

TITLE 7

Licensing, Permit, Fees and Regulation

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Title 7 – Chapter 1

Licensing of Dogs and Regulation of Animals

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Sec. 7-1-1 Dog License Required; Definitions.

- (a) **License Required.** It shall be unlawful for any person in the Town of Oshkosh to own, harbor or keep any dog for more than five (5) months of age after July 1 of the license year without complying with the provisions of this Chapter relating to the listing, licensing and tagging of the same.
- (b) **Definitions.** In this Chapter, unless the context or subject matter otherwise require:
- (1) **Owner.** Any person owning, harboring or keeping a dog or cat and the occupant of any premises on which a dog or cat remains or to which it customarily returns daily for a period of ten (10) days; such person is presumed to be harboring or keeping the dog or cat within the meaning of this Section.
 - (2) **At Large.** To be off the premises of the owner and not under the control of some person either by leash or otherwise, but a dog or cat within an automobile of its owner, or in an automobile of any other person with the consent of the owner of said dog or cat, shall be deemed to be upon the owner's premises.

- (3) **Dog.** Any canine, regardless of age or sex.
- (4) **Cat.** Any feline, regardless of age or sex.
- (5) **Neutered.** A dog or cat having nonfunctional reproductive organs.
- (6) **Animal.** Mammals, reptiles and birds.
- (7) **Cruel.** Causing unnecessary and excessive pain or suffering or unjustifiable injury or death.
- (8) **Law Enforcement Officer.** Has that meaning as appears in §967.02(5), Wis. Stats., and includes a humane officer under §58.07, Wis. Stats., but does not include a conservation warden appointed under §23.10, Wis. Stats.
- (9) **Farm Animal.** Any warm-blooded animal normally raised on farms in the United States and used for food or fiber.
- (10) **Pet.** An animal kept and treated as a pet.
- (11) **Kennel.** The term "kennel" means any establishment wherein or whereon dogs are kept for the purpose of breeding, sale or sporting purposes.

State Law Reference: §174.001 through §174.15, Wis. Stats.

Sec. 7-1-2 Rabies Vaccination Required for License.

- (a) **Rabies Vaccination.** The owner of a dog shall have the dog vaccinated against rabies by a veterinarian within thirty (30) days after the dog reaches four (4) months of age and revaccinated within one (1) year after the initial vaccination. If the owner obtains the dog or brings the dog into the Town of Oshkosh after the dog has reached four (4) months of age, the owner shall have the dog vaccinated against rabies within thirty (30) days after the dog is brought into the Town unless the dog has been vaccinated as evidenced by a current certificate of rabies vaccination. The owner of a dog shall have the dog revaccinated against rabies by a veterinarian before the date of that immunization expires as stated on the certificate of vaccination or, if no date is specified, within three (3) years after the previous vaccination. The certificate of vaccination shall meet the requirements of §95.21(2), Wis. Stats.
- (b) **Issuance of Certificate of Rabies Vaccination.** A veterinarian who vaccinates a dog against rabies shall complete and issue to the owner a certificate of rabies vaccination bearing a serial number and in the form approved by the Town stating the owner's name and address, the name, sex, spayed or unspayed, neutered or unneutered, breed and color of the dog, the date of the vaccination, the type of rabies vaccination administered and the manufacturer's serial number, the date that the immunization expires as specified for that type of vaccine by the Center for Disease Control of the U.S. Department of Health and Human Services and the Town.
- (c) **Copies of Certificate.** The veterinarian shall keep a copy of each certificate of rabies vaccination in a file maintained for this purpose until the date that the immunization expires or until the dog is revaccinated, whichever occurs first.

- (d) **Rabies Vaccination Tag.** After issuing the certificate of rabies vaccination, the veterinarian shall deliver to the owner a rabies vaccination tag of durable material bearing the same serial number as the certificate, the year the vaccination was given and the name, address and telephone number of the veterinarian.
- (e) **Tag to be Attached.** The owner shall attach the rabies vaccination tag or a substitute tag to a collar and a collar with the tag attached shall be kept on the dog at all times, but this requirement does not apply to a dog during competition or training, to a dog while hunting, to a dog securely confined indoors or to a dog securely confined in a fenced area. The substitute tag shall be of durable material and contain the same information as the rabies vaccination tag. The requirements of this paragraph do not apply to a dog, which is not required to be vaccinated under Subsection (a).
- (f) **Duplicate Tag.** The veterinarian may furnish a new rabies vaccination tag with a new serial number to an owner in place of the original tag upon presentation of the certificate of rabies vaccination. The veterinarian shall then indicate the new tag number on the certificate and keep a record in the file.
- (g) **Cost.** The owner shall pay the cost of the rabies vaccination and the cost associated with the issuance of a certificate of rabies vaccination and the delivery of a rabies vaccination tag.

Sec. 7-1-3 Issuance of Dog and Kennel Licenses.

(a) Dog Licenses.

- (1) It shall be unlawful for any person in the Town of Oshkosh to own, harbor or keep any dog more than five (5) months of age without complying with the provisions of §174.001 through §174.15, Wisconsin Statutes, relating to the listing, licensing, and tagging of the same.
- (2) The owner of any dog more than five (5) months of age on January 1 of any year, or five (5) months of age within the license year, shall annually, or on or before the date the dog becomes five (5) months of age, pay a license tax and obtain a license.
- (3) The minimum license tax under this Section shall be the state and county established fee.
- (4) Upon payment of the required license tax and upon presentation of evidence that the dog is currently immunized against rabies, as required by Section 7-1-2 of this Chapter, the Town Treasurer or his/her deputy shall complete and issue to the owner a license for such dog containing all information required by state law. The Town Treasurer or his/her deputy shall also deliver to the owner, at the time of issuance of the license, a tag of durable material bearing the same serial number as the license, the name of the county in which issued and the license year.

- (5) The owner shall securely attach the tag to a collar and the collar with the tag attached shall be kept on the dog for which the license is issued at all times, except as provided in Section 7-1-2(e).
- (6) The fact that a dog is without a tag attached to the dog by means of a collar shall be presumptive evidence that the dog is unlicensed. Any Town law enforcement or humane officer shall seize, impound or restrain any dog for which a dog license is required which is found without such tag attached. Each day that any dog within the Town of Oshkosh continues to be unlicensed constitutes a separate offense for which a separate penalty applies.
- (7) Notwithstanding the foregoing, every dog specifically trained to lead blind or deaf persons is exempt from the dog license tax, and every person owning such dog shall receive annually a free dog license from the Town Treasurer or his/her deputy upon application therefor.

(b) **Kennel Licenses.**

- (1) Any person who keeps or operates a kennel may, instead of the license tax for each dog required by this Chapter, apply for a kennel license for the keeping or operating of the kennel. Such person shall pay for the license year a license tax in accordance with the state and county fee for a kennel. Upon payment of the required kennel license tax and, if required by the Town Board, upon presentation of evidence that all dogs over five (5) months of age are currently immunized against rabies, the Town Treasurer or his deputy shall issue the kennel license and a number of tags equal to the number of dogs authorized to be kept in the kennel
- (2) The owner or keeper of a kennel shall keep at all times a kennel license tag attached to the collar of each dog over five (5) months old kept by the owner or keeper under a kennel license but this requirement does not apply to a show dog during competition, to a dog securely confined indoors or to a dog securely confined in a fenced area. These tags may be transferred from one dog to another within the kennel whenever any dog is removed from the kennel. The rabies vaccination tag or substitute tag shall remain attached to the dog for which it is issued at all times but this requirement does not apply to a show dog during competition, to a dog securely confined indoors or to a dog securely confined in a fenced area. No dog bearing a kennel tag shall be permitted to stray or to be taken anywhere outside the limits of the kennel unless the dog is in leash or temporarily for the purposes of hunting, breeding, trial, training or competition.
- (3) If three (3) or more dogs are kept on any one premise, it shall be deemed to be a kennel; and the burden of proving that it is not a kennel shall be on the operator thereof.

State Law Reference: § 174.053, Wis. Stats.

Sec. 7-1-4 Late Fees.

The Town Treasurer shall assess and collect a late fee of Five Dollars (\$5.00) from every owner of a dog five (5) months of age or over if the owner failed to obtain a license prior to April 1 of each year, or within thirty (30) days of acquiring ownership of a licensable dog or if the owner failed to obtain a license on or before the dog reached licensable age. Said late fee shall be charged in addition to the required license fee.

Sec. 7-1-5 Rabies Quarantine.

- (a) **Dogs and Cats Confined.** If a district or neighborhood is quarantined for rabies, all dogs and cats within the Town shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is declared a public nuisance and may be impounded. All officers shall cooperate in the enforcement of the quarantine. The Town Clerk shall promptly post in at least three (3) public places in the Town notices of quarantine.
- (b) **Exemption of Vaccinated Dog or Cat from Town Quarantine.** A dog or cat which is immunized currently against rabies, as evidenced by a valid certificate of rabies vaccination or other evidence, is exempt from the Town quarantine provisions of Subsection (a) if a rabies vaccination tag or substitute tag is attached to the dog's or cat's collar.
- (c) **Quarantine or Sacrifice of an Animal Suspected of Biting a Person or Being Infected or Exposed to Rabies.**
 - (1) ***Quarantine or sacrifice of dog or cat.*** A law enforcement, humane or animal control officer shall order a dog or cat quarantined if the officer has reason to believe that the animal bit a person, is infected with rabies or has been in contact with a rabid animal. If quarantine cannot be imposed because the dog or cat cannot be captured, the officer may kill the animal. The officer may kill a dog or cat only as a last resort if the owner agrees. The officer shall attempt to kill the animal in a humane manner and in a manner, which avoids damage to the animal's head.
 - (2) ***Sacrifice of other animals.*** A law enforcement, humane or animal control officer may order killed or may kill an animal other than a dog or cat if the officer has reason to believe that the animal bit a person or is infected with rabies.
- (d) **Quarantine of Dog or Cat.**
 - (1) ***Delivery to Isolation facility or quarantine on premises of owner.*** A law enforcement, humane or animal control officer who orders a dog or cat to be quarantined shall deliver the animal or shall order the animal delivered to an isolation facility as soon as possible but no later than twenty-four (24) hours after the original order is issued or the officer may order the animal to be quarantined on the premises of the owner if the

animal is immunized currently against rabies as evidenced by a valid certificate of rabies vaccination or other evidence.

- (2) **Health risk to humans.** If a dog or cat is ordered to be quarantined because there is reason to believe that the animal bit a person, the custodian of an isolation facility or the owner shall keep the animal under strict isolation under the supervision of a veterinarian for at least ten (10) days after the incident occurred. In this paragraph, “supervision of a veterinarian” includes, at a minimum, examination of the animal on the first day of isolation, on the last day of isolation and one (1) intervening day. If the observation period is not extended and if the veterinarian certifies that the dog or cat has not exhibited any signs of rabies, the animal may be released from quarantine at the end of the observation period.
- (3) **Risk to animal health.**
 - (a) If a dog or cat is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal and if the dog or cat is not currently immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for one hundred eighty (180) days. The owner shall have the animal vaccinated against rabies between one hundred fifty-five (155) and one hundred sixty-five (165) days after the exposure to a rabid animal.
 - (b) If a dog or cat is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal but if the dog or cat is immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for sixty (60) days. The owner shall have the animal revaccinated against rabies as soon as possible after exposure to a rabid animal.
- (4) **Sacrifice of a dog or cat exhibiting symptoms of rabies.** If a veterinarian determines that a dog or cat exhibits symptoms of rabies during the original or extended observation period, the veterinarian shall notify the owner and the officer who ordered the animal quarantined and the officer or veterinarian shall kill the animal in a humane manner and in a manner which avoids damage to the animal’s head. If the dog or cat is suspected to have bitten a person, the veterinarian shall notify the person or the person’s physician.
- (e) **Delivery of Carcass; Preparation; Examination by Laboratory of Hygiene.** An officer who kills an animal shall deliver the carcass to a veterinarian or local health department. The veterinarian or local health department shall prepare the carcass, properly prepare and package the head of the animal in a manner to minimize deterioration, arrange for delivery by the most expeditious means feasible of the head of the animal to the State Laboratory of Hygiene and dispose of or arrange for the disposal of the remainder of the carcass in a manner which minimizes the risk or exposure to any rabies virus. The Laboratory of Hygiene shall examine the specimen and determine if the animal was infected with rabies.

The State Laboratory of Hygiene shall notify the Town, the veterinarian or local health department which prepared the carcass and, if the animal is suspected to have bitten a person, that person or the person's physician.

- (f) **Cooperation of Veterinarian.** Any practicing veterinarian who is requested to be involved in the rabies control program by an officer is encouraged to cooperate in a professional capacity with the Town, the Laboratory of Hygiene, the local health department, the officer involved and, if the animal is suspected to have bitten a person, the person's physician.
- (g) **Responsibility for Quarantine and Laboratory Expenses.** The owner of an animal is responsible for any expenses incurred in connection with keeping the animal in an isolation facility, supervision and examination of the animal by a veterinarian, preparation of the carcass for laboratory examination and the fee for the laboratory examination. If the owner is unknown, the county is responsible for these expenses.

Sec. 7-1-6 Restrictions on Keeping of Dogs, Cats or Fowl and Other Animals.

- (a) **Restrictions.** It shall be unlawful for any person within the Town of Oshkosh to own, harbor or keep any dog, cat or fowl or other animal which:
 - (1) Habitually pursues any vehicle upon any public street, alley or highway in the Town.
 - (2) Assaults or attacks any person or destroys property.
 - (3) Is at large within the limits of the Town.
 - (4) Habitually barks or howls to the annoyance of any person or persons.
(See Section 7-1-11)
 - (5) Kills, wounds or worries any domestic animal.
 - (6) Is known by such person to be infected with rabies or to have been bitten by an animal known to have been infected with rabies.
 - (7) In the case of a dog, is unlicensed.
- (b) **Vicious Dogs and Animals.**
 - (1) For purposes of enforcing this Section, a dog shall be deemed as being of a vicious disposition if, within any twelve (12) month period it bites two (2) or more persons or inflicts serious injury to one (1) person in unprovoked circumstances off the owner's premises. Any vicious dog which is found off the premises of its owner other than as hereinabove provided may be seized by any person and, upon delivery to the proper authorities, may, upon establishment to the satisfaction of a court of competent jurisdiction of the vicious character of said dog, by testimony under oath reduced to writing, be killed by the law enforcement authorities.
 - (2) No person shall harbor or permit to remain on his/her premises any animal that is habitually inclined toward attacking persons or animals, destroying

property, barking excessively, or making excessive noises or running after automobiles.

