

TITLE 7

Licensing and Regulation

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Title 7 – Chapter 1

Licensing of Dogs; Regulation of Animals

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Sec. 7-1-1 Definitions.

- (a) **Definitions.** In this Chapter, unless the context or subject matter otherwise require, the following definitions shall be applicable; in addition, the definitions contained in Section 1-1-2 shall also be applicable:
- (1) **Owner.** Any person owning, harboring, having an interest in, having control or custody of, or keeping a dog, cat or other animal and/or the occupant of any premises on which a dog, cat or other animal 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, cat or other animal within the meaning of this Section.
 - (2) **At large.** To be off the premises of the owner and not under the control of some person either by leash or otherwise, but a dog, cat or other animal within an automobile of its owner, or in an automobile of any other person with the consent of the owner of said dog, cat or other animal shall be deemed to be upon the owner's premises. The owner of an

- animal may raise an affirmative defense that any animal not under the control of some person by leash is in fact under control by command or other reasonable means. A dog, cat or other animal is not at large if it is in the presence of its owner, is fully controlled, is trained and is in a public park or other public recreational area. [See Sec. 7-1-6(b) standards for leash control].
- (3) **Dog.** Any canine, regardless of age or sex.
 - (4) **Cat.** Any feline, regardless of age or sex.
 - (5) **Neutered.** A dog or cat having nonfunctional reproductive organs.
 - (6) **Animal.** Mammals, reptiles and birds.
 - (7) **Cruel.** Causing unnecessary and excessive pain or suffering or unjustifiable injury or death.
 - (8) **Law Enforcement Officer.** Has that meaning as appears in 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.** Any warm-blooded animal normally raised on farms in the United States and used for food or fiber.
 - (10) **Pet.** An animal kept and treated as a domesticated or household pet.
 - (11) **Residential Lot.** A parcel zoned as residential, occupied or to be occupied by a dwelling, platted or unplatted and under common ownership. For the purpose of this Chapter, any vacant parcel or parcels adjoining a dwelling and under the same ownership shall constitute one (1) lot.
 - (12) **Restrain.** Includes notifying the dog or cat's owner or an officer and requesting either the owner or officer to capture and restrain the dog or cat, or capturing and restraining the dog or cat, and killing the dog or cat if the circumstances require immediate action.
 - (13) **Untagged.** Not having a valid license tag attached to a collar kept on the dog whenever the dog is outdoors unless the dog is securely confined in a fenced area.
 - (14) **Kennel.** An establishment where dogs are bred, trained or boarded.
 - (15) **Service Animal.** Any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.
 - (16) **Stray or Abandoned Animal.** Any animal whose owner or custodian remains unidentified after a period of seven (7) days.
 - (17) **Animal Control Authority.** The persons and entities responsible for enforcement of the animal control laws of the City of Westby, or such person as is designated by the City, whether acting alone or in concert with other responsible persons and/or local governmental units.
 - (18) **Animal Control Officer.** Any individual employed, contracted with, or appointed by the City of Westby for the purpose of aiding in the enforcement of this Chapter.
 - (19) **Dog Pack.** A group of two (2) or more dogs running upon either public or private property not that of their owner, in a state in which either their control or ownership is in doubt or cannot readily be ascertained, and when such dogs are not restrained or controlled.

State Law Reference: Sections 174.05 through 174.10, Wis. Stats.

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

- (a) **Rabies Vaccination.** The owner of a dog shall have the dog vaccinated against rabies by a veterinarian within thirty (30) days after the dog reaches four (4) months of age and revaccinated within one (1) year after the initial vaccination. If the owner obtains the dog or brings the dog into the City of Westby after the dog has reached four (4) months of age, the owner shall have the dog vaccinated against rabies within thirty (30) days after the dog is brought into the City of Westby 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 two (2) 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 City of Westby stating the owner's name and address, the name, sex, spayed or unspayed, neutered or unneutered, breed and color of the dog, the date of the vaccination, the type of rabies vaccination administered and the manufacturer's serial number, the date that the immunization expires as specified for that type of vaccine by the Center for Disease Control of the U.S. Department of Health and Human Services and the City of Westby.
- (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 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 Multiple-Dog (Kennel) Licenses.

- (a) **Dog Licenses.**
 - (1) It shall be unlawful for any person in the City of Westby 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, Wis. Stats., 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:
 - a. Neutered males and spayed females: As prescribed in Section 1-3-1.
 - b. Unneutered males and unspayed females: As prescribed in Section 1-3-1.
- (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 City Clerk-Treasurer shall complete and issue to the owner a license for such dog containing all information required by state law. The City Clerk-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 issued at all times, except as provided in Section 7-1-2(e).
- (6) The fact that a dog is without a tag attached to the dog by means of a collar shall be presumptive evidence that the dog is unlicensed. Any 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.

(b) **Multiple Dog Licenses.**

- (1) Any person who keeps more than three (3) dogs shall, instead of the license tax for each dog required by this Chapter, apply for a multiple dog license for the keeping of the dogs. Such person shall pay for the license year a license tax as prescribed in Section 1-3-1 for twelve (12) or fewer dogs and an additional fee for each dog in excess of twelve (12). Upon payment of the required multiple dog license tax and, if required by the Common Council, upon presentation of evidence that all dogs over five (5) months of age are currently immunized against rabies, the City Clerk-Treasurer shall issue the multiple dog license and a number of tags equal to the number of dogs authorized to be kept. Multiple dogs may only be located in residential areas following a public hearing and approval by the Common Council; the Council may attach conditions to such approval as a conditional use under the City's Zoning Code. (See also Section 7-1-22).
- (2) The owner or keeper of multiple dogs shall keep at all times a multiple dog license tag attached to the collar of each dog over five (5) months old kept by the owner or keeper under a multiple dog 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. 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 multiple dog tag shall be permitted to stray or to be taken anywhere outside the limits of the owner's premises unless the dog is on a leash or temporarily unconfined/unleashed for the purposes of hunting, breeding, trial, training or competition.
- (3) The term "multiple dog" means any establishment wherein or whereon three (3) or more dogs are kept.
- (4) No multiple dog license shall be issued to the keeper or operator of multiple dogs who fails to provide proper food and drink and proper shelter for the dogs or who neglects or abandons said dogs. Designated officials shall investigate any complaints regarding the failure to maintain proper standards or investigate any multiple dog premises upon his/her own initiative. Expressly incorporated by reference in this Section as minimum standards for multiple dog keepers or operators are the relevant provisions of Ch. 174, Wis. Stats.
- (5) A condition of a multiple license shall be that the licensed premises may be entered and

inspected at any reasonable hour by appropriate City officials 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 Section. Should any multiple dog license be found to constitute a public nuisance, the license shall be revoked and the nuisance abated pursuant to City ordinances.

(c) **Exemption for Leader Dogs and Service Animals.**

- (1) **Service Animals.** Notwithstanding the foregoing, all service animals specifically trained to work or perform tasks for the benefit of an individual with a disability are exempt from the licensing tax and every person owning such dog shall receive annually a dog license from the City Clerk-Treasurer at no charge upon proper application thereof and proper vaccination required in Subsection (a)(4).
- (2) **Leader Dogs.** Notwithstanding the foregoing, every dog specifically trained to lead blind or deaf persons is exempt from the licensing tax and every person owning such dog shall receive annually a dog license from the City Clerk-Treasurer at no charge upon proper application therefor and proof of rabies vaccination required in Subsection (a)(4).

State Law Reference: Sec. 174.053, Wis. Stats.

Sec. 7-1-4 Late Fees.

The City Clerk-Treasurer shall assess and collect a late fee of Five Dollars (\$5.00) from every owner of a dog or cat 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 cat or if the owner failed to obtain a license on or before the dog or cat reached licensable age. Said late fee shall be charged in addition to the required license fee.

Sec. 7-1-5 Rabies Quarantine.

(a) **Area-Wide Rabies Quarantines.**

- (1) **Area Confinement Order.** If a district is quarantined for rabies, all dogs, cats or ferrets within the City of Westby shall be kept securely confined, tied, leashed or muzzled. Any dog, cat or ferret 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 City Clerk-Treasurer shall promptly post in at least three (3) public places in the City notices of quarantine.
- (2) **Exemption of Vaccinated Dog or Cat from City 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 City quarantine provisions of Subsection (a) if a rabies vaccination tag or substitute tag is attached to the dog's or cat's collar.

(b) **Quarantine or Sacrifice of an Animal Suspected of Biting a Person or Being Infected or Exposed to Rabies.**

- (1) **Quarantine or sacrifice.** A law enforcement or animal control officer shall order a dog, cat or ferret 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, cat or ferret cannot be captured or such animal exhibits actual signs of rabies, the officer may kill the animal. The officer shall attempt to kill the animal in a humane manner and in a manner which avoids damage to the animal's head. No

person shall interfere with City of Westby authorities or agents in carrying out their duties in this regard. All expenses thus incurred shall be paid by the owner or the person having custody of such dog, cat or ferret.

(2) ***Sacrifice of other animals.***

- a. An officer may order killed or may kill an animal other than a dog, cat or ferret if the officer has reason to believe that the animal bit a person or is infected with rabies.
- b. Any domesticated wild animal that has bitten any person, inclusive of, but not limited to, wolf-dog hybrids, skunks and raccoons, shall be immediately destroyed by a licensed veterinarian and the proper specimen from the animal tested for rabies by the State Laboratory of Hygiene. All expenses connected therewith shall be charged to the owner or custodian of the animal.

(c) **Quarantine Procedures.**

(1) ***Vaccinated Animal Bite Incidents.*** Any dog, cat or ferret which has bitten any person and which shows evidence of a current rabies inoculation shall be quarantined at such place as designated by law enforcement or health authorities for a minimum period of ten (10) days. The dog, cat or ferret shall be examined by a licensed veterinarian within twenty-four (24) hours of a quarantine notice and again on the tenth (10th) day after the bite. If, in the opinion of law enforcement or health authorities, the vaccinated animal cannot be confined securely at the residence of its owner or custodian, or exhibits signs of illness as determined by a licensed veterinarian, the dog, cat or ferret shall be quarantined at a veterinary hospital under the supervision of a licensed veterinarian.

(2) ***Unvaccinated Animal Bite Incidents.*** Any dog, cat or ferret which has bitten any person and which does not display evidence of rabies inoculation shall be quarantined within twenty-four (24) hours of the quarantine order at a veterinary hospital under the supervision of a licensed veterinarian for a minimum of ten (10) days. "Supervision of a licensed veterinarian" includes, at a minimum, examination of the animal on the first day of isolation and on the last day of isolation. If the veterinarian certifies that the dog, cat or ferret has not exhibited any signs of rabies, the animal may be released from quarantine at the end of the observation period. After such period of time, such veterinarian shall report his/her determination or findings thereof in writing.

(3) ***Risk to Animal Health Due to Suspected Exposure to a Rabid Animal.***

- a. If a dog, cat or ferret is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal and if the dog, cat or ferret is not currently immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for one hundred eighty (180) days. The owner shall have the animal vaccinated against rabies between one hundred fifty-five (155) and one hundred sixty-five (165) days after the exposure to a rabid animal.
- b. If a dog, cat or ferret 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, cat or ferret 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.
- c. No person shall keep or harbor any dog or other domesticated animal, whether licensed or not, which is known to be, or when there is good reason to believe the same to be, mad, rabid, vicious or dangerous to the public.

- (4) ***Destruction of an Animal Exhibiting Symptoms of Rabies.*** If a veterinarian determines that a dog, cat, ferret or other animal exhibits symptoms of rabies during the original or extended observation period, the veterinarian shall notify the owner and the officer who ordered the animal quarantined and the officer or veterinarian shall kill the animal in a humane manner and in a manner which avoids damage to the animal's head. If the dog, cat, ferret or other animal is suspected to have bitten a person, the veterinarian shall notify the person or the person's physician.
- (d) **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 State Laboratory of Hygiene shall examine the specimen and determine if the animal was infected with rabies. The State Laboratory of Hygiene shall notify the City of Westby, 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.
- (e) **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 City of Westby, the Laboratory of Hygiene, the applicable health department, the officer involved and, if the animal is suspected to have bitten a person, the person's physician.
- (f) **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.
- (g) **State Laws Adopted by Reference.** The provisions of Secs. 95.21 and 174.02(3), Wis. Stats., insofar as the same are applicable, are incorporated by reference and made a part of this Section with the same force and effect as those set forth verbatim herein. Any amendments to those sections shall be adopted by reference as if they were fully set forth herein.

State Law Reference: Secs. 95.21 and 174.02(3), Wis. Stats.

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 City of Westby to own, harbor or keep any dog or cat which:
- (1) Habitually pursues any vehicle upon any public street, alley or highway in the City.
 - (2) Assaults or attacks any person or destroys property.
 - (3) Is at large within the limits of the City of Westby.
 - (4) Habitually barks or howls to the annoyance of any person or persons. (See Section 7-1-15.)
 - (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.

- (8) Is tied or leashed in a manner that prohibits or impairs the reading of utility meters.
- (9) Is permitted by its owner to run in dog packs.
- (b) **Unleashed Dogs or Other Animals Running at Large.**
 - (1) No owner, keeper, harborer or caretaker of any dog or other animal shall permit the same to be unleashed or unrestrained at any time said dog or other animal is not on the owner's, keeper's, harborer's, or caretaker's property or premises and which is upon any public street, alley, right-of-way or any school ground, public park, cemetery or other public or private property without the permission of the owner or occupier of the property.
 - (2) A dog or other animal which is leashed or otherwise restrained by any device that is less than ten (10) feet in length, which is of sufficient strength to restrain and control said dog or other animal, and is held by a person competent to govern and control said animal, who has obtained the age of ten (10) years or more, and is able to prevent said dog or animal from annoying or worrying pedestrians or from trespassing on private or public property. Furthermore, a dog or other animal is not unleashed or uncontrolled and at large if it is properly restrained within a motor vehicle.
 - (3) A service animal (as defined in Section 7-1-1) shall not be considered running at large whether or not the animal is on a leash if the animal is in the immediate company of the owner or immediately responds and obeys (e.g. a dog playing a game of "fetch" in a field or walking alongside its owner, a member of the owners immediate family or the assisting individual of the service animals' owner).
 - (3) Any person or entity who violates this Subsection (b) shall be subject to a forfeiture of not less than Twenty-five Dollars (\$25.00) and not more than One Hundred Dollars (\$100.00), together with any impoundment under Section 7-1-8.
- (c) **Owner's Liability for Damage Caused by Dogs or Other Animals; Penalties.** The provisions of Sec. 174.02, Wis. Stats., relating to the owner's liability for damage caused by dogs and other animals together with the penalties therein set forth are hereby adopted and incorporated herein by reference.
- (d) **Animals Restricted on Public Grounds and Cemeteries.** No dog or cat shall be permitted in any public playground, school grounds, public park, or swimming area within the City of Westby. Dogs and cats are prohibited from being in cemeteries. All service animals shall be exempt from this Section.

Sec. 7-1-7 Vicious and Potentially Dangerous Dogs and Animals; Potentially Dangerous Dog Supplemental License.

