

## **TITLE 7**

### Licensing and Regulation

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## **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 Marion 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" shall mean 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" means 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 or 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" shall mean any canine, regardless of age or sex.
  - (4) "Cat" shall mean any feline, regardless of age or sex.
  - (5) "Neutered" as used herein as describing a dog or cat shall mean a dog or cat having nonfunctional reproductive organs.
  - (6) "Animal" means mammals, reptiles and birds.
  - (7) "Cruel" means causing unnecessary and excessive pain or suffering or unjustifiable injury or death.
  - (8) "Law Enforcement Officer" has that meaning as appears in Sec. 967.02(5), Wis. Stats., and includes a humane officer under Sec. 58.07, Wis. Stats., but does not include a conservation warden appointed under Sec. 23.10, Wis. Stats.
  - (9) "Farm Animal" means any warm blooded animal normally raised on farms in the United States and used for food or fiber.
  - (10) "Pet" means an animal kept and treated as a pet.
- State Law Reference: Sections 174.05 through 174.10, Wis. Stats.

## **SEC. 7-1-2 RABIES BACCINATION TREQUIRED FOR LICENSE.**

- (a) **Rabies Vaccination.** The owner of a dog shall have the dog vaccinated against rabies by a veterinarian within thirty 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 Marion after the dog has reached four 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 Sec. 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 of 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 a 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 of rabies vaccination 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 Marion to own, harbor or keep any dog more than five (5) months of age without complying with the provisions of Sec. 174.05 through Sec. 174.10 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 Two Dollars (\$2.00) for spayed females or neutered males. The minimum fee for unsprayed or unneutered animals shall be Five Dollars (\$5.00). These amounts shall be reduced by one-half (1/2) if the animal becomes (5) months of age after July 1 during the license year. The license year shall commence January 1 and end December 31.
- (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 shall complete and issue to the owner a license for such dog containing all information required by state law. The Town Treasurer 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 used 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.
- (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 a dog shall receive annually a free dog license from the Town Treasurer 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 operation of the kennel. Such person shall pay for the license year a license tax of Thirty Five Dollars (\$35.00) for a kennel of twelve (12) or fewer dogs and an additional Three Dollars (\$3.00) for each dog in excess of twelve (12). 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 shall issue the kennel license and a number of tags equal to the number of dogs authorized to be kept in the kennel. Kennels may only be located in residential areas if prior approval is first obtained from the Town Board, following notice and public hearing.
- (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.

State Law Reference: Sec. 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 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. An 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 a 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. An 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. An 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 on 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 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 one hundred eighty (180) days. The owner shall have the animal vaccinated against rabies between one hundred fifty-five 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 that 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, FOWL AND OTHER ANIMALS.**

**(a) Restrictions.** It shall be unlawful for any person within the Town of Marion to own, harbor or keep any dog or cat 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 7-1-12.)
- (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) No vicious dog shall be allowed off the premises of its owner unless muzzled or on a leash in charge of the owner or a member of the owner's immediate family over sixteen (16) years of age. For purposes of enforcing this Section, a dog shall be deemed as being of a vicious disposition if, within any twelve month period it bites two (2) or more persons or inflicts serious injury to one (1) person in unprovoked circumstance 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 police authorities.
- (2) No person shall harbor or permit to remain on his 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 possession or ownership any animal shall allow the same to run at large within the Town. The owner of any animal, whether licensed or unlicensed, shall keep his 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 and required by state law or Town Ordinance to be licensed shall be seized and impounded by a humane or law enforcement officer.
- (2) A dog or cat 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 Sec. 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.

## **SEC. 7-1-7 IMPOUNDMENT OF ANIMALS.**

### **(a) Animal Control Agency.**

- (1) The Town of Marion 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 Marion 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 office must see or hear the violation of this Section or have in his 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 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 retrained 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 doesn't reclaim the 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.

#### **7-1-8 DOGS AND CATS RESTRICTED ON CEMETERIES.**

No dog or cat shall be permitted in any public cemetery. Every dog specially trained to lead blind persons shall be exempt from this Section.

#### **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 the Town Constable and shall keep such dog or cat confined for not less than fourteen days or for such period of time as the Town Constable 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.

#### **7-1-10 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 public or private property, unless such matter is immediately removed therefrom by said owner or person in charge. This Section shall not apply to a person who is visually or physically handicapped.

#### **7-1-11 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.

## **7-1-12 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 Board or Clerk within a four (4) week period.

## **7-1-13 SALE OF RABBITS, CHICKS OR ARTIFICIALLY COLORED ANIMALS**

**(a)** No person may well, 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 Sec. 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: Sec. 948.11, Wis. Stats.

## **SEC. 7-1-14 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 948.16, Investigation of Cruelty Complaints, and Sec. 948.17, Wis. Stats., Expenses of Investigation, are hereby adopted by references 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 whom 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: Section 948.15, 948.16 and 948.17, Wis. Stats.

## **SEC. 7-1-15 CRUELTY TO ANIMALS AND BIRDS PROHIBITED.**

- (a) Acts of Cruelty Prohibited.** No person except a police officer or health or humane officer in the pursuit of his duties shall, within the Town, shoot or kill or 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 Sec. 161.14, Wis. Stats., whether mixed with meat or other 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 or 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.