(c) **Animals Running At Large.**

- (1) No person having in his/her possession or ownership any animal or fowl shall allow the same to run at large within the Town. The owner of any animal, whether licensed or unlicensed, shall keep his/her animal tied or enclosed in a proper enclosure so as not to allow said animal to interfere with the passing public or neighbors. Any animal running at large unlicensed shall be seized and impounded by a humane or law enforcement officer.
- (2) A dog shall not be considered to be running at large if it is on a leash and under control of a person physically able to control it.

(d) **Owner's Liability for Damage Caused by Dogs; Penalties.** The provisions of § 174.02, Wis. Stats., relating to the owner's liability for damage caused by dogs together with the penalties therein set forth are hereby adopted and incorporated herein by reference.

(e) **Animal Feces.** The owner or person in charge of any dog or other animal shall not permit solid fecal matter of such animal to deposit on any street, alley or other animal public or private property, unless such matter is immediately removed there from by said owner or person in charge. This Section shall not apply to a person who is visually or physically handicapped.

Sec. 7-1-7 Impoundment of Animals.

(a) **Animal Control Agency.**

- (1) The Town of Oshkosh may contract with or enter into an agreement with such person, persons, organization or corporation to provide for the operation of an animal shelter, impoundment of stray animals, confinement of certain animals, disposition of impoundment animals and for assisting in the administration of rabies vaccination programs.
- (2) The Town of Oshkosh does hereby delegate any such animal control agency the authority to act pursuant to the provisions of this Section.

(b) **Impounding of Animals.** In addition to any penalty hereinafter provided for a violation of this Chapter, any law enforcement or humane officer may impound any dog, cat or other animal which habitually pursues any vehicle upon any street, alley or highway of this Town, assaults or attacks any person, is at large within the Town, habitually barks, cries or howls, kills, wounds or worries any domestic animal or is infected with rabies. In order for an animal to be impounded, the impounding officer must see or hear the violation of this Section or have in his/her possession a signed statement of a complaining witness made under oath alleging the facts regarding the violation and containing an agreement to reimburse the Town for any damages it sustains for improper or illegal seizure.

- (c) **Claiming Animal; Disposal of Unclaimed Animals.** After seizure of animals under this Section by a law enforcement or humane officer, the animal shall be impounded. The officer shall notify the owner, personally or through the U.S. Mail, if such owner be known to the officer or can be ascertained with reasonable effort, but if such owner be unknown or unascertainable, the officer shall post written notice in three (3) public places in the Town, giving a description of the animal, stating where it is impounded and the conditions for its release, after the officer has taken such animal into his/her possession. If within seven (7) days after such notice the owner does not claim such animal, the officer may dispose of the animal in a proper and humane manner; provided, if an animal before being impounded has bitten a person, the animal shall be retained in the Animal Shelter for fourteen (14) days for observation purposes. Within such times, the owner may reclaim the animal upon payment of impoundment fees, such fees to be established by resolution of the Town Board. No animal shall be released from the pound without being properly licensed if so required by state law or Town Ordinance.
- (d) **Sale of Impounded Animals.** If the owner does not reclaim animal within seven (7) days, the animal warden may sell the animal to any willing buyer.
- (e) **Town Not Liable for Impounding Animals.** The Town and/or its animal control agency shall not be liable for the death of any animal which has been impounded or disposed of pursuant to this Section.

Sec. 7-1-8 Dogs and Cats Restricted on Parks and Beaches.

No dog or cat shall be permitted in any Town of Oshkosh parks or beaches. Every dog specially trained to lead blind or hearing-impaired persons shall be exempt from this Section.

Sec. 7-1-9 Duty of Owner in Case of Dog or Cat Bite.

Every owner or person harboring or keeping a dog or cat who knows that such dog or cat has bitten any person shall immediately report such fact to a law enforcement, humane or animal control officer and shall keep such dog or cat confined for not less than fourteen (14) days or for such period of time as a law enforcement, humane or animal control officer shall direct. The owner or keeper of any such dog or cat shall surrender the dog or cat to a law enforcement or humane officer upon demand for examination.

Sec. 7-1-10 Injury to Property by Animals.

It shall be unlawful for any person owning or possessing an animal, dog or cat to permit such animal, dog or cat to go upon any parkway or private lands or premises without the permission of the owner of such premises and break, bruise, tear up, crush or injure any

lawn, flower bed, plant, shrub, tree or garden in any manner whatsoever, or to defecate thereon.

Sec. 7-1-11 Barking Dogs or Crying Cats.

It shall be unlawful for any person knowingly to keep or harbor any dog which habitually barks, howls or yelps, or any cat which habitually cries or howls to the great discomfort of the peace and quiet of the neighborhood or in such manner as to materially disturb or annoy persons in the neighborhood who are of ordinary sensibilities. Such dogs and cats are hereby declared to be a public nuisance. A dog or cat is considered to be in violation of this Section when two (2) formal, written complaints are filed with the Town within a six (6) week period.

Sec. 7-1-12 Artificially Colored Animals.

- (a) No person may sell, offer for sale, raffle, give as a prize or premium, use as an advertising device or display living chicks, ducklings, other fowl or rabbits that have been dyed or otherwise colored artificially.
- (b)
 - (1) No person may sell, offer for sale, barter or give away living chicks, ducklings or other fowl without providing proper brooder facilities for the care of such chicks, ducklings or other fowl during the time they are in such person's care, custody or control.
 - (2) No retailer, as defined in §100.30(2)(g), Wis. Stats., may sell, offer for sale, barter or give away living baby rabbits, baby chicks, ducklings or other fowl under two (2) months of age, in any quantity less than six (6), unless the purpose of selling these animals is for agricultural, wildlife or scientific purposes.

State Law Reference: §951.11, Wis. Stats.

Sec. 7-1-13 Providing Proper Food and Drink to Confined Animals.

- (a) No person owning or responsible for confining or impounding any animal may refuse or neglect to supply the animal with a sufficient supply of food and water as prescribed in this Section.
- (b) The food shall be sufficient to maintain all animals in good health.
- (c) If potable water is not accessible to the animals at all times, it shall be provided daily and in sufficient quantity for the health of the animal.

State Law Reference: §951.13, Wis. Stats.

Sec. 7-1-14 Providing Proper Shelter.

- (a) **Proper Shelter.** No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter as prescribed in this Section. In the case of farm animals, nothing in this Section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in the particular county where the animal or shelter is located.
- (b) **Indoor Standards.** Minimum indoor standards of shelter shall include:
 - (1) **Ambient temperatures.** The ambient temperature shall be compatible with the health of the animal.
 - (2) **Ventilation.** Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.
- (c) **Outdoor Standards.** Minimum outdoor standards of shelter shall include:
 - (1) **Shelter from sunlight.** When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. As used in this paragraph, “caged” does not include farm fencing used to confine farm animals.
 - (2) **Shelter from inclement weather.**
 - (a) **Animals generally.** Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.
 - (b) **Dogs.** If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a shelter of suitable size to accommodate the dog shall be provided.
- (d) **Space Standards.** Minimum space requirements for both indoor and outdoor enclosures shall include:
 - (1) **Structural strength.** The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.
 - (2) **Space requirements.** Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.
- (e) **Sanitation Standards.** Minimum standards of sanitation for both indoor and outdoor enclosures shall include periodic cleaning to remove excreta and other waste materials, dirt and trash so as to minimize health hazards.

State Law Reference: § 951.14, Wis. Stats.

Sec. 7-1-15 Neglected or Abandoned Animals.

- (a) **Neglected or Abandoned Animals.**
- (1) No person may abandon any animal.
 - (2) Any law enforcement officer may remove, shelter and care for an animal found to be cruelly exposed to the weather, starved or denied adequate water, neglected, abandoned or otherwise treated in a cruel manner and may deliver such animal to another person to be sheltered, cared for and given medical attention, if necessary. In all cases the owner, if known, shall be immediately notified and such officer, or other person, having possession of the animal shall have a lien thereon for its care, keeping and medical attention and the expense of notice.
 - (3) If the owner or custodian is unknown and cannot, with reasonable effort, be ascertained or does not, within five (5) days after notice, redeem the animal by paying the expenses incurred, it may be treated as a stray and dealt with as such.
 - (4) Whenever in the opinion of any such officer an animal is hopelessly injured or diseased so as to be beyond the probability of recovery, it shall be lawful for such officer to kill such animal and the owner thereof shall not recover damages for the killing of such animal unless he shall prove that such killing was unwarranted.
 - (5) **Section** §951.18, Wis. Stats., Expenses of Investigation, are hereby adopted by reference and made a part of this Chapter.
- (b) **Injured Animals.** No person who owns, harbors, or keeps any animal shall fail to provide proper medical attention to such animal when and if such animal becomes sick or injured. In the event the owner of such animal cannot be located, the Town or any animal control agency with which the Town has an agreement or contract shall have the authority to take custody of such animal for the purpose of providing medical treatment, and the owner thereof shall reimburse the person or organization for the costs of such treatment.

State Law Reference: §951.11, 951.13, 951.14, 951.18, Wis. Stats.

Sec. 7-1-16 Cruelty to Animals and Birds Prohibited.

- (a) **Acts of Cruelty Prohibited.** No person except a law enforcement, health or humane officer in the pursuit of his duties shall, within the Town, commit an act of cruelty to any animal or bird or disturb any bird's nests or bird's eggs.
- (b) **Leading Animal From Motor Vehicle.** No person shall lead any animal upon a Town street from a motor vehicle or from a trailer or semi-trailer drawn by a motor vehicle.
- (c) **Use of Poisonous and Controlled Substances.** No person may expose any pet animal owned by another to any known poisonous substance or controlled

substance listed in § 961.14, Wis. Stats., whether mixed with meat or other food or not, where it is reasonable to anticipate the substance may be eaten by such animal or for the purpose of harming the animal. This Subsection shall not apply to poison used on one's own premises and designed for the purpose of rodent and pest extermination, nor the use of a controlled substance used in accepted veterinarian practice or in research by persons or organizations regularly engaged in such research.

- (d) **Use of Certain Devices Prohibited.** No person may directly or indirectly, or by aiding, abetting or permitting the doing thereof either put, place, fasten, use of fix upon or to any animal used or readied for use for a work purpose or for use in an exhibition, competition, rodeo, circus or other performance any of the following devices: a bristle bur, tack bur or like device; or a poling device used to train a horse to jump which is charged with electricity or to which have been affixed nails, tacks or other sharp points.
- (e) **Shooting at Caged or Staked Animals.** No person may instigate, promote, aid or abet as a principal, agent, employee, participant or spectator, or participate in the earnings from or intentionally maintain or allow any place to be used for the shooting, killing or wounding with a firearm or any deadly weapon any animal that is tied, staked out, caged or otherwise intentionally confined in a man-made enclosure, regardless of size.

Sec. 7-1-17 Number of Dogs Limited.

- (a) **Limited Number of Dogs:** It shall be unlawful for any person or persons to harbor or keep more than three (3) dogs per dwelling unit on any premises in a populated area within the Town, with the exception that a litter of pups, or a portion of a litter, may be kept for a period of time not exceeding six (6) months from birth.
- (b) **Kennel;** The provisions of this Section shall not apply to any properly licensed commercial kennel, pet store, pet grooming establishment or animal hospital. Refer to Section 7-1-3 of and Title 16 Town Zoning.
- (c) **Multiple Dogs Over Allowance;** The provisions of this Section shall not apply if the dog owner who wishes to have four (4) or more dogs on the premises presents to the Town Board a written request for a license, indicating upon oath the adjacent residents, and that seventy-five percent (75%) of the residents over eighteen (18) years of age living within five hundred (500) feet of the property line of the premises of the petitioner approve the request. The petitioner also shall state the number of dogs that will be kept or maintained on the premises. A license shall be granted by the Town Board, which shall be valid for a period of three (3) license periods after the date of the petition written request approval. A written request for renewal is necessary if the terms of the initial request changes or the three (3) license period has ended. Dog License Fee follows Section 7-1-3.

- (d) The provisions of this Section shall not apply to dog owners whose dogs (regardless of number) are duly licensed as of the effective date of this Section. This exemption pertains only to the specific animals so licensed.

Sec. 7-1-18 Animals Restricted in Town.

No person shall keep within the Town of Oshkosh on any parcel less than five (5) acres, ducks, turkeys, geese, cows, cattle, horses, sheep, swine, goats, or any other domesticated livestock except such animals or fowl may be kept for commercial agricultural purposes, for slaughtering, for educational purposes, and for circuses or similar educational events.

Sec. 7-1-20 Penalties.

- (a) Any person violating Sections 7-1-13, 7-1-14, 7-1-15, 7-1-16, 7-1-17 and 7-1-18, shall be subject to a forfeiture of not less than Fifty Dollars (\$50.00) and not more than Two Hundred Dollars (\$200.00). This Section shall also permit the Town Attorney to apply to the court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any aspect of this Chapter.
- (b)
 - (1) Anyone who violates Sections 7-1-1, 7-1-2, 7-1-3, 7-1-4 and 7-1-5 of this Code of Ordinances or Chapter 174, Wis. Stats., shall be subject to a forfeiture of not less than Twenty-five Dollars (\$25.00) and not more than Two Hundred Dollars (\$200.00) for the first offense and not less than One Hundred Dollars (\$100.00) and not more than Four Hundred Dollars (\$400.00) for any subsequent offenses.
 - (2) An owner who refuses to comply with an order issued under Section 7-1-5 to deliver an animal to an officer, isolation facility or veterinarian or who does not comply with the conditions of an order that an animal be quarantined shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned not more than sixty (60) days or both.
- (c) Any person who violates Sections 7-1-6 through 7-1-12 of this Code of Ordinances shall be subject to a forfeiture of not less than Twenty-five Dollars (\$25.00) and not more than One Hundred Dollars (\$100.00) for the first violation and not less than Fifty Dollars (\$50.00) and not more than Two Hundred Dollars (\$200.00) for the subsequent violations.

Title 7 – Chapter 2

Fermented Malt Beverages and Intoxicating Liquor

Article A Fermented Malt Beverages and Intoxicating Liquor

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Penalties

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Penalties

Article A: Fermented Malt Beverages and Intoxicating Liquor

Sec. 7-2-1 State Statutes Adopted.