- (a) **Definitions.** The following definitions shall be applicable in this Section:
 - (1) **Vicious Dog or Other Animal.** Any dog or other animal that:
 - a. Bites or inflicts serious injury on a human being or a domestic animal without provocation on public or private property. (If the dog or other animal inflicts serious injury in a manner other than biting, said dog or other animal shall also be deemed and presumed to be vicious under this Section);
 - b. On two (2) separate occasions within the immediate prior thirty-six (36) month period, has killed, seriously bitten, or otherwise caused serious injury to a domestic animal off the property of the owner or keeper of the dog;
 - c. Has been previously found to be potentially dangerous, the owner having received notice of such, and the dog again aggressively bites, attacks or endangers the safety of humans or domestic animals;

- d. Is owned or harbored primarily, or in part, for the purpose of dog fighting or any dog trained for dog fighting;
 - e. Is a "potentially dangerous dog", as defined in this Section, that has been permitted or allowed to run free and unrestrained off the property of its owner; or Licensing of Dogs; Regulation of Animals
 - f. Has, since the effective date of this Section, demonstrated a propensity, tendency, or disposition to attack unprovoked, to cause injury, or otherwise to threaten the safety of humans or domestic animals.
- (2) **Potentially Dangerous Dog or Other Animal.**
- a. Any dog or other animal which, when unprovoked, on two (2) separate occasions within the immediate prior thirty-six (36) month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner or keeper of the dog. Such behavior would include situations when the dog or other animal, when unprovoked, chases or approaches a person in a menacing fashion or apparent attitude of attack on public or private property.
 - b. Any dog or other animal which, when unprovoked, bites a person, causing a less severe injury than is defined in Subsection (a)(1) above.
- (3) **Serious Injury.** Shall be defined as any abrasions, bruising, cuts, broken bones, lacerations, internal injuries, torn or pulled ligaments or muscles, head injuries, or any other such similar condition.
- (4) **Proper Enclosure of a Dangerous Dog.** While on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.
- (b) **Vicious Dogs Prohibited.** No person shall harbor, keep or maintain within the City of Westby any vicious dog or other animal. Any dog or other animal alleged to be vicious by virtue of an attack upon a human being or domestic animal shall be impounded as directed by the authorities until disposition of the charge issued by citation. Moreover, the owner of any dog or other animal found to be vicious in the trial of the charge of harboring a vicious dog or other animal, or by plea to such a charge, shall be prohibited from returning that dog or other animal to the City of Westby.
- (c) **Penalty for Keeping Vicious Dogs or Animals in Violation of Subsection (b).**
- (1) **Forfeiture.** Any person convicted of violating Subsection (b) above shall pay a forfeiture of Five Hundred Dollars (\$500.00) together with all costs and assessments. Each day that a person owns, harbors, keeps, maintains or cares for any vicious dog or other animal in violation of this Section may be deemed a separate and distinct violation, subject to separate citations and convictions. Furthermore, any violation of Subsection (b) above shall result in a further penalty of having the subject animal or dog impounded by any law enforcement or animal control officer of the City of Westby, or any law enforcement or animal control officer of any jurisdiction authorized by the City of Westby to enforce or effectuate the City of Westby's ordinances.
 - (2) **Impoundment.** In the event that any vicious dog or animal has been impounded, said dog's or animal's owner shall be required to make arrangements to have said animal removed from the corporate limits of the City of Westby within seven (7) days of impoundment. In the event any impounded animal has not had arrangements made to remove said animal from the corporate limits of the City of Westby within said seven (7)

day period, any law enforcement officer or animal control officer for the City of Westby shall be authorized to destroy said animal.

(d) **Restrictions and Rules Regarding Potentially Dangerous Dogs or Animals.**

- (1) **Hearing.** If a law enforcement or animal control officer for the City of Westby (or any other law enforcement agency having jurisdiction and authority to enforce this Section), has investigated and determined that there exists probable cause to believe that a dog or other animal which is owned, harbored, kept or cared for within the City of Westby corporate limits is potentially dangerous as that term is defined herein, a law enforcement officer or animal control officer for the City of Westby or his/her designee, shall petition the Common Council for the City of Westby, for a hearing for the purpose of determining whether or not the dog or other animal in question, should be declared potentially dangerous. Whenever possible, any complaint received from a member of the public which serves as part of the evidentiary basis for the animal control officer or law enforcement officer to find probable cause, shall be sworn to and verified by the complainant and shall be attached to the aforementioned petition. Notice of the hearing before the Common Council shall be given to the owner, caretaker or keeper of the dog or animal in question no less than seven (7) days prior to said hearing, with said notice, together with a copy of the petition, and all sworn complaints to be either served personally, or by first class mail with return receipt requested. All hearings under this Section shall be open to the public.
- (2) **Hearing Body.** The hearing body, which shall be the Common Council for the City of Westby, may admit all relevant documents and testimony into evidence including incident reports and affidavits of witnesses, photographs, and personal testimony. The Common Council, or designated alternative body, shall be the exclusive trier of the issue of whether a dog or other animal is determined to be potentially dangerous. For the Common Council of the City of Westby to determine that a dog or other animal is potentially dangerous, there must be a preponderance of the evidence to establish the same.
- (3) **Appeals.** Any owner, harbinger, keeper, caretaker, or other interested party who is aggrieved by any decision of the Common Council, or designated alternative body, under this Section shall have the right to appeal the same by filing an action for certiorari with the Circuit Court no more than thirty (30) days from the date that said aggrieved person had received written notice of the Common Council's decision on whether a dog or other animal is potentially dangerous under this Section.
- (4) **Notice of Determination; Compliance.** After the hearing conducted pursuant to Subsection (d)(1)-(2) above, the owner, keeper, harbinger or caretaker of the dog or other animal shall be notified in writing of the determination and orders issued, either personally or by first class mail return receipt requested. If a determination is made that a dog or other animal is potentially dangerous as herein provided, the owner, keeper, harbinger or caretaker shall comply with Subsections (d)(6)-(8) and in accordance with the time schedule established by the chief law enforcement officer or animal control officer of the City of Westby, or designee, but in no case more than thirty (30) days after the date of the determination, or thirty-five (35) days if the notice of the determination is mailed to the owner, keeper, harbinger or caretaker of the dog or other animal.
- (5) **Affirmative Defenses; Exceptions.**
 - a. No dog or other animal may be declared potentially dangerous if any injury or damage is sustained by a person who, at the time the injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner, keeper, harbinger or caretaker of the dog or other animal, or was

teasing, tormenting, abusing, or assaulting the dog or other animal, or was committing or attempting to commit a crime.

- b. No dog or other animal may be declared potentially dangerous if the dog or other animal was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.
 - c. No dog or other animal may be declared potentially dangerous if an injury or damage was sustained by a domestic animal which, at the time of the injury, or damage was sustained, was teasing, tormenting, abusing or assaulting the dog or other animal.
 - d. No dog or other animal may be declared potentially dangerous if the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, keeper, harbinger or caretaker, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.
 - e. No dog or other animal may be declared potentially dangerous if the injury or damage to another domestic animal was sustained while on the property or premises of the owner, harbinger, keeper or caretaker of the dog or other animal, and the injured domestic dog or animal was upon the property not owned or maintained by the owner of the injured or damaged domestic animal.
- (6) ***Licensing and Vaccination Requirements; Potentially Dangerous Dog Supplemental License.*** All potentially dangerous dogs or other animals shall be properly licensed and vaccinated. The licensing authority for the City of Westby shall include the potentially dangerous designation in the registration records of the dog, either after the owner or keeper of the dog has agreed to the designation or the Common Council, after hearing, has determined the designation applies to the dog. The City of Westby may charge a potentially dangerous dog fee in addition to the regular licensing fee as to provide for the increased cost of maintaining the records of the dog.
- (7) ***Fencing and Restraint Requirements.*** A potentially dangerous dog or other animal, while on the owner's property, shall, at all times, be kept indoors or in a securely fenced yard from which the dog cannot escape and into which children cannot trespass. A potentially dangerous dog or other animal may be off the owner's premises only if it is restrained by a substantial leash, of appropriate length, and muzzled, and if it is under the control and supervision of a responsible adult while being restrained by said leash and muzzle.
- (8) ***Notice Upon Death or Relocation of Animal.*** If a potentially dangerous dog or other animal dies, or is sold, transferred or permanently removed from the City of Westby where the owner, harbinger, keeper or caretaker so resides, said person who owns, keeps, harbors, or caretakes a potentially dangerous dog or other animal shall notify the City of Westby or the animal control officer of the change in condition or new location of the potentially dangerous dog or other animal in writing within forty-eight (48) hours of said dog or other animal's removal.
- (e) **Penalty for Violations of Subsection (d)(1).**
- (1) ***Forfeiture.*** Any person or entity convicted of violating Subsection (d) shall pay a forfeiture of Two Hundred Fifty Dollars (\$250.00), together with all costs and assessments. Each day that a person owns, harbors, keeps, maintains or cares for any potentially dangerous dog or other animal in violation of Subsection (d) may be deemed separate and distinct violations, subject to separate citations and convictions.
 - (2) ***Impoundment.*** Furthermore, any violation of Subsection (d) shall result in a further penalty of having the subject animal or dog impounded by any law enforcement or

animal control officer of the City of Westby, or any law enforcement or animal control officer of any jurisdiction authorized by the City of Westby to enforce or effectuate the City of Westby's ordinances, may impound any dog or other animal which is subject to this Section. In the event that any restricted or prohibited animal or other vicious or potentially vicious animal or dog has been impounded, said dog's or animal's lawful owner shall be required to make arrangements to have said animal removed from the corporate City of Westby limits within seven (7) days of impoundment. In the event any impounded animal has not had arrangements made to lawfully remove said animal from the corporate City limits within said seven (7) day period, any law enforcement officer or animal control officer for the City of Westby shall be authorized to destroy said animal.

Sec. 7-1-8 Impoundment of Animals.

(a) Animal Control Agency.

- (1) The City of Westby 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 impounded animals and for assisting in the administration of rabies vaccination programs.
- (2) The City of Westby does hereby delegate to 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, a law enforcement or animal control officer may impound any dog, cat or other animal which habitually pursues any vehicle upon any street, alley or highway of this City, assaults or attacks any person, is at large within the City, habitually barks, cries or howls, kills, wounds or worries any domestic animal or is infected with rabies. In order for an animal to be impounded, the impounding officer must see or hear the violation of this Section or have in his/her possession a signed statement of a complaining witness made under oath alleging the facts regarding the violation and containing an agreement to reimburse the City of Westby for any damages it sustains for improper or illegal seizure.

(c) Claiming Animal; Disposal of Unclaimed Animals.

- (1) **Seizure.** A law enforcement officer or any animal control officer appointed by the Common Council may attempt to capture and restrain dogs or other animals running at large or otherwise in violation of this Chapter, and shall confine and capture or restrain animals in a suitable dog pound or other enclosure. After seizure of animals under this Section by a law enforcement or animal control officer, the animal shall be impounded.
- (2) **Retention and Disposition of Unclaimed Animals.** All dogs or other animals apprehended may be kept for no more than three (3) days at the animal pound or other enclosure and if such animal is not claimed by the rightful owner, representative or keeper within such time, said animal shall be transmitted to the County Humane Society to be handled in accordance with the Wisconsin Statutes and the policies of that facility.
- (3) **Notification.** A person who captures or restrains a dog or other animal shall notify or deliver the dog or other animal to the humane society or to any officer within twelve (12) hours of capture or restraint. Any law enforcement or other City official to whom a dog or other animal is delivered shall attempt to notify the owner as soon as possible if the owner is known or can be ascertained with reasonable effort.
- (4) **Claiming Animals.** The owner or representative, or keeper of any dog or other animal so confined may reclaim such animal from the Police Department at any time before transmittal to the humane society, if:
 - a. The owner, representative or keeper gives his/her name and address.

- b. The owner, representative or keeper presents evidence that the dog is licensed and presents evidence that the dog is vaccinated against rabies, or a receipt from a licensed veterinarian for repayment of a rabies inoculation.
 - c. The owner, representative or keeper pays the cost of apprehending, boarding fees, necessary medical treatment and impounding fees, if any.
- (5) **Payment of Costs.** Payment of costs and charges shall be made to the City of Westby and may be paid directly through the Westby Police Department. Upon identification of the owner of a dog or other animal so apprehended or confined, all City costs and charges shall be billed to said owner.
- (d) **Sale of Impounded Animals.** If the owner doesn't reclaim the animal within seven (7) days, the animal control officer may sell the animal to any willing buyer.
- (e) **City Not Liable for Impounding Animals.** The City of Westby and/or its animal control agency shall not be liable for the death of any animal which has been impounded or disposed of pursuant to this Section.

Sec. 7-1-9 Duty of Owner in Case of Animal Bite.

Every owner or person harboring or keeping a dog, cat, ferret or other domesticated animal who knows that such dog, cat, ferret or other domesticated animal has bitten any person shall immediately report such fact to City law enforcement officers, or other enforcement authority, and shall keep such dog, cat, ferret or other domesticated animal confined for not less than ten (10) days or for such period of time as directed. The owner or keeper of any such dog, cat, ferret or other domesticated animal shall surrender the dog, cat, ferret or other domesticated animal to a law enforcement or humane officer upon demand for examination.

Sec. 7-1-10 Pit Bulls and Other Regulated Dogs and Animals.

- (a) **Keeping of Certain Animals Prohibited.** Except as provided herein, it shall be unlawful to keep, harbor, own or in any way possess within the corporate limits of the City of Westby:
- (1) **Exotic Animals.** Any warm-blooded, carnivorous or omnivorous, wild or exotic animal including but not limited to non-human primates, raccoons, skunks, foxes and wild and exotic cats are prohibited unless kept in accordance with Section 7-1-12.
 - (2) **Poisonous Animals.** Any animal having poisonous bites.
 - (3) **Regulated Dogs.** Any regulated dog provided that regulated dogs complying with the provisions of this Section may be kept within the City of Westby subject to the standards and requirements set forth in Subsection (b) of this Section. There shall be a presumption that any dog which substantially conforms or exhibits the distinguishing characteristics or substantially conforms to the standards describing the physical characteristics as recognized by the American Kennel Club, the United Kennel Club, or Continental Kennel Club for a particular breed which is regulated by this Section, shall be deemed a dog of the breed so regulated. "Regulated dog" as that term is Listed in this Section is defined to mean:
 - a. The Staffordshire bull terrier breed of dog;
 - b. The American pit bull terrier breed of dog;
 - c. The American Staffordshire terrier breed of dog;
 - d. The Perro de Presa Canario breed of dog, otherwise known as Presa Canario, also known as Canary Dog or Presa dog.
 - e. The Rottweiler breed of dog.
 - f. The Mastiff breed of dog.

- g. The Tosa Inu breed of dog.
- h. Any dog which has the appearance and characteristic of being predominantly of any of the above-listed breed or breeds of dogs.

(b) **Keeping of Regulated Dogs.** The provisions of Subsection (a) are not applicable to parties who own, keep or harbor regulated dogs within the City of Westby, provided there is full compliance with the following conditions:

- (1) **Leash and Muzzle.** No person shall permit a regulated dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than four (4) feet in length. No person shall permit a regulated dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, etc. In addition, all regulated dogs on a leash outside the animal's kennel or pen must be muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals.
- (2) **Confinement.** All regulated dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel except when leashed and muzzled as provided in Subsection (b)(1). All pens or kennels shall comply with all zoning, building and health regulations of the City and shall be kept in a clean and sanitary condition.
- (3) **Confinement Indoors.** No regulated dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition.
- (4) **Insurance.**
 - a. All owners, keepers or harborers of regulated dogs must within thirty (30) days of the effective date of this Section provide proof to the City Clerk-Treasurer of public liability insurance in the amounts of:
 - 1. Five Hundred Thousand Dollars (\$500,000.00) for bodily injury or death to any one person with the limit, however, of One Million Dollars (\$1,000,000) for bodily injury or death resulting from anyone incident/accident; and
 - 2. One Million Dollars (\$1,000,000.00) for property damage resulting from any one incident/accident.
 - b. The City of Westby shall be named as an additional insured under such insurance and a copy of the current in-force policy shall be deposited with the City Clerk-Treasurer. Such insurance policy shall provide that no cancellation of the policy will be made unless ten (10) days' written notice is first given to the City Clerk Treasurer.
- (5) **Registration.** All owners, keepers or harborers of regulated dogs shall within thirty (30) days after the effective date of this Section register said dog with the City of Westby by filing with the City Clerk-Treasurer two (2) color photographs of the dog clearly showing the color and approximate size of the dog. There shall be a registration fee as prescribed in Section 1-3-1.
- (6) **Reporting Requirements.** All owners, keepers or harborers of registered regulated dogs must within ten (10) days of the incident, report the following information in writing to the City Clerk-Treasurer:
 - a. The removal from the City of Westby or death of a registered regulated dog;
 - b. The birth of offspring of a registered regulated dog;
 - c. The new address of a registered regulated dog should the dog be moved within the City of Westby;
 - d. If the registered regulated dog is sold, the name and address of the new owner.
- (7) **Animals Born of Registered Dogs.** All offspring born of registered regulated dogs registered within the City of Westby shall be removed from the City within six (6) weeks

- after the birth of said animal.
- (8) **Failure to Comply.** It shall be unlawful for the owner, keeper or harbinger of a registered regulated dog registered with the City of Westby to fail to comply with the requirements and conditions set forth in this Section.

Sec. 7-1-11 Wolf/Dog Hybrid Regulation and Confinement.

