and the number, amount, and duration of the policy.

## **(4) Granting and Issuing License**

Upon the filing with the City Clerk of such application, together with a receipt of the City Treasurer showing payment of the license fee required, the Council shall either grant or deny such license whichever shall in its judgment appear in the interests of the public, specifying the terms and conditions, if any, under which said person shall operate public vehicles, taxicabs or automobiles for hire, including the rates to be charged therefor and any other limitations or conditions that may be deemed advisable in the judgement of the Council. After the granting of such license by the Council, the City Clerk shall issue to the applicant a license for the operation of such vehicle or vehicles. The City Clerk may license additional vehicles of a taxicab license holder hereunder upon compliance with subsections (5) and (6).

## **(5) Mechanical Condition of Car**

No vehicle shall be licensed under this Code unless the applicant presents with the application a certificate as to the good mechanical condition of the automobile to be used for hire, from a reputable automobile mechanic or reputable garage owner, and such automobile shall be kept in good mechanical condition at all times and shall comply with the provisions of law pertaining to the mechanical conditions of cars. Such vehicles shall also be subject to further inspection of the Wisconsin Division of Motor Vehicles as may be required by the Police Department in order to determine whether there are any violations of the Wisconsin Motor Vehicle equipment regulations as well as physical condition of such vehicle.

## **(6) Insurance Required**

- (a) No license to operate a taxicab shall be issued unless and until the owner shall have filed with the City Clerk a public liability and property damage insurance policy issued by a responsible insurance company which company shall be licensed to do business in the State or shall have designated an agent within this State upon whom the service of process may be made and will submit to the jurisdiction of any court of competent jurisdiction within the State and will comply with all requirements necessary to give such court jurisdiction, providing insurance coverage for such taxicab (which must be specifically described in the policy) with a minimum liability of \$100,000.00 for the injury or death of any one person and subject to the same limit per person, a minimum liability of \$300,000.00 for the injury or death of any number of persons in any one accident, and a minimum liability of \$100,000.00 for property damage in any one accident, which policy or policies shall provide that the indemnitor shall be directly liable for and shall pay all damages for injuries to persons or property that may be recovered against the owner or operator of each such motor vehicle by reason of the negligent use or operation thereof.

- (b) At the time of the delivery of any such insurance policy, the licensee shall certify under oath the trade name, model, engine number, and other identifying characteristics of all vehicles actually used in the business, and no vehicle shall be used by the business unless such insurance policy covers it and such an affidavit has been made.
- (c) Said policy shall further provide that it cannot be cancelled until 15 days notice of such cancellation shall have been given by registered mail to the City Clerk. The cancellation or other termination of any such insurance policy shall automatically revoke and terminate all licenses issued for the taxicabs covered by such insurance policy, unless another policy shall be provided and be in effect at the time of such policy cancellation or termination.
- (d) The owner of any taxicab, at the time of filing with the City Clerk said insurance policy, shall also file a receipted bill from the insurance company issuing said policy showing that the premium for said policy for one year has been paid in full.

### **(7) Meters and Rates**

All taxicabs operated under the authority of this ordinance shall either be equipped with taximeters in front of the passengers, visible to them at all times, day and night, or shall have zoned rates approved by the Common Council. The face of the taximeter shall be illuminated and the zone rates shall be readily visible to passengers at all times. Taximeters shall be operated mechanically by a mechanism of standard design and construction, driven either from the transmission or from one of the front wheels by a flexible and permanently attached driving mechanism. Taximeters shall be sealed at all points and connections which, if manipulated, would affect their correct reading and recording. Each taximeter shall have thereon a flag to denote when the vehicle is employed and when it is not employed; and it shall be the duty of the driver to throw the flag of such taximeter into a non-recording position at the termination of each trip. The said taximeters shall be subject to inspection from time to time by the Police Department. Any police officer is hereby authorized either on complaint of any person or without such complaint to inspect any meter and upon discovering any inaccuracy therein to notify the person operating such taxicab to cease operation. Thereupon said taxicab shall be kept off the highways until the taximeter is repaired and in the required working condition. Each vehicle operated under a license required by this Code shall have displayed in a prominent place therein the schedule of rates charged, including the charges according to ones and mileage. The licensee shall submit to the Council with each application a schedule of the rates proposed to be charged during the license year. The Council may approve or disapprove the proposed rates or may substitute in its discretion a rate or rates which shall be reasonable under the circumstances. Standards of service shall also be prescribed by the Council. Failure to charge the rate subsequently approved by the Council or to provide the service proposed to be performed, or failure to comply with any of the provisions of this section shall subject the licensee to the penalties provided by this Chapter. A copy of the rates shall be on file with the City Clerk and Police Department at all times and no amendments or changes thereto may be made without prior Council approval.

### **(8) Duty to Carry Passengers**

No person engaged in the business of carrying passengers for hire or reward shall unreasonably or unlawfully refuse to carry passengers to or from any part of the City with reasonable promptness, and at the rates fixed in the license to operate.

### **(9) Revision to License**

The Council may, after due hearing thereon, and pursuant to notice to all interested parties, while any license by this Code is in full force and effect, change such license or licenses by inserting therein additional terms or conditions or schedules of changes in the rates as may to the Council appear to be for the public good.

## **(10) Operator's License**

No person shall operate any vehicle requiring an operator's license under this Code without first having obtained such a license and the requisite type of driver's license required by the State of Wisconsin. Application for such operator's license shall be made to the City Clerk. The application shall contain the name and address of the applicant, the vehicle to be operated and for whom, a description of such vehicle by factory number, maker's name, number of adult persons the vehicle is designed to carry, number of State license under which the vehicle is operated, and the age of the applicant. Any such persons must be at least 18 years of age. Such license shall be valid until the first day of January of the second year subsequent to the issuance thereof. Fees shall be paid as set forth in the Fee Schedule under Section 3.12. The fees for an operator's license herein shall include the cost of photo identification for all operators licensed by the City. It shall be unlawful for the operator of any vehicle for hire or reward to operate said vehicle more than 12 hours out of every 24 hours. An operator shall be deemed to be operating a vehicle whenever he or she is in charge of a vehicle and holding him or herself in readiness to convey passengers. No operator's license shall be issued unless the Chief of Police has certified that he or she has examined the applicant as to qualifications as a driver of an automobile for hire in the City and finds that the applicant is of good moral character and possesses all of the necessary qualifications for such.

## **(11) Exemptions**

- (a) Taxicabs as described in s. 7.12(1) of this Code and Operators as described in s. 7.12 (10) of this Code properly licensed in any other community are not required to be licensed under the provisions of this ordinance, however must be registered with the City Clerk. The registration requirement is met by filing a copy of a current taxicab license with the City Clerk.
- (b) Taxicabs and Operators properly licensed by another community are also exempted from licensing requirements under this ordinance providing that both the origin and destination of pickup service is not conducted within the City of Middleton limits for the same fare. All other provisions of this ordinance, however, must be satisfied.

## **7.13 ADULT ENTERTAINMENT**

### **(1) Live Adult Entertainment**

- (a) Purpose
  - 1. The Common Council of the City of Middleton has explicit authority under Wis. Stats. § 125.10(1) to adopt regulations governing the sale of alcohol beverages which are in addition to those set forth in Wis. Stats. Chap. 125.
  - 2. It is a lawful purpose of the Common Council to enact rules and regulations as are necessary for the preservation of health and to prevent the spread of AIDS and other communicable or sexually transmitted diseases in the City of Middleton. It has been found by municipalities through the State of Wisconsin, particularly Milwaukee, Racine, Waukesha, Delafield, Kenosha, West Allis and St. Croix County, as well as communities around the country, including Cleveland, Ohio; Phoenix; Arizona; Oklahoma City, Oklahoma; Indianapolis, Indiana; Austin, Texas; Belleview, Washington; Houston, Texas; Cleburne, Texas; Denver, Colorado; and Kansas City, Missouri; as well as other communities around the country, that sexually oriented adult entertainment establishments are predisposed to the creation of unsafe and unsanitary conditions; that operators and employees of such businesses tend to participate in sex-related offenses on the premises, creating substantial law enforcement problems, and that the operational characteristics of such businesses have a deleterious effect on surrounding areas, resulting in neighborhood blight and

reduced property values, especially when such businesses are concentrated in one area. Many of such establishments install movie viewing booths with doors in which patrons view videotapes, movies, films and other forms of entertainment characterized by their emphasis on depicting, describing or relating to specified sexual activities or specified anatomical areas, and that such booths have been and are being used by patrons to engage in sexual acts resulting in unsanitary, unhealthy and unsafe conditions in said booths and establishments. This Ordinance is intended to establish standards in order to prevent the spread of AIDS and other communicable or sexually transmitted diseases, and to eliminate the deleterious effects described above in the City of Middleton.

3. The Common Council finds that there is an increasing likelihood of commercial exploitation of human sexuality by owners of premises holding "Class B" and Class "B" alcohol beverage licenses in the State of Wisconsin. Such exploitation takes place in the form of employing or permitting persons to perform or exhibit their nude or semi-nude bodies to other persons as an inducement to other persons to purchase alcohol beverages. The direct result of such exploitation is criminal activity, moral degradation and disturbance of the peace and good order of the community. In addition, this commercial exploitation of such nude and semi-nude acts is adverse to the public's interest in the quality of life, commercial activity and total community environment in the City of Middleton.

(b) Definitions

The following words, terms and phrases, when used in this Section, shall have the meaning ascribed to them in this Subsection, except where the context clearly indicates a different meaning:

1. Adult Bath House. An establishment or business which provides the service of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in specified sexual activities as defined in this Section.
2. Adult Body Painting Studio. An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this Section, an adult body painting studio shall not be deemed to include a tattoo parlor.
3. Adult Bookstore. An establishment having as a substantial or significant portion of its stock and trade in books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined herein. This includes an establishment having as its stock in trade, for sale, rent, trade, lease, inspection or viewing books, films, video cassettes, motion pictures, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specific sexual activities or specified anatomical areas, and in conjunction therewith have facilities for the presentation of adult entertainment, including adult-oriented videotapes, films, motion pictures or other offered entertainment for observation by patrons therein.
4. Adult Cabaret. A cabaret which features male or female impersonators or similar entertainers.
5. Adult Entertainment. Any exhibition of any motion pictures, live performance, display or dance of any type, which has as a significant or substantial portion of

such performance or is distinguished or characterized by an emphasis on, any actual or simulated performance of specified sexual activities, or exhibition and viewing of specified anatomical areas, as defined herein, appearing unclothed, or the removal of articles of clothing to reveal specified anatomical areas.