The provisions of Chapter 125 of the Wisconsin Statutes, relating to the sale of intoxicating liquor and fermented malt beverages, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this Chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Chapter. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this Chapter in order to secure uniform statewide regulation of alcohol beverage control.

State Law Reference: Ch. 125, Wis. Stats.

Sec. 7-2-2 Definitions.

As used in this Chapter the terms “Alcoholic Beverages,” “Intoxicating Liquors,” “Principal Business,” “Legal Drinking Age,” “Premises,” “Sell,” “Sold,” “Sale,” “Restaurant,” “Club,” “Retailer,” “Person,” “Fermented Malt Beverages,” “Wholesalers,” “Retailers,” “Operators,” and “Non-Intoxicating Beverages” shall have the meaning given them by Chapter 125, Wisconsin Statutes.

Sec. 7-2-3 License Required.

No person, firm or corporation shall vend, sell, deal or traffic in or have in his possession with intent to vend, sell, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage in any quantity whatsoever, or cause the same to be done, without having procured a license as provided in this Chapter nor without complying with all the provisions of this Chapter, and all statutes and regulations applicable thereto, except as provided by Sections 125.16, 125.27, 125.28, 125.51 of the Wisconsin Statutes.

Sec. 7-2-4 Classes of Licenses.

- (a) **Retail “Class A” Intoxicating Liquor License.** A retail “Class A” intoxicating liquor license, when issued by the Town Clerk under the authority of the Town Board, shall permit its holder to sell, deal and traffic in intoxicating liquors only in original packages or containers and to be consumed off the premises so licensed.
- (b) **Retail “Class B” Intoxicating Liquor License.** A retail “Class B” intoxicating liquor license, when issued by the Town Clerk under authority of the Town Board,

- shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed and in the original package or container in multiples not to exceed four (4) liters at any one (1) time, to be consumed off the premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.
- (c) **Reserve “Class B” Licenses.** A Reserve “Class B” license means a license that is not granted or issued by the Town on December 1, 1997, and that is counted under §125.51(4)(br), Wis. Stats., which, if granted or issued, authorized the sale of intoxicating liquor to be consumed by the glass only on the premises where sold, and also authorized the sale of intoxicating liquor in the original package or container in multiples not to exceed four (4) liters at any one time, to be consumed off premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.
 - (d) **Class “A” Fermented Malt Beverage Retailer’s License.** A Class “A” retailer’s fermented malt beverage license, when issued by the Town Clerk under the authority of the Town Board, shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages only for consumption away from the premises where sold and in the original packages, containers or bottles. Such license may be issued after July 1st. The license shall expire on the following June 30th.
 - (e) **Class “B” Fermented Malt Beverage Retailer’s License.**
 - (1) **License.** A Class “B” fermented malt beverage retailer’s license, when issued by the Town Clerk under the authority of the Town Board, shall entitle the holder thereof to possess, sell or offer for sale, fermented malt beverages, either to be consumed upon the premises where sold or away from such premises. The holder may also sell beverages containing less than one-half (1/2) of a per centum of alcohol by volume, without obtaining a special license to sell such beverages. Such license may be issued after July 1st. The license shall expire on the following June 30th.
 - (2) **Application.** Class “B” licenses may be issued to any person qualified under §125.04(5), Wis. Stats. Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least six (6) months before the date of application. A Class “B” license for a hotel, restaurant, club, society or lodge may be issued in the name of the officer who shall be personally responsible for compliance with this Chapter. Except as provided in §125.31, Wis. Stats., Class “B” licenses may not be issued to brewers or fermented malt beverages wholesalers.
 - (f) **Temporary Class “B” Fermented Malt Beverage License.**
 - (1) **License.** As provided in §125.26(1) and (6), Wis. Stats., temporary Class “B” fermented malt beverage licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months before the date of application and to posts of veterans’ organizations

authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of fermented malt beverages from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of fermented malt beverages from the stands while the fair is being held. Such license is valid for dates as approved by the Town Board.

- (2) **Application.** Application for such license shall be signed by the president or corresponding officer of the society or association making such application and shall be filed with the Town Clerk together with the appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to a forfeiture of Two Hundred Dollars (\$200.00) and will be ineligible to apply for a temporary Class "B" license for one (1) year. The license shall specify the hours and dates of license validity. The application shall be filed a minimum of fifteen (15) days prior to the meeting of the Town Board at which the application will be considered for events of more than three (3) consecutive days. If the application is for a license to be used in a Town park, the applicant shall specify the main point of sale facility.

(g) **Temporary "Class B" Wine License.**

- (1) **License.** Notwithstanding §125.68(3), Wis. Stats., temporary "Class B" licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months before the date of application and to posts of veterans' organizations authorizing the sale of wine containing not more than six percent (6%) alcohol by volume in an original package, container or bottle or by the glass if the wine is dispensed directly from an original package, container or bottle at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. No fee may be charged to a person who, at the same time, applies for a temporary Class "B" beer license under §125.26(6), Wis. Stats., or the same event. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of wine containing not more than six percent (6%) alcohol by volume from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who engage in retail sales of wine containing not more than six percent (6%) alcohol by volume from the stands while the fair is being held.
- (2) **Application.** Application for such license shall be signed by the president or corresponding officer of the society or association making such application and shall be filed with the Town Clerk together with the

appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to a forfeiture of Two Hundred Dollars (\$200.00) and will be ineligible to apply for a temporary "Class B" wine license for one (1) year. The license shall specify the hours and dates of license validity. The application shall be filed a minimum of fifteen (15) days prior to the meeting of the Town Board at which the application will be considered for events of more than three (3) consecutive days. If the application is for a license to be used in a Town park, the applicant shall specify the main point of sale facility.

(h) **Wholesaler's License.** A wholesaler's fermented malt beverage license, when issued by the Town Clerk under authority of the Town Board, shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages only in original packages or containers to dealers, not to be consumed in or about the premises of said wholesaler.

(i) **Retail "Class C" Licenses.**

- (1) In this Subsection, "barroom" means a room that is primarily used for the sale or consumption of alcohol beverages.
- (2) A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.
- (3) A "Class C" license may be issued to a person qualified under §125.04(5), Wis. Stats., for a restaurant in which the sale of alcohol beverages accounts for less than fifty percent (50%) of gross receipts and which does not have a barroom if the municipality's quota prohibits the municipality from issuing a "Class B" license may not be issued to a foreign corporation or a person acting as agent for or in the employ of another.
- (4) A "Class C" license shall particularly describe the premises for which it is issued.

Cross Reference: Section 7-2-17

Sec. 7-2-5 License Fees.

There shall be the following classes of licenses which, when issued by the Town Clerk under the authority of the Town Board after payment of the license fee and publication costs hereinafter specified shall permit the holder to sell, deal or traffic in intoxicating liquors or fermented malt beverages as provided in Section 7-2-4 of this Code of Ordinances and Chapter §125, Wis. Stats.

- (a) **Class "A" Fermented Malt Beverages Retailer's License.** The annual fee for this license shall be in accordance with the Town Board's current fee schedule. According to §125.25(4) a Class "A" beer fee; none is determined; determination is made by municipality. Board set fee at \$50.00. The fee for a license for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the license is issued.
- (b) **Class "B" Fermented Malt Beverage License.**

- (1) The annual fee for this license shall be in accordance with the Town Board's current fee schedule. Board set fee at \$80.00. According to §125.26(4) a Class "B" beer fee can be \$100 maximum; no minimum. This license may be issued at any time for six (6) months in any calendar year, for which fifty percent (50%) of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued. The fee for a license for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the license is issued.
- (2) A Class "B" fermented malt beverages license may also be issued to bona fide clubs, lodges or societies that have been in existence for at least six (6) months before the date of application and to posts of veterans' organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering and at a meeting of the post. The fee for the license shall be as prescribed by the Town's Fee Schedule.
- (c) **Temporary Class "B" Fermented Malt Beverage License.** The fee for this license shall be per event in accordance with the Town Board's current fee schedule.
- (d) **Temporary Class "B" Wine License.** The fee for this license shall be per event in accordance with the Town Board's current fee schedule. However, there shall be no fee if the Temporary Wine License is obtained along with a Temporary Fermented Malt Beverage License.
- (e) **Fermented Malt Beverage Wholesaler's License.** The annual fee for this license shall be in accordance with the Town Board's current fee schedule. According to §125.28(4) fee can be \$25 maximum; no minimum.
- (f) **"Class A" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be in accordance with the Town Board's current fee schedule. According to §125.51(2)(d) fee can be \$500 maximum; \$50 minimum.
- (g) **"Class B" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be in accordance with the Town Board's current fee schedule. Board set fee at \$140.00. According to §125.51(3)(d) fee can be \$500 maximum; \$50 minimum. This license may be issued at any time for six (6) months in any calendar year, for which fifty percent (50%) of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued.
- (h) **"Class B" Reserve License.** The annual fee for this license shall be in accordance with the Town Board's current fee schedule.

Sec. 7-2-6 Application for License.

- (a) **Contents.** Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on the form prescribed by the Wisconsin Department of Revenue and shall be sworn to by the applicant as provided by §887.01 to 887.04, Wis. Stats., and shall be filed with the Town Clerk not less than fifteen (15) days prior to the granting of such license. The premises shall be physically described to include every room and storage space to be

covered by the license, including all rooms not separated by a solid wall or joined by connecting entrances.

- (b) **Corporations.** Such application shall be filed and sworn to by the applicant if an individual, by the president and secretary, of a corporation.
- (c) **Publication.** The Town Clerk shall publish each application for a Class “A”, Class “B”, “Class A” or “Class B” or “Class C” license. There is no publication requirement for temporary Class “B” picnic beer licenses under §125.26, Wis. Stats., or temporary “Class B” picnic wine licenses under §125.51(10), Wis. Stats. The application shall be published once in the official Town newspaper, and the costs of publication shall be paid by the applicant at the time the application is filed, as determined under §958.08, Wis. Stats.
- (d) **Amending Application.** Whenever anything occurs to change any fact set out in the application of any licensee, such license shall file with the issuing authority a notice in writing of such change within ten (10) days after the occurrence thereof.
- (e) **License Quotas.** Retail intoxicating liquor licenses issued by the Town Board shall be limited in number to the quota prescribed by state law.

Sec. 7-2-7 Qualifications of Applicants and Premises.

- (a) **Residence Requirements.** A retail Class “A” or Class “B” fermented malt beverage or “Class A”, “Class B” or “Class B” Reserve intoxicating liquor license shall be granted only to persons, or their agents, who are citizens of the United States and who have been residents of the State of Wisconsin and Oneida county continuously for at least ninety (90) days prior to the date of application.
- (b) **Applicant to have Malt Beverage License.** No retail “Class B” intoxicating liquor license shall be issued to any person who does not have or to who is not issued a Class “B” retailer’s license to sell fermented malt beverages.
- (c) **Right to Premises.** No applicant will be considered unless he has the right to possession of the premises described in the application for the license period, by lease or by deed.
- (d) **Age of Applicant.** Licenses related to alcohol beverages shall only be granted to persons who have attained the legal drinking age.
- (e) **Corporate Restrictions.**
 - (1) No license or permit may be issued to any corporation unless the corporation meets the qualifications under §125.04(a)1 and 4 and (b), Wis. Stats., unless the agent of the corporation appointed under §125.04(6) and the officers and directors of the corporation meet the qualifications of §125.04(a)1 and 3 and (b) and unless the agent of the corporation appointed under §125.04(6) meets the qualification under §125.04(a)2. The requirement that the corporation meet the qualifications under §125.04(a)1 and (b) does not apply if the corporation has terminated its relationship with all of the individuals whose acts directly contributed to the conviction.
 - (2) Each corporate applicant shall file with its application for such license a statement by its officers showing the names and addresses of the persons

who are stockholders together with the amount of stock held by such person or persons. It shall be the duty of each corporate applicant and licensee to file with the Town Clerk a statement of transfers of stock within forty-eight (48) hours after such transfer of stock.

- (3) Any license issued to a corporation may be revoked in the manner and under the procedure established in §125.12, Wis. Stats., when more than fifty percent (50%) of the stock interest, legal or beneficial, in such corporation is held by any person or persons not eligible for a license under this Chapter or under the state law.
- (f) **Sales Tax Qualification.** All applicants for retail licenses shall provide proof, as required by §77.61(11), Wis. Stats., that they are in good standing for sales tax purposes (i.e., hold a seller's permit) before they may be issued a license.
- (g) **Separate License Required for Each Place of Sale.** A separate license shall be required for each stand, place, room or enclosure or for each suite of rooms or enclosures which are in a direct connection or communication where intoxicating liquor or fermented malt beverages are kept, sold or offered for sale; and no license shall be issued to any person, firm, partnership, corporation or association for the purpose of possession, selling or offering for sale any intoxicating liquors or fermented malt beverages in any dwelling house, flat or residential apartment.
- (h) **Residential Areas.** No "Class B" fermented malt beverage license may be issued for any premises where forty percent (40%) or more of the property fronting on both sides of the same street in the same block whereon the premises is located is used for residence purposes if a written objection is filed with the Town Clerk signed by owners of more than eighty percent (80%) of such residence property.
- (i) **Off-Street Parking Facilities.** No "Class B" intoxicating liquor license shall be issued for any premises unless said premises provides off-street parking stalls equal in number to fifty percent (50%) of the number of patrons which said premises may lawfully accommodate. This restriction shall not apply in the case of renewal licenses issued for premises licensed as of the date of the enactment of this Subsection.
- (j) **Connecting Premises.** Except in the case of hotels, no person may hold both "Class A" license and either a "Class B" license or permit, a Class "B" license or permit, or a "Class C" license for the same premises or for connecting premises. Except for hotels, if either type of license or permit is issued for the same or connecting premises already covered by the other type of license or permit, the license or permit last issued is void. If both licenses or permits are issued simultaneously, both are void.
- (k) **Limitations on Other Business; Class "B" Premises.** No Class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class "B" license or permit is issued is connected to premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the Class "B" premises.

No other business may be conducted on premises operating under a Class “B” license or permit. These restrictions do not apply to any of the following:

- (1) A hotel.
- (2) A restaurant whether or not it is a part of or located in any mercantile establishment.
- (3) A combination grocery store and tavern.
- (4) A combination sporting goods store and tavern in towns, villages and 4th class cities.
- (5) A combination novelty store and tavern.
- (6) A bowling alley or recreation premises.
- (7) A club, society or lodge that has been in existence for at least (6) months or more prior to the date of filing application for the Class “B” license or permit.