## **7-1-16 PENALTIES.**

**(a)** Any person violating Sections 7-1-14 (Neglected Animals) or 7-1-15 (Cruelty to Animals) shall be subject to a forfeiture of not less than Fifty (\$50.00) Dollars and not more than Three Hundred Dollars (\$300.00).

**(b)** (1) Anyone who violates Sections 7-1-1, 7-1-2, 7-1-4, and 7-1-5 (Rabies Vaccination/Quarantine) of the Code of Ordinances of Chapter 174, Wis. Stats., shall be subject to a forfeiture of not less than Fifty Dollars (\$50.00) and not more than Three Hundred Dollars (\$300.00) for the first offense and not more than Four Hundred Dollars (\$400.00) for 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 (Regarding Animal Bites/Injury to property/barking dogs) of this Code of Ordinances shall be subject to a forfeiture of not less than Fifty Dollars (\$50.00) and not more than Three Hundred Dollars (\$300.00) for the first violation and not less than One Hundred Dollars (\$100.00) and not more than Four Hundred (\$400.00) for subsequent violations.

## CHAPTER 2

### Fermented Malt Beverages and Intoxicating Liquor

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## 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 intoxication 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: Chapter 125, Wis. Stats.

#### **SEC. 7-2-2 DEFINITIONS.**

As used in this Chapter the terms "Alcoholic Beverages," "Intoxicating Liquors," "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 intoxication liquor or fermented malt beverage in any quantity whatever, 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 and 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 intoxication liquors only in original packages or containers and to be consumed off the premises so licensed.

**(b) Retail Class “B” Intoxication 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) 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.

**(d) Class “B” Fermented Malt Beverage Retailer’s 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, wither 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 percentum of alcohol by volume, without obtaining a special license to sell such beverages.

**(e) Special Class “B” Fermented Malt Beverage Picnic License.**

(1) License. A special Class “B” picnic license, when issued by the Town Clerk under authority of the Town Board, as provided for in Sec. 125.26(6), Wis. Stats., shall entitle the older therof to possess, sell or offer for sale fermented malt beverages or wine coolers at a particular picnic, post meeting, fair or similar gathering. Such license may be issued only to bona fide clubs, state, county or local fairs, associations or agricultural societies, lodges or societies that have been in existence for not less than six (6) months prior to the date application for such license or to posts of ex-servicemen’s organizations now or hereafter established. Such license is valid for dates as approved by the Town Board.

(2) Applications. Application for such license shall be signed by the president or corresponding officer of the society 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 special 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. Such license shall be valid

for no more that five (5) 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.

**(f) 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 dealer, not to be consumed in or about the premises of said wholesaler.

**(g) Special Wholesaler's license.** A special wholesaler's license pursuant to Sec. 125.28(a), Wis. Stats., when issued by the Town Clerk under authority of the Town Board, shall permit the holder to sell or offer to sell fermented malt beverages in original packages or containers and in quantities of not less that four and one-half (4-1/2) gallons at any one (1) time for consumption on the premises.

Cross Reference: Section 7-2-17.

## **SEC. 7-2-5 LICENSE FEES**

There shall be the following classes and denominations of license which, when issued by the Town Clerk under the authority of the Town Board after payment of the fee hereinafter specified shall permit the holder to sell, or traffic in intoxication liquors or fermented malt beverages as provided in Sections 125.04(5), (6); 125.28(1)(a), (b), (d); 125.28(2); 125.31(2)(a); 125.22(1), (2), (4); 125.32(4)(a); 125.31(2)(b); 125.26(2); 125.04(6); 125.17; 125.68(2); 125.32(2); 125.51(2); 125.51(3); or 125.57, Wis. Stats.:

- (a) Retail Class "A" Intoxicating Liquor License - \$100.00 annually.
- (b) Retail Class "B" Intoxicating Liquor License - \$100.00 annually.
- (c) Class "A" Fermented Malt Beverage Retailer's License – \$25.00 annually.
- (d) Class "B" Fermented Malt Beverage Retailer's License - \$100.00 per year or three-fourths (3/4) of that amount for a six (6) month period. Club license as defined in Sec. 125.32(4)(b), Wis. Stats., shall be issued for a fee of Ten Dollars (\$10.00). Class "B" fermented malt beverage retailer's license for brewers shall be pursuant to Section 125.31 (1)(a) and 125.06(1), Wis. Stats.
- (e) Special Class "B" Fermented Malt Beverage Picnic License - \$10.00 per event.
- (f) Wholesaler's License - \$25.00 annually.

## **SEC. 7-2-6 APPLICATION FOR LICENSE.**

**(a) Contents.** Application for a license to sell or deal in intoxication 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 Section 887.01 to 887.04, Wis. Stats., and shall be filed with the Town Clerk not less than fifteen

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 application shall be published once in the official Town newspaper, and the costs of publication shall be paid by the applicant.
- (d) Amending Application.** Whenever anything occurs to change any fact set out in the application of any licensee, such licensee shall file with the issuing authority a notice in writing of such change within ten (10) days after the occurrence thereof.