- (a) **Definitions.** A "wolf/dog hybrid" is defined as any cross-breed resulting from the mating of a domesticated dog and a wolf, coyote jackal or dingo or resulting from the mating of any wolf/dog hybrid and another wolf/dog hybrid or a domesticated dog. As used herein:
- (1) **Canine Animal.** Includes all members of the family *canidae* except foxes.
 - (2) **Domesticated Dog.** *Canis familiaris*.
 - (3) **Wolf.** Includes both *canis lupus* and *canis niger*.
 - (4) **Coyote.** *Canis latrans*.
 - (5) **Jackal.** *Canis Aurens*.
 - (6) **Dingo.** *Canis dingo*.
- (b) **Prohibition on Unregistered Animals.** No person shall harbor, keep or maintain within the City of Westby any wolf/dog hybrid which has not been registered pursuant to Subsection (k) below on or before January 30, 2011. This prohibition shall not apply to animals being transported through the limits of the City of Westby within a one (1) hour period of time. A pup born to a female wolf/dog hybrid so registered shall be removed from the City of Westby before it has reached the age of five (5) months. Wolf/dog hybrids permitted in the City of Westby shall be confined as set forth in this Section.
- (c) **Removal; Impoundment.** Whenever any person is charged with harboring, keeping or maintaining a wolf/dog hybrid in the City of Westby which has not been registered on or before January 30, 2011, that person shall, to the satisfaction of the Court, remove said animal from the City of Westby until a trial on the citation. If said animal has not been so removed within forty-eight (48) hours of the service of the citation, the said animal may be impounded as directed by City authorities until the trial on the citation. In that case, the owner of any such animal shall pay all expenses incurred due to such impoundment, including but not limited to the cost of shelter, food, handling and veterinary care. If it is determined by plea or trial that said animal is a wolf/dog hybrid not registered pursuant to Subsection (k) on or before January 30, 2011, it shall be removed from and not returned to the City of Westby.
- (d) **Confinement Requirements.** The owner of any wolf/dog hybrid permitted to be kept in the City of Westby, and the owner of any property on which such wolf/dog hybrid is kept, shall see that the animal is at all times confined according to the minimum requirements of this Section. A wolf/dog hybrid may be kept only in enclosures that meet the following minimum requirements:
- (1) The first enclosure shall be constructed of not less than nine- (9-) gauge galvanized chain link fencing, with mesh openings not greater than two (2) inches, which shall be securely anchored by stainless steel or copper rings, placed at intervals not greater than six (6) inches apart, to a poured concrete base as described herein. Such enclosure shall be not less than five hundred (500) square feet in area, plus two hundred fifty (250) square feet for each additional canine animal kept therein. Such enclosure shall be the location in which any wolf/dog hybrid is primarily kept.
 - (2) The first enclosure shall extend to a height of not less than eight (8) feet, and shall be surrounded from ground level to a height of not less than four (4) feet by one-quarter (1/4) inch galvanized mesh screening.
 - (3) The first enclosure shall have a full top, which shall also be constructed of not less than

- nine- (9-) gauge chain link fencing with mesh openings not greater than two (2) inches, and which shall be securely anchored to the sides of the enclosure. The entire base of the first enclosure shall be a poured concrete slab floor at least four (4) inches thick.
- (4) The second enclosure shall consist of a securely anchored fence at least six (6) feet in height, which shall entirely surround the first enclosure, and no part of which shall be nearer than six (6) feet in height, which shall entirely surround the first enclosure, and no part of which shall be nearer than six (6) feet from any part of the first enclosure. Said fence shall be a "vision barrier" fence, no more than five percent (5%) open for through vision: except, however, that the portion of said fence facing the dwelling of the owner of said animals or of the property on which they are kept shall be constructed of not less than nine- (9-) gauge chain link fencing, to provide for observation of said animals. If any portion of said fence is made of wood, the finished or painted side thereof shall face outward from the first enclosure.
 - (5) Both enclosures shall be kept locked with case hardened locks at all times when an animal is unattended by an adult. The first (innermost) enclosure shall have double entrance gates or doors situated and constructed in such a fashion as to prevent an animal from escaping past an open gate or door. The gates or doors providing access to the first (innermost) enclosure shall be spring-loaded, so as to shut on their own accord behind anyone entering that enclosure.
 - (6) Within the first enclosure, shelter shall be provided adequate to protect the animals confined against weather extremes. The first enclosure shall be regularly cleaned to remove excreta and other waste materials, dirt and trash, in a manner adequate to minimize health hazards and avoid offensive odors.
 - (7) The above described enclosures shall be located in the rear yard of any property on which a wolf/dog hybrid is kept, as defined in the City Zoning Code.
- (e) **Transportation and Muzzling of Animals.** A wolf/dog hybrid may be transported only if confined in a secure, locked container, covered with one-fourth (1/4) inch galvanized fine mesh screen. This paragraph shall not prohibit the walking of such animals, provided they are muzzled and restrained by a leather lead, at least one (1) inch in diameter and not exceeding three (3) feet in length, attached to a metal choker-type collar, under the control of an adult. The muzzle must be made in a manner that will not cause injury to the wolf/dog hybrid or unduly interfere with its vision or respiration, but will prevent it from biting any person or animal.
 - (f) **Right of Inspection.** To insure compliance with this Section, any person possessing any registration papers, certificate, advertisement or other written evidence relating to the bloodlines or ownership of a canine animal found within the City of Westby shall produce the same for inspection on demand of any law enforcement, conservation or public health officer or court.
 - (g) **Limitation on Numbers.** No person shall own, harbor or keep in his/her possession on any one parcel of property more than two (2) wolf/dog hybrids over five (5) months of age at any one time, nor shall any person retain a litter or portion of a litter of wolf/dog hybrids longer than five (5) months.
 - (h) **Veterinary Exception.** The foregoing provisions of this Section shall not apply to doctors of veterinary medicine in temporary possession of wolf/dog hybrids in the ordinary course of their practice.
 - (i) **Abandonment or Negligent Release.** No person shall willfully or negligently release or abandon a wolf/dog hybrid as defined herein within the City of Westby.
- Nonconforming Enclosures.** As to any person keeping wolf/dog hybrids in existing enclosures in the City of Westby on the date of original passage of this Section, Subsection (d) shall take effect on January 30, 201. For all other persons, said Subsection shall take effect and be in force from and after passage and publication as provided by law. The remaining provisions of this

Section shall take effect and be in force from and after passage and publication as provided by law.

- (k) **Wolf/Dog Hybrid Registration; Insurance Requirement.** All owners of any wolf/dog hybrid in the City of Westby shall, on or before January 30, 2011, and annually thereafter on or before January 30th of each year, register such animal and provide a current color photograph of such animal with the City Clerk-Treasurer's office and pay a registration fee as prescribed in Section 1-3-1. At the time of registration, each owner of any wolf/dog hybrid kept within the City limits shall provide to the City Clerk-Treasurer proof of liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) for any acts of property damage, personal injury or other liability incurred by virtue of any injury or damage inflicted by such wolf/dog hybrid. Such insurance shall name the City of Westby as co-insured solely for the purpose of notice of cancellation of such insurance policy.
- (l) **Warning Sign.** The owner or keeper of a wolf/dog hybrid shall display on the premises on which such animal is kept signs warning that there is a wolf/dog hybrid on the property as provided herein. Such signs shall be visible and capable of being read within at least twenty (20) feet of their placement, but shall not be more than two (2) square feet in area, and shall state in bold, capital letters, on a white background, the following: "WARNING - WOLF/DOG HYBRIDS PRESENT". One such sign shall be placed in the front yard of any property on which any wolf/dog hybrid is kept, and additional such signs shall be placed on all gates or doors providing access through the second (outermost) enclosure required above.

Sec. 7-1-12 Keeping Of Exotic Animals; Protected Animals, Fowl, Reptiles and Insects.

- (a) **Intent.**
 - (1) **Purpose.** It is the purpose and intent of the City of Westby in adopting this Section to protect the public safety, health and general welfare from the safety and health risks that the unregulated keeping or harboring of exotic animals can pose to the community and to protect the health and welfare of permitted exotic animals held in private possession. By their very nature, exotic animals are wild and potentially dangerous, and, typically, do not adjust well to a captive environment. This Section shall be liberally construed in favor of the City's right and authority to protect the public health, safety and welfare.
 - (2) **Prohibition.** It shall be unlawful for any person to own, possess, maintain, harbor, bring into the City of Westby, have in one's possession, act as a custodian for, or have custody or control on an exotic animal, except in compliance with this Section.
- (b) **Definitions.** The following definitions and terms shall be applicable in this Section. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and not permissive; the word "may" is non-mandatory and discretionary:
 - (1) **Animal.** For purposes of this Section, shall mean exotic animals.
 - (2) **Animal Control Officer.** Law enforcement officers, the City Building Inspector, animal control officers, humane society employees, or any other person designated by the City of Westby to enforce or assist in the enforcement of this Section.
 - (3) **Animal Shelter.** Any premises designated or used by the City for the purpose of impounding and caring for animals found in violation of this Section, or of any other City ordinance regulating the keeping of and care of animals. Included within this definition are animal shelters whose services are secured by the City through contract or intergovernmental agreement.
 - (4) **At Large.** An animal is at large when:

- a. It is off the property of the owner and not properly confined or restrained in a manner such that the risk of uncontrolled or accidental contact by the animal with humans or domesticated animals has been minimized; or
 - b. It is on the property of the owner, but is improperly restrained or confined so as to pose a risk of leaving the property and having uncontrolled or accidental contact with humans or domesticated animals off of the owner's property; or
 - c. It is so improperly, inadequately or negligently restrained or confined on the owner's property so to pose a risk of potentially dangerous contact with humans or domesticated animals which come on to the owner's property.
- (5) **Enclosure or Enclosure Area.** The indoor and/or outdoor area in which an animal is kept confined or restrained, including any structure(s) in which it is kept, confined or restrained.
- (6) **Exotic Animal (including USDA Dangerous Animals).** Any animal, fowl, insect, or reptile that is not normally domesticated in Wisconsin or is inherently wild by nature. Exotic animals include, but are not limited to, any or all of the following orders, families and/or species, whether bred in the wild or in captivity, and also hybrids with domestic species. The animals, fowl, insects, and reptiles listed in parentheses are intended to act as examples and are not to be construed as an exhaustive list nor to limit the generality of each group of animals, fowl, reptiles or insects:
- a. Non-human primates and prosimians*, including chimpanzees (*Pan*); monkeys (*Cercopithecidae*); gibbons (*Hylobates*); gorillas (*Gorilla*); orangutans (*Pongo*); and siamangs (*Symphalangus*); and baboons (*Papoi*, *Mandrillus*).
 - b. *Canidae**, excluding non-hybrid domesticated dogs, including wolves (*Canis lupus*); coyotes (*Canis latrans*); and all foxes and jackals.
 - c. *Felidae**, excluding domesticated cats, including cheetahs (*Acinonyx jubatus*); jaguars (*Panthera onca*); leopards (*Panthera pardus*); lions (*Panthera leo*); lynxes (*Lynx*); pumas (*Felis concolor*) which are also known as cougars, mountain lions or panthers; snow leopards (*Panthera uncia*); tigers (*Panthera tigris*); and ocelots.
 - d. *Ursidae**, including all bears.
 - e. Crocodylians (*Crocodylia*) thirty (30) inches in length or more, including alligators, caimans, and crocodiles.
 - f. *Proboscidea**, including elephants (*Elephas* and *Loxodonta*).
 - g. *Hyaenidea**, including all hyenas.
 - h. *Artiodactyla**, including hippopotami (*Hippopotamidae*) and giraffes (excluding camels, cattle, swine, sheep and goats).
 - i. *Procyonidae*, including coatis (raccoons excluded).
 - j. *Marsupialia*, including kangaroos (opossums excluded).
 - k. *Perissodactyla**, including rhinoceroses (*Rhinocero tidae*) and tapirs, excluding horses, donkeys and mules.
 - l. *Edentata*, including anteaters, sloths and armadillos.
 - m. *Viverridae*, including mongooses, civets and genets.
 - n. Game cocks and other fighting birds.
 - o. *Varanidae*, including only water monitors and crocodile monitors.
 - p. Any other type of dangerous or carnivorous wild animal, fowl, or reptile.
- * *Species listed on the United States Department of Agriculture's dangerous species list.*
- (7) **Humane Society.** The Humane Society of Vernon County.
- (8) **Own/Owner/Owning.** Any person, corporation, partnership, limited liability corporation, organization, association, joint venture, trust, or other legal entity who possesses, harbors, keeps, controls, boards, or has in his/her custody an exotic animal in the City of Westby,

and any officer, member, shareholder, director, employee, agent or representative thereof. Any animal is being harbored if it is being fed and/or sheltered by such party.

- (9) **Section.** The same meaning as "this Ordinance."
- (10) **Solid Surface.** A surface constructed of cement, concrete, metal, asphalt, fiberglass or similar such hard, impervious surface.
- (11) **City.** The City of Westby, Wisconsin.
- (12) **Common Council.** The Common Council of the City of Westby, and authorized committees and subunits thereof, including City officials, employees or agents.

(c) **Compliance with Federal Regulations.**

- (1) **Federal Code Requirements.** It shall be unlawful for any person, firm or corporation to buy, sell or offer for sale a native or foreign species or subspecies of mammal, bird, amphibian or reptile, or the dead body or parts thereof, which appears on the endangered species list designated by the United States Secretary of the Department of Interior and published in the Code of Federal Regulations pursuant to the Endangered Species Act of 1969 (Public Law 135, 91st Congress).
- (2) **Regulation of the Importation of Birds.** No person, firm or corporation shall import or cause to be imported into the City of Westby any part of the plumage, skin or dead body of any species of hawk, owl or eagle. This Subsection shall not be construed to forbid or restrict the importation or use of the plumage, skin, body or any part thereof legally collected for use by American Indian Nations for ceremonial purposes or in the preservation of their tribal customs and heritage.

(d) **Exotic Animal Permit Requirement - Application for Permit.**

- (1) **Sale, Importation, Transfer, Purchase and/or Gifting of an Exotic Animal.** It shall be unlawful for any person to:
 - a. Import, transfer, sell, own, or purchase an exotic animal in the City of Westby without first obtaining a permit from the Common Council as prescribed by this Section, unless exempt from such permit requirement.
 - b. Sell, transfer, deliver, or give an exotic animal to any other person in the City of Westby without first obtaining a permit from the Common Council as prescribed by this Section, unless exempt from such permit requirement.
- (2) **Keeping, Harboring, Maintaining or Controlling an Exotic Animal; Zoning.**
 - a. It shall be unlawful for any person in the City of Westby to own, keep, maintain, harbor, board, or control an exotic animal without first obtaining a permit from the Common Council as prescribed by this Section, unless exempt from such permit requirement.
 - b. An exotic animal may only be kept, harbored or maintained on a parcel in a Conservancy or Agricultural Zoning classification.
- (3) **Exceptions to Exotic Animal Permit Requirement.** The exotic animal permit requirements of this Section shall not apply to:
 - a. Institutions accredited by the American Zoo and Aquarium Association (AZA).
 - b. State licensed humane societies.
 - c. Animal control or law enforcement officers acting in an official capacity.
 - d. State licensed veterinary hospitals or clinics.
 - e. Persons holding a Scientific Collectors Permit issued by the Wisconsin Department of Natural Resources.
 - f. Any person, company or organization presenting a transient or itinerant circus or carnival operating within the City of Westby ten (10) days or less per year and holding all other required City, county and state permits and/or licenses.
 - g. Wildlife rehabilitators licensed by the Wisconsin Department of Natural

Resources who temporarily keep, nurture, rehabilitate, and care for exotic animals which are injured or in need of rehabilitation, with the primary purpose of returning such animals to the wild. No animal may be kept under this exception for a period of more than ninety (90) days. No animal may be kept under this exception that poses a danger to the community or domestic animals.