Sec. 7-2-8 Investigation.

The Town Clerk shall notify the Fire Inspector and Building Inspector of each new application, and these officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto, including those governing sanitation in restaurants, and whether the applicant is a proper recipient of a license. A records check may also be requested from the Sheriff’s Department. These officials shall furnish to the Town Clerk in writing, who shall forward to the Town Board, the information derived from such investigation, accompanied by a recommendation as to whether a license should be granted or refused.

Sec. 7-2-9 Approval of Application.

- (a) No license shall be granted for operation on any premises or with any equipment for which taxes, assessments, forfeitures or other financial claims of the Town are delinquent and unpaid.
- (b) No license shall be issued unless the premises conform to the sanitary, safety and health requirements of the State Building Code, and the regulations of the State Board of Health and local Board of Health applicable to restaurants. The premises must be properly lighted and ventilated, must be equipped with separate sanitary toilet and lavatory facilities equipped with running water for each sex and must conform to all Ordinances of the Town.
- (c) Consideration for the granting or denial of a license will be based on:
 - (1) Arrest and conviction record of the applicant, subject to the limitations imposed by §111.321, 111.322 and 111.335, Wis. Stats.;
 - (2) The financial responsibility of the applicant;
 - (3) The appropriateness of the location and the premises where the licensed business is to be conducted; and
 - (4) Generally, the applicant’s fitness for the trust to be reposed.

- (d) An application may be denied based upon the applicant's arrest and 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 to be an arrest or conviction of at least two (2) offenses which are substantially related to the licensed activity within the five (5) years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the Town Board, the Town Board reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Board, at its discretion, may, based upon an arrest or conviction record of two (2) or more offenses which are substantially related to the licensed activity within the five (5) years immediately preceding, act to suspend such license for a period of one (1) year or more.

Sec. 7-2-10 Granting or Denial of License.

- (a) In the event the application is for a "Class A" or a "Class B" intoxicating liquor license at a site not previously licensed under this Chapter, the Town Clerk shall schedule public hearings before the Town Board on the granting of the licenses and shall notify all property owners situated in the block of the site for which the license is sought and all property owners within a radius of three hundred (300) feet of the proposed site of the dates of the hearings. The notice shall be given at least ten (10) days before hearing and may be given by mail.
- (b) Opportunity shall be given by the governing body to any person to be heard for or against the granting of any license. Upon the approval of the applicant by the Town Board, the Town Clerk shall issue to the applicant a license, upon payment by the applicant of the license fee to the Town. The full license fee shall be charged for the whole or fraction of any year.
- (c) If the Town Board denies the license, the applicant shall be notified in writing, by registered mail or personal service, of the reasons for the denial. The notice shall also inform the applicant of the opportunity to appear before the Town Board and to provide evidence as to why the denial should be reversed. In addition, the notice shall inform the applicant that the reconsideration of the application shall be held in closed session, pursuant to §19.85(1)(b), Wis. Stats., unless the applicant requests such reconsideration be held in open session and the Town Board consents to the request. Such written notice shall be mailed or served upon the applicant at least ten (10) days prior to the Town Board meeting at which the application is to be reconsidered.

Sec. 7-2-11 Transfer and Lapse of License.

- (a) In accordance with the provisions of §125.04(12), Wis. Stats., a license shall be transferable from one premise to another if such transfer is first approved by the Town Board. An application for transfer shall be made on a form furnished by the Town Clerk. Proceedings for such transfer shall be had in the same form and

manner as the original application. The fee for such transfer is Ten Dollars (\$10.00). Whenever a license is transferred, the Town Clerk shall forthwith notify the Wisconsin Department of Revenue of such transfer. In the event of the sale of a business or business premises of the licensee, the purchaser of such business or business premises must apply to the Town for reissuance of said license and the Town, as the licensing authority, shall in no way be bound to reissue said license to said subsequent purchaser.

- (b) Whenever the agent of a corporate holder of a license is for any reason replaced, the licensee shall give the Town Clerk written notice of said replacement, the reasons therefor and the new appointment. Until the next regular meeting or special meeting of the Town Board, the successor agent shall have the authority to perform the functions and be charged with the duties of the original agent. However, said license shall cease to be in effect upon receipt by the Town Clerk of notice of disapproval of the successor agent by the Wisconsin Department of Revenue or other peace officer of the municipality in which the license was issued. The corporation's license shall not be in force after receipt of such notice or after a regular or special meeting of the Town Board until the successor agent or another qualified agent is appointed and approved by the Town.

Sec. 7-2-12 Numbering of License.

All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid and the name of the licensee. The Town Clerk shall affix to the license his affidavit as provided by §125.04(4) of the Wisconsin Statutes.

Sec. 7-2-13 Posting Licenses; Defacement.

- (a) Every person licensed in accordance with the provisions of this Chapter shall immediately post such license and keep the same posted while in force in a conspicuous place in the room or place where said beverages are drawn or removed for service or sale.
- (b) It shall be unlawful for any person to post such license or to be permitted to post it upon premises other than those mentioned in the application or knowingly to deface or destroy such license.

Sec. 7-2-14 Conditions of License.

All retail Class "A", Class "B", "Class A" and "Class B" licenses granted hereunder shall be granted subject to the following conditions, and all other conditions of this Section, and subject to all other Ordinances and regulations of the Town applicable thereto.

- (a) **Consent to Entry.** Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the Town at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of

Town 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 offenses.

- (b) **Employment of Minors.** No retail “Class B” or Class “B” licenses shall employ any underage person, as defined in the Wisconsin Statutes, but this shall not apply to hotels and restaurants. Family members may work on the licensed premises but are not permitted to sell or dispense alcoholic beverages.
- (c) **Disorderly Conduct Prohibited.** 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.
- (d) **Licensed Operator on Premises.** There shall be upon premises operated under a “Class B” or Class “B” or “Class C” license, at all times, the licensee, members of the licensee’s immediate family who have attained the legal drinking age, and/or some person who shall have an operator’s license and who shall be responsible for the acts of all persons serving as waiters, or in any other manner, any fermented malt beverages to customers. No person other than the licensee shall serve fermented malt beverages in any place operated under a “Class B”, Class “B” or “Class C” license unless he/she possesses an operator’s license, or there is a person with an operator’s license upon said premises at the time of such service.
- (e) **Health and Sanitation Regulations.** The rules and regulations of the State Board of Health governing sanitation in restaurants shall apply to all “Class B” liquor or “Class C” licenses issued under this Chapter. No “Class B” or “Class C” license shall be issued unless the premises to be licensed conform to such rules and regulations.
- (f) **Restrictions Near Schools and Churches.** No retail Class “A”, Class “B”, “Class A” or “Class B” license shall be issued for premises, the main entrance of which is less than three hundred (300) feet from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the maintenance entrance of such school, church or hospital to the main entrance to such premises. This Subsection shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within three hundred (300) feet thereof by any school building, hospital building or church building.
- (g) **Clubs.** No club shall sell or give away any intoxicating liquors except to bona fide members and guests invited by members.
- (h) **Gambling Prohibited.** Except as authorized by state law, no gambling or game of chance of any sort shall be permitted in any form upon any premises licensed under this Chapter or the laws of the State of Wisconsin.
- (i) **Credit Prohibited.** No retail Class “A”, Class “B”, “Class A” or “Class B” liquor or fermented malt beverage or “Class C” wine licensee shall sell or offer for sale any alcohol beverage to any person or persons by extending credit, except hotel credit extended to a resident guest or a club to a bona fide member. It shall be unlawful for such licensee or permittee to sell alcohol beverages to any person

on a passbook or store order or to receive from any person any goods, ware, merchandise or other articles in exchange for alcohol beverages.

- (j) **Licensee or Permittee Responsible for Acts of Help.** A violation of this Chapter by a duly authorized agent or employee of a licensee or permittee under this Chapter shall constitute a violation by the licensee or permittee. Whenever any licensee or permittee under this Chapter shall violate any portion of this Chapter, proceedings for the suspension or revocation of the license or permit of the holder thereof may be instituted in the manner prescribed in this Chapter.

Annotation: See *Colonnade Catering Corp v. United States*, 397 U.S. 72, 90 S. Ct 774 (1970); and *State v. Erickson*, 101 Wis. 2d 224 (1981), for guidelines for warrantless searches of licensed premises.

Sec. 7-2-15 Closing Hours.

Closing hours shall be established in conformance with §125.32(3), Wis. Stats., and further restricted as follows:

- (a) **Class “B” Licenses.**
- (1) No premises for which a retail “Class B” liquor or Class “B” fermented malt beverage license or “Class C” wine license has been issued shall be permitted to remain open for the sale of liquor or fermented malt beverages or for any other purpose between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday, and 2:30 a.m. and 6:00 a.m., Saturday and Sunday. There shall be no closing hours on January 1st.
 - (2) Hotels and restaurants, the principal business of which is the furnishing of food or lodging to patrons, bowling alleys, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but shall not sell liquor or malt beverages during the closing hours of Subsection (a)(1) above.
- (b) **Carryout Hours.** The Town of Oshkosh follows the law determined by State Statutes that the State allows for carryout hours.

Sec. 7-2-16 Restrictions on Temporary Fermented Malt Beverage or Wine Licenses.

It shall be unlawful for any person or organization on a temporary basis to sell or offer to sell any alcohol beverage upon any Town-owned property or privately-owned property within the Town of Oshkosh, except through the issuance of a Temporary Class “B” Fermented Malt Beverage License or Temporary “Class B” Wine License issued by the Town Board in accordance with Wisconsin Statutes and as set forth in this Section. A Temporary Class “B” Fermented Malt Beverage License or Temporary “Class B” Wine License authorizing the sale and consumption of beer and/or wine on Town-owned property or privately-owned property may be authorized by the Town Board provided the following requirements are met:

- (a) **Compliance with Eligibility Standards.** The organization shall meet the eligibility requirements of a bona fide club, association, lodge or society as set forth in §125.26(6), Wis. Stats., and shall fully comply with the requirements of this Section and Section 11-4-1. Members of an organization which is issued a temporary license and who are issued operator's licenses for the event shall attend a pre-event informational meeting to learn what rules and regulations apply and what the responsibilities of the bartenders and organization will be.
 - (b) **Posting of Signs and Licenses.** All organizations issued a temporary license shall post in a conspicuous location at the main point of sale and at all remote points of sale a sufficient number of signs stating that no fermented malt beverage shall be served to any under-age person without proper identification.
 - (c) **Fencing.** If necessary due to the physical characteristics of the site, the Town Board may require that organizations install a double fence around the main point of sale to control ingress and egress and continually station a licensed operator, security guard or other competent person at the entrance for the purpose of checking age identification. Where possible, there shall be only one (1) point of ingress and egress. When required, the double fence shall be a minimum of four (4) feet high and a minimum of six (6) feet between fences.
 - (d) **Underage Persons Prohibited.** No underage persons as defined by the Wisconsin Statutes shall be allowed to assist in the sale of fermented malt beverages or wine at any point of sale, nor shall they be allowed to loiter or linger in the area of any point of sale.
 - (e) **Licensed Operators Requirement.** A licensed operator shall be stationed at all points of sales at all times.
 - (f) **Waiver.** The Town Board may waive or modify the requirements of this Section due to the physical characteristics of the licensed site.
 - (g) **Insurance.** The applicant for a temporary fermented malt beverage or wine license may be required to indemnify, defend and hold the Town and its employees and agents harmless against all claims, death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the license, the applicant may be required to furnish a Certificate of Comprehensive General Liability insurance with the Town of Oshkosh. The applicant may be required to furnish a performance bond prior to being granted the license.
- Cross-Reference:** Section 11-4-1

Sec. 7-2-17 Revocation and Suspension of Licenses; Non-Renewal.

- (a) **Procedure.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 11, Chapter 4, of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by this Section.
- (b) **Abandonment of Premises.** Any licensee holding a license to sell alcohol beverages that abandons such business shall forfeit any right or preference he may have to the holding of or renewal of such license. Abandonment shall be

sufficient grounds for revocation of any alcohol beverage license. The losing of the licensed premises for at least six (6) months shall be prima facie evidence of the abandonment, unless extended by the Town Board. All persons issued a license to sell alcohol beverages in the Town for which a quota exists limiting the number of such licenses that may be issued by the Town shall cause such business described in such license to be operated on the premises described in such license for at least one hundred fifty (150) days during the terms of such license, unless such license is issued for a term of less than one hundred eighty (180) days, in which event this Subsection shall not apply.

- (c) **License Revocation or Suspension.** License revocation or suspension procedures shall be as prescribed by Chapter 125, Wis. Stats.

Sec. 7-2-18 Non-Alcohol Events for Underage Persons on Licensed Premises.

The presence of underage persons on a licensed premises as provided under §125.07(3)(a)10, Wis. Stats., shall be subject to the following:

- (a) The license or agent of a corporate licensee shall notify the Town Clerk at least forty-eight (48) hours in advance of the date of any event at which underage persons will be present on the licensed premises. Each such non-alcohol event notice shall specify the date(s) on which the event is to occur and the time(s) of commencement. All notices shall be filed with the Town Clerk during normal working hours. After a non-alcohol event notice has been given, the licensee may cancel an event(s) only by giving like notice to the Town in accordance with the provisions of this Subsection. Regardless of the date given, all notices shall expire and be deemed cancelled no later than the date of expiration or revocation of the applicable retail Class “B” or “Class B” license.
- (b) During the period of any non-alcohol event a notice card prescribed by the Town shall be posted at all public entrances to the licensed premises notifying the general public that no alcohol beverages may be consumed, sold or given away on or carried into the licensed premises during the event. Such notice cards shall be made available by the Town to a requesting licensee.
- (c) Once a non-alcohol event has commenced, no alcohol beverages may be consumed, sold or given away on or carried into the licensed premises until the next day following the closing hours of the licensed premises.
- (d) During the period of any non-alcohol event all alcohol beverages shall be stored in a locked portion of the licensed premises in a secure place out of the sight and physical reach of any patron present and shall be under the direct and immediate control and supervision of the licensee or a licensed bartender in the employ of the licensee. All beer taps and automatic dispensers of alcohol beverages (“speed guns”) shall be either disconnected, disable or made inoperable.

Sec. 7-2-19 Nude Dancing in Licensed Establishments Prohibited.