## **SEC. 7-2-7 QUALIFICATIONS OF APPLICANTS AND PREMISES.**

- (a) Requirements for Licenses and Permits.** All natural persons, criminal offenders, corporations, operators and managers applying for licenses and permit relating to alcoholic beverages shall be subject to the conditions and provisions of Sec. 125.04(5) of Wisconsin Statutes.
- (b) Residence Requirements.** A retail Class "A" or retail Class "B" fermented malt beverage or intoxication liquor license shall be granted only to persons who are citizens of the United States and of Wisconsin.
- (c) Applicant to have Malt Beverage License.** No retail Class "B" intoxication liquor license shall be issued to any person who does not have or to whom is not issued a Class "B" retailer's license to sell fermented malt beverages.
- (d) 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.
- (e) Age of Applicant.** No Class "A" or "B" licenses shall be granted to any underage person as defined by the Wisconsin Statutes.
- (f) Corporate Restrictions.**
  - (1) No license shall be granted to any corporation which does not comply with the provisions of Sec. 125.04(6), Wis. Stats., which does not have an agent eligible for a license under this Chapter or under state law, or which has more than fifty percent (50%) of the stock interest, legal or beneficial, in such corporation held by any person or persons not eligible for a license under this Chapter or under the state law.
  - (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 hours after such transfer of stock.

The corporation shall, following the approval of each successor agent or another qualified agent as provided in Sec. 125.04(6)(d), Wis. Stats., pay a fee of Ten Dollars (\$10.00) to the Town.

(3) Any license issued to a corporation may be revoked in the manner and under the procedure established in Sec. 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.

**(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 or 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) License Quotas.** License Quotas for the Town shall be as provided in Chapter 125, Wis. Stats.

**(i) Licensed Premises.** License issued by the Town shall be for the structure itself and shall not confer any license or right to property outside of the licensed structure, unless specified on the license as approved by the Town Board.

**(j) Delinquent Taxes, Assessments, Etc.**

(1) Premises. No initial or renewal alcohol beverage licenses shall be granted for any premises for which Town taxes, assessment, utility bills, garbage collection fees, sewer and water bills, assessments or other claims to the Town are delinquent and unpaid.

(2) Person. No initial or renewal alcohol license shall be granted to any person:

- a. Delinquent in payment of any taxes, utility bills, garbage collection fees, sewer and water bills, assessments or other claims owed to the Town.
- b. Delinquent in payment of a forfeiture resulting from a violation of any Ordinance of the Town.

## **SEC. 7-2-8 INVESTIGATION.**

The Town Clerk shall notify the Town Constable and Fire Inspector of all license and permit applications, 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. 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. No license shall be renewed without a re-inspection of the premises and report as originally required by the Section.

#### **SEC. 7-2-9 APPROVAL OF APPLICATION.**

- (a) In determining the suitability of an applicant, consideration shall be given to the moral character and financial responsibility of the applicant, the appropriateness of the location and premises proposed and generally the applicant's fitness for the trust to be reposed.
- (b) No license shall be granted or renewed for operation on any premises or with any equipment for which taxes, forfeitures or assessments or other financial claims of the Town are delinquent and unpaid.
- (c) No license shall be issued for any premises which do not conform to rules made by the Department of Health and Social Services, any health and sanitation requirements of the Town and any applicable health and sanitation ordinances of Waushara County.

#### **SEC. 7-2-10 GRANTING OF LICENSE.**

Opportunity shall be given by the Town Board 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.

#### **SEC. 7-2-11 TRANSFER AND LAPSE OF LICENSE.**

- (a) In accordance with the provisions of Sec. 125.04(12), Wis. Stats., a license shall be transferable from one premises 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 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 is 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 and the Wisconsin Department of Revenue.

#### **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 Sec. 125.04(4) of the Wisconsin Statutes.

#### **SEC. 7-2-13 POSTING LICENSES; DEFAACEMENT.**

- (a) As provided in Sec. 125.04(10), Wis. Stats., every person licensed in accordance with the provision 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" and "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.**

- (1) 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.
- (2) It shall be a condition of any license issued hereunder that the licensed premises may be entered and inspected at any reasonable hour by any law enforcement

official or police officer of the Town or the Building, Electrical or Plumbing Inspectors without any warrant, and the application for a license hereunder shall be deemed a consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license issued hereunder and shall be deemed a violation of this Chapter.

- (b) Employment of Minors.** No retail 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 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” 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” license unless he 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 regulation of the State Board of Health governing sanitation in restaurants shall apply to all Class “B” liquor licenses issued under this Chapter. No Class “B” license shall be issued unless the premises to be licensed conform to such rules and regulations.
- (f) Clubs.** No Club shall sell or give away any intoxication liquors except to bona fide members and guests invited by members.
- (g) Gambling Prohibited.** 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.
- (h) Credit Prohibited.** No retail Class “A” or Class “B” liquor or fermented malt beverage 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.
- (i) License 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.

**(j) Improper Conduct.** No person possessing a Class “B” fermented malt beverage retailer’s license or a Class “B” retailer’s intoxicating liquor license, personally or through his employee, shall permit or engage in the following conduct on licensed premises, and no entertainer or employee shall engage in the following conduct on said licensed premises:

- (1) The performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or sexual acts which are prohibited by law.
- (2) The actual or simulated touching, caressing or fondling of the breast, buttocks, anus, vulva or genitals.
- (3) The actual or simulated displaying of the areola of the breast, pubic hair, anus, vulva and genitals.
- (4) The showing of films or slides depicting any of the acts which are prohibited by the regulations stated above.