6. Adult Mini-Motion Picture Theater. An enclosed building with a capacity for less than fifty (50) people, including establishments that have coin operated video or motion picture booths, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined herein for observation by patrons therein.
7. Adult Modeling Studio. An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially nude by means of photography, painting, sketching, drawing or otherwise.
8. Adult Motel. A hotel, motel, or similar commercial establishment which:
  - (a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, 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 may have a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
  - (b) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
  - (c) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
9. Adult Motion Picture Theater. An enclosed building with a capacity of fifty (50) or more people at which a significant or substantial portion of the material presented is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined herein for observation by patrons therein.
10. Adult Motion Picture Theater (Outdoor). A parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activity or specified anatomical areas, as defined herein, for observation by patrons.
11. Adult Novelty Shop. An establishment or business having as a substantial or significant portion of its stock and trade in novelty or other items which are distinguished or characterized by their emphasis on, or designed for, specified sexual activities or specified anatomical areas, as defined herein, or stimulating such activity.
12. Adult Oriented Establishment. An establishment which includes, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion theaters, adult bath houses, adult body painting studios, adult motels, adult novelty shops or adult cabarets, and further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common area of the premises for the purposes of viewing adult oriented motion pictures, or wherein an entertainer provides adult



entertainment to a member of the public, a patron or a member, regardless of whether such adult entertainment is held, conducted, operated or maintained for profit, direct or indirect. An adult oriented establishment further includes, without being limited to, any adult entertainment studio or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

13. Booth, Room or Cubicle. Such enclosures as are specifically offered to the public or members of an adult oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure; which shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, booth, room, or cubicle does not mean such enclosures that are private offices used by the owners, managers or persons employed on the premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing entertainment for a fee, and are not open to anyone other than employees; nor shall this definition apply to hotels, motels or other similar establishments licensed by the State of Wisconsin pursuant to Chapter 50 of the Wisconsin Statutes.
14. Church. A building whether situated within the City or not, in which people regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.
15. Customer. Any individual who:
  - (a) Is allowed to enter an adult oriented establishment in return for the payment of an admission fee or any other form of consideration or gratuity; or
  - (b) Enters an adult oriented business and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or
  - (c) Is a member of and on the premises of an adult oriented establishment operating as a private club.
16. Community. The State of Wisconsin.
17. Day Care Center. A facility licensed by the State of Wisconsin pursuant to Wis. Stats. § 48.65, whether situated within the City or not.
18. Door, Curtain or Portal Partition. A nontransparent closure device which prevents activity taking place within a booth, room or cubicle from being seen or viewed from outside the booth, room or cubicle.
19. Employee. Any and all individuals, including independent contractors, who work in or at or render any services directly or indirectly related to the operation of an adult oriented establishment.
20. Entertainer. Any person who provides entertainment within an adult oriented establishment as defined in this Ordinance, regardless of whether a fee is charged or accepted for entertainment and regardless of whether entertainment is provided as an employee or independent contractor.
21. Harmful to Minors. That quality of any description or representation, in

whatever form, of nudity, specified sexual activities or specified anatomical areas, which taken as a whole appeals to the prurient interest in sex, which taken as a whole portrays sexual conduct in a patently offensive way, and which taken as a whole does not have serious literary, artistic, political or scientific value. Whether a work appeals to the prurient interest and whether it depicts or describes sexual conduct in a patently offensive way, and whether it has serious literary, artistic, political or scientific value are to be determined by applying contemporary community standards in the adult community as a whole with respect to what is suitable material for minors.

22. Knowingly. Having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:
  - (a) The character and content of any material described herein which is reasonably suspect under this Section; and
  - (b) The age of a minor, provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable *bona fide* attempt to ascertain the true age of such minor.
23. Knowledge of Minor's Age. Means:
  - (a) Knowledge or information that the individual is a minor; and
  - (b) Reason to know, or a belief or grounds for belief, which warrants further inspection or inquiry of the age of the minor
24. Manager. The operator or agent licensed under this Ordinance who shall not be licensed as a massage technician.
25. Minor. Any individual under the age of eighteen (18) years.
26. Nudity. The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernible turgid state.
27. Operator. Any person operating, conducting, maintaining or owning any adult-oriented establishment or massage establishment.
28. Patron. Any individual who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any consideration therefor.
29. Person. Any individual, corporation, limited liability company, partnership, limited partnership, association or other entity recognized by the State of Wisconsin as being capable of owning property or engaging in business operations.
30. Residential. Pertaining to the use of land, whether situated within the City or not, for premises such as homes, townhouses, duplexes, condominiums, apartments and mobile homes, which contain habitable rooms for non-transient occupancy and which are designed primarily for living, sleeping, cooking and eating therein. A premises which is designed primarily for living, sleeping, working and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Hotels, motels, boarding houses, nursing homes and hospitals shall not be considered to be residential.
31. Sadoomasochistic Abuse. Flagellation or torture generally by an individual clad in undergarments, a mask or bizarre costume, or the condition of being fettered,

bound or otherwise physically restrained on the part of one so clothed.

32. School. A building, whether situated within the City or not, where people regularly assemble for the purpose of instruction or education, together with playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to:
  - (a) Public and private schools used for primary or secondary education in which any regular kindergarten or grades one through twelve classes are taught; and
  - (b) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one through twelve.
33. Sexual Conduct. The commission of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus or lewd exhibition of human genitals.
34. Sexual Intercourse. Physical sexual contact between individuals that involves the genitalia of at least one (1) person including, but not limited to, heterosexual intercourse, sodomy, fellatio, or cunnilingus.
35. Specified Anatomical Areas. Less than completely and opaquely covered:
  - (a) Human genitals, pubic region;
  - (b) Buttock; or
  - (c) Female breast below a point immediately above the top of the areola.
  - (d) Human male genitals in a discernible turgid state, even if completely and opaquely covered.
36. Specified Sexual Activities. Simulated or actual:
  - (a) Showing of human genitals in a state of sexual stimulation or arousal;
  - (b) Acts of human masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus;
  - (c) Fondling or other erotic touching of human genitals, pubic region, buttock, or female breasts.
37. Substantial. As used in various definitions shall mean fifty percent (50%) or more of a business' stock in trade, display space, floor space or retail sales in any one month during the license year.
38. Waiting Area. An area adjacent to the main entrance that is separate from any area where massages are given.

(c) Prohibitions Applicable To Premises Holding Alcohol Beverage Licenses

1. It shall be unlawful for any owner or operator of premises holding a Class "A," "Class A," Class "B," "Class B," Reserve "Class B" or "Class C" Alcohol Beverage license to permit any person to:
  - (a) expose to public view on the licensed premises any specified anatomical area as defined in this Ordinance;
  - (b) appear in a state of nudity;
  - (c) employ any device which is intended to give the appearance of or simulate such specified anatomical areas; or

- (d) publicly display or perform any specified sexual activities on the licensed premises.
2. Any licensee who permits a violation of (c)1., above, shall be subject to revocation of all alcohol beverage licenses issued by the City to the licensee.
3. Subsection (c)1. shall not apply to live theatrical, musical or dance performances occurring or conducted at a theater, playhouse, community center, civic center, or performing arts center where the predominant business attraction is not the offering to patrons of entertainment which is intended to provide sexual stimulation or sexual gratification to such patrons and where the establishment is not distinguished by an emphasis on or the advertising or promotion of employees engaging in nude erotic dancing. This exception shall only apply to establishments whose receipts from alcohol or liquor sales do not exceed fifteen percent (15%).

(d) License Required

1. This Section applies only to premises and persons not licensed to sell alcohol beverages by the City of Middleton that offer live performances by persons appearing in a state displaying some portions of specified anatomical areas not covered by fully opaque coverings.
2. No person shall open premises to the public offering live performances by persons appearing in a state displaying some portions of specified anatomical areas not covered by fully opaque coverings, regardless of whether such persons are paid for such performance, unless the person opening the premises has obtained a license from the City Clerk.
3. Subsections (d)1. and 2. shall not apply to live theatrical, musical or dance performances occurring or conducted at a theater, playhouse, community center, civic center, or performing arts center where the predominant business attraction is not the offering to patrons of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on or the advertising or promotion of employees engaging in nude erotic dancing. This exception shall only apply to establishments whose receipts from food and beverage sales do not exceed fifteen percent (15%) of gross receipts.

(e) License Application, Review and Issuance

1. Application

Applications for an annual adult entertainment license shall be made to the City Clerk. The City Clerk shall notify the Chief of Police, Building Inspector, and Fire Chief of the license application, publish a Class II notice of such application and have the license application submitted to the Common Council within thirty (30) days of application. Investigating officials shall submit written reports and recommendations to the Common Council prior to the Common Council's review of the application. A public hearing shall be held on the application, preceded by a Class II notice. The Common Council may take any testimony regarding the granting or denial of such license.

2. Action

The Common Council shall approve, modify, or reject the application within sixty (60) days of the application; the reasons for the action taken shall be specified in the written findings of fact of the Common Council.

3. Denial of Application

Whenever an initial application is denied, the City Clerk shall, within fourteen (14) days of the denial, advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held before the Common Council within thirty (30) days of the denial of the application.

4. Probationary Period

If license issuance is approved by a majority of the Common Council, an initial applicant shall be granted a probationary license by the City Clerk. An annual license shall be granted if, upon the expiration of the six (6) month probationary period, no violations under this Section occur and the applicant corrects any deficiencies or problems that the applicant is directed to correct. If, however, for any reason, the application is denied by the Common Council, the Common Council shall specify the findings made that support that denial.