- (a) **Authority.**

- (1) The Town Board of the Town of Oshkosh has explicit authority under §125.10(1), Wis. Stats., to adopt regulations governing the sale of alcohol beverages which are in addition to those set forth in Ch. 125, Wis. Stats.; and
- (2) The Town Board has authority under its general police powers set forth in §62.11(5), Wis. Stats., to act for the good order of the municipality and for the health, safety and welfare of the public; and may carry out its powers by regulation and suppression; and
- (3) The Town Board recognizes it lacks authority to regulate obscenity in light of §66.051(3), Wis. Stats., and does not intend by adopting this Section to regulate obscenity, since nudity in and of itself is not obscene, it declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, non-obscene, erotic dancing in bars and taverns; and
- (4) Bars and taverns featuring live totally nude, non-obscene, erotic dancing have in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of real property, to harm the economic welfare of the communities and to negatively affect the quality of life of the communities; and such secondary effects are detrimental to the public health, safety and general welfare of citizens; and
- (5) The Town Board recognizes the U.S. Supreme Court has held that nude dancing is expressive conduct within the outer perimeters of the First Amendment to the United States Constitution and therefore entitled to some limited protection under the First Amendment, and the governing body further recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights; and
- (6) However, the Town Board is aware, based on the experiences of other communities, that bars and taverns in which live, totally nude, non-obscene, erotic dancing occurs may and do generate secondary effects which the governing body believes are detrimental to the public health, safety and welfare of the citizens of the Town of Oshkosh; and
- (7) Among these secondary effects are:
 - a. The potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses;
 - b. The potential depreciation of property values in neighborhoods where bars and taverns featuring nude dancing exist;
 - c. Health risks associated with the spread of sexually transmitted diseases; and
 - d. The potential for infiltration by organized crime for the purpose of unlawful conduct; and
- (8) The Town Board desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the Town of Oshkosh; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

- (9) The Town Board has determined that enactment of an ordinance prohibiting live, totally nude, non-obscene, erotic dancing in bars and taverns licensed to serve alcohol beverages promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such activity.
- (b) **Nude Dancing in Licensed Establishments Prohibited.** It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a licensed establishment which:
- (1) Shows his/her genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering; or
 - (2) Shows any portion of the female breast below a point immediately above the top of the areola; or
 - (3) Shows the covered male genitals in a discernibly turgid state.
- (c) **Exemptions.** The provisions of this Section does not apply to the following licensed establishments; theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers 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.
- (d) **Definitions.** For purposes of this Section, the term “licensed establishment” means any establishment licensed by the Town Board of the Town of Oshkosh to sell alcohol beverages pursuant to Ch. 125, Wis. Stats. The term “licensee” means the holder of a retail “Class A”, “Class B”, Class “A”, or “Class C” licensee granted by the Town Board of the Town of Oshkosh pursuant to Ch. 125, Wis. Stats.
- (e) **Penalties.** Any person, partnership or corporation who violates any of the provisions of this Section shall be subject to forfeiture pursuant to Section 1-1-6. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this Section constitutes sufficient grounds for suspending, revoking or non-renewing an alcohol beverage license under §125.12, Wis. Stats.

Sec. 7-2-20 through Sec. 7-2-29

Reserved for Future Use.

Sec. 7-2-30 Operator's License Required.

- (a) **Operator's Licenses; Class "A", Class "B" or "Class C" Premises.** Except as provided under §125.32(3)(b) and §125.07(3)(a)10, Wis. Stats., no premises operated under a Class "A", Class "B" or "Class C" license or permit may be open for business unless there is upon the premises the licensee or permittee, the agent named in the license or permit if the license or permittee is a corporation, or some person who has an operator's license and who is responsible for the acts of all persons serving any fermented malt beverages to customers. An operator's license issued in respect to a vessel under §125.27(2), Wis. Stats., is valid outside the municipality that issues it. For the purpose of this Section, any person holding a manager's license under §125.18, Wis. Stats., or any member of the licensee's or permittee's immediate family who has attained the age of eighteen (18), shall be considered the holder of an operator's license. No person, including a member of the licensee's or permittee's immediate family, other than the licensee, permittee or agent, may serve fermented malt beverages in any place operated under a Class "A", Class "B" or "Class C" license or permit unless he or she has an operator's license or is at least eighteen (18) years of age and is under the immediate supervision of the licensee, permittee, agent or a person holding an operator's license, who is on the premises at the time of the service.
- (b) **Use by Another Prohibited.**
- (1) No person may allow another to use his or her Class "A" or Class "B" license or permit to sell alcohol beverages.
- (2) The license or permit or person who violates Subsection (b)(1) above shall be revoked.

State Law Reference: §125.17 and 125.32, Wis. Stats.

Sec. 7-2-31 Procedure Upon Application.

- (a) The Town Board may issue an operator's license, which license shall be granted only upon application in writing on forms to be obtained from the Town Clerk only to persons eighteen (18) years of age or older. Operator's licenses shall be operative only within the limits of the Town.
- (b) All applications are subject to an investigation by law enforcement authorities and/or other appropriate authority to determine whether the applicant and/or premises to be licensed complies with all regulations, ordinances and laws applicable thereto. These authorities may conduct an investigation of the applicant including, but not limited to, requesting information from the State, surrounding municipalities, and/or any community where the applicant has

previously resided concerning the applicant's arrest and conviction record. Based upon such investigation, the authorities may recommend, in writing, to the Town Board approval or denial of the application. If the authorities recommend denial, the authorities shall provide, in writing, the reasons for such recommendation.

Sec. 7-2-32 Duration.

Licenses issued under the provisions of this Chapter shall be valid for a period of two (2) years and shall expire on the thirtieth (30th) day of June of each even year.

Sec. 7-2-33 Operator's License Fee; Provisional License; Temporary License.

- (a) **Fee.** The bi-annual fee for an operator license or provisional license shall be Forty-Two Dollars (\$42.00) for the term or part thereof, plus any additional adjustments to the records check costs. The fee for a provisional operator license shall be Five Dollars (\$5.00) when applying for a regular Operator License included in the \$42.00.
- (b) **Provisional License.** The Town Clerk may issue provisional operator's licenses in accordance with §125.17(5), Wis. Stats. The provisional operator's license shall expire sixty (60) days after its issuance or when an operator's license is issued to the holder, whichever is sooner. The Town Clerk may, upon receiving an application for a temporary provisional license, issue such a license without requiring the successful completion of the approved program as described herein. 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 successful completion of the approved program. A provisional license may not be issued to any person who has been denied an operator's license by the Town Board or who has had his operator's license revoked or suspended within the preceding twelve (12) months. The Town Clerk shall provide an appropriate application form to be completed in full by the applicant. The Town Clerk may revoke the provisional license issued if he discovers that the holder of the license made a false statement on the application.
- (c) **Temporary License.** The Town Clerk may issue a temporary operator's license, at Ten Dollars (\$10.00), provided that:
 - (1) This license may only be issued to operators employed by, or donating their services to, nonprofit corporations and organizations.
 - (2) No person may hold more than one (1) license of this kind per year.
 - (3) The license is valid for any period from one (1) day to fourteen (14) days, and the period for which it is valid shall be stated on the license.

Sec. 7-2-34 Issuance or Denial of Operator's Licenses.

- (a) After the Town Board approves the granting of an operator's license, the Town Clerk shall issue the license. Such licenses shall be issued and numbered in the order they are granted and shall give the applicant's name and address and the date of the expiration of such license.
- (b)
 - (1) If the application is denied by the Town Board, the Town Clerk shall, in writing, inform the applicant of the denial, the reasons therefore, and have the opportunity to request a reconsideration of the application by the Town Board in a closed session. Such notice must be sent by registered mail to, or served upon, the applicant at least ten (10) days prior to the Board's reconsideration of the matter. At such reconsideration hearing, the applicant may present evidence and testimony as to why the license should be granted.
 - (2) If, upon reconsideration, the Board again denies the application, the Town Clerk shall notify the applicant in writing of the reasons therefore. An applicant who is denied any license upon reconsideration of the matter, may apply to Circuit Court pursuant to §125.12(2)(d), Wis. Stats., for review.
- (c)
 - (1) Consideration for the granting or denial of a license will be based on:
 - a. Arrest and conviction record of the applicant, subject to limitations imposed by §111.321, 111.322 and 111.335, Wis. Stats;
 - b. The financial responsibility of the applicant;
 - c. The appropriateness of the location and the premises where the licensed business is to be conducted; and
 - d. Generally, the applicant's fitness for the trust to be reposed.
 - (2) If a licensee is convicted of an offense substantially related to the licensed activity, the Town Board may act to revoke or suspend the license.
- (d) An application may be denied based upon the applicant's arrest and 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 to be an arrest or conviction of at least two (2) offenses which are substantially related to the licensed activity within the five (5) years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the Town Board, the Town Board reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Town Board, at its discretion, may, based upon an arrest or conviction record of two (2) or more offenses which are substantially related to the licensed activity within the five (5) years immediately preceding, act to suspend such license for a period of one (1) year or more.

Sec. 7-2-35 Training Course.

- (a) Except as provided in Subsection (b) below, the Town Board may not issue an operator's license unless the applicant has successfully completed a responsible beverage server training course at any location that is offered by a vocational,

technical and adult education district and that conforms to curriculum guidelines specified by the board of vocational, technical and adult education or a comparable training course that is approved by the educational approval board or unless the applicant fulfills one of the following requirements:

- (1) The person is renewing an operator's license.
 - (2) Within the past two (2) years, the person held a Class "A", Class "B", "Class A", "Class B" or "Class C" license or permit or a manager's or operator's license.
 - (3) Within the past two (2) years, the person has completed such a training course.
- (b) The Town Board may issue a provisional operator's license to a person who is enrolled in a training course under Subsection (a) above and shall revoke that license if the applicant fails successfully to complete the course in which he or she enrolls.
- (c) The Town Board may not require that applicants for operator's licenses undergo training in addition to that under Subsection (a), but may require applicants to purchase, at cost, materials that deal with relevant local subjects not covered in the course under Subsection (a).

Sec. 7-2-36 Display of License.

Each license issued under the provisions of this Chapter shall be posted on the premises whenever the operator dispenses beverages or be in his/her possession, or carry a license card.

Sec. 7-2-37 Revocation of Operator's License.

Violation of any of the terms or provisions of the State law or of this Chapter relating to operator's licenses by any person holding such operator's license shall be cause for revocation of the license.

Sec. 7-2-38 through Sec. 7-2-39 Reserved for Future Use.

Sec. 7-2-40 Penalties.

- (a) Forfeitures for violations of §125.07(1)-(5) and 125.09(2) of the Wisconsin Statutes, adopted by reference in Section 7-2-1 of the Code of Ordinances of the Town of Oshkosh, shall conform to the forfeiture penalty permitted to be imposed for violations of the comparable State Statute, including any variations or increases for subsequent offenses.
- (b) Any person who shall violate any provision of this Chapter of the Code of Ordinances of the Town of Oshkosh, except as otherwise provided in Subsection (a) herein or who shall conduct any activity or make any sale for which a license is required without a license, shall be subject to a forfeiture as provided in the general penalty section of this Code of the Town of Oshkosh.
- (c) Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the Wisconsin Statutes.

Title 7 – Chapter 3

Cigarette License

7-3-1 Cigarette License

Sec. 7-3-1 Cigarette License.

- (a) **License Required.** No person, firm or corporation shall, in any manner, directly or indirectly, upon any premises, or by any device, sell, exchange, barter, dispose of or give away, or keep for sale, any cigarette, cigarette paper or cigarette wrappers, or any substitute therefor, without first obtaining a license as hereinafter provided.
- (b) **Application for License; Fee.** Every person, firm or corporation desiring a license under this Section shall file with the Town Clerk a written application therefor, stating the name of the person and the place for which such license is desired. Each license shall be filed by the Town Clerk and shall name the licensee and the place wherein he/she is authorized to conduct such business, and the same shall not be delivered until the applicant shall pay to the Town Clerk a Five Dollar (\$5.00) license fee in accordance with the Town Board's current fee schedule.
- (c) **Issuance and Term of License.** Licenses for the sale, exchange, barter, disposition of, or giving away or keeping for sale of cigarette paper or cigarette wrappers or any substitute therefor shall be issued by the Town Clerk. Each license shall be issued on the first day of July in each year, or thereafter whenever applied for, and shall continue in force from date of issuance until the succeeding June 30th unless sooner revoked for any violation of this Section.

State Law Reference: §134.65, Wis. Stats.

Title 7 – Chapter 4

Regulation of Large Assemblies of Persons

7-4-1	Intent
7-4-2	License Required
7-4-3	Conditions for Issuing License
7-4-4	Application
7-4-5	Issuance
7-4-6	Revocation
7-4-7	Enforcement

Sec. 7-4-1 Intent.

It is the purpose of this Chapter to regulate the assemblage of large members of people, in excess of those normally needing the health, sanitary, fire, police, transportation and utility services regularly provided in the Town of Oshkosh, in order that the health, safety and welfare of all persons in the Town of Oshkosh, residents and visitors alike, may be protected.

Sec. 7-4-2 License Required.