- h. State licensed or accredited research or medical institution.
 - i. Any person temporarily transporting an exotic animal through the City if the transit time is not more than twenty-four (24) hours and the animal is at all times maintained within a confinement sufficient to prevent the exotic animal from escaping.
- (4) ***Application; Required Application Information.*** An applicant for an exotic animal permit shall file an application with the City Clerk-Treasurer containing the following information:
- a. ***Basic Application Information.*** The applicant shall file the following information at the time of application filing:
 - 1. The name, address, and telephone number of the applicant.
 - 2. A description of each exotic animal the applicant possesses, or seeks to possess, including the scientific name, common name, sex, age, color, weight and any distinguishing marks or coloration that would aid in the identification of the animal.
 - 3. A photograph of each exotic animal.
 - 4. A description of the exact location and confinement facilities where the exotic animal will be kept.
 - 5. The names, addresses, and telephone number of the person from whom the applicant obtained the exotic animal, if known.
 - 6. The name and address of the veterinarian providing veterinary care to the exotic animal and a certificate of good health for the exotic animal from that veterinarian.
 - 7. A plan for the prompt and safe recapture of the exotic animal if the exotic animal escapes. Each applicant/permittee shall have a plan for the quick and safe recapture of the exotic animal if the animal escapes, and, if recapture is impossible, then a plan for the destruction of the exotic animal.
 - 8. In the case of exotic animals included on the United States Department of Agriculture's dangerous animal list, proof of having obtained a minimum of one year's, paid in full liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) for each occurrence for liability damages for destruction of or damage to property and death or bodily injury to a person caused by the exotic animal. [Failure to at all times keep such liability insurance in full force and effect during the life of the permit shall immediately terminate the validity of such permit; it is the responsibility of the permittee to immediately notify the City Clerk-Treasurer, in writing, of any changes in his/her insurance status, validity or carrier]. The City of Westby shall be listed as a co-insured solely for the purpose of notice of cancellation of such insurance policy.
 - 9. Copies of all United States Department of Agriculture, United States Department of Interior, Wisconsin Department of Natural Resources, and any other state or federal permits/ licenses issued to the applicant approving of or governing the applicant's possession of the species for

which a City exotic animal permit is being sought.

10. Exotic animal permit application fee in the amount per animal as prescribed in Sec. 1-3-1.
11. Any other information required by City of Westby authorities to properly consider the application.

b. ***Certified Information.*** The applicant shall certify in writing that:

1. The applicant is eighteen (18) years of age or older.
2. The applicant has not been convicted of or found responsible for violating a local or state law prohibiting cruelty, neglect, or mistreatment of animals or has not within the last ten (10) years been convicted for possession, sale or use of illegal narcotics or controlled substances.
3. The facility and the conditions in which the exotic animal will be kept are in compliance with this Section and all other applicable state and local regulations.
4. The applicant has regularly provided veterinary care to the exotic animal when needed and will provide such care in the future.
5. Proof that a licensed veterinarian has spayed or neutered the exotic animal.

(e) **Review of Exotic Animal Permit Application; Issuance; Conditions of Permit Issuance; Renewals.**

(1) ***Consideration of Application.*** Upon receipt of the application, application fee and all of the information required by Subsection (d)(4) above, the City Clerk-Treasurer shall schedule consideration of the application before the Common Council, duly noticing the consideration of the application on the notice/agenda for such meeting in compliance with the Wisconsin Open Meeting Law. All neighboring property owners and residents located within three hundred (300) feet of the applicant's property shall receive written notice of the meeting at which the application is to be considered by the Common Council a minimum of seven (7) days prior to the meeting date.

(2) ***Common Council Action.*** Upon consideration of the application, the Common Council may issue an exotic animal permit if the Council is satisfied that:

- a. All of the application and insurance requirements required by Subsections (d)(4) and (e)(4) have been fully satisfied;
- b. The applicant has provided credentials, satisfactory to the Common Council, establishing that the applicant/owner is properly trained to handle, care for, restrain, and recapture the type of animal for which the permit application is being made;
- c. The applicant has provided either application information or oral testimony at the application review meeting demonstrating ownership of, and training and proficiency with, tranquilizing and restraint equipment that is species-appropriate, to the satisfaction of the Common Council, and shall demonstrate adequate training and certification in first aid and CPR;
- d. The exotic animal and the manner in which it will be kept will be fully in compliance with the requirements of this Section and that the animal will be kept in such manner so as not pose a threat to public safety and health;
- e. The applicant has demonstrated that the animal will be kept in a humane manner consistent with this Section and all other applicable federal and state standards; and
- f. The site is properly zoned for such use.

- (3) **Validity.**
- a. A copy of the exotic animal permit shall be displayed, in plain view, on or reasonably near the animal's confinement area.
 - b. An exotic animal permit is not transferable without re-application under this Section.
 - c. Permits for each exotic animal shall be valid for one (1) year. The permit year shall commence on January 1 or as soon thereafter as officially issued and expire on December 31 of that year.
 - d. In addition to the application fee under Subsection (d)(4), the fee for an annual exotic animal permit, or renewal thereof, shall be as prescribed in Section 1-3-1 for each exotic animal.
- (4) **Permit Renewal; Issuance Criteria.**
- a. Exotic animal permit renewal applications shall be submitted to the City Clerk-Treasurer on or before November 15 of the permit year.
 - b. Along with each permit renewal application, the applicant shall submit the required renewal fee, a current certificate of good health for the animal(s), update in full all information required for the original permit, and provide proof of the required continued paid-up liability insurance [such proof of insurance shall be no more than thirty (30) days old.]
 - c. The Common Council shall consider renewals in the same manner as with the issuance of original permits.
 - d. The Common Council shall not issue or renew a permit if it determines that:
 1. The applicant has been convicted of cruelty to animals within the previous ten (10) years;
 2. The applicant has failed to provide, withheld or falsified any required permit application or renewal information; or
 3. The applicant is, or has been, unable to comply with the requirements necessary to obtain a permit or has failed to comply with the provisions of this Section at any time during the permit year.
- (5) **Permit Revocation.** The Common Council may revoke a permit for violation of this Section after giving written notice of the reasons for revocation to the permit holder. The City of Westby shall give the permittee notice, by certified mail with receipt requested, of intent to consider revocation of the exotic animal permit. The City shall give the permittee an opportunity to respond to the notice and address the issues identified at an open, noticed Common Council meeting, after which the Common Council shall make its determination, with the reasons therefor included in the record of the Common Council's meeting.
- (6) **Permit Transfer.** If an owner can no longer properly care for his/her exotic animal, that person may only transfer his/her exotic animal to another person who has been issued a valid exotic animal permit by the Common Council. An owner/permittee shall notify the City Clerk-Treasurer of any changes central to the validity of the permit, including the death of the exotic animal.
- (f) **Confinement Standards for Exotic Animals.**
- (1) **Prohibited Confinement.** An exotic animal shall not be tethered, leashed, chained outdoors, or allowed to run at large.
 - (2) **Confinement Standards.**
 - a. All exotic animals governed by this Section shall be confined in a building or secure enclosure that has a floor, a secure roof and sides, constructed and

maintained so as to securely confine the animal and provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of animal debilitation, stress, abnormal behavior patterns, or the professional opinion of a veterinarian, a qualified animal trainer, or experts from the United States Department of Agriculture (USDA), United States Department of Interior, or Wisconsin Department of Natural Resources.

- b. For each exotic animal, the permittee shall comply with the AZA's "Minimum Guidelines" for animal care and maintenance or the USDA's standards for the humane handling, care and treatment of exotic animals [9 CFR Subchapter A (Animal Welfare, Part 3)], whichever is more restrictive. These standards shall provide the basis against which to assess the sufficiency of space or facility for animals for which a permit is sought or held.
 - c. The City of Westby recognizes that exotic animals typically require extra care in the provision of confinement and care due to the climate and conditions of their original place of origin.
- (3) **Minimum Outdoor Area Standards.** The outdoor area of an exotic animal's enclosure shall, at a minimum:
- a. Have two (2) sets of wire enclosures with a minimum of four (4) inches separation between them;
 - b. Have the sides of the wire enclosure extend downward and be buried a minimum of twelve (12) inches below ground;
 - c. Incorporate a roof design with independent fencing separate from and located between the roof and floor of the enclosure so as to prevent escape in the event high winds damage the roof over the enclosure;
 - d. Have a floor with a minimum six (6) inch perimeter of breaker rock-grade aggregate around the borders of the enclosed area and a minimum five (5) inch uniform depth of Class Five gravel for the floor, or a floor with a minimum four (4) inch uniform depth of concrete or asphalt over the remainder of the enclosure floor;
 - e. Be provided with shelter that allows the exotic animal, if kept outdoors, to remain dry and warm during snow/sleet/rain;
 - f. In the alternative, present to and secure approval from the Common Council for an alternative outdoor confinement system that substantially complies with the safeguards of this Section.
 - g. In addition to the structural requirements of the exotic animal's outdoor enclosure, the permittee shall:
 - 1. Ensure that the outdoor area is maintained in a safe and healthful manner;
 - 2. Keep the outdoor area free of standing water, accumulated waste, and debris;
 - 3. Ensure that sufficient shade, by natural or artificial means, is available when the animal is outdoors; and
 - 4. Maintain the structural soundness of the outdoor structure in good repair to protect the exotic animals from injury and to prevent escape.
- (4) **Minimum Indoor Area Standards.** The indoor area of an exotic animal's enclosure shall:
- a. Be an insulated, moisture-proof and windproof structure of adequate area to accommodate the need of the animal for adequate freedom of movement;
 - b. Contain a solid floor of no less than four (4) inches thick to prevent the animal from escaping;

- c. Incorporate a roof design with independent fencing separate from and located between the roof and floor of the enclosure so as to prevent escape in the event high winds blow off the roof over the enclosure;
- d. Locate the entrance to the building in which the animal is housed facing away from prevailing winds; and
- e. Have a self-closing door over the human and animal entryway during the winter months to protect the animal from cold temperatures.
- f. In addition to the structural requirements of the animal's indoor enclosure area, the owner of an animal shall:
 - 1. Ensure that the indoor enclosure area remains at an ambient temperature that will maintain the good health of the exotic animal;
 - 2. Provide proper ventilation of the indoor structure by natural or mechanical means to provide fresh air for the animal and to prevent moisture condensation;
 - 3. Ensure that the animal has natural or artificial lighting and adequate heat and ventilation to properly provide for the health of the animal at all times;
 - 4. Ensure that the animal has proper bedding in sufficient quantity for insulation against the cold and dampness and that it is changed regularly; and
 - 5. Maintain the indoor enclosure area in good repair to protect the animal from injury and to prevent escape.
- (g) **Notification Signs.** All owners/permittees of an exotic animal(s) shall have continuously posted and displayed at each normal entrance onto the premises where an exotic animal is kept a conspicuous sign, clearly visible, and easily readable by the public, warning that there is an exotic animal on the premises. At least one such sign shall be located within twenty (20) feet of the animal's confinement area using the words "BEWARE OF ____ ", with the last word to indicate the type of exotic animal that is being confined. In addition, the permittee shall conspicuously display a sign with a warning symbol that adequately informs children of the presence of an exotic animal.
- (h) **Escape and Liability for Escape.**
 - (1) **Notification of Escape.**
 - a. An owner/permittee shall immediately notify the City Clerk-Treasurer/City office, local Humane Society, the City's animal control officer, City law enforcement authorities and the County Sheriffs Department of the escape of any exotic animal for which a permit is required
 - b. No person may intentionally release an exotic animal. If an exotic animal is released by any party, authorized or unauthorized, the owner/permittee is liable for all expenses associated with efforts to recapture the animal, and may, in addition, be subject to a forfeiture.
 - (2) **Liability.**
 - a. The owner/permittee shall be liable for all costs incurred by any public authority or their agents and resulting from the escape of any animal for which a permit is required, including boarding, placement, veterinarian and legal fees.
 - b. Neither the City or any agent of the City of Westby shall be liable for the loss, death, injury or destruction of any animal for which a permit is required, nor shall the City be liable for any injury or damage caused by any animal for which a permit is required and issued under this Section.
- (i) **Inspection.** The owner/permittee of an exotic animal, at all reasonable times, shall allow designated inspectors of the City, humane officers and law enforcement authorities to enter the

premises where the animal is kept to ensure compliance with this Section as a condition of permit issuance. City representatives shall conduct a minimum of three (3) periodic, unannounced inspections of the outdoor and indoor enclosure areas per twelve (12) month period for USDA designated dangerous exotic animals, and a minimum of one (1) such unannounced inspection per twelve (12) month period for non-dangerous exotic animals, to ensure that said areas are being maintained in the manner required by this Section.

(j) **Restraint and Impoundment.**

(1) ***Animals At Large May Be Impounded.***

- a. All exotic animals shall be kept confined or under proper restraint by their owners as provided herein and shall not be permitted to run at large. Unrestrained exotic animals and animals running at large may be taken into custody in accordance with Chapter 173, Wis. Stats., and impounded at any facility deemed appropriate for the protection of the public and with facilities and equipment that permit the facility to adequately care for the animal. Such animals shall be considered to be abandoned.
- b. Animal control officers, designees of the Common Council, humane officers or law enforcement officers, upon receipt of information indicating probable cause of a violation of this Section, may in his/her discretion, and after investigation, seize and impound an animal in emergency situations or where previous written notice has failed to produce compliance and when otherwise authorized by law.

(2) ***Failure to Reclaim; Costs.***

- a. If an owner fails to reclaim an exotic animal within seven (7) days of taking the animal into custody, the City shall consider the animal to be unclaimed, as authorized by Section 173.23(1m), Wis. Stats., and shall take such steps as authorized by law. The City may contact the American Zoo and Aquarium Association for further assistance.
- b. The animal's owner is liable for the costs of capture, care and placement for the exotic animal from the time of confiscation until the time of return to the owner, until the animal is disposed of, or until the time the animal has been relocated to an approved facility, such as a proper wildlife sanctuary.
- c. If an exotic animal is confiscated due to the animal being kept in contravention of this Section, the animal's owner is required to post a security bond or cash deposit with the City and/or animal control authority in an amount sufficient to guarantee payment of all reasonable costs expected to be incurred in caring and providing for the animal, including, but not limited to, the estimated cost of feeding, medical care, and housing for at least thirty (30) days. The posting of the bond or cash deposit shall not prevent the City of Westby or animal control authority from disposing of the animal as permitted by law at the end of the thirty (30) days.
- d. An exotic animal may be returned to its owner only if, to the satisfaction of the Common Council, the possessor has a valid City exotic animal permit, has corrected the conditions resulting in the confiscation, and has paid in full the cost of placement and care of the animal while under the care and control of the City or Humane Society.
- e. If the owner of a confiscated exotic animal cannot be located or if a confiscated animal remains unclaimed, the City or Humane Society may, at its discretion, contact an approved facility, such as an institution accredited by the American Zoo and Aquarium Association (AZA), allow the animal to be adopted by a party who can satisfy the permit requirements of this Section, or may euthanize the animal as permitted by law.

- f. If an escaped exotic animal cannot be recaptured safely and is posing a threat to public health and safety, authorities may euthanize the animal as permitted by law.
- (k) **Animal Care.**
 - (1) **Food and Water.** No owner shall fail to provide an exotic animal in his/her care with sufficient food, potable water, or shelter when needed.
 - (2) **Humane Treatment.** No person shall ill-treat, beat, torment or otherwise abuse an exotic animal.
- (l) **Incidents Causing Injury.**
 - (1) **Notification.** All incidents in the City of Westby in which an exotic animal injures or is suspected of injuring any person or domesticated animal shall be reported by the permittee to the Police Department within two (2) hours of the incident.
 - (2) **Liability.** The owner of an exotic animal shall be responsible for all expenses incurred as a result of an injury inflicted or suffered by an exotic animal, whether expenses are incurred by the family of the victim, the victim, the City or on behalf of the animal involved.
- (m) **Sanitation.**
 - (1) **Fecal Matter; Odor.** Any person who owns, harbors, keeps, or controls an exotic animal shall be responsible for keeping his/her property properly clean of fecal matter and to keep obnoxious odors under control.
 - (2) **Waste Disposal.** Disposal of all animal waste shall be in a manner that is consistent with normal agricultural practices and adequately protects human and animal health.
- (n) **Limitation on Exotic Animal Numbers.** No person shall own, harbor or keep in his/her possession on any one parcel of property more than two (2) exotic animals over five (5) months of age at any one time, nor shall any person retain a litter/offspring, or portion thereof, of exotic animals longer than five (5) months following birth.
- (o) **Compliance; Enforcement**
 - (1) **Transition Period.**
 - a. As a measure deemed necessary by the Common Council to protect the public safety, health and welfare, this Section shall apply to owners of exotic animals in the City of Westby and who possess, harbor, board or keep an exotic animal(s) on the effective date of this Section.
 - b. All such existing exotic animal owners shall file with the City Clerk-Treasurer the location, species, gender and age of each such exotic animal within thirty (30) days of the effective date of this Section.
 - c. All such existing exotic animal owners shall comply with this Section, including applying for an exotic animal permit, within ninety (90) days of the effective date of this Section.
 - d. An exotic animal permit may be issued by the Common Council under the standards and procedures of this Section. Failure to apply for, and be granted, an exotic animal permit shall result in the animal being removed from its owner by the City, or its designees, within six (6) months of the effective date of this Section.
 - (2) **Enforcement.** The Common Council, with the assistance of the Humane Society, animal control officers, and other law enforcement authorities, and such veterinarian assistance as may be needed shall be primarily responsible for the enforcement of this Section. The Common Council may appoint additional persons as may be necessary to assist with the enforcement of this Section.