**(k) Certain Performances and Costumes Prohibited.** No licensee, either personally or through his agent or employee, shall furnish entertainment or permit the performance of any act, stunt or dance by dancers, performers or entertainers, whether such dancers, performers or entertainers are employed by the License or through his agent or not, and no entertainer or employee shall furnish any entertainment or perform any act, stunt or dance unless such dancers, performers or entertainers shall meet the following wearing apparel standards when performing or when present upon the premises;

- (1) That portion of every costume to be worn by dancers, performers or entertainers covered by the provisions of this Subsection and which relates to the breast or chest area and/or to the area of the sex organs and buttocks shall be of nontransparent material.
- (2) The top portion of the costume worn by the female dancer, performer or entertainer or a female impersonator shall be so conformed, fabricated and affixed to the body so as to keep the areola of the breast completely covered at all times.
- (3) The lower portion of the costume worn by a female dancer, performer or entertainer or a female impersonator shall encircle the body at the area of the sex organs and buttocks. This portion of the costume shall be of such dimensions and so conformed, fabricated and affixed to the body so as to completely cover the sex organs, the pubic hair and the cleavage of the buttocks at all times. An animal fur

piece or other device simulation the hair surrounding the pubic area shall not constitute compliance with the costume requirements of this section.

- (4) The lower portion of the costume worn by a male dancer, performer or entertainer shall encircle the area of the sex organs and the buttocks. This portion of the costume shall be of such dimensions and so conformed, fabricated and affixed to the body so as to completely cover the pubic hair, sex organs and the cleavage of the buttocks at all times.

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.**

#### **(a) Closing Hours.**

- (1) No premises in the Town of Marion for which a Class “B” intoxication liquor or fermented malt beverage license(s) for the sale of fermented malt beverages has been issued shall be permitted to remain open 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. No person, except the licensee or his employees, shall be permitted on the licensed premises during the hours when such sale is prohibited. There shall be no closing hours on January 1<sup>st</sup>.
- (2) No premises holding a Class A intoxicating liquor or fermented malt beverage license(s) nor the holder of a license permitting such premises or holder to sell, deal or traffic in fermented malt beverages nor any person on such premises, whether or not such person holds an operator’s license pursuant to Sec. 125.17 of the Wisconsin Statutes, as amended, shall sell, vend, barter, exchange, offer for sale, give away or otherwise furnish to any person any fermented malt beverages or intoxicating liquor in original packages, intending to mean aluminum/tin cans, bottles, barrels or any containers in which the beverages have been delivered to the premises, and to be removed from the premises, if a Class “A” Intoxicating Liquor License, between 9:00 p.m. and 8:00 a.m.

- (b) Modification of Closing Hours.** Closing hours may be modified for specific events by a majority vote of the Town Board.

### **SEC. 7-2-16 RESTRICTIONS ON SPECIAL CLASS “B” FERMENTED MALT BEVERAGE SPECIAL EVENT LICENSE.**

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 Marion, except through the issuance of temporary Class “B” permit issued by the Town Board in accordance with Wisconsin State Statutes and as set forth in this Section. A temporary

Class “B” permit authorizing the sale and consumption of beer 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 Sec. 125.26(26), Wis. Stats., and shall fully comply with the requirements of this Section and Section 9-5-1.
- (b) Posting of Signs and Licenses.** All organizations issued a liquor 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.** All organizations shall install a double fence around the main point of sale to control ingress and egress and shall continually station a licensed operator or security guard at the entrance for the purpose of checking age identification. There shall be only one (1) point of ingress and egress. The double fence shall be a minimum of four (4) feet high and a minimum of six (6) feet between fences. A single eight (8) foot chain link fence may be used to meet the fence requirements.
- (d) Underage Persons Prohibited.** No person as defined by the Wisconsin Statutes shall be allowed to assist in the sale of fermented malt beverage at any point of sale, nor shall they be allowed to loiter or linger in the area of any point of sale.
- (e) Licensed Operator’s Requirement.** A licensed operator shall be stationed at all points of sales at all times.
- (f) Permitted Cups Only.** Intoxicants will be sold only in foam or plastic cups, or cans.
- (g) Additional Requirements.** In addition, requesting organizations shall comply with the following:

  - (1) When the event sponsored by the Requesting organization is to take place on Town park property, the organization shall work closely with the Town officials in locating, setting up and identifying the size of the snow fence area. Such information shall be made part of the temporary Class “B” permit application.
  - (2) When the event sponsored by the requesting organization is to take place on Town owned property other than park property and/or privately owned property, the organization shall work closely with the Town Constable in locating and setting up the snow fence area. The Town Constable shall work closely with the requesting organization in identifying the size of the fenced-in area and the exact location. Such information shall be made part of the temporary Class “B” permit application. For indoor events, the structure used must have suitable exits and open spaces to accommodate anticipated attendance. It shall contain adequate sanitary facilities to accommodate the size of group.

**(h) Insurance.** The applicant for a Special Class “B” fermented malt beverage 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 condition of the permit, the applicant may be required to furnish a Certificate of Comprehensive General Liability insurance with the Town of Marion. The applicant may be required to furnish a performance bond prior to being granted the permit.

## **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 9, Chapter 5, of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by Chapter 125, Wis. Stats., and this Section.

**(b) Abandonment of Premises.** Any licensee holding a license to sell alcohol beverages who 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) Revocation for Noncompliance.** The Town Board of the Town of Marion may revoke any license hereunder at any time for any violation of the provisions of this Chapter.