- (a) No person shall permit, maintain, promote, conduct, advertise, act as entrepreneur, undertake, organize, manage or sell or give tickets to an actual or reasonably anticipated assembly of four thousand (4,000) or more people which continues or can reasonably be expected to continue for fifteen (15) or more consecutive hours, whether on public or private property, unless a license to hold the assembly has first been issued by the Town Board of the Town of Oshkosh, application for which must be made at least forty-five (45) days in advance of the assembly. A license to hold an assembly issued to one person shall permit any person to engage in any lawful activity in connection with the holding of the licensed assembly.
- (b) As used in this Chapter:
 - (1) “Person” means any individual natural human being, partnership, corporation, firm, company, association, society or group;
 - (2) “Assembly” means a company of persons gathered together at any location at any single time for any purpose.
 - (3) Separate enclosed toilets for males and females, meeting all state and local specifications, conveniently located throughout the grounds, sufficient to provide facilities for the maximum number of people to be assembled at the rate of at least one toilet for every two hundred (200) females and at least one toilet for every three hundred (300) males together with an efficient, sanitary means of disposing of waste matter

deposited, which is in compliance with all state and local laws and regulations; a lavatory with running water under pressure and a continuous supply of soap and paper towels shall be provided with each toilet;

- (4) A sanitary method of disposing of solid waste, in compliance with state and local laws and regulations, sufficient to dispose of the solid waste production of the maximum number of people to be assembled at the rate of at least 2.5 lbs of solid waste per person per day, together with a plan for holding and a plan for collecting all such waste at least once each day of the assembly and sufficient trash cans with tight-fitting lids and personnel to perform the task;
- (5) Physicians and nurses licensed to practice in Wisconsin sufficient to provide the average medical care enjoyed by residents of Wisconsin for the maximum number of people to be assembled at the rate of at least one physician for every one thousand (1,000) people and at least one nurse for every one thousand five hundred (1,500) people, together with an enclosed covered structure where treatment may be rendered, containing separately enclosed treatment rooms for each physician, and at least one emergency ambulance available for use at all times;
- (6) If the assembly is to continue during hours of darkness, illumination sufficient to light the entire area of the assembly at the rate of at least five (5) foot candles, but not to shine unreasonably beyond the boundaries of the enclosed location of the assembly;
- (7) A free parking area inside of the assembly grounds sufficient to provide parking space for the maximum number of people to be assembled at the rate of at least one parking space for every four (4) persons;
- (8) Telephones connected to outside lines sufficient to provide service for the maximum number of people to be assembled at the rate of at least one separate line and receiver for each one thousand (1,000) persons;
- (9) If the assembly is to continue overnight, camping facilities in compliance with all state and local requirements as set forth in the Wisconsin Administrative Code and ordinances of the Town of Oshkosh, sufficient to provide camping accommodations for the maximum number of people to be assembled;
- (10) Security guards, either regularly employed, duly sworn, off-duty Wisconsin peace officers or private guards, licensed in Wisconsin, sufficient to provide adequate security for the maximum number of people to be assembled at the rate of at least one security guard for every seven hundred fifty (750) people;
- (11) Fire protection, including alarms, extinguishing devices and fire lanes and escapes, sufficient to meet all state and local standards for the location of the assembly as set forth in the Wisconsin Administrative Code and ordinances of the Town of Oshkosh, and sufficient emergency personnel to efficiently operate the required equipment;

- (12) All reasonably necessary precautions to insure that the sound of the assembly will not carry unreasonably beyond the enclosed boundaries of the location of the assembly;
- (13) A bond, filed with the Town Clerk, either in cash or underwritten by a surety company licensed to do business in Wisconsin at the rate of Two Dollars (\$2.00) per person for the maximum number of people permitted to assemble, which shall indemnify and hold harmless the Town of Oshkosh of any of its agents, officers, servants and employees from any liability or causes of action which might arise by reason of granting this license, and from any cost incurred in cleaning up any waste material produced or left by the assembly.

Sec. 7-4-3 Conditions for Issuing License.

Before he may be issued a license, the applicant shall first:

- (a) Determine the maximum number of people which will be assembled or admitted to the location of the assembly, provided that the maximum number shall not exceed the maximum number which can reasonable assemble at the location of the assembly in consideration of the nature of the assembly and provided that, where the assembly is to continue overnight, the maximum number shall not be more than is allowed to sleep within the boundaries of the location of the assembly by the zoning or health ordinances of the Town of Oshkosh
- (b) Provide proof that he will furnish, at his own expense, before the assembly commences:
 - (1) A fence completely enclosing the proposed location, of sufficient height and strength to prevent people in excess of the maximum permissible number from gaining access to the assembly grounds, which shall have at least four (4) gates, at least one at or near four (4) opposite points of the compass;
 - (2) Potable water, meeting all federal and state requirements for purity, sufficient to provide drinking water for the maximum number of people to be assembled at the rate of at least one gallon per person per day and water for bathing at the rate of at least ten (10) gallons per person per day;
 - (3) Separate enclosed toilets for males and females, meeting all state and local specifications, conveniently located throughout the grounds, sufficient to provide facilities for the maximum number of people to be assembled at the rate of at least one toilet for every two hundred (200) females and at least one toilet for every three hundred (300) males together with an efficient, sanitary means of disposing of waste matter deposited, which is in compliance with all state and local laws and regulations; a lavatory with running water under pressure and a continuous supply of soap and paper towels shall be provided with each toilet.
 - (4) A sanitary method of disposing of solid waste, in compliance with state and local laws and regulations, sufficient to dispose of the solid waste production of the maximum person per day, together with a plan for

- holding and a plan for collection all such waste at least once each day of the assembly and sufficient trash cans with tight-fitting lids and personnel to perform the task;
- (5) Physicians and nurses licensed to practice in Wisconsin sufficient to provide the average medical care enjoyed by residents of Wisconsin for the maximum number of people to be assembled at the rate of at least one physician for every one thousand (1,000) and at least one nurse for every one thousand five hundred (1,500) people, together with an enclosed covered structure where treatment may be rendered, containing separately enclosed treatment rooms for each physician, and at least one emergency ambulance available for use at all times;
 - (6) If the assembly is to continue during hours of darkness, illumination sufficient to light the entire area of the assembly at the rate of at least five (5) foot candles, but not to shine unreasonably beyond the boundaries of the enclosed location of the assembly;
 - (7) A free parking area inside of the assembly grounds sufficient to provide parking space for the maximum number of people to be assembled at the rate of at least one parking space for every four (4) persons;
 - (8) Telephones connected to outside lines sufficient to provide service for the maximum number of people to be assembled at the rate of at least one separate line and receiver for each one thousand (1,000) persons;
 - (9) If the assembly is to continue overnight, camping facilities in compliance with all state and local requirements as set forth in the Wisconsin Administrative Code and ordinances of the Town of Oshkosh, sufficient to provide camping accommodations for the maximum number of people to be assembled;
 - (10) Security guards, either regularly employed, duly sworn, off-duty Wisconsin peace officers or private guards, licensed in Wisconsin, sufficient to provide adequate security for the maximum number of people to be assembled at the rate of at least one security guard for every seven hundred fifty (750) people;
 - (11) Fire protection, including alarms, extinguishing devices and fire lanes and escapes, sufficient to meet all state and local standards for the location of the assembly as set forth in the Wisconsin Administrative Code and ordinances of the Town of Oshkosh, and sufficient emergency personnel to efficiently operate the required equipment;
 - (12) All reasonable necessary precautions to insure that the sound of the assembly will not carry unreasonably beyond the enclosed boundaries of the location of the assembly;
 - (13) A bond, filed with the Town Clerk, either in cash or underwritten by a surety company licensed to do business in Wisconsin at the rate of Two Dollars (\$2.00) per person for the maximum number of people permitted to assemble, which shall indemnify and hold harmless the Town of Oshkosh or any of its agents, officers, servants and employees from any liability or causes of action which might arise by reason of granting this license, and

from any cost incurred in cleaning up any waste material produced or left by the assembly.

Sec. 7-4-4 Application.

- (a) Application for a license to hold an actual or anticipated assembly of four thousand (4,000) or more persons shall be made in writing to the Town Board at least forty-five (45) days in advance of such assembly.
- (b) The application shall contain a statement made upon oath or affirmation that the statements contained therein are true and correct to the best knowledge of the applicant and shall be signed and sworn to or affirmed by the individual making application in the case of an individual, natural, human being, by all officers of an unincorporated association, society or group, if there be no officers, by all members of such association, society or group.
- (c) The application shall contain and disclose:
 - (1) The name, age, residence and mailing address of all persons required to sign the application by Subsection (b) and, in the case of a corporation, a certified copy of the articles of incorporation together with the name, age, residence and mailing address of each person holding ten percent (10%) or more of the stock of said corporation;
 - (2) The address and legal description of all property upon which the assembly is to be held together with the name, residence and mailing address of the record owner(s) of all such property;
 - (3) Proof of ownership of all property upon which the assembly is to be held or a statement made upon oath or affirmation by the record owner(s) of all such property that the applicant has permission to use such property for an assembly of four thousand (4,000) persons;
 - (4) The nature or purpose of the assembly;
 - (5) The total number of days and/or hours during which the assembly is to last;
 - (6) The maximum number of persons which the applicant shall permit to assemble at any time, not to exceed the maximum number which can reasonably assemble at the location of the assembly, in consideration of the nature of the assembly, or the maximum number of persons allowed to sleep within the boundaries of the location of the assembly by the zoning ordinances of the Town of Oshkosh if the assembly is to continue overnight;
 - (7) The maximum number of tickets to be sold, if any;
 - (8) The plans of the applicant to limit the maximum number of people permitted to assemble;
 - (9) The plans for fencing the location of the assembly and the gates contained in such fence;
 - (10) The plans for supplying potable water including the source, amount available and location of outlets;
 - (11) The plans for providing toilet and lavatory facilities, including the source, number and location, type and means of disposing of waste deposited;

- (12) The plans for holding, collecting and disposing of solid waste material;
 - (13) The plans to provide for medical facilities, including the location and construction of a medical structure, the names and addresses and hours of availability of physicians and nurses, and provisions for emergency ambulance service;
 - (14) The plans, if any, to illuminate the location of the assembly, including the source and amount of power and the location of lamps;
 - (15) The plans for parking vehicles including size and location of lots, points of highway access and interior roads including routes between highway access and parking lots;
 - (16) The plans for telephone service, including the source, number and location of telephones;
 - (17) The plans for camping facilities, if any, including facilities available and their location;
 - (18) The plans for security, including the number of guards, their deployment, and the names, addresses, credentials and hours of availability;
 - (19) The plans for fire protection, including the number, type and location of all protective devices, including alarms and extinguishers, and the number of emergency fire personnel available to operate the equipment;
 - (20) The plans for sound control and sound amplification, if any, including number, location and power of amplifiers and speakers;
 - (21) The plans for food concessions and concessionaires who will be allowed to operate on the grounds, including the names and addresses of all concessionaires and their license or permit numbers.
- (d) The application shall include the bond required in Section 7-4-3(b)(13), and the license fee.

Sec. 7-4-5 Issuance.

The application for a license shall be processed within twenty (20) days of receipt and shall be issued if all conditions are complied with.

Sec. 7-4-6 Revocation.

The license may be revoked by the Town Board at any time if any of the conditions necessary for the issuing of or contained in the license are not complied with, or if any condition previously met ceases to be complied with.

Sec. 7-4-7 Enforcement.

- (a) The provisions of this Chapter may be enforced by injunction in any court of competent jurisdiction.
- (b) The holding of an assembly in violation of any provision or condition contained in this Chapter shall be deemed a public nuisance and may be abated as such.

- (c) Any person who violates Section 7-4-2(a) or who violates any condition upon which he is granted a license may be subject to the penalties prescribed in Section 1-1-6. Each day of violation shall be considered a separate offense.

Title 7 – Chapter 5

Mobile Homes

7-5-1 Monthly Parking Fee; Limitations on Parking

Sec. 7-5-1 Monthly Parking Fee; Limitations on Parking.

- (a) There is hereby imposed on each owner of a nonexempt, occupied mobile home in the Town of Oshkosh a monthly parking fee as determined in accordance with §66.058(3) of the Wisconsin Statutes which is hereby adopted by reference and made part of this Chapter as if fully set forth herein. It shall be the full and complete responsibility of the licensee to collect the proper amount from each mobile homeowner. Licensees shall pay to the Town Treasurer such parking permit fees on or before the 10th day of the month following the month for which such fees are due in accordance with the terms of this Chapter and such regulations as the Town Treasurer may reasonably promulgate.
- (1) Licensees of mobile home parks and owners of land on which are parked any occupied, nonexempt mobile homes shall furnish information to the Town Treasurer and Assessor on such homes added to their park or land within five (5) days after arrival of such home on forms furnished by the Town Treasurer in accordance with §66.058(3)(c) and (e) of the Wisconsin Statutes.
- (2) Occupants or owners of non-exempt mobile homes parked outside of a mobile home park shall remit such fees directly to the Town Treasurer as provided in Subsection (a). It shall be the full and complete responsibility of the licensee of a mobile home park to collect such fees from each occupied nonexempt mobile home therein and to remit such fees to the Town Treasurer as provided in Subsection (a).
- (b) Owners of nonexempt, occupied mobile homes, upon receipt of notice from the Town Treasurer of their liability for the monthly parking permit fee, shall remit to the Town Treasurer a cash deposit of Twenty-five Dollars (\$25.00) to guarantee payment of such fees when due to the Town. It shall be the full and complete responsibility of the licensees of a mobile home park to collect such cash deposits from each occupied, nonexempt mobile home therein and to remit such deposits to the Town Treasurer. Upon receipt of a notice from the owner or licensee that the nonexempt, occupied mobile home has been or is about to be removed from the Town, the Town Treasurer shall apply said cash deposit to reduce any monthly parking permit fees for which said owner is liable and refund the balance, if any, to said owner.

- (c) It shall be unlawful for any person to park any mobile home in the Town of Oshkosh at any site other than a licensed mobile home park. A recreational vehicle shall not be considered a mobile home for the purpose of this Chapter.

State Law Reference: §66.058, Wis. Stats.

Regulation and Licensing of Fireworks

7-6-1 Regulation and Licensing of Fireworks

Sec. 7-6-1 Regulation of Fireworks.