- (p) **Penalties.** The following penalties shall apply to all violations of this Section:
- (1) **Forfeiture.** Any person who fails to comply with the provisions of this Section shall, upon adjudication of the violation, be subject to a forfeiture of not less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars (\$500.00) per violation, plus the costs of prosecution and any assessments and expenses related to enforcement authorized elsewhere in this Section. Each day of violation shall constitute a separate offense. This penalty is in addition to any other remedies for non-compliance set forth elsewhere in this Section.
 - (2) **Interference With Enforcement.** It is unlawful for a permittee/owner or any other person harboring, keeping, boarding or maintaining an exotic animal to fail to comply with the provisions of this Section, and/or for any person on the permittee's premises to interfere with the enforcement or administration of this Section.

Sec. 7-1-13 Animal Feces.

- (a) **Removal of Fecal Matter.** The owner or person in charge of any dog, cat, horse, potbellied pig, 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.
- (b) **Accumulation of Fecal Matter Prohibited on Private Yards.**
 - (1) **Owner's Property.** The owner or person in charge of the dog, cat or other animal must also prevent accumulation of animal waste on his/her own property by regularly inspecting and properly disposing of the fecal matter.
 - (2) **Rental Property.** Any owner of property rented to others must insure tenants do not permit the accumulation of animal waste on the rental property by tenants regularly and shall inspect and properly dispose of fecal matter.

Sec. 7-1-14 Injury to Property by Animals.

It shall be unlawful for any person owning or possessing an animal, dog or cat to permit such animal, dog or cat to go upon any parkway or private lands or premises without the permission of the owner of such premises and break, bruise, tear up, crush or injure any lawn, flower bed, plant, shrub, tree or garden in any manner whatsoever, or to defecate thereon.

Sec. 7-1-15 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. The owner of a dog or cat is considered to be in violation of this Section when two (2) formal, written complaints are filed with City law enforcement or animal control officers, or in the alternative, with the City Clerk-Treasurer, within a four (4) week period.

Sec. 7-1-16 Snakes; Farm Animals.

- (a) **Snakes.**
- (1) For purposes of this Subsection, "poisonous" shall mean having the ability to cause serious harm or death by the transfer of venom or poison to a person or animal.
 - (2) No person shall keep or possess any snake in the City of Westby which is poisonous or in excess of ten (10) feet in length. This prohibition shall not apply to bona fide zoos, educational institutions or exhibitions keeping such snakes for display or for instructional or research purposes. Any person legally possessing any such animal in this capacity shall notify the City Clerk-Treasurer in writing of the location and type of snake being kept and the purpose for such possession.
- (b) **Farm Animals; Miniature Pigs.** Except as provided in Section 7-1-25 regarding miniature pigs and on properties zoned in an agricultural classification, no person shall own, keep, harbor or board any cattle, horses, ponies, swine, goats, sheep, fowl [more than two (2)] or rabbits [more than four (4)]. For purposes of this Subsection, the term "swine" shall not include any miniature pigs of either sex weighing less than eighty (80) pounds which are intended for and kept as domestic pets.

Sec. 7-1-17 Sale of Rabbits, Chicks or Artificially Colored Animals.

- (a) **Artificially Colored Animals or Fowl.** No person may sell, offer for sale, raffle, give as a prize or premium, use as an advertising device or display living chicks, ducklings, other fowl or rabbits that have been dyed or otherwise colored artificially.
- (b) **Sale Numbers; Brooder Equipment.**
- (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. 951.11, Wis. Stats.

Sec. 7-1-18 Providing Proper Care, Food and Drink to Animals.

- (a) **Care of Dogs and Domesticated Animals.** All dogs and domesticated animals shall be cared for, maintained and handled in a humane and sanitary manner and in such a way as to prevent noises, barking, fighting or howling or other disturbance of the peace and quiet of the neighborhood. No domestic animal shall be abandoned or turned loose by its owner or keeper. No animal shall be inhumanely confined in a manner which causes or is likely to cause pain, suffering, injury or death.
- (b) **Food and Water.**
- (1) No person owning or responsible for confining or impounding any animal may refuse or neglect to supply the animal with a sufficient supply of food and water as prescribed in this Section.
 - (2) The food shall be sufficient to maintain all animals in good health.
 - (3) If potable water is not accessible to the animals at all times, it shall be provided daily and in sufficient quantity for the health of the animal.

Sec. 7-1-19 Providing Proper Shelter.

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

Sec. 7-1-20 Neglected or Abandoned Animals.

- (a) **Neglected or Abandoned Animals.**
 - (1) No person may abandon any animal.
 - (2) Any law enforcement or animal control officer may remove, shelter and care for an animal found to be cruelly exposed to the weather, starved or denied adequate water, neglected, abandoned or otherwise treated in a cruel manner and may deliver such animal to another person to be sheltered, cared for and given medical attention, if necessary. In all cases the owner, if known, shall be immediately notified and such officer, or other person, having possession of the animal shall have a lien thereon for its care, keeping and

medical attention and the expense of notice.

- (3) If the owner or custodian is unknown and cannot, with reasonable effort, be ascertained or does not, within five (5) days after notice, redeem the animal by paying the expenses incurred, it may be treated as a stray and dealt with as such.
 - (4) Whenever, in the opinion of any such officer, an animal is hopelessly injured or diseased so as to be beyond the probability of recovery, it shall be lawful for such officer to kill such animal and the owner thereof shall not recover damages for the killing of such animal unless he shall prove that such killing was unwarranted.
 - (5) Section 951.16, Investigation of Cruelty Complaints, and Sec. 951.17, Wis. Stats., Expenses of Investigation, are hereby adopted by reference and made a part of this Chapter.
- (b) **Injured Animals.** No person who owns, harbors or keeps any animal shall fail to provide proper medical attention to such animal when and if such animal becomes sick or injured. In the event the owner of such animal cannot be located, the City or any animal control agency with whom the City 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: Secs. 951.15, 951.16 and 951.17, Wis. Stats.

Sec. 7-1-21 Cruelty to Animals and Birds Prohibited.

- (a) **Acts of Cruelty Prohibited.** No person except a law enforcement or animal control officer in the pursuit of his/her duties shall, within the City of Westby, 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 City street from a motor vehicle, tractor, snowmobile, all-terrain 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. 961.14, Wis. Stats., whether mixed with meat or other food or not, where it is reasonable to anticipate the substance may be eaten by such animal or for the purpose of harming the animal. This Subsection shall not apply to poison used on one's own premises and designed for the purpose of rodent and pest extermination, nor the use of a controlled substance used in accepted veterinarian practice or in research by persons or organizations regularly engaged in such research.
- (d) **Use of Certain Devices Prohibited.** No person may directly or indirectly, or by aiding, abetting or permitting the doing thereof either put, place, fasten, use 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.

Sec. 7-1-22 Limitation on Number of Dogs and Cats.

- (a) **Purpose.** The keeping of a large number of dogs and cats within the City of Westby for a considerable period of time detracts from and, in many instances, is detrimental to, healthful and comfortable life in such areas. The keeping of a large number of dogs and cats is, therefore, declared a public nuisance.
- (b) **Number Limited.**
 - (1) No residential unit shall own, harbor or keep in its possession more than a total of three (3) dogs or three (3) cats, or a combined total of five (5) dogs and cats, in any residential unit without the prior issuance of a kennel license by the Common Council except that a litter of pups or kittens or a portion of a litter may be kept for not more than ten (10) weeks from birth.
 - (2) The above requirement may be waived with the approval of the Common Council when a multiple dog (kennel) license has been issued by the City pursuant to Section 7-1-3(b). Such application for waiver shall first be made to the City Clerk-Treasurer.

Sec. 7-1-23 Trapping of Animals.

- (a) In the interest of public health and safety, it shall be unlawful for any person, in or on City-owned land within the City of Westby to set, place or tend any trap for the purpose of trapping, killing, catching, wounding, worrying or molesting any animal, except by use of live box-type traps only. Live box-type traps shall be defined as those traps which capture and hold an animal in an alive and unharmed condition.
- (b) This Section shall prohibit the use of all traps on City-owned property other than live traps as described above, including, but not limited to, traps commonly known as leg traps, pan-type traps or other traps designed to kill, wound or close upon a portion of the body of an animal.
- (c) All such traps set, placed or tended shall comply with Chapter 29 of the Wisconsin Statutes as they relate to trapping.
- (d) Nothing in this Section shall prohibit or hinder the City of Westby or its employees or agents from performing their official duties.

Sec. 7-1-24 Keeping of Bees.

It shall be unlawful for any person to establish or maintain any hive, stand or box where bees are kept or keep any bees in or upon any premises within the corporate limits of the City of Westby unless the bees are kept in accordance with the following provisions:

- (a) No hive, stand or box where bees are kept shall be located closer than twenty (20) feet to any property boundary. Such hives, stands or boxes may only be located in the rear yard.
- (b) If bee colonies are kept within fifty (50) feet of any exterior boundary of the property on which the hive, stand or box is located, a barrier that will prevent bees from flying through it, no less than five (5) feet high, shall be installed and maintained along said exterior boundary. Said barrier may be either a natural planting or artificial.
- (c) Fresh, clean watering facilities for bees shall be provided on the said premises.
- (d) The bees and equipment shall be kept in accordance with the provisions of state law.
- (e) A conditional use permit shall first be obtained pursuant to the City Zoning Code.

Sec. 7-1-25 Vietnamese Potbellied Pigs.

- (a) **Definitions.** As used in this Section, the following words and phrases shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
- (1) "Vietnamese Potbellied Pig" shall mean a purebred Vietnamese Potbellied Pig registered through a North American Vietnamese Potbellied Pig Registry, which does not exceed one hundred (100) pounds in weight.
- (b) **License Required/Fee.** It is unlawful for any person, party, firm or corporation to keep or maintain within the City of Westby limits a Vietnamese Potbellied Pig without first having obtained a license from the City Clerk-Treasurer and being in compliance with all provisions of this Section. The fee for a license issued hereunder or renewal thereof shall be as prescribed in Section 1-3-1 per calendar year or fraction thereof. Excepted from the license requirement is any law enforcement agency or agency under contract with the City of Westby to care for stray or unwanted animals.
- (c) **License/Application.**
- (1) Any applicant for a license or renewal thereof under this Section shall file with the City Clerk-Treasurer a fully executed application on a form prescribed by the City Clerk-Treasurer, accompanied by the annual license fee
 - (2) No licenses or renewal thereof shall issue hereunder until:
 - a. A Certificate of Purebred Registration is filed with the City Clerk-Treasurer.
 - b. There has been an inspection by a City law enforcement or animal control officer or the Building Inspector of the premises being licensed and a determination by said sanitarian that all requirements of this Section, and other applicable general and zoning ordinances, have been met.
 - c. There is an adequate means of restraining animals from running at large or disturbing the peace.
 - (3) Any license or renewal thereof issued hereunder shall be for a calendar year or portion thereof. Licenses must be renewed each calendar year on or before the 31st day of January. Licenses shall not be assignable or transferable either to another person, party, firm or corporation or for another location.
 - (4) When issued, a license shall be kept upon the licensed premises and exhibited, upon request, to any City personnel requesting to examine it and having authority to enforce this Section.
 - (5) Only one (1) Vietnamese Potbellied Pig may be at any premises.
- (d) **License Requirements.** Licensee shall comply with the following as a condition of obtaining and maintaining a license:
- (1) Animal feces to be collected on a daily basis and stored in a sanitary receptacle. Animals shall not be brought, or permitted to be, on property, public or private, not owned or possessed by the owner or person in charge of the animal, unless such person has in his/her immediate possession an appropriate device for scooping excrement and an appropriate depository for the transmission of excrement to a receptacle located upon property owned or possessed by such person.
 - (2) When sunlight is likely to cause overheating to discomfort, sufficient shade shall be provided to allow an animal kept outdoors to protect itself from the direct rays of the sun.
 - (3) An animal kept outdoors shall be provided with access to shelter to allow it to remain dry during rain or snow. Animals may be kept outdoors only if contained in a fenced enclosure sufficient for purposes of restraint.
 - (4) When the atmospheric temperature is less than fifty degrees Fahrenheit (50°F), an animal

- shall be kept indoors at a temperature no less than fifty degrees Fahrenheit (50°F), except for temporary ventures which do not endanger the animals health.
- (5) An effective program for the control of insects, ectoparasites, avian and mammalian pests shall be established and maintained where a problem.
 - (6) Animals shall be fed and watered at least once a day, except as otherwise might be required to provide adequate veterinary care. The food shall be free from contamination, wholesome, palatable and of sufficient quality and nutritive value to meet the normal daily requirements for the condition and size of the animal. Food receptacles shall be accessible to the animal and shall be located so as to minimize contamination by excreta. Feeding pans shall be durable and kept clean. The food receptacles shall be cleaned daily. Disposable food receptacles may be used, but must be discarded after each feeding. Self feeders may be used for the feeding of dry food and they shall be sanitized as needed, but at least once per week, to prevent molding, deterioration or caking of feed.
 - (7) Animals may not be permitted to exceed one hundred (100) pounds in weight.
 - (8) Animals shall be examined by a veterinarian within a period of sixty (60) days prior to a new license application being filed. The animal may be licensed only upon a written statement from a veterinarian as to:
 - a. The animal's weight.
 - b. The animal has received all recommended vaccinations and boosters.
 - c. The animal is asymptomatic respecting disease or has a disease which is not contagious and is receiving appropriate treatment.
 - d. The animal's tusks, if any, have been removed or trimmed so as not to endanger any person or animal.
 - e. The animal has passed a pseudorabies test administered in accordance with application state regulations.
 - (9) The animal shall not be permitted to run at large. "Run at large" shall mean the presence of an animal which is not on a leash of six (6) feet or less on any public property or thoroughfare or on any private property. An animal may be unleashed on private property, with the permission of the property owner, in a fenced enclosure sufficient for purposes of restraint. Animals which are not leashed in a motor vehicle shall not be deemed to "run at large" if secured in a manner as will prevent their escape therefrom.
 - (10) Animals shall not be kept in a manner as to disturb the peace of the neighborhood or of persons passing to and from upon the streets.
- (e) **Suspension, Revocation or Denial of Renewal of License.** The Mayor or law enforcement officers shall have the right to suspend or revoke any license once granted or deny annual renewal thereof when it appears that any license has violated any of the provisions of this Section, or any ordinance of the City, or law, rule or regulation of the State of Wisconsin, involving cruelty or mistreatment of the animal, or the unlawful possession of the animal. Prior to the suspension or revocation of any license or the denial of an application for a renewal thereof, written notice of the reason for such action shall be given to the applicant or licensee by the officer. Such notice shall state that the applicant may pursue an appeal to the Common Council by filing a request within ten (10) days of such notice.

Sec. 7-1-26 Feeding of Deer.

- (a) **Feeding of Deer Prohibited.** No person may place any salt, mineral, grain, deer suckers, fruit or vegetable material outdoors on any public or private property for the purpose of feeding whitetail deer or enticing deer into any specific area of anyone's property in the City of Westby.