5. License Term

The license granted under this Section shall expire on June 30th of each year and each license shall be subject to revocation as hereinafter provided.

6. Form of License

The City Clerk shall be responsible for drafting and issuing all licenses under this Subsection. All such licenses shall specify the nature of the holder and the license and the date for which it is applicable, as well as any conditions that may be imposed by the City. All such licenses shall be open to public inspection and posted in public view on the premises for which issued.

7. Fee

All such license applications shall be accompanied by a fee as set forth in the Fee Schedule under Section 3.12. If for any reason the license is denied, one-half (1/2) of the license fee shall be returned to the applicant. If the license is granted, the entire fee will be kept by the City.

8. Number of Licenses Limited

No more than three (3) annual licenses, issued under this Section, shall be issued to license holders within the City of Middleton at one (1) time.

(f) Renewals

The holder of an annual license granted under this Section shall submit an application for renewal at least sixty (60) days before the expiration of the license. Such license may be renewed pursuant to the provisions of Subsection (e) as that Subsection applies to notice being given by the City Clerk and provisions for publication and action by the Common Council.

(g) Regulations

Any license holder governed by this Section shall comply with the following regulations:

1. No dancing shall be permitted by any performers under the auspices of the management, whether paid or not, within six (6) feet from any location from which patrons are directly served, while so entertaining the patrons.
2. No dancer, performer, or any individual, who is performing, singing, or dancing, shall have either direct or indirect physical contact with any patron.
3. While dancing is in progress, the establishment shall be adequately illuminated so as to permit safe entry and exit from the premises.

4. Good order shall be maintained at all times. Without limitation due to enumeration, a lack of "good order" for purposes of this Section shall be deemed to include persistent loud noises to the annoyance or detriment of surrounding property owners, patrons urinating in public, profane language and/or fighting.
5. The premises shall close and all customers shall vacate the premises between 12:00 midnight and 10:00 a.m. Monday through Saturday, and 12:00 midnight and noon on Sunday.
6. The license holder shall comply at all times with building capacity limits as set by the Fire Department and/or Building Code.
7. The license holder shall comply with all applicable State Statutes and regulations and all City Ordinances.
8. The management, license holder and employees shall obey all reasonable orders or directions of any law enforcement officer.
9. The performance of any dance by performers under the auspices of the management shall be given only on a raised portion of the floor separated by a railing or other device from the patrons so as to deter patrons from participating in the dance.
10. The license holder shall not permit any person to publicly perform specified sexual activities on the licensed premises.
11. The license holder shall not permit any person to touch any performer's specified anatomical areas during a public performance.
12. The use of simulated sexual organs during dances or performances is prohibited.
13. No license holder shall permit any amateur dancing, entertainment, or performances on the license holder's premises in violation of this Subsection or any applicable State or Federal laws.

(h) Location

1. No establishment licensed under this Section shall permit any performance or entertainment governed by this Section to occur within five hundred (500) feet of any area zoned for residential, church, school, nursing home, public park, or day care center uses. No establishment licensed under this Section shall be located within one thousand (1,000) feet of any other establishment licensed under this Section, or within one thousand (1,000) feet of any business holding an alcohol beverage license.
2. For purposes of this Subsection, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult-oriented establishment to the nearest property line of another adult-oriented establishment, area zoned for residential, church, school, nursing home, public park, or day care center uses, or business holding an alcohol beverage license.
3. All establishments licensed under this Section shall provide adequate off-street parking for employees, entertainers and customers.

(i) Penalty

In addition to any other actions allowed by law or taken by the Common Council, including the action of license revocation or nonrenewal, anyone who violates any of the provisions of this Section shall forfeit not less than \$150.00 or more than \$2,000.00 for each and every offense, together with the costs of prosecution and any applicable assessments. If

such forfeiture and costs are not paid, such person so convicted shall be subject to any civil penalties or other penalties available by law.

(j) License Suspension, Revocation, or Nonrenewal

1. In General

Any license granted herein may be revoked, suspended, or not be renewed by the Common Council as follows:

- (a) If the applicant has made or recorded any statement required by this Section knowing it to be false or fraudulent.
- (b) For the violation of any provision of this Section, except for establishment license matters involving a violation of Building Codes, in such case the license shall be revoked after the second conviction thereof in any license year.
- (c) After one (1) conviction of any establishment employee of an offense under Wis. Stats. Chapter 944, or of an offense against the person or property of a patron or customer of the establishment or of an offense involving substances scheduled in Subchapter II of Wis. Stats. Chapter 961, where there is shown the participation or knowledge of any other establishment employee or of any individual within the business structure of the applicant.

2. Notice of Hearing

No license shall be revoked, suspended, or not renewed by the Common Council except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Common Council. Notice of such hearing shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least fifteen (15) days prior to the date of the hearing and shall state the time and place thereof.

3. Hearing

The licensee shall be entitled to be heard, to be represented by counsel, to cross-examine opposing witnesses, to present witnesses on the licensee's own behalf under subpoena by the Common Council if such is required, and the hearing may be steno graphically recorded at the licensee's option and expense. At the conclusion of such hearing, the Common Council shall prepare findings of fact and conclusions of law as to what, if any, action the Common Council will take with respect to the license. The Common Council shall provide the complainant and licensee with a copy of the report.

(k) License Transfer

Any license granted under the provisions of this Section shall be transferable in accordance with the procedure set forth in Subsection (2)(j) of this Section.

(l) Severability

If any provision of this Section is deemed invalid or unconstitutional, or if the application of this Section to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Section which can be given effect without the invalid or unconstitutional provision or application.

## **(2) Adult Oriented Establishments**

### (a) Purpose

It is the purpose of this Article to regulate adult oriented establishment businesses (hereinafter referred to as adult oriented establishments) to promote the health, safety, morals, and the general welfare of the citizens of the City of Middleton, to aid in the alleviation and prevention of the adverse and deleterious effects of criminal activity and disruption of the public peace associated with such establishments, and to establish reasonable and uniform regulations to prevent the serious health hazards associated with unsafe and unsanitary conditions known to exist in those establishments and to alleviate the spread of sexually transmitted diseases and other contagious diseases in those establishments.

### (b) Definitions

All definitions set forth in Subsection (1)(b) shall apply throughout this Subsection.

### (c) License Required

1. Except as provided in Subsection 4. Below, no adult oriented establishment shall be operated or maintained within the City of Middleton without first obtaining a license to operate issued by the City of Middleton.
2. A license may be issued only for one (1) adult oriented establishment located at a fixed and certain place per filed application. Any person, partnership, limited liability company or corporation which desires to operate more than one (1) adult oriented establishment must have a license for each.
3. No license or interest in a license may be transferred to any person, partnership, limited liability company or corporation except as set forth in Subsection (2)(j) of this Section.
4. All adult oriented establishments existing at the time of the original passage of this Section must submit an application for a license within ninety (90) days of the passage of this Section. If an application is not received within said ninety (90) day period, then such existing adult oriented establishment shall cease operations.
5. The location requirements set forth in Subsection (1)(h) above shall apply to adult oriented establishments.

### (d) Application for License

#### 1. License Procedure

Any person, partnership, limited liability company or corporation desiring to secure a license shall make application to the City Clerk. The application shall be filed in triplicate with and dated by the City Clerk. A copy of the application shall be distributed to the Chief of Police, Fire Chief, Building Inspector, and to the applicant. The procedures prescribed in Subsection (1)(e)1. Through 4. shall be applicable to adult entertainment licenses under this Section.

#### 2. Required Information

The application for a license shall be upon a form provided by the City Clerk. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, all officers or directors of a corporate applicant, all members of any limited liability company applicant, and any other person who is interested directly in the ownership or operation of the business, shall furnish the following information under oath:



- (a) Name, including all aliases, address and date of birth of applicant;
  - (b) Written proof that the individual is at least eighteen (18) years of age;
  - (c) All residential addresses of the applicant for the past ten (10) years;
  - (d) The business, occupation, or employment of the applicant for ten (10) years immediately preceding the date of application;
  - (e) The exact nature of the activities to be conducted at the adult oriented establishment;
  - (f) Whether the applicant previously operated in this or any other State, County or municipality under an adult oriented establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;
  - (g) All criminal convictions, whether federal or State, or municipal Ordinance violation convictions, forfeiture of bond and pleadings of *nolo contendere* on all charges, except traffic offenses;
  - (h) Fingerprints and two (2) portrait photographs of at least two (2) inches by two (2) inches of the applicant;
  - (i) The address of the adult oriented establishment to be operated by the applicant;
  - (j) Proof of right to occupy under Subsection (2)(e)4. of this Ordinance; and
  - (k) If the applicant is a corporation, the application shall specify the name of the corporation, the date and State of incorporation, and the name and address of the registered agent of the corporation.
3. Failure or refusal of the applicant to provide any information for the investigation of the application, or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding said application, or refusal to submit to or cooperate with any investigation required by this Subsection, shall constitute an admission by the applicant of ineligibility for such license and shall be grounds for denial thereof.

(e) Requirements

1. In General

To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:

- (a) If the applicant is an individual:
  - (i) The applicant shall be at least eighteen (18) years of age;
  - (ii) Subject to Wis. Stats. Chap. 111, the applicant shall not have been convicted of or pleaded *nolo contendere* to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
  - (iii) The applicant shall not have been found to have previously violated this Section within five (5) years immediately preceding the date of the application.

- (b) If the applicant is a corporation:
  - (i) All officers, directors, and others required to be named under Subsection (2)(d)2. shall be at least eighteen (18) years of age;
  - (ii) Subject to Wis. Stats. Chap. 111, no officer, director, or other person required to be named under Subsection (2)(d)2. shall have been convicted of or pleaded *nolo contendere* to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
  - (iii) No officer, director or other person required to be named under Subsection (2)(d)2. shall have been found to have previously violated this Section within five (5) years immediately preceding the date of the application.
- (c) If the applicant is a partnership, joint venture, limited liability company or any other type of organization:
  - (i) All persons having a financial interest in the partnership, joint venture, limited liability company or other type of organization shall be at least eighteen (18) years of age;
  - (ii) Subject to Wis. Stats. Chap. 111, no person having a financial interest in the partnership, joint venture, limited liability company or other type of organization shall have been convicted of or pleaded *nolo contendere* to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
  - (iii) No person having a financial interest in the partnership, joint venture, limited liability company or other type of organization shall have been found to have violated any provision of this Section within five (5) years immediately preceding the date of the application.