- (a) **Definition.** In this Section, “fireworks” means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:
- (1) Fuel or a lubricant.
 - (2) A firearm cartridge or shotgun shell.
 - (3) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
 - (4) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
 - (5) A cap containing not more than one-quarter (1/4) grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
 - (6) A toy snake which contains no mercury.
 - (7) A model rocket engine.
 - (8) Tobacco and a tobacco product.
 - (9) A sparkler on a wire or wood stick not exceeding thirty-six (36) inches in length that is designed to produce audible or visible effects or to produce audible and visible effects..
 - (10) A device designed to spray out paper confetti or streamers and which contains less than one-quarter (1/4) grain of explosive mixture.
 - (11) A fuseless device that is designed to produce audible or visible effects or audible and visible effects, and that contains less than one-quarter grain of explosive mixture
 - (12) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects, or audible and visible effects.
 - (13) A cylindrical fountain that consists of one or more tubes and that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50, as amended.
 - (14) A cone fountain that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50, as amended.
 - (15) A novelty device that spins or moves on the ground

- (b) **Sale. Seller's Permit Required.** No person may sell, or possess with the intent to sell, fireworks without a seller's permit from the Town obtained in accordance with this subsection.
- (1) Sellers permits issued hereunder shall be for a term of not more than one year and shall expire on October 1st of each year. The Town shall charge a regulating fee for each seller's permit and the regulating fee charged for each permit shall be set by resolution of the Town Board from time-to-time. The regulating fee shall be based upon the Town's cost of inspecting and regulating fireworks sales at the site permitted within the Town and the cost incurred reviewing the permit application. Upon the passage of this ordinance, the Town shall be limited to issuing one seller's permit. The Town will be entitled to issue an additional permit (for a total of two) once the population of the Town reaches 3,000. The Town will be entitled to an additional permit for every 3,000 resident increase in population thereafter. The unadjusted ten-year U.S. Constitutional Census number for the Town shall be used for determining the number of available permits. The permit limit is intended to promote public safety and welfare, alleviate the burden of inspecting and regulating firework places of business, and improve property values through the slow, orderly development of fireworks permitted businesses.
- (2) Applicants for a seller's permit shall apply for each site in writing. Decisions on applications shall be made by the Town within 31 days of the date the application is filed. The application shall include the following information, in addition to the regulating fee:
- (a) Name, address, telephone number, and email address of the applicant;
 - (b) Itemization of the specific fireworks the applicant intends to sell;
 - (c) Address at which the applicant intends to sell the enumerated fireworks and description of the structure to be used for the storage and sale of the fireworks;
 - (d) Names, addresses, and consents of the owners of the real estate upon which the enumerated fireworks will be sold;
 - (e) The proposed days and hours of operation for in-season and off-season sales; and
 - (f) A site plan and description of the signage to be used in promoting and advertising the sale of fireworks.
- (3) If a seller's permit is granted, the permit shall impose the following conditions:
- (a) The name and address of the permit holder;
 - (b) The Location of permitted operations and a description of the structure to be used for the storage and sale of fireworks;

- (c) The kind and quantity of fireworks that may be sold under the permit;
 - (d) The days and hours of operations at the permitted location;
 - (e) Any other conditions required by the Town, including a certificate of insurance proving a policy for the payment of all claims that may arise by reason of injury to persons or property from the handling, use, or discharge of fireworks under the permit. The policy shall name the Town as an additional insured and shall be in an amount of not less than \$1 million General Aggregate. Such insurance shall be maintained by the applicant so long as it holds a seller's permit.
- (4) Notwithstanding the ownership of a seller's permit, no person may sell or possess with intent to sell fireworks, except:
 - (1) To a person holding a permit under Subsection (c);
 - (2) To a municipality; or
 - (3) To a person who is not a resident of the State of Wisconsin
 - (4) For a purpose specified under Subsection (c)(2)b-f.
- (c) **Use.**
 - (1) ***Users Permit Required.*** No person may possess or use fireworks without a user's permit from the Town Chairperson or from an official or employee of the Town as designated by the Town Board. No person may use fireworks or a device listed under Subsection (a)(5)-(7) and (9)-(14) while attending a fireworks display for which a permit has been issued to a person listed under Subparagraph (c)(3)a-e or under Subparagraph (c)(3)f if the display is open to the general public.
 - (2) ***Permit Exceptions.*** Subparagraph (c)(1) above does not apply to:
 - (a) The Town, except that Town fire and law enforcement officials shall be notified of the proposed use of fireworks at least two (2) days in advance.
 - (b) The possession or use of explosives in accordance with rules or general orders of the department of commerce.
 - (c) The disposal of hazardous substances in accordance with rules adopted by the Wisconsin Department of Natural Resources.
 - (d) The possession or use of explosive or combustible materials in any manufacturing process.
 - (e) The possession or use of explosive or combustible materials in connection with classes conducted by educational institutions.
 - (f) A possessor of manufacturer of explosives in possession of a license or permit under 18 USC 841 to 848, as amended, if the possession of the fireworks is authorized under the license or permit.
 - (3) ***Who May Obtain Permit.*** A permit under this Subsection may be issued only to the following:
 - i. A public authority.
 - ii. A fair association.

- iii. An amusement park.
 - iv. A park board.
 - v. A civic organization
 - vi. Any individual or group of individuals.
 - vii. An agricultural producer for the protection of crops from predatory birds or animals.
- (4) **Crop Protection Signs.** A person issued a permit or crop protection shall erect appropriate warning signs disclosing the use of fireworks for crop protection.
- (5) **Bond.** The Town Chairperson issuing a permit under this Subsection shall require an indemnity bond with good and sufficient sureties or policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit. The bond or policy shall be taken in the name of the Town, and any person injured thereby may bring an action on the bond or policy in the person's own name to recover the damage the person has sustained, but the aggregate liability of the surety or insurer to all persons shall not exceed the amount of the bond or policy. The bond or policy, together with a copy of the permit, shall be filed in the office of the Town Clerk.
- (6) **Required Information for Permit.** A permit under this Subsection shall specify all of the following:
 - (a) The name and address of the permit holder.
 - (b) The date on and after which fireworks may be purchased.
 - (c) The kind and quantity of fireworks which may be purchased.
 - (d) The date and location of permitted use.
- (7) **Copy of Permit.** A copy of a permit under this Subsection shall be given to the fire inspector at least two (2) days before the date of authorized use.
- (8) **Minors Prohibited.** A permit under this Subsection may not be issued to a minor.
- (9) **Possession While Transporting.** Possession of fireworks in the Town is not prohibited while the fireworks are being transported to a city, town, village, or county where the possession of the fireworks is authorized by permit or ordinance, unless in the course of transporting the fireworks through the Town, the person remains in the Town for a period of at least 12 hours.
- (d) **Wholesaler or Jobber; Out-of-State and In-State Shipping.**
 - (1) This section does not prohibit a vendor from selling fireworks to a nonresident person or to a person or group granted a permit under sub. (c). A vendor that ships the fireworks sold under this subsection shall package and ship the fireworks in accordance with applicable state and federal law.
- (e) **Storage and Handling.**

- (1) **Fire Extinguishers Required.** No wholesaler, dealer or jobber may store or handle fireworks on the premises unless the premises are equipped with fire extinguishers approved by the town fire inspector.
- (2) **Smoking Prohibited.** No person may smoke where fireworks are stored or handled.
- (3) **Fire Chief to be Notified.** A person who stores or handles fireworks shall notify the Fire Chief of the location of the fireworks.
- (4) **Storage Distance.** No wholesaler, dealer or jobber may store fireworks within one hundred (100) feet or sell fireworks within fifty (50) feet of a residential dwelling.
- (5) **Restrictions on Storage.** No person may store or sell fireworks within one hundred (100) feet of a public assemblage or place where gasoline or volatile liquid is sold in quantities exceeding one (1) gallon.
- (f) **Parental Liability.** A parent, foster parent, treatment foster parent, family-operated group home parent, or legal guardian of a minor who consents to the use of fireworks by the minor is liable for damages caused by the minor's use of fireworks.

Bank, Pit, Topsoil Removal and Other Excavations

7-7-1	Declaration of Policy
7-7-2	Definitions
7-7-3	Application for Permit
7-7-4	Regulation of Excavations
7-7-5	Topsoil Stripping and Removal
7-7-6	Provisions Applicable to Both Bank and Pit Excavations and Topsoil Removal
7-7-7	Penalties

Sec. 7-7-1 Declaration of Policy.

It is hereby declared to be the policy of the Town of Oshkosh to provide for the proper use of land to prevent all manner of excavations which create pits, holes, or hollows in the earth, leaving it in a hazardous or dangerous state, or cause soil erosion which depletes the land of its natural vegetative cover and supply of organic material, renders such land unproductive and unsuitable for agricultural purposes and undesirable for building homes, resulting in lower land values. By this Chapter the Town of Oshkosh seeks to remove the danger to health and life caused by deep excavations remaining in the ground; and the stripping of topsoil, thereby resulting in damage to agricultural crops through dust storms in dry weather, by exposure of the bare earth to wind action and in wet periods by pools of water, which ordinance will promote the safety, health and general welfare of the citizens of the Town.

Sec. 7-7-2 Definitions.

As used in this Chapter the following terms shall have the meanings hereinafter designated:

- (a) **Earth.** Sand, clay, gravel, mud, bog and rock, but not topsoil.
- (b) **Excavation.** The removal of more than seventy-five cubic feet of earth from the ground in a vertical dimension of more than three (3) feet for any purposes other than the improvements of land for permitted uses not otherwise regulated by this Chapter, other than sewage disposal systems, other than the purposes described by Section 7-7-8(d) and other than the removal of material subject to the dredging permitted by other governmental authorities.

- (c) **Pit Excavation.** Any excavation involving the removal of more than one thousand (1,000) cubic feet of earth leaving a hole or depression below the grade of the surrounding land.
- (d) **Bank Excavation.** Any excavation involving the removal of more than one thousand (1,000) cubic feet of earth, other than a pit excavation.

Sec. 7-7-3 Application for Permit.

Before any excavation is commenced for any purpose and topsoil, earth, sand, gravel, rock or other substance is removed from the ground, the owner, lessee or agent of the premises shall obtain a written permit therefore from the Town Board. For that purpose such applicant shall file with the Building Inspector of the Town of Oshkosh a verified application in duplicate for such permit containing a detailed statement of the proposed work, together with a plan prepared by an engineer or land surveyor duly licensed by the State of Wisconsin setting forth in detail the following information:

- (a) All information as required on the application form prepared by the Town of Oshkosh, including a detailed statement of the proposed work and three-dimensional extent of the proposed excavation and exact condition of the plot or premises before the work is commenced and proposed condition of the said plot or premises after the work is completed;
- (b) The plan shall be drawn to scale and give all streets adjoining the property, the location and dimensions of the premises upon which it is proposed to excavate, location, size and use of any existing buildings, cross sections of the property, giving elevations thereof at intervals of fifty (50) foot squares and also at each break in the grades, and the elevation of the premises as compared to the elevation of any abutting highways;
- (c) A duly acknowledged consent in writing of the owner of the premises and mortgagee, if any, including his, her, its or their address;
- (d) Receipted tax bills or a certificate from the Treasurer of the Town of Oshkosh and the County Treasurer of Winnebago County showing payment of all taxes or assessments to date against the property described in the application;
- (e) A certificate of the Highway Commissioner of Winnebago County that such proposed excavation and the finished grades of said property as shown on said map will not interfere with any applicable drainage plan of Winnebago County and will not endanger any road, street or highway of Winnebago County or of the Town of Oshkosh or other property of the said County or Town.
- (f) The purpose of the proposed excavation;
- (g) The existing and the theoretical maximum ground water level at the location.

Sec. 7-7-4 Regulations of Excavations.

- (a) No pit excavation shall be made within two hundred (200) feet of any property line opposite which there are residential buildings within one hundred (100) feet of such property line, or within one hundred (100) feet of any other property line.
- (b) No pit or bank excavation shall be made greater than ten (10) feet below the established grade of the nearest public street or highway unless the side walls

- remain at an incline of at least two (2) horizontal to one (1) vertical foot or are supported by retaining walls equal to that specified in the Building Code of the State of Wisconsin for permanent building foundations.
- (c) Any removal of more than seventy-five (75) cubic feet of earth from the ground in a vertical dimension of more than three (3) feet shall be protected by suitable barriers and lights. All pit and bank excavations shall be completely surrounded by wire fencing of the type known as chain link or cyclone fence, or its equivalent, of the height of six (6) feet with no opening except necessary gates for ingress or egress, to prevent public access to the top of any pits or deeply graded slopes.
 - (d) Dust-down or a similar dust layer shall be spread on access roads and other traveled areas used in connection with every pit or bank excavation to protect the public and the surrounding area against wind-blown sand and dust.
 - (e) No removal of earth from the ground shall be so made as to undermine, weaken or deprive of support other lands in the vicinity or to substantially obstruct, impede or change the course of or the natural movement or flow of the water in or otherwise adversely affect any public waterway or public body of water or any waterway or body of water which is used as a part of any public drainage system.
 - (f) No removal of earth from the ground shall be so as to expose to possible pollution, by surface water intrusion or otherwise, any underground water used as a water supply by the public.
 - (g) No removal of earth from the ground shall be so made as to prevent or interfere with the orderly development, for residential, business, manufacturing or public purposes, of other lands in the vicinity of the removal, or as to render unreasonably difficult or unreasonably delay travel from one (1) place to another or as to render unduly difficult or substantially increase the cost of the installation of public utilities or other public services or as to substantially depreciate the value of real property in the vicinity.
 - (h) No excavation shall be made below two (2) feet above the maximum ground water level at the site.
 - (i) No blasting, stone crushing, excavation or earth removal operations shall occur except during hours as follows:
 - (1) On Mondays through Fridays, except legal holidays, from 6:00 p.m. to 6:00 a.m.
 - (2) On Saturdays, except legal holidays, from 6:00 a.m. to 2:00 p.m.
 - (j) The Town Board may deny any application for a permit hereunder if it shall find that the proposed excavation will violate any of the provisions of this Section, and, may revoke or suspend any permit issued hereunder if it shall find that the removal of earth there under violates any such provision.
 - (k) When earth has been removed from any part of any pit excavation area to the maximum extent allowable under this Chapter or the removal of earth from any such part has been discontinued or abandoned or the permit for such removal has expired, such pit or part thereof shall be immediately refilled with clean, non-burnable fill containing no garbage, refuse, offal or any other deleterious or unwholesome matter and the premises, after completion of the removal of earth from the entire pit excavation area shall be so filled and graded to the levels of the nearest abutting streets or roads; or such other action shall be completed

promptly as approved by the Town Board for the restoration plan incorporated in the permit issued under Section 7-7-3.

Sec. 7-7-5 Topsoil Stripping and Removal.

No stripping or removal of topsoil shall be made within ten (10) feet of any property line and upon completion of the work, the premises, if below grade, shall be graded to the level of the abutting highway or the original grade if the same were below the level of the highway. Dust-down, or its equal, shall be spread to prevent dust from flying and there shall be left upon the surface of the land from which topsoil is removed not less than six (6) inches of topsoil. No topsoil shall be removed between the first day of October and the first day of April in the following year.

Sec. 7-7-6 Provisions Applicable to Both Bank and Pit Excavations and Topsoil Removal.