- (b) **Presumption.** There shall be a rebuttable presumption that either of the following acts are for the purpose of feeding whitetail deer:
 - (1) **Placement Height.** The placement of salt, mineral, grain, deer suckers, fruit or vegetable material in an aggregate quantity of greater than one-half (1/2) gallon at the height of less than six (6) feet off the ground.
 - (2) **Placement Quantity.** The placement of salt, mineral, grain, deer suckers, fruit or vegetable material in an aggregate quantity of greater than one-half (1/2) gallon in a drop feeder, automatic feeder or similar device regardless of the height of the salt, mineral, grain, fruit or vegetable material.
- (c) **Exceptions.** This Section shall not apply to the following situations:
 - (1) **Hunting.** The placement of bait for the purpose of hunting whitetail deer subject to all other laws, ordinances, rules and regulations governing hunting and the discharge of hunting weapons.
 - (2) **Naturally Growing Materials.** Naturally growing grain, fruit or vegetable material, including gardens and residue from lawns, gardens, and other vegetable materials maintained as a mulch pile.
 - (3) **Bird Feeders.** Unmodified commercially purchased bird feeders or their equivalent.
 - (4) **Authorized by the Common Council.** Deer feeding may be authorized on a temporary basis by the Common Council for a specific public purpose as determined by the Common Council.
 - (5) **Counting.** Deer feeding may be authorized on a temporary basis by the Common Council for the purpose of determining the deer population.

Sec. 7-1-27 Dog Pens; Setback for Leashed Dogs.

- (a) **Building Permit Required.** Any party constructing a dog pen within the City of Westby will be first required to obtain a building permit from the Building Inspector for the sum set from time to time by the Common Council.
- (b) **Setbacks Required of Dog Pens.** No dog pen/house/run may be constructed within the City of Westby closer than ten (10) feet from a neighbor's property line and no dog shall be tied so that it is closer than ten (10) feet from such neighbor's property line.

Sec. 7-1-28 Penalties.

- (a) Any person violating any Section of this Chapter, except Sections 7-1-7 and 7-1-12, shall be subject to a forfeiture of not less than Fifty Dollars (\$50.00) and not more than Two Hundred Dollars (\$200.00) for the first offense and not less than One Hundred Dollars (\$100.00) and not more than Four Hundred Dollars (\$400.00) for any subsequent offenses.
- (b) 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) Each day that a violation of this Chapter continues shall be deemed a separate violation. Any dog found to be the subject of a violation of this Section shall be subject to immediate seizure, impoundment and removal from the City of Westby by City-authorized officials in the event the owner or keeper of the dog fails to remove the dog from the City of Westby. In addition to the

foregoing penalties, any person who violates this Chapter shall pay all expenses including shelter, food, handling and veterinary care necessitated by the enforcement of this Chapter.

Title 7 - 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, Wis. Stats., relating to the sale of intoxicating liquor and fermented malt beverages, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this Chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Chapter. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this Chapter in order to secure uniform statewide regulation of alcohol beverage control.

State Law Reference: Chapter 125, Wis. Stats.

Sec. 7-2-2 Definitions.

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

Sec. 7-2-3 License Required.

No person, firm or corporation shall vend, sell, deal or traffic in or have in his/her possession with intent to vend, sell, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage in any quantity 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, Wis. Stats.

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 City Clerk-Treasurer under the authority of the Common Council, shall permit its holder to sell, deal and traffic in intoxicating liquors only in original packages or containers and to be consumed off the premises so licensed.
- (b) **Retail "Class B" Intoxicating Liquor License.** A retail "Class B" intoxicating liquor license, when issued by the City Clerk-Treasurer under authority of the Common Council, shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed and in the original package or container in multiples not to exceed four (4) liters at any one (1) time, to be consumed off the premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.
- (c) **Reserve "Class B" Licenses.** A Reserve "Class B" license means a license that is not granted or issued by the City on December 1, 1997, and that is counted under Sec. 125.51(4)(br), Wis. Stats., which, if granted or issued, authorizes the sale of intoxicating liquor to be consumed by the glass only on the premises where sold, and also authorizes the sale of intoxicating liquor in the original package or container in multiples not to exceed four (4) liters at anyone time, to be consumed off premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.

- (d) **Class "A" Fermented Malt Beverage Retailer's License.** A Class "A" retailer's fermented malt beverage license, when issued by the City Clerk-Treasurer under the authority of the Common Council, shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages only for consumption away from the premises where sold and in the original packages, containers or bottles. Such license may be issued after July 1st The license shall expire on the following June 30th.
- (e) **Class "B" Fermented Malt Beverage Retailer's License.**
- (1) **License.** A Class "B" fermented malt beverage retailer's license, when issued by the City Clerk-Treasurer under the authority of the Common Council, shall entitle the holder thereof to possess, sell or offer for sale, fermented malt beverages, either to be consumed upon the premises where sold or away from such premises. The holder may also sell beverages containing less than one-half (1/2) of a percentage of alcohol by volume, without obtaining a special license to sell such beverages. Such license may be issued after July 1st The license shall expire on the following June 30th
- (2) **Application.** Class "B" licenses may be issued to any person qualified under Sec. 125.04(5), Wis. Stats. Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least six (6) months before the date of application. A Class "B" license for a hotel, restaurant, club, society or lodge may be issued in the name of an officer who shall be personally responsible for compliance with this Chapter. Except as provided in Sec. 125.31, Wis. Stats., Class "B" licenses may not be issued to brewers or fermented malt beverages wholesalers.
- (f) **Temporary Class "B" Fermented Malt Beverage License.**
- (1) **License.** As provided in Sec. 125.26(1) and (6), Wis. Stats., temporary Class "B" fermented malt beverage licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months before the date of application and to posts of veterans' organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of fermented malt beverages from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of fermented malt beverages from the stands while the fair is being held. Such license is valid for dates as approved by the Common Council.
- (2) **Application.** Application for such license shall be signed by the president or corresponding officer of the society or association making such application and shall be filed with the City Clerk-Treasurer, together with the appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to a forfeiture of Two Hundred Dollars (\$200.00) and will be ineligible to apply for a temporary Class "B" license for one (1) year. The license shall specify the hours and dates of license validity. The application shall be filed a minimum of fifteen (15) days prior to the meeting of the Common Council at which the application will be considered for events of more than three (3) consecutive days. If the application is for a license to be used in a City park, the applicant shall specify the main point of sale facility.

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

- (1) **License.** Notwithstanding Sec. 125.68(3), Wis. Stats., temporary "Class B" licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six months before the date of application and to posts of veterans' organizations authorizing the sale of wine in an original package, container or bottle or by the glass if the wine is dispensed directly from an original package, container or bottle at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. No fee may be charged to a person who, at the same time, applies for a temporary Class "B" beer license under Sec. 125.26(6), Wis. Stats., or the same event. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of wine from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of wine from the stands while the fair is being held. Not more than two (2) such licenses may be issued under this Subsection to any club, county or local fair association, agricultural association, church, lodge, society or veteran's post in any twelve (12) month period.
- (2) **Application.** Application for such license shall be signed by the president or corresponding officer of the society or association making such application and shall be filed with the City Clerk-Treasurer together with the appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to a forfeiture of Two Hundred Dollars (\$200.00) and will be ineligible to apply for a temporary "Class B" wine license for one (1) year. The license shall specify the hours and dates of license validity. The application shall be filed a minimum of fifteen (15) days prior to the meeting of the Common Council at which the application will be considered for events of more than three (3) consecutive days. If the application is for a license to be used in a City park, the applicant shall specify the main point of sale facility.

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

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

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

Cross Reference: Section 7-2-17.

Sec. 7-2-5 License Fees.

All license fees shall be due on or before June 30th in the year of renewal or in the event of a transfer during the license year within five (5) days of the Common Council granting of such transfer. Non-payment of license fees within the required time shall be grounds for revocation. There shall be the following classes of licenses which, when issued by the City Clerk-Treasurer under the authority of the Common Council after payment of the license fee and publication costs hereinafter specified shall permit the holder to sell, deal or traffic in intoxicating liquors or fermented malt beverages as provided in Section 7-2-4 of this Code of Ordinances and Chapter 125, Wis. Stats.:

- (a) **Class "A" Fermented Malt Beverages Retailer's License.** The annual fee for this license shall be as prescribed in Section 1-3-1. The fee for a license for less than twelve months shall be prorated according to the number of months or fraction thereof for which the license is issued.
- (b) **Class "B" Fermented Malt Beverage License.** The annual fee for this license shall be as prescribed in Section 1-3-1. This license may be issued at any time for six (6) months in any calendar year, for which fifty percent (50%) of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued. The fee for a license for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the license is issued.
- (c) **Temporary Class "B" Fermented Malt Beverage License.** The fee for this license shall be as prescribed in Section 1-3-1 per event.
- (d) **Temporary "Class B" Wine License.** The fee for this license shall be as prescribed in Section 1-3-1 per event. However, there shall be no fee if the Temporary Wine License is obtained along with a Temporary Fermented Malt Beverage License.
- (e) **Fermented Malt Beverage Wholesalers' License.** The annual fee for this license shall be as prescribed in Section 1-3-1.
- (f) **"Class A" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be as prescribed in Section 1-3-1.
- (g) **"Class B" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be as prescribed in Section 1-3-1. This license may be issued at any time for six (6) months in any calendar year, for which fifty percent (50%) of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued.
- (h) **Reserve "Class B" Intoxicating Liquor License.** The fee for an initial issuance of a Reserve "Class B" license shall be as prescribed in Section 1-3-1, except that the fee for the initial issuance of a Reserve "Class B" license to a bona fide club or lodge situated and incorporated in the state for at least six (6) years is the fee established in Section 7-2-5(g) for such a club or lodge. The annual fee for renewal of a Reserve "Class B" license is the fee established in Section 7-2-5(g).
- (i) **"Class B" License for Full-Service Restaurants and Hotels.** The initial annual fee for a "Class B" license for a full-service restaurant that has a seating capacity of three hundred or more persons, or a hotel that has one hundred (100) or more rooms of sleeping accommodations and that has either an attached restaurant with a seating capacity of one hundred fifty (150) or more persons or a banquet room which will accommodate four hundred (400) or more persons, is as prescribed in Section 1-3-1. Thereafter, the annual renewal fee is as prescribed in Section 1-3-1.

Sec. 7-2-6 Application for License.

- (a) **Contents.** Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on the form prescribed by the Wisconsin Department of Revenue and shall be sworn to by the applicant as provided by Secs. 887.01 to 887.04, Wis. Stats., and shall be filed with the City Clerk-Treasurer not less than fifteen (15) days prior to the

granting of such license. The premises shall be physically described to include every room and storage space to be covered by the license, including all rooms not separated by a solid wall or joined by connecting entrances.

- (b) **Corporations.** Such application shall be filed and sworn to by the applicant if an individual, by the president and secretary, of a corporation.
- (c) **Publication.** The City Clerk-Treasurer shall publish each application for a Class "A", Class "B", "Class A", "Class B", or "Class C" license. There is no publication requirement for temporary Class "B" picnic beer licenses under Sec. 125.26, Wis. Stats., or temporary "Class B" picnic wine licenses under Sec. 125.51(10), Wis. Stats. The application shall be published once in the official City newspaper, and the costs of publication shall be paid by the applicant at the time the application is filed, as determined under Sec. 985.08, Wis. Stats.
- (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.
- (e) **Quota.** License quotas shall be as established in Ch. 125, Wis. Stats.

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

- (a) **Residence Requirements.** A retail Class "A" or Class "B" fermented malt beverage or "Class A" or "Class B" intoxicating liquor license shall be granted only to persons who are citizens of the United States and who have been residents of the State of Wisconsin continuously for at least ninety (90) days prior to the date of the application.
- (b) **Applicant to have Malt Beverage License.** No retail "Class B" intoxicating liquor license shall be issued to any person who does not have or to whom is not issued a Class "B" retailer's license to sell fermented malt beverages.
- (c) **Right to Premises.**
 - (1) No applicant will be considered unless he/she has the right to possession of the premises described in the application for the license period, by lease or by deed.
 - (2) Any person applying for a Class "B" Intoxicating Liquor license shall have a premises at the time application is made or within the license year. In the event a building permit for construction or remodeling has been issued and substantial progress is being made on such construction or remodeling, the licensee shall be considered to meet the requirement of having a premises. In the event such licensee does not so obtain a premises, such license shall be subject to revocation or non-renewal.
- (d) **Age of Applicant.** Licenses related to alcohol beverages shall only be granted to persons who have attained the legal drinking age.
- (e) **Corporate Restrictions.**
 - (1) No license or permit may be issued to any corporation unless the corporation meets the qualifications under Sec. 125.04(a)1 and 4 and (b), Wis. Stats., unless the agent of the corporation appointed under Sec. 125.04(6) and the officers and directors of the corporation meet the qualifications of Sec. 125.04(a)1 and 3 and (b) and unless the agent of the corporation appointed under Sec. 125.04(6) meets the qualification under Sec. 125.04(a)2. The requirement that the corporation meet the qualifications under Sec. 125.04(a)1 and (b) does not apply if the corporation has terminated its relationship with all of the individuals whose actions directly contributed to the conviction.
 - (2) Each corporate applicant shall file with its application for such license a statement by its officers showing the names and addresses of the persons who are stockholders together with the amount of stock held by such person or persons. It shall be the duty of each

corporate applicant and Licensee to file with the City Clerk-Treasurer a statement of transfers of stock within forty-eight (48) hours after such transfer of stock.

- (3) Any license issued to a corporation may be revoked in the manner and under the procedure established in 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.
- (f) **Sales Tax Qualification.** All applicants for retail licenses shall provide proof, as required by Sec. 77.61(11), Wis. Stats., that they are in good standing for sales tax purposes (i.e., hold a seller's permit) before they may be issued a license.
- (g) **Connecting Premises.** Except in the case of hotels, no person may hold both a "Class A" license and either a "Class B" license or permit, a Class "B" license or permit, or a "Class C" license for the same premises or for connecting premises. Except for hotels, if either type of license or permit is issued for the same or connecting premises already covered by the other type of license or permit, the license or permit last issued is void. If both licenses or permits are issued simultaneously, both are void.
- (h) **Limitations on Other Business; Class "B" Premises.** No Class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class "B" license or permit is issued is connected to premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the Class "B" premises. No other business may be conducted on premises operating under a Class "B" license or permit. These restrictions do not apply to any of the following:
 - (1) A hotel.
 - (2) A restaurant, whether or not it is a part of or located in any mercantile establishment.
 - (3) A combination grocery store and tavern.
 - (4) A combination sporting goods store and tavern in towns, villages and 4th class cities.
 - (5) A combination novelty store and tavern.
 - (6) A bowling alley or recreation premises.
 - (7) A club, society or lodge that has been in existence for six (6) months or more prior to the date of filing application for the Class "B" license or permit.
- (i) **Catering Service Requirements.** In any case where the licensee operates or conducts a business in which the Licensee provides food for consumption off the licensed premises, commonly known as a catering service, the following rules shall apply to a caterer who provides alcoholic beverages as part of the catering services:
 - (1) The Licensee shall deliver alcoholic beverages to an event only when the Licensee supplies all the food for said event through the catering service for all guests and participants in the event.
 - (2) No Licensee shall sell, deal or traffic in alcoholic beverages, unless said alcohol is sold on a premises licensed to serve alcoholic beverages.
 - (3) The Licensee, its employees or agents, shall not act as a bartender or pour alcoholic beverages at the catering event.
- (j) **Video Surveillance Equipment.** Video surveillance equipment in licensed establishments shall be subject to the following restrictions:
 - (1) The Common Council may impose video surveillance as a condition on a license if the nature of the license proposal or the character of the immediate area in which the establishment will be located clearly demonstrates that video surveillance is consistent with maintaining the health, safety and welfare of the community. Factors which would support imposing this condition would include but are not limited to: physical layout of

the establishment, capacity, venue, history of the application operating previous licensed establishments, history of the applicant in operating previous licensed establishments, history of the establishment itself and character of the surrounding area of the establishment.

- (2) If a licensed establishment has video surveillance imposed as a license condition, the Common Council record shall clearly state the basis for imposing the condition.
- (3) Any video surveillance license condition imposed by the Common Council or the Police Department shall be limited to two (2) years after which time such condition may be reviewed at the request of the licensee.

Sec. 7-2-8 Investigation.

The City Clerk-Treasurer shall notify the Fire Inspector, Building Inspector and, as appropriate, pertinent law enforcement agencies of each new application, and these officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto, including those governing sanitation in restaurants, and whether the applicant is a proper recipient of a license. These officials shall furnish to the City Clerk-Treasurer in writing, who shall forward to the Common Council, the information derived from such investigations, 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.