2. Investigation

No license shall be issued unless the Police Department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the City Clerk no later than fourteen (14) days after the application.

3. Inspection

The Building Inspector, Fire Chief, and Chief of Police or their designees shall inspect the premises proposed to be licensed to verify compliance with their respective Codes, and shall report compliance findings to the City Clerk within fourteen (14) days of the date of application.

4. Proof

No license shall be issued unless the applicant provides proof of one (1) of the following:

- (a) Ownership of a properly zoned building or parcel of real property upon which a building can be constructed. Proper zoning includes permissible non-conforming use status.

- (b) A lease on a building which is properly zoned to house an adult oriented establishment. Proper zoning includes permissible non-conforming use status.
  - (c) An option to purchase property which is properly zoned for the adult oriented establishment.
  - (d) An option to lease property which is properly zoned for the adult oriented establishment. Proper zoning includes permissible non-conforming use status.
- (f) License Fee  
A non-refundable license application fee in the amount set forth in the Fee Schedule under Section 3.12 shall be submitted with the application for a license.
- (g) Display of License  
The license shall be displayed in a conspicuous public place in the adult oriented establishment.
- (h) Renewal of License
1. Every license issued pursuant to this Section will terminate on June 30th of the year it is issued, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the City Clerk. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the City Clerk. A copy of the application for renewal shall be distributed by the City Clerk to the Chief of Police, Building Inspector, Fire Chief and the applicant. The application for renewal shall be upon a form provided by the City Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.
  2. A license renewal fee in the amount set forth in the Fee Schedule under Section 3.12 shall be submitted with the application for renewal.
  3. If the Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the City Clerk.
- (i) Denial of Application
1. Whenever an initial application is denied, the City Clerk shall, within fourteen (14) days of the denial, advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held before the Common Council within thirty (30) days of the denial of the application.
  2. Failure or refusal of the applicant to give any information relevant to the investigation of the application or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding said application, or refusal to submit to or cooperate with any investigation required by this Section shall constitute an admission by the applicant of ineligibility for such license and shall be grounds for denial thereof by the City Clerk.
- (j) Transfer of License
1. A license is personal to the owner and operator designated in the application, provided it may be transferred pursuant to this Subsection. A transfer application must be filed no less than ten days before any change of the owner or operators designated on the application. In the event that a transfer

application is not timely filed, then the license shall be invalid for any purpose relating to the operation of the adult oriented business, and any transfer shall require the filing of an original application and be subject to the regulations applicable thereto.

2. The City Clerk shall prescribe a form on which license transfer applications shall be made. The form shall include a statement under oath that the original application remains correct as previously submitted in all respects except those that are amended by the transfer application. The transfer application shall contain a statement under oath that the individual signing the transfer application has personal knowledge of the information contained therein and that the information is true and correct and shall not be complete unless accompanied by a nonrefundable transfer fee in the amount set forth in the Fee Schedule under Section 3.12. Transfer applications shall be filed in the same place and at the same time as original applications, and the fee shall be payable in the same manner as for original applications.
3. Transfer applications shall be reviewed, issued and subject to appeal in the same manner as original applications, and they shall be issued for the remaining term of the license to be transferred.
4. Any transfer of an adult oriented establishment, other than as provided in this Subsection, from the licensed premises to any other premises shall cause such license to lapse and become void. A license which has lapsed and become void shall be subject to revocation under Subsection (2)(p) of this Section.

(k) Physical Layouts of Adult Oriented Establishments

Any adult oriented establishment having available for customers, patrons or members any booth, room, or cubicle for the private viewing of any motion picture, videotape or compact disc in which a significant or substantial portion of the material presented is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas must comply with the following requirements:

1. Access

Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the adult oriented establishment and shall be unobstructed by any door, lock or other control-type devices.

2. Construction

Every booth, room or cubicle shall meet the following construction requirements:

- (a) Each booth, room or cubicle shall be separated from adjacent booths, rooms, cubicles and any non-public areas by a wall.
- (b) Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.
- (c) All walls shall be solid and without any openings, extended from the floor to a height of not less than eight (8) feet, and be light colored, non-absorbent, smooth textured and easily cleanable.
- (d) The floor must be light colored, non-absorbent, smooth textured and easily cleanable.

- (e) The lighting level of each booth, room or cubicle, when not in use, shall be a minimum of ten (10) foot candles at all times, as measured from the floor.

3. Occupants

Only one (1) individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of specified sexual activity, cause any bodily discharge or litter while in the booth. No person shall alter, damage or deface any portion of any such booth, room or cubicle in such a manner that it no longer complies with the provisions of this Section.

(l) Responsibilities of Operators

1. An operator, licensed under this Section, shall maintain a register of all employees, showing the name and aliases used by the employee, home address, birth date, sex, telephone numbers, Social Security Number, and date of employment and termination. The above information on each employee shall be maintained in the register on the premises of a period of three (3) years following termination.
2. The operator shall make the register of employees available immediately for inspection by law enforcement officers upon demand of a member of a law enforcement agency at all reasonable times.
3. Every act or omission by an employee constituting a violation of the provisions of this Section shall be deemed the act or omission of the 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.
4. Any act or omission of any employee constituting a violation of the provisions of this Section 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.
5. 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-explicit live adult entertainment or materials containing depictions of specified sexual activities or specified anatomical areas as defined in Subsection (1)(b).
6. The operator shall maintain the premises in a clean and sanitary manner at all times.
7. The operator shall ensure compliance of the establishment and its patrons with the provisions of this Section.
8. The operator shall ensure there is conspicuously posted inside each booth, room or cubicle an unmutilated and undefaced sign or poster supplied by the City which contains information regarding sexually transmitted diseases and the telephone numbers from which additional information can be sought.
9. 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 City pertaining to sexually transmitted diseases.

10. The operator shall ensure there are posted regulations concerning booth occupancy on signs, with lettering at least one (1) inch high, that are placed in conspicuous areas of the establishment and in each of the booths, rooms or cubicles.
11. The City shall charge its reasonable costs for supplying such posters, brochures, pamphlets and other information required under this Section.

(m) Registration of Employees

1. All operators and employees working in any adult oriented establishment hereunder shall, prior to beginning employment or contracted duties, register with the City Clerk. Such registration shall include the following:
  - (a) Name, address, birth date, any aliases used, telephone numbers, date of employment and name of employer; and
  - (b) Fingerprints and two (2) portrait photographs of the applicant of at least two (2) by two (2) inches.
2. Upon registration, the City will provide to each registered employee an identification card containing the employee's photograph identifying the employee as such, which shall be kept available for production upon request of all inspecting officers while on duty at such adult oriented establishment.
3. All registrations hereunder are valid for a period of one(1) year.
4. The registration fee set forth in the Fee Schedule under Section 3.12 shall be paid per registration, which shall be paid to the City to cover costs of the identification card.

(n) Exclusions

All private schools and public schools, as defined in Wis. Stats. Chapter 115, located within the City of Middleton are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.

(o) Penalty

In addition to any other actions allowed by law or taken by the Common Council, including the action of license revocation, suspension or nonrenewal, anyone who violates any of the provisions of this Section shall forfeit not less than \$150.00 nor more than \$2,000.00 for each and every offense, together with the costs of prosecution and any applicable assessments. If such forfeiture and costs are not paid, such person so convicted shall be subject to any civil penalties or other penalties available by law.

(p) Suspension, Revocation, or Nonrenewal of Licenses

1. In General

Any license granted herein may be revoked, suspended, or not renewed by the Common Council as follows:

- (a) If the applicant has made or recorded any statement required by this Section knowing it to be false or fraudulent;
- (b) For the violation of any provision of this Section, except for establishment license matters involving a violation of Building Codes, in such case the license shall be revoked after the second conviction thereof in any license year;
- (c) After one (1) conviction of any establishment employee of an offense under Wis. Stats. Chapter 944, or of an offense against the person or property of a patron or customer of the establishment or of an offense involving substances in Subsection II of Wis. Stats. Chapter 961 where

there is shown the participation or knowledge of any other establishment employee or of any individual within the business structure of the applicant.

- (d) If the licensee, operator or employer becomes ineligible to obtain a license.
- (e) If an operator employs an employee who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without being registered with the City Clerk.
- (f) If any cost or fee required to be paid by this Section is not paid.
- (g) If any intoxicating liquor or fermented malt beverage, narcotic or controlled substance is served or consumed on the premises of the adult oriented establishment.
- (h) If any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any material depicting specified sexual activities or specified anatomical areas.

## 2. Notice of Hearing

No license shall be revoked, suspended, or not renewed by the Common Council except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Common Council. Notice of such hearing shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least fifteen (15) days prior to the date of the hearing and shall state the time and place thereof.

## 3. Hearing

The licensee shall be entitled to be heard, to be represented by counsel, to cross-examine opposing witnesses, to present witnesses on the licensee's own behalf under subpoena by the Common Council if such is required, and the hearing may be steno graphically recorded at the licensee's option and expense. At the conclusion of such hearing, the Common Council shall prepare findings of fact and conclusions as to what, if any, action the Common Council will take with respect to the license. The Board shall provide the complainant and licensee with a copy of the report.

## (q) Severability

If any provision of this Section is deemed invalid or unconstitutional, or if the application of this Section to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Section which can be given effect without the invalid or unconstitutional provision or application.