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

(1) Procedure. Except as hereinafter provided, the provisions of Sec. 125.12, Wis. Stats., shall be applicable to proceedings for the revocation or suspension of all licenses or permits granted under this Chapter. Revocation or suspension proceedings may be instituted by the Town Board upon its own motion by adoption of a resolution.

(2) Automatic Revocation. Any license or permit issued under the provisions of this Chapter shall stand revoked without further proceedings upon the conviction of a licensee or permittee or his employee, agent or representative or a second offense under Chapter 1252 Wis. Stats., or any other state or federal liquor or fermented malt beverage law or any felony.

(3) Repossession of License or Permit. Whenever any license or permit under this Chapter shall be revoked or suspended by the Town Board, action of any court or by effect of Subsection (d)(2) above, it shall be the duty of the Clerk to notify the licensee or permittee of the suspension or revocation and to notify any applicable law enforcement official who shall take physical possession of the license or permit wherever it may be found and file it in the Town Clerk's office.

**(e) Denial of Renewals.** Before denial of any renewal, the licensee shall be given written notice of any violation or reason for nonrenewal. The licensee shall be entitled to a hearing.

**(f) Other Provisions.** Any license issued pursuant to this Chapter shall be subject to such further regulations and restrictions as may be imposed by the Town Board by amendment to this Section or by the enactment of new ordinances. If any licenses shall fail or neglect to meet the requirements imposed by such new restriction and regulation his license may be revoked in accordance with this Section. In case of revocation of any license or any violation of any provision of this Chapter in accordance with this Section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made for any part of the license fee.

**SEC. 7-2-18 RESERVED FOR FUTURE USE.**

**SEC. 7-2-19 RESERVED FOR FUTURE USE.**

## Fermented Malt Beverages and Intoxicating Liquor

### Article B

#### Operator's License

##### **SEC. 7-2-20 OPERATOR'S LICENSE REQUIRED.**

There shall be upon the premises operated under a Class "A" or Class "B" intoxicating liquor license or Class "B" fermented malt beverage license at all times the licensee or some other person who shall have an operator's license and who shall be responsible for the acts of all persons serving or selling any intoxicating liquor or fermented malt beverages to customers. An operator's license shall permit the holder to draw or remove any fermented malt beverage for sale or consumption from any barrel, keg, cask, bottle or other container in which fermented malt beverages shall be stored or kept on premises requiring a Class "B" fermented malt beverage license for sale or service to a consumer for consumption in or upon the premises where sold. No person other than the licensee shall serve or sell fermented malt beverages or intoxicating liquor in any place operated under the Class "A" or Class "B" licenses unless he shall possess an operator's license or unless he shall be under the immediate supervision of the licensee or a person holding an operator's license who shall be upon the premises at the time of such service.

State Law Reference: Sec. 125.17, Wis. Stats.

##### **SEC. 7-2-21 PROCEDURE UPON APPLICATION.**

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. Operator's Licenses shall be operative only within the limits of the Town.

##### **SEC. 7-2-22 DURATION.**

Licenses issued under the provisions of this Chapter shall be valid for a period of one (1) year and shall expire on the thirtieth (30<sup>th</sup>) day of June. The fee for an operator's license shall be Five Dollars (\$5.00).

##### **SEC. 7-2-23 PROVISIONAL OPERATOR'S LICENSE.**

- (a) **Provisional License Permitted.** A provisional operator's license is issued for purposes of compliance with Section 125.32(2) and 125.68.(2), Wis. Stats. The Town Clerk or the Clerk's designee is hereby designated to have the authority to issue said provisional operator's license if the following conditions have been met:

- (1) Applicant has filed a completed application for an operator's license pursuant to Sec. 125.17(1), Wis. Stats. And the Town of Marion Code of Ordinances;
  - (2) The Town Board has not previously denied, revoked or suspended an application by the applicant for an operator's license pursuant to Sec. 125.17(1), Wis. Stats., and the Town of Marion Code of Ordinances;
  - (3) The Town Constable has reviewed the applicant's application for an operator's license and has reported back to the Town Clerk that he has determined that the applicant has no prior record or criminal convictions (whether the offense be a felony or a misdemeanor), or ordinance violations which involve in any way the possession, distribution, use or control of alcoholic beverages or "controlled substances" (as that term is defined in Sec. 161.01(4), Wis. Stats.); and
  - (4) At the time the applicant applies for the provisional operator's license, no meeting of the Town of Marion Board of Supervisors during which the applicant's application for an operator's license could be considered is scheduled to occur within the next seven days.
- (b) **Expiration.** A provisional operator's license issued pursuant to this Section shall expire upon the earlier of:
- (1) Sixty (60) days after its issuance; or
  - (2) When a regular operator's license is issued upon written proof of completion of the responsible beverage server training course.
- (c) **Fee.** There shall be a Two Dollar (\$2.00) nonrefundable fee for the issuance of a provisional operator's license.
- (d) **Revocation.** If, after issuance of a provisional operator's license pursuant to this Section, the Town Clerk or the Clerk's designee discovers that the holder of said license made a false statement on his application for operator's license, the Town Clerk shall immediately revoke the provisional operator's license.

#### **SEC. 7-2-24 ISSUANCE.**

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.

#### **SEC. 7-2-25 DISPLAY OF LICENSE.**

Each license issued under the provisions of this Chapter shall be posted on the premises whenever the operator dispenses beverages.