Sec. 7-2-9 Approval of Application

- (a) No license shall be issued for operation on any premises or with any equipment for which taxes, assessments, forfeitures or other financial claims of the City are delinquent and unpaid.
- (b) No license shall be issued unless the premises conform to the sanitary, safety and health requirements of the State Building Code, and the regulations of the State Board of Health and local Board of Health applicable to restaurants. The premises must be properly lighted and ventilated, must be equipped with separate sanitary toilet and lavatory facilities equipped with running water for each sex and must conform to all Ordinances of the City.
- (c) Consideration for the granting or denial of a license will be based on:
 - (1) Arrest and conviction record of the applicant, subject to the limitations imposed by Secs. 111.321, 111.322, and 111.335, Wis. Stats.;
 - (2) The financial responsibility of the applicant;
 - (3) The appropriateness of the location and the premises where the licensed business is to be conducted; and
 - (4) Generally, the applicant's fitness for the trust to be reposed.
- (d) An application may be denied based upon the applicant's arrest and conviction record if the applicant has been convicted of a felony (unless duly pardoned) or if the applicant has habitually been a law offender. For purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an arrest or conviction of at least two (2) offenses which are substantially related to the licensed activity within the five (5) years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the Common Council, the Common Council reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Council, at its discretion, may, based upon an arrest or conviction

record of two (2) or more offenses which are substantially related to the licensed activity within the five (5) years immediately preceding, act to suspend such license for a period of one (1) year or more.

Sec. 7-2-10 Granting of License.

- (a) **Review.** Opportunity shall be given by the governing body to any person to be heard for or against the granting of any license. Upon the approval of the applicant by the Common Council, the City Clerk-Treasurer shall issue to the applicant a license, upon payment by the applicant of the license fee to the City. The full license fee shall be charged for the whole or fraction of any year.
- (b) **Ceased Regular Operations.** An establishment is deemed to have ceased regular operations when any of the following occurs:
 - (1) The alcohol beverage license is surrendered to the City Clerk-Treasurer absent the issuance of a newly-granted license; or
 - (2) The establishment is no longer open to the public; or
 - (3) The establishment is open to the public only intermittently in an attempt to circumvent the provisions of this Subsection; or
 - (4) The establishment fails to maintain open and active accounts with its food and/or alcohol distributors; or
 - (5) The alcohol beverage license holder fails to submit a renewal application to the City Clerk-Treasurer before the last possible submittal date; or
 - (6) An establishment is not deemed to have ceased regular operations if it is temporarily closed due to remodeling or any type of license suspension.
- (c) **Denial of License.** If the Common Council denies the license, the applicant shall be notified in writing, by registered mail or personal service, of the reasons for the denial. The notice shall also inform the applicant of the opportunity to appear before the Common Council and to provide evidence as to why the denial should be reversed. In addition, the City shall inform the applicant that the reconsideration of the application shall be held in closed session, pursuant to Sec. 19.85(1)(b), Wis. Stats., unless the applicant requests such reconsideration be held in open session and the Common Council consents to the request. Such written notice shall be mailed or served upon the applicant at least ten (10) days prior to the Common Council meeting at which the application is to be reconsidered.

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

- (a) In accordance with the provisions of Sec. 125.04(12), Wis. Stats., a license shall be transferable from one premises to another if such transfer is first approved by the Common Council. An application for transfer shall be made on a form furnished by the City Clerk-Treasurer. 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 City Clerk-Treasurer shall forthwith notify the Wisconsin Department of Revenue of such transfer. In the event of the sale of a business or business premises of the Licensee, the purchaser of such business or business premises must apply to the City for reissuance of said license and the City, as the licensing authority, shall in no way be bound to reissue said license to said subsequent purchaser.
- (b) Whenever the agent of a corporate holder of a license is for any reason replaced, the Licensee shall give City Clerk-Treasurer written notice of said replacement, the reasons therefor and the new appointment. Until the next regular meeting or special meeting of the Common Council, 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 City Clerk Treasurer of notice of disapproval of the successor agent by the Wisconsin Department of Revenue or other law enforcement officers 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 Common Council until the successor agent or another qualified agent is appointed and approved by the City.

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 City Clerk-Treasurer shall affix to the license his/her affidavit as provided by Sec. 125.04(4), Wis. Stats.

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

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

Sec. 7-2-14 Conditions of License.

All retail Class "A", Class "B", "Class A", "Class B" and "Class C" 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 City applicable thereto.

- (a) **Consent to Entry.** Every applicant procuring a license thereby consents to the entry of law enforcement authorities or duly authorized representatives of the City at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of City Ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.
- (b) **Employment of Minors.** No retail "Class B" or Class "B" licenses shall employ any underage person, as defined in the Wisconsin Statutes, but this shall not apply to hotels and restaurants. Family members may work on the licensed premises but are not permitted to sell or dispense alcoholic beverages.
- (c) **Disorderly Conduct Prohibited.** Each licensed premises shall, at all times, be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.
- (d) **Licensed Operator on Premises.** There shall be upon premises, and in visual control of such premises, operated under a "Class B", Class "B", or "Class C" license, at all times, the Licensee, members of the Licensee's immediate family who have attained the legal drinking age, and/or some person who shall have an operator's license and who shall be responsible for the acts of all persons serving as waiters, or in any other manner, any fermented malt beverages to customers. No person other than the Licensee shall serve fermented malt beverages in any place operated under a "Class B", Class "B", or "Class C" license unless he/she possesses an operator's license, or there is a person with an operator's license upon said premises at the time of such service.

- (e) **Health and Sanitation Regulations.** The rules and regulations of the State Board of Health governing sanitation in restaurants shall apply to all "Class B" liquor or "Class C" licenses issued under this Chapter. No "Class B" or "Class C" license shall be issued unless the premises to be licensed conform to such rules and regulations.
- (f) **Restrictions Near Schools and Churches.** No retail Class "A", Class "B", "Class A" or "Class B" license shall be issued for premises, the main entrance of which is less than three hundred (300) feet from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the maintenance entrance of such school, church or hospital to the main entrance to such premises. This Subsection shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within three hundred (300) feet thereof by any school building, hospital building or church building.
- (g) **Clubs.** No club shall sell or give away any intoxicating liquors except to bona fide members and guests invited by members.
- (h) **Gambling Prohibited.** Except as authorized by state law, no gambling or game of chance of any sort shall be permitted in any form upon any premises licensed under this Chapter or the laws of the State of Wisconsin.
- (i) **Credit Prohibited.** No retail Class "A", Class "B", "Class A", "Class B", or "Class C" liquor, wine, 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.
- (j) **Licensee or Permittee Responsible for Acts of Help.** A violation of this Chapter by a duly authorized agent or employee of a Licensee or permittee under this Chapter shall constitute a violation by the Licensee or Permittee. Whenever any Licensee or Permittee under this Chapter shall violate any portion of this Chapter, proceedings for the suspension or revocation of the license or permit of the holder thereof may be instituted in the manner prescribed in this Chapter.
- (k) **Indoor Pyrotechnic Displays Prohibited.** No indoor pyrotechnic display or fireworks display of any kind is allowed in the licensed premises, nor any unlicensed property attached to the licensed premises.
- (l) **Dances in Licensed Establishments.** No person shall conduct or hold any dance, public or private, in any establishment possessing a Class B intoxicating liquor or fermented malt beverage license without meeting the following requirements:
 - (1) A dance inspector, an adult employed by the establishment, shall be stationed at the door of the room in which the dance is being held at all times during the dance.
 - (2) The dance inspector shall admit no minors to such dance unless accompanied by a parent or legal guardian.
 - (3) The dance inspector shall not permit any improper, illegal, or immoral conduct at any dance.
- (m) **Timely Startup.** Timely startup and continuation of business is an ongoing condition of an alcohol beverage license issued under this Chapter. The Common Council may cancel or not renew any license granted if any of the following occurs:
 - (1) The privileges granted under the license are not exercised within ninety (90) days after the granting of the license;
 - (2) The business for which the license was issued is discontinued; or the business was not opened for business for the purpose of the license for a period of ninety (90) consecutive days or more; or the business was only open intermittently for period of two (2) days or less during the ninety (90) day period.

- (n) **Open Container.** It shall be unlawful for any person to whom a license has been granted to permit any person to leave the licensed premises with an open container containing any alcohol beverages.
- (o) **Sell or Serve on Public Street.** It shall be unlawful for any person to sell or serve, or offer to sell or serve any alcoholic beverages upon any public street within the City of Westby except in areas holding a sidewalk cafe permit pursuant to Section 7-2-22.

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

Sec. 7-2-15 Closing Hours.

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

- (a) **Class "B" Licenses.**
 - (1) No premises for which a retail "Class B" liquor, Class "B" fermented malt beverage, or "Class C" wine license has been issued shall be permitted to remain open for the sale of liquor or fermented malt beverages or for any other purpose between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday, and 2:30 a.m. and 6:00 a.m., Saturday and Sunday. There shall be no closing hours on January 1st.
 - (2) Hotels and restaurants, the principal business of which is the furnishing of food or lodging to patrons, bowling alleys, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but shall not sell liquor or malt beverages during the closing hours of Subsection (a)(1) above.
- (b) **Carryout Hours.** Between 9:00 p.m. and 8:00 a.m., no person may sell, remove, carry out or permit to be removed or carried out from any premises having a "Class A" or Class "A" license, fermented malt beverages or intoxicating liquor in original unopened packages, containers or bottles or for consumption away from the premises. On "Class B" liquor or Class "B" fermented malt beverage licensed premises, carryout shall be prohibited between midnight and 6:00 a.m.

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

It shall be unlawful for any person or organization on a temporary basis to sell or offer to sell any alcohol beverage upon any City-owned property or privately-owned property within the City of Westby, except through the issuance of a Temporary Class "B" Fermented Malt Beverage License or Temporary "Class B" Wine License issued by the Common Council in accordance with Wisconsin Statutes and as set forth in this Section. A Temporary Class "B" Fermented Malt Beverage License or Temporary "Class B" Wine License authorizing the sale and consumption of beer and/or wine on City-owned property or privately-owned property may be authorized by the Common Council 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(6), Wis. Stats., and shall fully comply with the requirements of this Section and Section 11-4-1. Members of an organization which is issued a temporary license and who are issued operator's licenses for the event may be required to attend a pre-event informational meeting to learn what rules and regulations apply and what the responsibilities of the bartenders and organization will be.

- (b) **Posting of Signs and Licenses.** All organizations issued a temporary license shall post in a conspicuous location at the main point of sale and at all remote points of sale a sufficient number of signs stating that no fermented malt beverage shall be served to any under-age person and that proper identification may be required.
- (c) **Fencing.**
 - (1) If necessary due to the physical characteristics of the site, the Common Council may require that organizations install a double fence around the main point of sale to control ingress and egress and continually station a licensed operator, security guard or other competent person at the entrance for the purpose of checking age identification. Where possible, there shall be only one (1) point of ingress and egress. When required, the double fence shall be a minimum of four (4) feet high and a minimum of six (6) feet between fences.
 - (2) For indoor events, the structure used shall have suitable exits and open spaces to accommodate anticipated attendance. It should contain adequate sanitary facilities to accommodate the size of the group.
- (d) **Underage Persons Prohibited.** No underage persons as defined by the Wisconsin Statutes shall be allowed to assist in the sale of fermented malt beverages or wine at any point of sale, nor shall they be allowed to loiter or linger in the area of any point of sale.
- (e) **Licensed Operators Requirement.** A licensed operator shall be stationed at all points of sales at all times.
- (f) **Waiver.** The Common Council may waive or modify the requirements of this Section due to the physical characteristics of the licensed site.
- (g) **Insurance.** The applicant for a temporary fermented malt beverage or wine license may be required to indemnify, defend and hold the City and its employees and agents harmless against all claims, death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the license, the applicant may be required to furnish a Certificate of Comprehensive General Liability insurance with the City of Westby. The applicant may be required to furnish a performance bond prior to being granted the license.

Cross Reference: Section 11-4-1.

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

- (a) **Procedure.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 11, Chapter 4, of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by this Section.
- (b) **Abandonment of Premises.** Any Licensee holding a license to sell alcohol beverages 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 Common Council. All persons issued a license to sell alcohol beverages in the City for which a quota exists limiting the number of such licenses that may be issued by the City shall cause such business described in such license to be operated on the premises described in such license for at least one hundred fifty (150) days during the terms of such license, unless such license is issued for a term of less than one hundred eighty (180) days, in which event this Subsection shall not apply.
- (c) **License Revocation or Suspension.** License revocation or suspension procedures shall be as prescribed by Chapter 125, Wis. Stats.

(d) **Point Values for Alcohol Beverages Violation, Revocations and Suspensions.**

(1) **Purpose and Definitions.** The purpose of this Subsection is to administratively interpret those portions of this Chapter relating to the establishment of an alcohol beverage demerit point system to assist in determining which license holders should be subject to suspension or revocation procedures.

(2) **Point Schedule.** The scale of demerit points is listed according to the type of alcohol beverage violation. This demerit point system is used to identify habitually troublesome license holders who have repeatedly violated state statutes and City Ordinances for the purpose of recommending suspension or revocation of their alcohol beverage licenses.

<u>Type of Violation</u>	<u>Point Value</u>
1. Sale of alcohol beverages without license or permit; sale of controlled substances on licensed premises	100
2. Sale of alcohol beverages to underage person	50
3. Sale of alcohol beverages to intoxicated person	50
4. Underage person on premises	50
5. Intoxicated bartender; disorderly conduct on premises	50
6. After hours consumption	50
7. Refusal to allow police to search premises or refusal to cooperate with lawful police investigation	50
8. Licensee, agent or operator not on premises at all times	25
9. Persons on premises after closing hours	25
10. Violation of carry-out hours	25
11. Licensee permitting person to leave licensed premises with open alcohol beverage	25
12. All other violations of this Chapter	25

(3) **Violations How Calculated.** In determining the accumulated demerit points against a licensee within twelve (12) months, the City shall use the date each violation was committed as the basis for the determination.

(4) ***Suspension or Revocation of License.***

- a. The Common Council shall call before it for purposes of revocation or suspension hearing all licensees who have accumulated two hundred (200) points in a twelve (12) month period as a result of court imposed convictions.
- b. If the demerit point accumulation calculated from the date of violation amounts to two hundred (200) points in a twelve (12) month period, a suspension of thirty (30) days shall be imposed. If the demerit point accumulation is two hundred fifty (250) points (calculated from the date of violation) in a twenty-four (24) month period, a suspension of sixty (60) days shall be imposed. If the demerit point accumulation in a thirty-six (36) month period is three hundred (300) points, the suspension shall be for the maximum allowed by law, which is ninety (90) days. If the license is revoked no other license shall be granted to such licensee or for such premises for a period of twelve (12) months from the date of revocation.
- c. The procedure to be used for suspension or revocation shall be that found in Subsection (c) above.

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

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

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

Sec. 7-2-19 Permits Required for Outdoor Sports Activities and Beer/Beverage Gardens.

- (a) **Purpose.** The Common Council finds that restrictions are necessary for outdoor beer/beverage gardens and sports activities at premises holding "Class B" and Class "B" liquor and fermented malt beverages or "Class C" wine licenses in the City of Westby due to concerns arising from

noise, density and related problems. This Section is enacted pursuant to police powers granted to municipalities provides a framework for issuance of permits and regulatory controls for such outdoor sports and beer/beverage garden activities associated with premises with an alcohol beverage license.

(b) **Common Council Approval Required.**

(1) **Generally.** No Licensee shall conduct or sponsor any outdoor sports activity or event or beer/beverage garden on property forming any part of the real property on which the licensed premises exist without the prior approval of the Common Council and issuance of a permit pursuant to this Section.

(2) **Permit Required for Beer/Beverage Garden or Outdoor Sports Activity Area Outdoor Consumption.**

- a. No Licensee shall permit the consumption of alcohol beverages on any part of the licensed premises not enclosed within the building, except under a beer/beverage garden permit or outside sports activity permit granted by the Common Council. The permits are a privilege in which no rights vest and, therefore, may be revoked by the Common Council at its pleasure at any time or shall otherwise expire on June 30th of each year.
- b. No person shall consume or have in his or her possession alcohol beverages on any unenclosed part of a licensed premises which is not described in a valid beer/beverage garden permit or outdoor sports activity permit.
- c. The Common Council may also issue limited duration beer/beverage garden or outdoor sports activities permits for specified times for special events to be conducted on outdoor areas at licensed areas.