## **7.14 EMERGENCY ALARM LICENSE**

### **(1) Policy and Purpose**

- (a) The purpose of this ordinance is to establish controls and regulations applicable to the various types of intrusion, holdup, fire, and other emergency signals from alarm devices that require emergency response, investigation and safeguarding of persons and property at the location of an event reported by a signal which is transmitted by telephone line or otherwise relayed to the police communication center, fire department or other City

emergency response personnel from a mechanical or electronic alarm device including those alarms already in use within the City.

- (b) It is further declared to be the purpose of this ordinance and the policy of the City to provide prompt, effective and safe response to emergency alarm signals, to encourage effective crime and fire prevention and other emergency response measures, to guard against inefficient use of public resources and to provide for the general public safety.
- (c) For the purposes of this ordinance, an emergency alarm shall be defined as any installation of an operable alarm device designed to be actuated by a criminal act or other event requiring emergency response by a public agency which transmits a prerecorded message or other signal by telephone, radio or other means to the police communication center or other alarm receiving facility, or produces an audible or visual signal which alerts persons in the vicinity to such event.
- (d) Residential smoke and fire detectors and alarms as required under sections 11.19(6) and 23.04(2)(n) of this Code shall be exempt from the provisions of this section provided that such detectors and alarms are installed for the primary purpose of alerting residents to danger and do not have an external signal or transmit an alarm or signal to another location.

## **(2) Licensing Provisions**

### (a) License Required

It shall be unlawful for any person, firm, partnership, association, corporation, company or organization of any kind to maintain an emergency alarm device without first obtaining a license as hereinafter provided. A separate license shall be required for each structure, facility or dwelling unit to be protected by such alarm and for each type of alarm maintained.

### (b) Licensing Authority

The Chief of Police shall be the licensing authority and is herewith required to grant a revocable license to any applicant complying with the provisions of this ordinance.

### (c) Application Requirements and Procedure

An application for an annual license, renewable on January 1 of each year, shall be made by the owner or the owner's agent of each structure, facility or dwelling unit to be licensed to the licensing authority on forms provided by the licensing authority. Such application shall contain specific information on the nature of the business or facility to be protected, the identity of any occupant of a dwelling unit to be licensed if other than the owner thereof, the nature of the alarm device, the type of occurrence to be detected, and other information which the licensing authority may determine to be reasonably necessary for the safe and effective response to alarm signals by emergency personnel. Information contained in applications shall be for official police use only and shall be held secure by the licensing authority except that information contained in an application and notice that a license has been granted shall be furnished to the Fire Chief in the case of fire related alarms.

### (d) Denials and Revocations; Appeals

A license under this ordinance may be denied or revoked by the licensing authority if the application for said license contained incomplete or false information or for five (5) or more false alarms under sections 4.06 or 5.06 of these Ordinances within any calendar year or fifteen (15) or more false alarms under sections 4.06 or 5.06 of these Ordinances within five (5) consecutive calendar years, provided further that a revocation be made only after a reasonable notice has been provided the licensee and the licensee has been afforded an opportunity for a hearing before the licensing authority. Any applicant or licensee denied or revoked may appeal the decision of the licensing authority to the Mayor within thirty (30) days after the date of action by the licensing authority and may appear before



the Mayor at a time and place to be determined by the Mayor in support of the contention that the license should not have been denied or revoked. The decision of the Mayor shall be final.

(e) License Fee

The license fee shall be as set forth in the Fee Schedule under Section 3.12 per license year which may be reduced by quarterly adjustment of the fee required for any part thereof.

## **7.15 OUTDOOR AMPLIFIED SOUND PERMIT**

### **(1) Definitions**

- (a) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, municipal corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- (b) "Operate" means to operate, maintain, use, connect, and/or permit to be operated, maintained, used, or connected.
- (c) "Sound system" includes, but is not limited to, sound amplifier, microphone, speaker, amplified or electrified instrument, connective cable or wire, and power source connections.

### **(2) Permit Required**

No person shall operate any sound system outdoors; cause amplified music or other sound including music from a live performance to be projected outdoors; to cause amplified sound to be projected outside of any building; or to cause amplified sound to be projected from any vehicle in the City without a permit issued under this section.

### **(3) Exemptions**

The following activities are exempt from the permit requirement of this section, however, the exemption granted herein shall not be construed as an exemption from any other applicable rules or regulations, including, but not limited to prohibitions on public nuisances or unreasonable noise.

- (a) Car stereos.
- (b) Typical household radios, televisions, stereos, boom-boxes or similar equipment operated on residential premises.
- (c) Amplification devices of any kind operated by police, fire, emergency medical or other public safety agencies in the course of their official duties.
- (d) Equipment operated by the Middleton-Cross Plains School District or local, non-profit organizations for making announcements at organized athletic or similar events held on school or public property or equipment used by a school to signal the beginning or ending of classes.
- (e) Amplified sound produced by churches and religious institutions used to simulate church bells traditionally used to signal the beginning of church services or events.

### **(4) Application for Permit**

The application for an amplified sound permit shall be submitted to the City Clerk and shall include the following:

- (a) The application shall be signed by the person applying for the permit and by a person with control of the premises (if that person is different from the person applying for the permit). Each person signing the application must be over the age of eighteen (18).

- (b) The application shall be accompanied by a nonrefundable application fee, as set forth in the Fee Schedule under Section 3.12. No fee is required for applications for City operated events.

### **(5) Issuance of Permit**

- (a) The permit application shall be referred to the Police Department and, if the permit involves City owned property, the Public Lands Manager. The Police Department may seek input from any other City staff member or Department. If the application is not for a commercial enterprise and meets the standards in this ordinance, the Police Department may issue the permit along with any conditions or limitations necessary to protect the public health, peace, safety and welfare.
- (b) If the permit is for a commercial enterprise, the application and recommendation of the Police Department shall be forwarded to the License and Ordinance Committee for approval.
- (c) All permits issued shall be subject to the following limitations:
  - 1. On Sunday through Thursday amplified sound shall not exceed 65 decibels on the A – weighted scale at the lot line of the premises for which the permit is issued, from 9:00 a.m. to 9:00 p.m. and shall not exceed 60 decibels from 9:00 p.m. to midnight.
  - 2. On Friday through Saturday, holidays as established in Section 27.06(1) or the day before such holiday, amplified sound shall not exceed 65 decibels on the A – weighted scale at the lot line of the premises for which the permit is issued from 9:00 a.m. to 11:00 p.m. and shall not exceed 60 decibels from 11:00 p.m. to midnight.
  - 3. No permit shall be issued for the hours between midnight and 9:00 a.m.
- (d) Any person aggrieved by a decision of the Police Department to deny a permit or impose additional conditions or limitations may be appealed to the License and Ordinance Committee. Appeals of any decision of the License and Ordinance Committee shall be heard by the Common Council.
- (e) The limitations in paragraph (c) above may not be waived or relaxed except by approval of the Common Council.
- (f) No permit shall be issued contrary to Section 21.01(2)(d).

### **(6) Expiration, Suspension, and Revocation**

- (a) Permits shall be effective for a specified time period not to exceed one year.
- (b) Permits may be suspended or revoked for any violation of the permit conditions or of provisions of this ordinance. Proceedings for suspension or revocation may be initiated by the Chief of Police or by any member of the Common Council upon any citizen complaint. Before any permit is suspended or revoked, a hearing shall be held before the License and Ordinance Committee with 10 days written notice to the permit holder of the time, date and place of the hearing and a brief description of the reasons for suspension or revocation.
- (c) The Police Department may, at any time, order the immediate cessation of all amplified sound emitted pursuant to a permit if it is determined that the amplified sound constitutes a public nuisance and that the nuisance cannot be effectively abated by any other measures. Should any such order or orders be issued, the permit shall be reviewed by the License and Ordinance Committee at its next regular meeting for possible suspension, revocation or modification of the permit. In such case, the 10 day notice requirement in paragraph (b) shall not apply, but reasonable notice shall be provided.

## **(7) Enforcement**

Any person who violates this section or any condition of any permit issued under this section shall be subject to a forfeiture of not less than \$100.00. If a law enforcement officer finds any sound system operating in violation of this ordinance he or she may order the volume to be turned down to compliance level or order the system to be turned off. Failure to obey such order shall constitute a violation of this section and may lead to confiscation of the sound system.

## **7.16 CIGARETTE LICENSE**

### **(1) Definitions**

For purposes of this section, the following definitions apply:

- (a) "Cigarette" has the meaning set forth in Wis. Stats. § 139.30.
- (b) "Person" means an individual, partnership, firm, company, limited liability company, corporation, whether tenant, owner, lessee, licensee, franchisee, or their agent, heir or assigns.

### **(2) License Required**

It shall be unlawful for any person, in any manner, directly or indirectly, upon any pretense or by any device, to manufacture, to directly or indirectly sell, exchange, barter, dispose of or give away, or keep for sale any cigarettes or tobacco products in the City of Middleton without first obtaining a license under this section.

### **(3) Issuance of License**

License for the manufacture, sale, exchange, barter, disposition of or giving away or keeping for sale of cigarettes or tobacco products in the City of Middleton shall be issued by the City Clerk. Every such license shall be issued on the first (1st) day of July in each year or thereafter whenever applied for and shall continue in force from date of issuance until the succeeding thirtieth (30th) day of June, unless sooner revoked for a violation of this section as herein provided.

### **(4) Application and Qualifications**

- (a) Every person desiring a license under this section shall file with the City Clerk a written application therefor stating the name of the person and the place for which such license is desired. Every license shall be signed by the City Clerk and shall not be delivered until the applicant shall produce and file with such Clerk a receipt showing the payment of the license fee.
- (b) No person may be issued a cigarette license if the person has an arrest or conviction record subject to Wis. Stats. §§111.321, 111.322, and 111.335.
- (c) If an application for a cigarette license is denied by the City Clerk, the City Clerk shall, in writing, inform the applicant of the denial, the reasons therefor and of the opportunity to request a reconsideration of the application by the License and Ordinance Committee. Such notice shall be sent by regular mail, or served upon the applicant at least ten days prior to the License and Ordinance Committee's reconsideration of the matter. At such reconsideration hearing, the applicant may present evidence and testimony as to why the license should be granted.