#### **SEC. 7-2-26 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. 7-2-27 THROUGH SEC. 7-2-29 RESERVED FOR FUTRE USE.**

## Fermented Malt Beverages and Intoxicating Liquor

### ARTICLE C

#### Penalties

#### **SEC. 7-2-30 PENALTIES.**

- (a) Forfeitures for violations of Sections 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 Marion, shall conform to the forfeiture penalty permitted to be imposed for violation 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 Marion, 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 Marion.
- (c) Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the Wisconsin Statutes.

## CHAPTER 3

### Pharmacists' Permits; Cigarette License

7-3-1 Pharmacists' Permits

7-3-2 Cigarette License

#### **SEC. 7-3-1 PHARMACISTS' PERMIT**

- (a) A Pharmacist's Permit, when issued by the Town Clerk in and upon compliance with this Code and the Wisconsin Statutes, shall entitle and authorize the holder thereof to possess, sell or offer for sale intoxication liquors as defined by Sec. 125.02, Wis. Stats., in quantities less than four (4) liters for medicinal or scientific purposes only and not to be drunk on the premises. Said sales shall be made in compliance with Sec. 125.57, Wis. Stats.
- (b) Upon the approval of the application by the Town Board, the Town Clerk shall upon filing by the applicant of a receipt showing the payment to the Town of a permit fee of Five Dollars (\$5.00), issue to the applicant a permit.
- (c) Each permit shall be numbered in the order in which issued and shall specifically state the premises for which issued, the fee paid and the name of the licensee.

State Law Reference: Sec. 125.57, Wis. Stats.

#### **SEC. 7-3-2 CIGARETTE LICENSEE.**

- (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 thereof, 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 is authorized to conduct such business, and the same shall not be delivered until the applicant shall pay to the Town Clerk a license fee of Five Dollars (\$5.00).
- (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 on each year, or thereafter whenever applied for, and shall continue in force from date of issuance until the succeeding June 30<sup>th</sup> unless sooner revoked for any violation of this Section.

State Law Reference: Sec. 134.64, Wis. Stats.

## **CHAPTER 4**

### **Direct Sellers**

- 7-4-1 Registration Required
- 7-4-2 Definitions
- 7-4-3 Exemptions
- 7-4-4 Registration
- 7-4-5 Investigation
- 7-4-6 Appeal
- 7-4-7 Regulation of Direct Sellers
- 7-4-8 Records
- 7-4-9 Revocation of Registration

#### **SEC. 7-4-1 REGISTRATION REQUIRED.**

It shall be unlawful for any direct seller to engage in direct sales within the Town of Marion without being registered for that purpose as provided herein.

#### **SEC. 7-4-2 DEFINITIONS.**

In this Chapter:

- (a) **Direct Seller** means any individual who, for him/herself, or for a partnership, association or corporation, sells goods, or takes sales orders for the later delivery of goods, at any location other than the permanent business place or residence of said individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer.
- (b) **Permanent Merchant** means a direct seller who, for at least one (1) year prior to the consideration of the application of this Chapter to said merchant:
  - (1) Has continuously operated an established place of business in this Town; or
  - (2) Has continuously resided in this Town and now does business from his/her residence.

- (c) **Goods** shall include personal property of any kind and shall include goods provided incidental to services offered or sold.
- (d) **Charitable Organization** shall include any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such, but shall not include religious organizations.
- (e) **Clerk** shall mean the Town of Marion Clerk.
- (f) **Person** shall mean all humans of any age or sex, partnerships, corporations, associations, groups, organization and any other description of a collection of human beings working in concert or for the same purpose or objective.

### **SEC. 7-4-3 EXEMPTIONS.**

The following shall be exempt from all provisions of this Chapter:

- (a) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;
- (b) Any person selling goods at wholesale to dealers in such goods;
- (c) Any person selling agricultural products which such person has grown;
- (d) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such goods in their regular course of business;
- (e) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested a home visit by, said person;
- (f) Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;
- (g) Any person selling or offering for sale a service unconnected with the sale or offering of sale of goods;
- (h) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;
- (i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the Town Clerk proof that such charitable organization is registered under Sec. 440.41, Wis. Stats., or which is except from that statute's registration requirements, shall be required to register under this Chapter;
- (j) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Town Clerk that such person is a transient merchant, provided that there is submitted to the Town Clerk proof that such person has leased for at least one

(1) year, or purchased, the premises from which he is conducting business, or proof that such person has conducted such business in this Town for at least one (1) year prior to the date complaint was made.

#### **SEC. 7-4-4 REGISTRATION.**

- (a) Applicants for registration must complete and return to the Town Clerk a registration form furnished by the Town Clerk which shall require the following information;
  - (1) Name, permanent address and telephone number, and temporary address, if any;
  - (2) Height, weight, color of hair and eyes, and date of birth;
  - (3) Name, address and telephone number of the person, firm association or corporation that the direct seller represents or is employed by, or whose merchandise is being sold;
  - (4) Temporary address and telephone number from which business will be conducted, if any;
  - (5) Nature of business to be conducted and a brief description of the goods offered and any services offered;
  - (6) Proposed method of delivery of goods, if applicable;
  - (7) Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business’
  - (8) Last cities, villages, town, not to exceed three (3), where applicant conducted similar business just prior to making this registration.
  - (9) Place where applicant can be contacted for at least seven (7) days after leaving this Town:
  - (10) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant’s transient merchant business within the last five (5) years, the nature of the offence and the place of conviction.
- (b) Applicants shall present to the Town Clerk for examination;
  - (1) A driver’s license or some other proof of identity as may be reasonably required;
  - (2) A state certificate of examination and approval from the sealer of weights and measures where applicant’s business requires use of weighing and measuring devices approved by state authorities;
  - (3) A state health officers’ certificate where applicant’s business involves the handling of food and clothing and is required to be certified under state law; such certificate to stat that applicant is apparently free from any contagious or infectious disease, dated not more that ninety (90) days prior to the date the application for license is made.
- (c) **Registration Fee.**