(a) **Bond or Cash Deposit.**

- (1) Before the issuance of a permit, the applicant and the owner of record of the premises shall execute and file with the Town Clerk, a bond approved by the Town Board of the Town of Oshkosh in an amount to be fixed by said Board, but not less than Two Thousand Dollars (\$2,000) with a surety company as surety and conditioned for the faithful performance of the conditions contained in this Chapter, the observance of all Town ordinances, and to indemnify the Town of Oshkosh and/or the Superintendent of Highways for any damage to Town Property. In the event of a default such bond shall be forfeited to the Town of Oshkosh.
- (2) Said bond shall remain in full force and effect until a certificate of completion has been issued by the Building Inspector, certifying to the fact that all provisions of this Chapter and conditions of the permit have been fully complied with. Application for such certificate shall be made by the applicant, owner, lessee or his agent on forms provided by the Town of Oshkosh and shall be accompanied by a map drawn to scale showing a cross-section of the affected property, giving elevations thereof as provided in Section 7-7-3(b), prepared by an engineer or land surveyor duly licensed by the State of Wisconsin after the completion of the operations, who shall also certify that there is not less than six (6) inches of topsoil remaining upon the ground from which topsoil has been removed and that such area has been seeded in compliance with Section 7-7-5 hereof.
- (3) In lieu of such bond a cash deposit or deposit of negotiable securities may be made with the presiding Supervisor of the Town.

(b) **Fees.** The officer designated by the Town Board to issue such permits shall charge and collect for each such permit:

- (1) **Bank and Pit Excavations.** A minimum fee of Two Hundred Dollars (\$200.00) for an excavation volume not to exceed twenty thousand (20,000) cubic yards. For excavations exceeding twenty thousand

(20,000) cubic yards, the minimum fee shall be Two Hundred Dollars (\$200.00) plus one cent (1¢) for each additional cubic yard or fraction thereof.

- (2) **Top Soil Removal.** Such permits shall expire by limitation sixty (60) days from the date of issuance unless extended by the Town Board, and no permit or permits shall be granted:
- (a) For removal of more than four (4) acres of topsoil from any one (1) tract of land until full compliance with the Chapter is had under any existing permit for the same tract except the preparation of the ground and seeding as provided in Section 7-7-5 hereof, and
 - (b) No permit shall be valid except between April 1st and October 1st of any year.
- (d) **Exceptions.** Nothing contained in this Chapter shall require a person to obtain a permit hereunder for or prevent a person from removing topsoil from one (1) part of his lands to another part of the same premises when such removal is necessary as an accessory use or is made for the purpose of farming or improving said property or for the installation of public improvements or public utilities, or to obtain a permit hereunder either for the installation of public utilities under a road opening permit or for the removal of material regulated by the Wisconsin Department of Natural Resources or the United States Army Corps of Engineers.

Sec. 7-7-7 Penalties.

For any and every violation of the provisions of this Chapter, the owner, general agent, or contractor of a building on premises where such violations have been committed or shall exist, and the lessee or tenant of the premises where such violation has been committed or shall exist, and the owner, general agent, contractor, lessee or tenant of any part of the premises in which part of said violation has been committed or shall exist, and the general agent, architect, engineer, surveyor, building contractor or any other person who knows, permits, takes part or assists in any such violation, or who maintains any premises in which any such violation shall exist, shall be subject to a forfeiture as provided in Section 1-1-6.

Title 7 – Chapter 8

Street Use Permits

7-8-1 Street Use Permits

Sec. 7-8-1 Street Use Permits.

- (a) **Purpose.** The streets in possession of the Town are primarily for the use of the public in the ordinary way. However, under proper circumstances, the Town Clerk may grant a permit for street use, subject to reasonable municipal regulation and control. Therefore, this Chapter is enacted to regulate and control the use of streets pursuant to a Street Use Permit to the end that the health, safety and general welfare of the public and the good order of the Town can be protected and maintained.
- (b) **Application.** A written application for a Street Use Permit by persons or groups desiring the same shall be made on a form provided by the Town Clerk and shall be filed with the Town Clerk. The application shall set forth the following information regarding the proposed street use:
 - (1) The name, address and telephone number of the applicant or applicants.
 - (2) If the proposed street use is to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization and of the authorizing responsible heads of such organization.
 - (3) The name, address and telephone number of the person or persons who will be responsible for conducting the proposed use of the street.
 - (5) The date and duration of time for which the requested use of the street is proposed to occur.
 - (6) An accurate description of that portion of the street proposed to be used.
 - (7) The approximate number of persons for who use of the proposed street area is requested.
 - (8) The proposed use, described in detail, for which the Street Use Permit is requested.
- (c) **Representative at Meeting.** The person or representative of the group making application for a Street Use Permit shall be present when the Town Board gives consideration to the granting of said Street Use Permit to provide any additional information which is reasonably necessary to make a fair determination as to whether a permit should be granted.
- (d) **Denial of Street Use Permit.** An application for a Street Use Permit may be denied if:
 - (1) The proposed street use is primarily for private or commercial gain.
 - (2) The proposed street use would violate any federal or state law or any Ordinance of the Town.

- (3) The proposed street use will substantially hinder the movement of police, fire or emergency vehicles, constituting a risk to persons or property.
- (4) The application for a Street Use Permit does not contain the information required above.
- (5) The application requests a period for the use of the street in excess of eight (8) hours.
- (6) The proposed use could equally be held in a public park or other location. In addition to the requirement that the application for a Street Use Permit shall be denied, as hereinabove set forth, the Town Board may deny a permit for any other reason or reasons if it concludes that the health, safety and general welfare of the public cannot adequately be protected and maintained if the permit is granted.
- (e) **Permit Fee.** Each application for a Street Use Permit shall be accompanied by a fee of Twenty-five Dollars (\$25.00). The applicant shall be responsible for obtaining a state-approved barricades from a private firm that supplies such equipment and pay the cost thereof.
- (f) **Consent to Issuance of Street Use Permit.** In addition to the fee required by the previous Subsection, each application for a Street Use Permit, except for parades or races sponsored by civic, youth or scout organizations which have been in existence for at least six (6) months, shall be accompanied by a petition designating the proposed area of the street to be used and time for said proposed use, said petition to be signed by not less than seventy-five percent (75%) of the residents over eighteen (18) years of age residing along that portion of the street designated for the proposed use. Said petition shall be verified and shall be submitted in substantially the following form:

PETITION FOR STREET USE PERMIT

We, the undersigned residents of the _____ hundred block of _____ Street in the Town of Oshkosh, hereby consent to the _____ recreational or business use of this street between the hours of _____ and _____ on _____, the _____ day of _____, 20____, for the purpose of _____ and do hereby consent to the Town of Oshkosh to grant a Street Use Permit for use of the said portion of said street for said purpose and do hereby agree to abide by such conditions of such use as the Town of Oshkosh, attach to the granting of the requested Street Use Permit. We further understand that the permit will not be granted for longer than six (6) hours on the date hereinabove specified, and agree to remove from the street prior to the end of said period all equipment, vehicles and other personal property placed or driven thereon during the event for which a permit is granted.

We designate _____ as the responsible person or persons who shall apply for an application for a Street Use Permit.

- (g) **Insurance.** The applicant for a Street Use Permit may be required to indemnify, defend and hold the Town and its employees and agents harmless against all claims, liability, loss, damage or expense incurred by the Town on account of any injury to or death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the permit, the applicant may be required to furnish a Certificate of Comprehensive General Liability Insurance with the Town of Oshkosh. The applicant may be required to furnish a performance bond prior to being granted the permit.
- (h) **Termination of a Street Use Permit.** A Street Use Permit for an event in progress may be terminated by law enforcement officers if the health, safety and welfare of the public appears to be endangered by activities generated as a result of the event or the event is in violation of any of the conditions of the permits or ordinances of the Town of Oshkosh. Law enforcement officers have the authority to revoke a permit or terminate an event in progress if the event organizers fail to comply with any of the regulations in the street use policy or conditions stated in the permit.

Title 7 – Chapter 9

Licensees to Pay Local Claims; Appellate Procedures

- 7-9-1 Licensees Required to Pay Local Taxes, Assessments and Claims; Appellate Procedures
- 7-9-2 Duty of Clerk with Regard to Licenses

Sec. 7-9-1 Licensees Required to Pay Local Taxes, Assessments and Claims.

- (a) **Payment of Claims.** The Town shall not issue or renew any license to transact any business within the Town of Oshkosh:
 - (1) For any purposes for which taxes, assessments or other claims of the Town are delinquent and unpaid.
 - (2) For any person who is delinquent in payment:
 - (a) Of any taxes, assessments or other claims owed the Town; or
 - (b) Of any forfeiture resulting from a violation of any Town Ordinance.
- (b) **Exemption.** This Section shall apply to licenses issued pursuant to the provisions of Title 7 of this Code of Ordinances, except Chapters 1 and 5.
- (c) **Applicability.** An application for renewal of a license subject to this Chapter shall be denied pursuant to the provisions of Subsection (a) only following notice and opportunity for hearing as provided by Subsection (d) below.
- (d) **Hearings.** Prior to any denial of an application for renewal of a license, including denials pursuant to Subsection (a), the applicant shall be given notice and opportunity for a hearing as hereinafter provided:
 - (1) With respect to licenses renewable under Chapter 2 of Title 7 of this Code of Ordinances, notice and opportunity for hearing shall be as provided by §125.12, Wis. Stats., as amended from time to time, and Town ordinances.
 - (2) With respect to licenses other than those described in Subsection (a) herein, the Town Board or its assignee shall notify the applicant with an opportunity for hearing. The notice shall state the reasons for the intended action and shall establish a date, not less than three (3) days nor more than ten (10) days after the date of the notice on which the applicant shall appear before the Town Board. If the applicant shall fail to appear before the Board on the date indicated on the notice, the Board shall deny the application for renewal. If the applicant appears before the Board on the date indicated in the notice and denies that the reasons for nonrenewal exist, the Town Board shall conduct a hearing with respect to

the matter. At the hearing, both the Town and the applicant may produce witnesses, cross examine witnesses and be represented by counsel. The applicant shall, upon request, be provided a written transcript of the hearing at the applicant's expense. If the Town Board determines the applicant shall not be entitled to renewal pursuant to Subsection (a), the application for renewal shall be denied.

- (e) **Appeals.** Where an individual, business or corporation wishes to appeal the Town Clerk's decision not to issue a license or permit under this Title on grounds other than those specified in Subsections (a) through (d) above, the applicant may file a request in writing with the Town Clerk that the matter be referred to the Town Board. A public hearing shall be scheduled within fourteen (14) calendar days by the Town Board. All parties may be represented by counsel. The Board shall consider all relevant information and shall render a decision, which shall be binding.

Sec. 7-9-2 Duty of Clerk with Regard to Licenses.

The Town Clerk shall be charged with the administration of all ordinances relating to licenses unless otherwise provided by the Town Board.

Title 7 – Chapter 10

Building Inspection Permit Fee Enforcement

7-10-1 Building Permit Required

7-10-2 Penalty

Sec. 7-10-1 Building Permit Required

- (a) All persons are required to apply for a building permit in categories as specified by Resolution of Building Inspection Permit Fee Schedule affecting property and/or structures in the Town of Oshkosh.
- (b) Building Permit application forms will be issued, and fees will be collected by the designated Town of Oshkosh Building Inspector.
- (c) Persons who neglect or intentionally do not apply for the applicable Building Permit and/or refuses to make payment are therefore in violation and the persons found in violation are subject to a penalty as outline in section 7-10-2.

Sec. 7-10-2 Penalty

- (a) **General Penalty.** Any person who shall violate any of the provisions of this section shall, upon conviction of such violation, be subject to a penalty, which shall be as follows;
 - (1) **First Offense – Penalty.** Any person who shall violate any provision of this section shall, upon conviction thereof, forfeit double the amount of the original Building Permit fee.
 - (2) **Second Offense – Penalty.** Any person found guilty of violating any section or part of this section who shall previously have been convicted of a violation of the same section within one (1) year shall, upon conviction thereof, forfeit not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2000.00) for each such offense, together with costs of prosecution and, in default of payment of such forfeiture and costs, shall be imprisoned in the County Jail until such forfeiture and costs of prosecution are paid, but not exceeding six (6) months.
- (b) **Continued Violations.** Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this section shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this section.

- (c) **Other Remedies.** The Town shall have any and all other remedies afforded by the Wisconsin Statutes in addition to the forfeitures and costs of prosecution above.

Title 7 – Chapter 11

Plummer Cemetery-Purchase of Cemetery Lot(s) and Transfers

<u>7</u> -11-1	Purchase of Cemetery Lots
7-11-2	Resale and Transfer of Lots
7-11-3	Grave Lot Fees, Perpetual Care Fees, Burial Fees, and Cemetery Rules

Sec. 7-11-1 Purchase of Cemetery Lots

The Town Board-appointed Sexton will conduct the purchases and transactions of grave lot sites at Plummer Cemetery.

Sec. 7-11-2 Resale and Transfer of Lots

It is not allowed for a lot owner to sell all or a portion of owned lots(s). The lots(s) must first be deeded back to the Town of Oshkosh who in turn will resell the lot(s) to a new owner.

- (a) Any transfer request of a lot(s) from an owner or heir of owner returned/deeded back to the Town with proof of ownership there is no fee. Town owner may qualify and request in writing for a refund payment of the original paid lot(s) price.
- (b) Any transfer of lot ownership given/gifted to another person/new owner, except for the condition stated in 7-11-2 (a), there is a fee of \$50.00 payable to the Town.

Sec. 7-11-3 Grave Lot Fees, Perpetual Care Fees, Burial Fees, and Cemetery Rules

Grave lot fees, perpetual care fees, burial fees, and cemetery rules, may occasionally be updated by Resolution established by the town board as shown in Exhibit A.

Exhibit A is shown at the end of Title 7 as Resolution 07-2023

Cross Reference Exhibit A Plummer Cemetery Fees and Rules of this Chapter and 11-3-8 Cemetery Regulations

Fair and Open Housing

7-12-1 Fair and Open Housing

Sec. 7-12-1 Fair and Open Housing.

- (a) **State Statues Adopted.** The Town of Oshkosh recognizes its responsibilities under Section 106.50, Wisconsin Statutes, as amended, and all subsequent amendments thereto.
- (b) **Authority and Enforcement Procedures Implemented.** The officials and employees of the Town of Oshkosh shall assist in the orderly prevention and removal of all discrimination in housing within the Town of Oshkosh by implementing the authority and enforcement procedures set forth in Section 106.50, Wisconsin Statutes, as amended.
- (d) **Complaints.** The Municipal Clerk shall maintain forms for complaints to be filed under Section 106.50, Wisconsin Statutes, as amended, and shall assist any person alleging a violation thereof in the Town to file a complaint thereunder with the Wisconsin Department of Work Force Development, Equal Rights Division, for enforcement of Section 106.50, Wisconsin Statutes, as amended.