### **(5) Fee; Renewal**

- (a) The fee for the license shall be as set forth in the Fee Schedule under Section 3.12 which shall be established within the range authorized under Wis. Stats. §134.65.

- (b) Renewal licenses shall be obtained on or before June 30 of each year or be subject to a late filing fee of 15% of the license fee. Payment of the late filing fee shall not relieve any person from any other penalties prescribed in this chapter for failure to possess or obtain a license.

### **(6) Penalty**

Any person violating any of the provisions of this section may be subject to a fine of not less than Twenty-Five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for the first offense and not less than Twenty-Five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) for the second offense; and each day when any cigarettes or tobacco products are manufactured, sold or disposed of within the City of Middleton without a license having been issued therefor shall be a separate offense.

## **7.17 SPECIAL EVENTS PERMITS**

### **(1) Permit Required**

No person shall engage in, participate in, aid, form or start any special event on public property, unless a special event permit is issued by the City Clerk after approval by the License and Ordinance Committee in accordance with this Section.

### **(2) Definitions**

The following words, terms and phrases, when used in this Section, except where the context clearly indicates a different meaning, shall have the meaning ascribed as follows:

- (a) "Participant," means only those persons actually taking part in the event, including, but not limited to, those sponsoring, organizing, promoting or initiating the event; those invited to attend; those paying to attend; or those for whom the event is sponsored organized or initiated, including the general public.
- (b) "Public property," means streets, sidewalks, parkways, highways, roads, boulevards, avenues, alleys, plazas, parks, conservancies, medians, and any and all spaces dedicated to the public use or used in any way by the City for the benefit of the public.
- (c) "Special event," means any event requiring the closure of any street, road, highway or trail, or any concert, show, performance, marathon, parade, race, walk or any other such activity or gathering of persons, animals or vehicles upon public property that is organized primarily for the purpose of amusement, athletic competition, charity, commemoration, education or entertainment or any public display of fireworks as defined under section 5.15(2)(b). Except for events that will require the closure or use of public streets or a public display of fireworks, this definition shall only apply to events where 200 or more individuals are expected to participate.
- (d) "Standard complement of personnel," means those personnel normally assigned for duty absent the existence of the special event by the applicable department head in accordance with the standard operating procedures.

### **(3) Property and Events Exempt from Permit Requirement**

Notwithstanding subsection (1), a permit under this Section shall not be required for the events described under this subsection. Exclusion from the terms of this Section pursuant to this subsection does not relieve the sponsors, coordinators, promoters, organizers or those otherwise holding an event from the responsibility of obtaining permission or authorization from the appropriate person or entity for the use of property that is not covered by this article. The following events do not require a permit under this section:

- (a) The event is to take place on property which is under the control or jurisdiction of the federal government, the State of Wisconsin, Dane County or the Middleton-Cross Plains

School District.

- (b) The event is a sporting event that is to take place on property equipped with facilities designed for the purpose of accommodating such events, including baseball diamonds, soccer fields and football fields, whether or not bleachers or other seating is provided.
- (c) Funeral processions.
- (d) Events for which an alcohol license is to be issued covering the entire premises upon which the event is to be held.
- (e) Events organized, sponsored or directed by the City of Middleton.
- (f) Events considered to be expressive activity events under Section 7.20.

#### **(4) Application**

- (a) A person seeking issuance of a special event permit shall file an application during regular business hours at City Hall in the office of the City Clerk. The City Clerk shall promptly transmit a copy of all applications to the Chief of Police.
- (b) An application for a special event permit may be filed any time beginning 12 months prior to the date of event, but no later than 45 calendar days preceding the date of the proposed event. The City may proceed to process applications at any time, however, no assurances shall be given or presumed that late applications can or will be processed in time for the proposed event or that the processing schedule will leave sufficient time to obtain an appeal hearing or ruling under subsection (13).

#### **(5) Review**

- (a) The Chief of Police shall review each application and forward his or her recommendations to the License and Ordinance Committee. The Chief of Police may seek the recommendation of any other City Staff including, but not limited to the Fire Chief, Building Inspector, Director of Public Works, or Public Lands Manager, as circumstances warrant.
- (b) The License and Ordinance Committee may approve, approve with conditions or deny the application. If the application is denied, the License and Ordinance Committee shall state its reasons therefore on the record with reference to the standards set forth in subsection (8) and shall direct the Chief of Police to provide written notice of denial and the reasons therefore by regular mail sent within three (3) business days of the decision.

#### **(6) Insurance**

- (a) The applicant shall indemnify, defend, and hold harmless the City of Middleton, its officers, council members, agents, employees against any and all damages or claims arising from the permitted event and shall carry insurance coverage as follows:

1. General Liability Coverage

Coverage shall be occurrence coverage. Claims-made coverage is prohibited.

- (a) Commercial General Liability

- (i) \$1,000,000 general aggregate – per event;
- (ii) \$1,000,000 products - completed operations aggregate;
- (iii) \$1,000,000 personal injury and advertising injury;
- (iv) \$1,000,000 each occurrence limit.

- (b) Insurance must Include:

- (i) Premises and operations liability;
- (ii) Contractual liability, including coverage for the joint negligence of the City of Middleton, its officers, council members, agents, employees,

authorized volunteers and the named insured;

- (iii) Personal injury;
- (iv) Explosion, collapse and underground coverage;
- (v) Products and completed operations;
- (vi) The general aggregate must apply separately to the event and location.

2. Business Automobile Coverage

Such coverage is required if motor vehicles are used in relation to and before, during or after the event. This requirement does not apply to cover personal vehicles used by attendees or event personnel to arrive or depart from the event. Coverage limits shall be no less than \$250,000 each person, \$500,000 each accident for bodily injury, \$100,000 for property damage or \$500,000 combined single limit for bodily injury and property damage each accident.

3. Worker's Compensation and Employer's Liability

Proof of such coverage shall be required consistent with Wis. Stats. Chap. 102 or any applicable Worker's Compensation Statutes of a different state. Coverage limits shall be no less than \$100,000 each accident, \$500,000 disease policy limit and \$100,000 disease per employee.

4. Liquor Liability

If the event holder sells alcoholic beverages, liquor liability insurance with coverage limits of no less than \$500,000 each occurrence and \$500,000 aggregate.

5. Fireworks Liability

If the event includes a firework display, then the event holder shall carry an additional \$1,000,000 in coverage.

6. Bounce Houses

If the event includes a bounce house or similar equipment, then the event holder shall carry an additional \$1,000,000 in liability coverage.

- (b) Additional insurance requirements may apply in the reasonable discretion of the License and Ordinance Committee. The License and Ordinance Committee may waive or modify these insurance requirements for purely private events if it determines that the requirements would impose an undue hardship and that the public interest is otherwise adequately protected.
- (c) All insurance shall be in full force prior to commencing the event and remain in force throughout the entire event, including the clean-up period after the event.
- (d) The City of Middleton, and its officers, council members, agents, employees, and authorized volunteers shall be additional insureds on general liability, business automobile and liquor liability policies. The additional insured policy endorsement must accompany the certificate of insurance.
- (e) All policies shall require 30 day written notice to the City of Middleton of cancellation, non-renewal or material change in the insurance coverage.
- (f) Insurance must be provided by an insurance carrier with the "Best" rating of "A-VII" or better. All carriers shall be admitted carriers in the State of Wisconsin.

## **(6) Fees and Expenses**

- (a) The applicant shall pay a review fee at the time of submittal of the application in an amount set forth in the Fee Schedule under Section 3.12.
- (b) An applicant may be required to reimburse the City for the actual costs it incurs, including costs for reviewing the application, planning for and setting up for the event, and for providing any security, traffic control, crowd control or other emergency service personnel required by the License and Ordinance Committee that is in excess of the standard complement of personnel provided by the City or for the costs of any remedial actions including clean-up that are the applicant's responsibility that the applicant fails to fulfill. The License and Ordinance Committee may require all estimated costs under this paragraph or any portion thereof to be paid in advance of the event and held in escrow or for payment to be secured by a letter of credit or other form of security approved by the City Attorney. If money is held in escrow, unused funds shall be returned to the applicant within thirty (30) days of the end of the event. The applicant shall be sent an invoice for any deficiency in the escrow which shall be paid within thirty (30) days of issuance. In no case shall an applicant be required to reimburse the city for the costs associated with providing personnel based on the actual or anticipated conduct of non-participants. Any required coverage for which reimbursement is sought shall be based on the following factors:
  - 1. The location or route of the event;
  - 2. The physical characteristics of the location or route;
  - 3. The duration of the event;
  - 4. The day and time of the event;
  - 5. The estimated number of the participants;
  - 6. The potential danger to the event participants, the general public or public property;
- (c) Nothing in this subsection shall be construed to require the City to provide any services including security, traffic control, crowd control or other emergency service.

## **(8) Grounds for Denial**

No application shall be unreasonably denied and, in no event, shall an application be denied based upon the content of any lawful message that may be connected with the special event. The grounds for the denial of an application are as follows:

- (a) The application is incomplete in any material respect.
- (b) The application was not received at least 45 days prior to the proposed event.
- (c) A portion of the event will take place on private property or property under the control or jurisdiction of any board, agency or other governmental entity and permission has not been obtained from such persons or entities.
- (d) The special event is a violation of federal, state or local ordinances, statutes or laws.
- (e) The conduct of the event will require the diversion of so great a number police officers or other City personnel so as to impair service to the remainder of the City.
- (f) There is insufficient complement of City personnel available to provide the necessary security, traffic control, crowd control or other necessary services for the event because of other previously approved and scheduled special events.
- (g) The applicant has failed to reimburse the city for expenses and fees charged for a prior special event.
- (h) If the time or location are unsafe and impracticable in the opinion of the Chief of Police.

- (i) The application contains a material falsehood or misrepresentation.
- (j) The applicant is legally incompetent to contract or to sue or to be sued.
- (k) Applications for special events requiring the use or closure of public streets shall be denied if any of the following apply:
  - 1. The proposed street use is primarily for private or commercial gain;
  - 2. The proposed street use will substantially hinder the movement of police, fire or emergency vehicles, constituting a risk to persons or property;
  - 3. The application requests a period for the use of the street in excess of six (6) hours; or
  - 4. The proposed use could be held in a public park or other location.