- (1) At the time registration is returned, a fee shall be paid to the town Clerk to cover the cost of processing said registration. Each and every member of a group must file a separate registration form. At the time the registration is returned, a fee of five Dollars (\$5.00) shall be paid to the Clerk to cover the cost of processing said registration.
- (2) The applicant shall sign a statement appointing the Town Clerk his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally.
- (3) Upon payment of said fee and the signing of said statement, the Town Clerk shall register the applicant as a direct seller and date the entry. Said registration shall be valid for a period of one (1) year from the date of entry, subject to subsequent refusal as provided in Section 7-4-5(b) below.

#### **SEC. 7-4-5 INVESTIGATION.**

- (a) Upon receipt of each application, the Town Clerk may refer it immediately to law enforcement agencies serving the Town which may make and complete an investigation of the statements made in such registration.
- (b) The Town Clerk shall refuse to register the applicant if it is determined, pursuant to the investigation above, that; the application contains any material omission or materially inaccurate statement; complaints of material nature had been received against the applicant by authorities in the last cities, villages and towns, not exceeding three (3), in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five (5) years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicable provision of Section 7-4-4(b) above.

#### **SEC. 7-4-6 APPEAL.**

Any person denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the Town Board or, if none has been adopted, under the provisions of Sections 68.07 through 68.16, Wis. Stats.

#### **SEC. 7-4-7 REGULATION OF DIRECT SELLERS.**

- (a) **Prohibited Practices.**
  - (1) A direct seller shall be prohibited from: calling at any dwelling or other place between the hours of 9:00 p.m. and 8:00 a.m. except by appointment; calling at any

dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

- (2) A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the goods.
- (3) No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
- (4) No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one hundred (100) foot radius of the source.
- (5) No direct seller shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.

**(b) Disclosure Requirements.**

- (1) After the initial greeting and before any other statement is made to a prospective customer, a direct sell shall expressly disclose his name, the name of the company or organization he is affiliated with, if any, and the identity of goods or services he offers to sell.
- (2) If any sale of goods is made by a direct seller or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than Twenty-five Dollars (\$25.00), in accordance with the procedure as set forth in Sec. 423.203, Wis. Stats.; the seller shall give the buyer two (2) copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Sections 423.203(1)(a)(b) and (c), (2) and (3), Wis. Stats.
- (3) If the direct seller takes a sales order for the later delivery of goods, he shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

#### **SEC. 7-4-8 RECORDS.**

Law enforcement officers shall report to the Town Clerk all convictions for violation of this Chapter and Town Clerk shall note any such violation on the record of the registrant convicted.

#### **SEC. 7-4-9 REVOCATION OF REGISTRATION.**

- (a) Registration may be revoked by the Town Board after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, violated any provision of this Chapter or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.
- (b) Written notice of the hearing shall be served personally on the registrant at least seventy-two hours prior to the time set for the hearing; such notice contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

Editorial Note: This section is based on a model ordinance prepared by the Office of Consumer Protection of the Department of Justice. This Section conforms with the repeal of Sec. 440.85, Wis. Stats., and the uniform state plan recommended by the Department of Justice. Religious, patriotic, philanthropic or other organizations currently exempted from registration as charitable organizations under Sec. 440.41, Wis. Stats., are no longer exempt from registration under this Section.

## CHAPTER 5

### Regulation and Licensing of Fireworks

7-5-1 Regulation of Fireworks

#### SEC. 7-5-1 REGULATION OF FIREWORKS.

(a) **Definitions.** 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 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 or 0.25 inch in outside diameter which does not contain magnesium, chlorate or perchlorate.
- (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 device designed to produce an audible sound but not explode, spark move or emit an external flame after ignition and which does not exceed three (3) grams in total weight.
- (12) A device that emits smoke with no external flame and does not leave the ground.
- (13) A cylindrical fountain not exceeding one hundred (100) grams in total weight with an inside tube diameter not exceeding 0.75 inch, designed to sit on the ground and emit only sparks and smoke.
- (14) A cone fountain not exceeding seventy-five (75) grams in total weight, designed to sit on the ground and emit only sparks and smoke.

(b) **Sale.** No person may sell or possess with intent to sell fireworks, except;

- (1) To a person holding a permit under Subsection (c)(3);
- (2) To a municipality; or
- (3) For a purpose specified under Subsection (c)(5)b-f.

(c) **Use.**

- (1) 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)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 Wisconsin Department of Industry, Labor and Human Relations.
  - 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 or manufacturer of explosives in possession of a license or permit under 18 U.S.C. 841 to 848 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:
  - a. A public authority.
  - b. A fair association.
  - c. An amusement Park.
  - d. A park board.
  - e. A civic organization.
  - f. An agricultural producer for the protection of crops from predatory birds or animals.
- (4) Crop Protection Signs. A person issued a permit for 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.
- e. Other special conditions prescribed by ordinance.

(7) Copy of Permit. A Copy of a permit under this Subsection shall be given to the Fire Chief and Town Constable at least two (2) days before the date of authorized use.

(8) Minor Prohibited. A permit under this Subsection may not be issued to a minor.

**(d) 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 Fire Chief.

(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 five hundred (500) feet of a dwelling.

(5) Restrictions on Storage. No person may store fireworks within five hundred (500) feet of a public assemblage or place where gasoline or volatile liquid is sold in quantities exceeding one (1) gallon.

**(e) Parental Liability.** A 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 the fireworks.

State Law Reference: Sec. 101(1)(j), Wis. Stats.

## CHAPTER 6

### Street Use Permits

7-6-1 Street Use Permits

#### **SEC. 7-6-1 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.
  - (4) The date and duration of time for which the requested use of the street is proposed to occur.
  - (5) An accurate description of that portion of the street is proposed to be used.
  - (6) The approximate number of person for whom use of the proposed street area is requested.
  - (7) 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) **Mandatory Denial of Street Use Permit.** An application for a Street Use Permit shall 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 six (6) 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 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).
- (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 Marion, hereby consent to the \_\_\_\_\_ recreational or business use of this street between the hours of \_\_\_\_\_ and \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and do hereby consent to the Town of Marion 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 Marion, 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 Marion. 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 Marion. 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.

**CHAPTER 7**  
**Miscellaneous Business Licenses**

7-7-1            Transient and Temporary Public Entertainments

**SEC. 7-7-1    TRANSIENT AND TEMPORARY PUBLIC ENTERTAINMENTS.**

(a) **License Required.**

- (1) No person shall maintain or operate any transient or temporary public entertainment within the Town without first obtaining a license therefor as hereinafter provided.
- (2) This Section does not require a license for the conducting of fairs, lectures, concerts, exhibitions or entertainments of a scientific, historical, political, literary or musical character for humane, religious, charitable or scientific purposes.

(b) **Definition.** A transient or temporary public entertainment is one to which the public may gain admission by payment of an admission charge. It includes shows, circuses, exhibitions, carnivals and vaudeville.

(c) **Application.** Application for carnival licenses shall be made by the applicant to the Town Clerk in writing at least ten (10) days before the planned event and all of the information regarding insurance, etc., shall be filed within ten (10) days and referred to the Town board for examination of the qualifications, character and reputation of the applicant, and of the desirability of permitting the carnival to operate, show or exhibit in the Town.

(d) **Requirements.**

- (1) Insurance Required. No license shall be granted unless the applicant therefor shall have filed with the Town Clerk a public liability insurance policy in a sum as set by the Town Board from time to time, with the condition that the applicant shall indemnify and save harmless the Town and its officers and agents and citizens against any injuries and damages resulting or arising from the conducting of any carnival for which the license is issued or from the performance by the applicant or his agents of any negligence incident to or connected with the conduct of such carnival.
- (2) License Fees Required. No permit shall be issued unless the applicant shall pay a permit fee for the operation or maintenance of the public entertainment as follows:
  - Carnivals: Fifty Dollars (\$50.00)
  - Circuses: Fifty Dollars (\$50.00)
  - Public Entertainment: Ten Dollars (\$10.00) per day, Twenty-five Dollars (\$25.00) per week.

All public entertainments listed in Subsection (b) shall be exempt from any license fee if sponsored by a nonprofit organization.

- (3) Posting of License. Such permits when issued shall be prominently displayed while the carnival is in operation.
  - (4) Food Handlers to Obtain Health Certificate. Any person employed in such carnival for the purpose of preparing, handling or selling food or drink shall submit to a physical examination and obtain a health certificate as required by State Statute.
  - (5) Inspection of Mechanical Devices. The applicant shall indicate the date of the last State inspection of rides, merry-go-rounds and other mechanical devices. The Town reserves the right to require inspections of all mechanical devices that would be available to the public. All inspection costs shall be paid by the licensee.
- (e) **Revocation.** Any license granted by the Town Board under the provisions of this Section may be revoked by the Town Chairperson or Town Law enforcement officer, provided such carnival shall not be maintained or if the person who maintains, owns, controls or operates such carnival shall permit the violation of any provisions of this Code of Ordinances or State laws or where, in the opinion of the Town Chairperson, the carnival is deemed undesirable. Revocations or suspensions may be appealed to the Town Board.

## CHAPTER 8

### Licenses to Pay Local Claims; Appellate Procedures

7-8-1 Licenses Required to Pay Local Taxes, Assessments and Claims; Appellate Procedures

7-8-2 Duty of Clerk with Regard to Licenses

#### **SEC. 7-8-1 LICENSEES REQUIRED TO PAY LOCAL TAXES, ASSESSMENTS AND CLAIMS.**

- (a) **Payments of Claims.** The town shall not issue or renew any license to transact any business within the Town of Marion:
- (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, assessment or other claims owed the Town; or
    - b. Of any forfeiture resulting from a violation of any Town Ordinance.
- (b) **Exception.** 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 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 Sec. 125.12, Wis. Stats., as amended from time to time.
  - (2) With respect to licenses other than those described in Subsection (a) herein, the Town Board or its assignee shall notify the applicant in writing of the Town's intention not to renew the license and shall provide 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. 7-8-2 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.