### **(9) Permit Contents**

Unless waived by the Chief of Police, each permit issued under this chapter shall specify the following:

- (a) The specific portions of any street, park, sidewalk, trail, or other public place used by the permittee may be closed to traffic or use;
- (b) The duration of the special event;
- (c) The period of time during which any street, park, sidewalk, trail, or other public place used by the permittee may be closed to traffic or use;
- (d) Requirements for placement and removal of barricades and the marking and lighting thereof;
- (e) Requirements for the protection of persons and property abutting and near the portion of the public areas to be closed for the event from danger or annoyance which may be caused by such use;
- (f) Requirements for security, crowd control and a traffic control plan for the event in conformance with the most recent edition of the Manual on Uniform Traffic Control Devices;
- (g) Requirements and instructions for removal of litter or debris created by the event participants in connection with the event or use;
- (h) The minimum and maximum speeds to be monitored by participating vehicles, if any.

### **(10) Duties of Participants**

- (a) All persons involved with an event regulated by this article shall comply with all permit directions and conditions imposed under the terms of this article for the use of public property and with all applicable ordinances, statutes and laws.
- (b) All persons involved with an event regulated by this article shall stay within the area or route designated for the event during the conduct of this event.
- (c) The event chairman or other person leading such activity shall carry the special event permit upon his or her person during the conduct of the event.
- (d) The applicant shall be responsible for returning all premises used for the event or impacted by the event to the condition such premises was in prior to the event within twelve (12) hours after the permit expires.

### **(11) Public Conduct**

- (a) No person shall unreasonably hamper, obstruct or impede, or interfere with any event or event assembly or with any person, vehicle or animal participating or used in the event.
- (b) No driver of any vehicle, other than an authorized emergency vehicle, shall drive between the vehicles or persons comprising an event when such vehicles or persons are in motion and are conspicuously designated as a participant in the event.



- (c) The Chief of Police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along the street or highway or part thereof constituting a part of the route of the event. The Chief of Police shall see that signs are posted wherever parking is prohibited, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof.

## **(12) Revocation or Termination of an Event**

- (a) Any special event permit issued under this Section may be revoked or an event terminated on the day of the permitted activity without prior written notice and without a hearing if the Chief of Police or the Fire Chief determines that:
  - 1. Revocation or termination is in the interest of the immediate public health or safety because of fire, casualty, act of God, or a public emergency;
  - 2. Any term, standard for issuance, condition, duty, restriction or limitation of such permit or reservation has been violated by event participants and, as a result, the immediate health or safety of any participant or the general public is threatened;
- (b) The permittee shall immediately, upon receipt of the notification that the permit has been revoked, terminate the event and shall commence restoring the site to its condition prior to the event as soon as practicable and without delay.

## **(13) Appeal**

Any applicant aggrieved by the decision of the License and Ordinance Committee may appeal the decision to the Common Council. The request for appeal shall be filed in writing with the City Clerk no later than seven (7) days after the date of written notice or decision whichever is later. The request shall state the grounds for appeal. A hearing shall be held before the Council. The hearing need not be an evidentiary hearing, however, the applicant shall be present to answer questions and shall be permitted to make a brief statement in support of the appeal.

## **7.18 ENTERTAINMENT CLUB LICENSE**

### **(1) Entertainment Club License Required**

No person shall offer any live entertainment in any public building with a patron capacity of more than one hundred (100) without first obtaining an Entertainment Club License from the City Clerk.

### **(2) Exceptions**

A license under this section shall not be required for events as follows:

- (a) Events held at and sponsored by a public or private school.
- (b) Events sponsored by the City of Middleton or events subject to a special event permit under Section 7.17.
- (c) Events held at and sponsored by a church or other religious institution. This exception does not include events held at facilities used primarily for another purpose and at which religious activities are incidental to the primary use.
- (d) Where music is provided only as background for dining or other featured modes of entertainment including, but not limited to, spectator sports, rides, video arcades, or a facility that offers other interactive electronic games.
- (e) Private parties or receptions limited to invited guests for which there is no fee or charge for entry, participation, food or beverages.
- (f) Non-amplified or acoustic music performed by a single artist.

- (g) Performances where an uncompensated patron sings along with a machine that plays prerecorded music, commonly known as karaoke.

### **(3) Life Entertainment Defined**

- (a) A licensed establishment shall be deemed to offer or allow live entertainment if any of the following activities are offered, permitted or allowed:
  1. live music performances;
  2. disc jockeys;
  3. the establishment has a designated dance floor area;
  4. live dancers.

### **(4) Designated Dance Area Defined**

An identified area of at least 200 square feet that is devoted to dancing at times when entertainment is the principal business of the establishment. No dancing shall be permitted on top of a bar at which patrons are directly served.

### **(5) Qualifications**

Applicants shall meet the following qualifications:

- (a) Must be an adult;
- (b) May not be a habitual law offender;
- (c) May not have been convicted of a felony which substantially relates to the licensed activity;
- (d) Must be a state resident for a minimum of 90 continuous days prior to the date of application.

### **(6) No Contact with Performers**

All performers shall perform from a raised floor or stage or if on floor level an area separated from the audience by a railing or similar device. All performance areas shall be designed to prevent contact between patrons and performers and no contact shall be permitted between patrons and performers during performances. Patrons shall not be permitted on stage or in the performance area during performances.

### **(7) Identification of Patrons 21 Years of Age and Older**

Any establishment holding a "Class B" or Class "B" alcohol license that meets the exceptions contained in Wis. Stats. § 125.07(3)(a) for allowing underage patrons on the licensed premise, must have a means of visually and conspicuously identifying patrons who are twenty-one (21) years of age and older. It shall be the sole responsibility of the license holder to determine whether any of the exceptions contained in Wis. Stats. § 125.07(3)(a) apply to their establishment.

### **(8) Inspections**

By applying for and accepting any license issued under this section, the applicant consents to inspection of the premises by City officials including, but not limited to, police officers, fire inspectors and building inspectors, at any time the club is open for business or upon reasonable notice.

### **(9) Security Plan**

- (a) All entertainment license applicants shall submit a security plan at the time of application. The plan shall indicate what type of live entertainment the establishment will offer. The plan shall indicate the number of security personnel the applicant will employ and how they will be utilized.

- (b) The security plan shall also set forth how the applicant will handle issues regarding: control and clearance of the parking lot during hours of operation and at closing time; unruly patrons; patrons who are intoxicated; patrons presenting false IDs; control and supervision of patrons under the age of twenty-one (21); the circumstances under which the police should be called and how physical disturbances will be handled. The security plan shall also identify by name and date of birth, individuals who are employed by the establishment in a management capacity.
- (c) All security personnel and door personnel shall wear clothing that readily identifies them as security personnel.

### **(10) Control of Premises**

At no time may licensee relinquish control of the licensed premises or, if also licensed to serve alcohol beverages, the service of alcohol to any other person or entity. The licensee must remain in control of the premises and must continue to be in control of the alcohol and service thereof through the licensee's own employees, including but not limited to checking identification of patrons, providing security within the licensed premises and at the door, collecting money or tickets from patrons for food, drinks, or for charges for entry to the establishment or any area within the establishment, during all events, including private parties. A manager or supervisor shall be present at all times when open for business. The licensee and its employees will be held responsible for all conduct taking place on its premises at all times including conduct taking place during private parties. Notwithstanding the limitations of this subdivision, a licensee may contract with an agency that is licensed by the State of Wisconsin as a supplier of uniformed private security personnel to engage in private security activities.

### **(11) Application**

Upon application to the City Clerk, the City Clerk shall refer the entertainment license application to the Chief of Police for review and recommendation to the License and Ordinance Committee. The License and Ordinance Committee shall make a determination regarding the issuance of the entertainment license. The License and Ordinance Committee may impose restrictions on the entertainment club license hours relating to presentation of live entertainment or any other reasonable conditions or restrictions if the information or evidence available to and considered by the License and Ordinance Committee reasonably establishes that such condition or restriction is necessary to protect the health, safety and welfare of the surrounding neighborhood or necessary to prevent underage patrons from purchasing, possessing or consuming alcohol beverages on the licensed premise.

### **(12) Fee**

The annual license fee shall be as set forth in the Fee Schedule under Section 3.12 and the license shall expire at the end of the event or no later than June 30 following its issuance. No additional fee shall be required if the application is processed in conjunction with any alcohol license application, including expanded premises permits.

### **(13) Renewal**

Entertainment licenses shall be obtained on or before June 30 of each year or be subject to a late filing of fifteen percent (15%) of the license fee. Payment of the late filing fee shall not relieve any person from any other penalties prescribed in this chapter for failure to obtain the license.

### **(14) Change in Operation**

If, after the license has been granted or issued, the licensee wishes to make any substantial deviations from its original plan of operation, the licensee shall file a written request with the City Clerk which states the nature of the change. No change shall take place until the request has been considered by the License and Ordinance Committee and approved by the Common Council.

## **(15) Revocation, Suspension, or Nonrenewal**

- (a) A Complaint for revocation, suspension or non-renewal of an entertainment license may be made by; an Alderperson; The Police Chief; The City Attorney; or any resident of the City of Middleton. Complaints shall be made in writing and filed with the City Clerk who shall then refer the Complaint to the License and Ordinance Committee for a hearing. The License and Ordinance Committee may recommend to the Common Council that an entertainment license be suspended for cause after notice to the licensee and a hearing. If an entertainment license is revoked, no other entertainment license shall be issued to the same person for the same premises for at least twelve (12) months. Entertainment licenses may be suspended or revoked for any of the following causes:
1. Violation of any conditions or restrictions placed on the license by the License and Ordinance Committee;
  2. Repeated violations of any provisions of the City of Middleton Code of Ordinances on the premises;
  3. The licensed premises is operating in such a manner that it has a substantial adverse effect upon the health, safety and welfare of the immediate neighborhood;
  4. The licensee keeps or maintains a disorderly, riotous, indecent or improper house.
  5. Any other reasonable cause which shall be in the best interests and good order of the City.
- (b) The licensee shall be notified in writing of the charges against her or him at least ten (10) days prior to the hearing. At the hearing, the complainant and the licensee will have an opportunity to produce witnesses, cross-examine witnesses and be represented by counsel. The proceedings shall be tape-recorded. Within ten (10) days of the hearing, the License and Ordinance Committee shall issue a written decision and recommendation stating the reasons therefor and forward such decision to the Common Council. If the Common Council rejects the recommendation of the License and Ordinance Committee, the matter shall be dismissed without costs to either party. If ordered, suspension shall be for a period not to exceed six (6) months. If revoked, no new application may be approved for the premises for a period of one (1) year.

## **(16) Judicial Review**

The decision of the Common Council shall be a final determination and shall be subject to review in court as may be provided by law. Any person aggrieved by the decision may seek review thereof within thirty (30) days after the date of the final determination.

## **7.19 PAYMENT OF TAXES, CLAIMS, FORFEITURES, AND JUDGMENTS**

### **(1) Definitions**

For purposes of this Section:

- (a) "License" means any license, permit or other approval under this Chapter or under any other provision of this Code of Ordinances including, but not limited to, zoning and land division approvals. This term shall not include any license otherwise meeting this definition if the City is preempted by state or federal law from applying the terms of this Section to said license or where the application of this Section would violate the Wisconsin or United States Constitution.
- (b) "Licensee" means any person holding or seeking approval or renewal of a license.

- (c) “Licensed activity” means any activity for which a person is required to obtain a license.

## **(2) Condition of License and Permits**

It shall be considered a condition prerequisite to the holding, issuance or transfer of any license that the licensee is not delinquent in making any payments to the City of Middleton including, but not limited to, room taxes, real or personal property taxes, special assessments, special charges, forfeitures or judgments.

## **(3) Revocation, Suspension, or Non-issuance**

A delinquency under sub. (2) shall be grounds for revocation, suspension, or refusal to issue or renew, any license.

## **(4) Procedure**

### (a) Notice

Upon the discovery of any delinquency by a licensee under sub. (2), written notice of the nature and amount of the delinquency shall be provided to the licensee. The notice shall also include notice of the hearing procedures provided in this subsection. The notice may be sent by regular mail to the licensee’s last known address.

### (b) Time Periods

All time periods under this subsection shall be computed excluding the day of the act or event from which the designated period of time begins to run as well as weekends and holidays.

### (c) Hearing

1. The licensee may obtain a hearing by submitting a written request for a hearing within seven days of receiving the notice of delinquency to the City Clerk. Such request shall be personally served upon the City in the manner provided under Wis. Stats. § 801.11(4). The issues at the hearing shall not include questions of equity, but shall be limited to the questions of whether a delinquency exists under this Section and the amount thereof in accordance with the particular ordinance, statute, judgment or other legal authority establishing the debt. Failure to timely request a hearing shall constitute an admission that the delinquency exists as set forth in the notice for all purposes including, but not limited to, any decisions or actions with respect to the license.
2. The request shall include a detailed statement along with supporting documentation demonstrating that no delinquency exists. No request for hearing shall be considered effective unless the grounds for disputing the delinquency can be reasonably identified and understood by a person of ordinary intelligence. The hearing shall be limited to the issues raised in the request for hearing.
3. If, upon review of the request, the City determines that no delinquency exists, no hearing shall be required and the City Treasurer or other appropriate officer or employee shall correct the City records accordingly.
4. The hearing shall be held before the License and Ordinance Committee at its next regular meeting. If the next regular meeting occurs within three days or less, or if the Chairperson of the License and Ordinance Committee determines that a hearing cannot be accommodated because of other business, the hearing may be postponed to a future regular meeting or to a special meeting called for such purposes upon no less than seven days notice to the licensee. The licensee shall have the right to call witnesses and cross-examine witnesses against them.

5. The determination of the License and Ordinance Committee shall be considered the City's final determination with respect to the existence and amount of the delinquency. The Common Council may, by majority vote, agree to review the License and Ordinance Committee's decision but shall not be required to take any action.

(d) Alternative Procedures

As a complete alternative to the procedures under subsection (c), where notice and hearing procedures exist for suspension, revocation, refusal to issue or refusal to renew a license, such procedures may be followed to provide notice and hearing on the delinquency.

(e) Payment Agreements

1. As an alternative to requesting a hearing or where the existence or amount of delinquency is not in dispute, a licensee may enter into a payment agreement or other settlement agreement with the City to permit issuance, transfer, renewal, maintenance or retention of the license. Such agreement shall be approved by the Common Council after considering the recommendation of the City Administrator and City Attorney.
2. The Common Council shall not approve any payment agreement under this section unless it finds that the agreement is in the public interest considering factors including the circumstances of the delinquency, the likelihood and expense of collecting the delinquency by other methods, the licensee's history of delinquencies and the value to the City of the licensed activity.

### **(5) Severability**

Should any provisions of this Section be found invalid, such provisions may be stricken and the remaining provisions enforced whenever possible.

## **7.20 EXPEDITED STREET OR PUBLIC FACILITY USE PERMIT FOR EXPRESSIVE ACTIVITIES**

### **(1) Purpose**

The ability to exercise First Amendment rights in a group setting for purposes of peaceful protest, demonstration or similar activity is of significant importance to a healthy democracy and is part of the democratic heritage in this country and of the State of Wisconsin. The purpose of this ordinance is to facilitate the ability for gatherings of people for expressive activities to make use of public streets and other public facilities without the burdens that are generally required by the City of Middleton Code of Ordinances for events that can generally be planned further in advance and, without diminishing the importance of the purposes for such gatherings, do not carry with them the same fundamental Constitutional importance as those activities recognized as expressive activities under this Section. At the same time, this Section recognizes that public streets and certain other public facilities serve other important public purposes and that the public interest in providing greater accommodation for expressive activities does not preclude minimal time, place and manner restrictions on the use of such facilities to ensure that public streets and other identified public facilities are preserved for their intended purposes. This Section is intended to permit the fullest accommodation of expressive activities while preserving the fundamental purpose and the safe, healthful use of public streets and other public facilities.

### **(2) Expressive Activities Defined**

For purposes of this Section, "expressive activities" means any gathering or events, the principal object of which is the expression, dissemination or communication of opinions, views or ideas by verbal,

visual, literary or auditory means.

### **(3) Expressive Activities Exempt from Permit Requirements**

No permit shall be required for any expressive activity so long as such activity does not cause the obstruction of any public street, sidewalk, path or trail, and does not make use of any shelter, playground, designated athletic field or similar recreational facility designated and improved for a specific use.

### **(4) Street or Facility Permit for Expressive Activities**

Whenever a gathering or event constituting an expressive activity as defined under subsection (2) will cause the obstruction of any public street, sidewalk, path or trail, or will make use of any shelter, playground, designated athletic field or similar recreational facility designated and improved for a specific use, a permit shall be obtained from the Chief of Police.

#### **(a) Application**

- (i) The flow of traffic in both the immediate and surrounding area including access to homes, businesses and other institutions as well as the ability for emergency vehicles to effectively respond to calls for assistance.
- (ii) The burden upon City resources, including, but not limited to police and public works personnel and equipment to ensure security and traffic control.
- (iii) The burden upon surrounding property, residents or occupants.
- (iv) Safety of participants.
- (v) Sanitation and prevention of the accumulation of litter and debris.

#### **(b) Grounds for Denial or Imposition of Conditions**

In recognition that the purpose of this Section is to facilitate expressive conduct, the Chief of Police shall not deny any application or portion thereof unless the detriment to the public interests identified in this Section substantially outweighs the detriment to the exercise of First Amendment rights caused by the denial or partial denial. In making this determination, due consideration shall be given to the comparative burdens imposed by other events generally permitted in the City and the availability of alternate means to conduct the expressive activity. Mere inconvenience shall not constitute grounds for any denial in whole or in part unless the substitute permissions that are reasonably comparable to the requested permissions are granted. Substantial disruption of traffic on major arterial roads for any period of time or complete denial of direct vehicular access to any property for greater than 4 hours is presumed to be more than a mere inconvenience unless the use of the property does not traditionally require direct vehicular access to support its use; for example, a business that relies primarily on foot traffic or customers that typically park elsewhere than on or adjacent to the business property. The Chief of Police's discretion is further subject to the following limitations:

- (i) An application under this subsection may be denied in whole or in part for the reasons identified in Section 7.17(8), except that the time limit under Section 7.17(8)(b) shall be 48 hours and the grounds set forth in Section 7.17(8)(g) shall not apply.
- (ii) No permit shall be issued that would allow a material interference with any other duly authorized or permitted event or facility reservation.
- (iii) No permit shall allow the obstruction of any conservancy trail or authorize activities that present an unreasonable risk of damage to natural resources or City property.
- (iv) No insurance requirement may be imposed for a permit under this subsection unless the event involves the use of any motor vehicle, in which case proof of

insurance required under Wis. Stats. § 344.63 shall be provided. Whenever practicable, proof shall be provided at the time of application, otherwise proof of insurance shall be made available for inspection prior to the start of the event.

- (v) A permit under this subsection shall not authorize any commercial activity, however, incidental sale of merchandise, food or beverages may occur provided that such activity is clearly incidental to the expressive purposes of the event, and any such activity complies with all other applicable City ordinances or other State or local regulations.

(c) Time for Approval

The Chief of Police shall issue the permit along with a list of any necessary conditions within 36 hours or the application shall be deemed approved. All representations in the application regarding the nature of the event, as modified by the Chief of Police and as supplemented by any additional conditions, shall be deemed conditions of the permit, the violation of which shall be considered a violation of this section. For purposes of this paragraph, a permit is considered issued when it is made available for receipt upon request at the Police Department.

Organizers and participants of expressive activities that do not qualify under this section for a permit or permit exemption may apply for a permit under Section 7.17.