(c) **Permit Application.** If a Licensee shall conduct or sponsor any outdoor sports activity or event or beer/beverage garden on the Licensee's property, the Licensee shall file an application with the City Clerk-Treasurer setting forth the following information:

- (1) The name, address and telephone number of the person or persons who will be responsible for the actual conduct of the activity or event;
- (2) The date and duration of time for the proposed activity or event;
- (3) An accurate description of that portion of the Licensee's property proposed to be used;
- (4) A good faith estimate of the number of users, participants and spectators for the beer/beverage garden or proposed activity or event; and
- (5) The Licensee's plan for maintaining the cleanliness of the licensed area.

(d) **Time for Filing.** The Licensee shall file the application not less than fifteen (15) days before the date of the proposed activity or event. The Common Council may waive the fifteen (15) day time limit upon a Licensee's showing of exigent circumstances. The application shall be accompanied by payment of a fee as prescribed in Section 1-3-1 for review of the application. The applicant may request that an annual permit be issued for the beer/beverage garden or outdoor sports activities. Annual permits shall be renewed at the same time the license is renewed.

(e) **Review.** The Common Council shall review the applications in light of the standards of this Section. If the nature of the property or the event requires the imposition of additional regulations, the Common Council may impose these regulations upon an express finding detailing the reasons for additional regulation. All property owners within one hundred fifty (150) feet of the proposed beer/beverage garden or outside sports facility shall be notified of the pendency of application for a permit by first class mail

(f) **Standards for Permit Issuance for Outdoor Sports Activities at Licensed Establishments.**

The following standards shall apply to any outdoor sports activity in the City of Westby regulated under this Section:

- (1) The outdoor sale of alcohol beverages (bar setup) in the outdoor sports activity area is not permitted unless approved by the Common Council for each special outdoor sports activity event. Approval of an application shall not act to permit outdoor consumption of alcohol beverages on the property beyond the area specifically authorized by permit pursuant to this Section. A licensed operator shall be responsible for policing the outdoor sports activity at all times during which it is open for operation.
 - (2) If the estimated number of participants and spectators shall bring the number of persons on the property above the number for which licensed premises' restroom facilities are rated adequate, the Licensee shall provide a number of portable temporary restrooms sufficient to serve the estimated number of persons.
 - (3) The Common Council shall not grant approval to any applicant whose property on which the activity or event is proposed is adjacent to any property zoned residential or on which a residential use exists as a nonconforming use, or within fifty (50) feet of any property zoned residential or on which a residential use exists as a nonconforming use. Fencing may be required by the Common Council as a condition of permit issuance.
 - (4) The Licensee shall provide parking adequate for the proposed activity or event, whether on-site or through agreements with property owners shown to the Common Council's satisfaction to permit the Licensee's property to be used for parking for the proposed activity or event.
 - (5) The applicant shall show the Common Council plans adequate to provide reasonable access to participants and spectators for the event, and to limit access for all other persons.
 - (6) The Licensee shall clean up all garbage and debris relating to the activity or event at least once per twenty-four (24) hours during the activity or event.
 - (7) The Licensee shall not permit the noise level of the sports activity or event to exceed seventy-five (75) dB, measured at any border of the Licensee's real property. Amplified music or sound is not permitted.
 - (8) As a condition of approval, the Common Council shall approve the type of outdoor lighting to be used.
 - (9) Outdoor volleyball courts, horseshoe pits, or other athletic areas licensed as premises shall cease operation after 11 :00 p.m. of each day in such outdoor areas. In addition, no amplified sound shall be permitted in the outdoor premises.
- (g) **Standards on Issuance of Beer/Beverage Garden Permits.** The following standards shall apply to any beer/beverage license in the City of Westby regulated under this Section:
- (1) The outdoor sale of alcohol beverages (bar setup) in a beer/beverage garden in the City of Westby is not permitted unless approved by the Common Council for each special event. Approval of the application shall not act to permit outdoor consumption of alcohol beverages on the property beyond the area specifically authorized by permit pursuant to this Section.
 - (2) No permit shall be issued for a beer/beverage garden if any part of the beer/beverage garden is within fifty (50) feet of a structure used for residential purposes, except residential uses located in the same structure as the licensed premises or located on a commercially-zoned parcel. This requirement may be increased or decreased at the discretion of the Common Council if unique site characteristics exist.
 - (3) No permit shall be issued for a beer/beverage garden if the beer/beverage garden area is greater than fifty percent (50%) of the gross floor area of the adjoining interior/enclosed licensed premises.
 - (4) Each applicant for a beer/beverage garden permit shall accurately describe the area intended for use as a beer/beverage garden and shall indicate the nature of fencing or

other measures intended to provide control over the operation of the beer/beverage garden.

- (5) Unless exceptional circumstances exist, as determined by the Common Council, beer/beverage gardens shall be at ground level. Unless a special waiver is granted by the Common Council, no beer/beverage garden shall be located closer than five (5) feet to a public right-of-way.
- (6) No amplified sound or music is permitted outside the enclosed (building) premises, without a special event permit granted by the Common Council with hours to be set. Amplified sound or music is not permitted in the beer/beverage garden. As a condition of approval, the Common Council shall approve the type of outdoor lighting to be used.
- (7) A licensed operator shall be responsible for policing the beer/beverage garden at all times during which the beer/beverage garden is in operation.
- (8) Use of the beer/beverage garden is prohibited after 11 :00 p.m., at which time all access shall be secured.

(h) **Fencing.** The following fencing requirements shall be complied with by licensees under this Section:

- (1) A Class "B" fermented malt beverage and/or intoxicating liquor or "Class C" wine license holder whose premises are expanded to front, rear and/or side yard outdoor areas such as patios, volleyball pits, outdoor sports areas, beer/beverage gardens and the like may be required to install fencing around the perimeter of the outside premises. Such fencing may consist of Common Council-approved wire mesh, solid vegetation, wood, plastic, or other similar material or a wall which will provide for an enclosed area on the outside of the licensed premises. Such barrier shall be a minimum of six (6) feet in height. The Common Council may modify or waive these fencing/screening requirements when a front yard use is proposed.
- (2) Prior to installation of such fencing, screening or wall, a diagram of the proposed barrier shall be submitted to the City to ensure that the proposed barrier will adequately protect neighbors, limit noise, and prevent or limit access by underage individuals, while still providing sufficient visibility to law enforcement and other authorities to ensure the premises is complying with alcohol beverage and other requirements.
- (3) That in lieu of the fencing or barrier required above, the City may authorize the use of security personnel to patrol such outdoor premises on a full time basis during such times that the outdoor premises are open for business.
- (4) Access to the outdoor beer/beverage garden or sports activity area shall *only* be through the main entrance to the Class "B" intoxicating liquor, Class "B" fermented malt beverage, and "Class C" wine licensed premises.

(i) **State Statutes Enforced Within Beer/Beverage Gardens.** Every Licensee under this Section shall comply with and enforce all provisions of Chapter 125, Wis. Stats., applicable to Class "B" licensed premises, except insofar as such provisions are clearly inapplicable. Violation of the provisions of Chapter 125, Wis. Stats., shall be grounds for immediate revocation of the outdoor sports activity permit or beer/beverage garden permit by the Common Council.

(j) **Authority of Police Officers to Suspend Outdoor Alcoholic Beverages Permit.** Officers of the Police Department shall have the authority to order any outdoor area regulated under this Section to be closed down at any time the Officer believes its continued operation is in violation of this Section, any other applicable City ordinance, or provisions of Ch. 125, Wis. Stats.

(k) **Violations.** Failure of the Licensee to comply with any of the provisions of this Section shall be grounds for suspension, nonrenewal or revocation of the Licensee's alcohol beverage license or licenses and/or Licensee under this Section.

Sec. 7-2-20 Nude Dancing in Licensed Establishments Prohibited.

(a) Authority.

- (1) The Common Council of the City of Westby has explicit authority under Sec. 125.10(1), Wis. Stats., to adopt regulations governing the sale of alcohol beverages which are in addition to those set forth in Ch. 125, Wis. Stats.; and
- (2) The Common Council has authority under its general police powers set forth in Ch. 62, Wis. Stats., to act for the good order of the municipality and for the health, safety and welfare of the public; and may carry out its powers by regulation and suppression; and
- (3) The Common Council recognizes it lacks authority to regulate obscenity and does not intend by adopting this Section to regulate obscenity, since nudity in and of itself is not obscene, it declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, non-obscene, erotic dancing in bars and taverns; and
- (4) Bars and taverns featuring live totally nude, non-obscene, erotic dancing have in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of real property, to harm the economic welfare of the communities and to negatively affect the quality of life of the communities; and such secondary effects are detrimental to the public health, safety and general welfare of citizens; and
- (5) The Common Council recognizes the U.S. Supreme Court has held that nude dancing is expressive conduct within the outer perimeters of the United States Constitution and therefore entitled to some limited protection under the First Amendment, and the governing body further recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights; and
- (6) However, the Common Council is aware, based on the experiences of other communities, that bars and taverns in which live, totally nude, non-obscene, erotic dancing occurs may and do generate secondary effects which the governing body believes are detrimental to the public health, safety and welfare of the citizens of the City of Westby; and
- (7) Among these secondary effects are:
 - a. The potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses;
 - b. The potential depreciation of property values in neighborhoods where bars and taverns featuring nude dancing exist;
 - c. Health risks associated with the spread of sexually transmitted diseases; and
- (8) The potential for infiltration by organized crime for the purpose of unlawful conduct; and the Common Council desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the City of Westby; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and
- (9) The Common Council has determined that enactment of an ordinance prohibiting live, totally nude, non-obscene, erotic dancing in bars and taverns licensed to serve alcohol beverages promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such activity.

- (b) Nude Dancing in Licensed Establishments Prohibited.** It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a licensed establishment which:

- (1) Shows his/her genitals, pubic area, vulva, anus, anal cleft; or cleavage with less than a fully opaque covering; or
 - (2) Shows any portion of the female breast below a point immediately above the top of the areola; or
 - (3) Shows the covered male genitals in a discernably turgid state.
- (c) **Exemptions.** The provisions of this Section does not apply to the following licensed establishments; theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude erotic dancing.
- (d) **Definitions.** For purposes of this Section, the term "licensed establishment" means any establishment licensed by the Common Council of the City of Westby to sell alcohol beverages pursuant to Ch. 125, Wis. Stats. The term "licensee" means the holder of a retail "Class A", "Class B", Class "B", Class "A", or "Class C" licensee granted by the Common Council of the City of Westby pursuant to Ch. 125, Wis. Stats.
- (e) **Penalties.** Any person, partnership or corporation who violates any of the provisions of this Section shall be subject to a forfeiture pursuant to Section 1-1-7. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this Section constitutes sufficient grounds for suspending, revoking or non-renewing an alcohol beverage license under Sec. 125.12, Wis. Stats.

Sec. 7-2-21 Sidewalk Cafes.

- (a) **Introduction; Purpose.**
- (1) No establishment may operate a sidewalk cafe without first having obtained approval of the Common Council, subject to the conditions of this Section. The provisions of this Section are applicable to all sidewalk cafes whether licensed or not to sell alcohol beverages.
 - (2) There exists a need for outdoor eating facilities in certain areas of the City to provide a unique environment for relaxation, social interaction, and food consumption.
 - (3) Sidewalk cafes will:
 - a. Permit enhanced use of the available public rights of way;
 - b. Complement the restaurants operating from fixed premises; and
 - c. Promote economic activity in an area.
 - (4) The existence of sidewalk cafes encourages additional pedestrian traffic, but their presence may impede the free and safe flow of pedestrians. Therefore, a need exists for regulations and standards for the existence and operation of sidewalk cafes to ensure a safe environment.
 - (5) The establishment of permit conditions and safety standards for sidewalk cafes is necessary to protect and promote public health, safety and welfare.
- (b) **Definitions.**
- (1) **Sidewalk Cafe.** An expansion of a full service restaurant creating an outdoor dining facility on part of the public right of way that immediately adjoins the licensed premises for the purpose of consuming food or beverages prepared at the full service restaurant adjacent thereto.
 - (2) **Full Service Restaurant.** An establishment whose food sales are greater than fifty percent (50%) of its gross receipts.

- (c) **Application; License Fee.**
- (1) An application for expansion of the premises or the licensed premises to include a sidewalk cafe shall be filed with the City Clerk-Treasurer with the following information:
 - a. The name, address and telephone number of the person or persons who will be responsible for the sidewalk cafe;
 - b. An accurate detailed description and/or design including dimensions of the property and the Licensee's property, if serving alcohol.
 - (2) Each permit shall be effective for one (1) year, from April 1 until March 31.
 - (3) The permit issued may be transferred to a new owner only for the location and area listed in the permit. The transferred permit shall be valid only for the remainder of the period for which it was originally issued. A new certificate of insurance must be filed with the City within thirty (30) days of the permit transfer.
 - (4) The application shall be accompanied by payment of a fee as prescribed in Section 1-3-1 for review of the application. The application shall expire on June 30th of each year.
- (d) **Requirements.** Sidewalk cafes approved under this Section shall be subject to the following requirements. The Common Council may impose additional requirements at its discretion:
- (1) The service and consumption of alcohol beverages in the sidewalk cafe shall be limited to the hours of operation of the sidewalk cafe.
 - (2) Alcohol beverages shall only be served to patrons of the establishment by a server in the sidewalk cafe.
 - (3) Patrons of the sidewalk cafe shall remain seated at the table when consuming alcohol beverages.
 - (4) Alcohol beverages shall only be served to patrons of the establishment with food service in the sidewalk cafe.
 - (5) All sidewalk cafes shall be placed within approved boundaries of the sidewalk cafe site as determined by the Common Council. The Common Council shall make said determination by considering the following minimum factors: the distance the table and chairs of said cafe can extend into the sidewalk, upon considering the width of the sidewalk; no obstruction or interference with the public pedestrian walkway or interference with automobile traffic is allowed.
 - (6) The entire sidewalk surface for the proposed sidewalk cafe shall be paved. A "paved surface" includes concrete, asphalt, cement, brick, pavers, or other impervious surface. Paved areas of the establishment's private property may be included within the boundary of the proposed cafe, if immediately adjacent to the paved public sidewalk. Trash receptacles shall be provided within the sidewalk cafe.
 - (7) An establishment is not eligible for a license if, in the opinion of the Common Council, the sidewalk cafe has obstructions on the adjacent sidewalk which interfere with the public right-of-way. The sidewalk cafe shall have at least one (1) unobstructed entrance, the position of which allows sufficient access to the public entrance for ingress and egress from and to the restaurant.
- (e) **Case-by-Determination.** Given unique circumstances, the Common Council may on a case-by-case basis modify or add to the above requirements.
- (f) **Responsibility of Licensee.** The license holder shall, in addition to all other requirements of the law, the City alcohol beverage license, and this Section, take reasonable steps to ensure that alcohol beverages are consumed only by patrons of the establishment who are of legal drinking age, and not by passersby or persons who are not of age or who are obviously intoxicated. Reasonable steps may include, but not be limited to, the use of portable barriers or fences, supervision of the outside area by security and staff personnel, or electronic surveillance

monitors. Failure to take reasonable steps and use them at all times in the sidewalk cafe is grounds for suspension or revocation of the sidewalk cafe permit.

- (g) **Responsibility of Patrons.** No person shall leave the sidewalk cafe area listed in the permit with an alcohol beverage. Any person doing so shall be in violation of the City of Westby outdoor consumption ordinance prohibiting the consumption of alcohol or possession of open containers on the streets.
- (h) **State Statutes Enforced.** Every permittee under this Section shall comply with and enforce all provisions of Ch. 125, Wis. Stats. Violation of the provisions of Ch. 125, Wis. Stats., shall be grounds for immediate revocation of the sidewalk cafe permit.
- (i) **Violations.** Failure of the Licensee to comply with any of the provisions of this Section shall be grounds for suspension, non-renewal or revocation of the sidewalk cafe permit and/or the Licensee's alcohol beverage license or licenses.

Sec. 7-2-22 through Sec. 7-2-29 Reserved for Future Use.

Article B: Operator's License

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

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

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

Sec. 7-2-31 Procedure Upon Application.

- (a) The City Clerk-Treasurer may issue an operator's license, which license shall be granted only upon application in writing on forms to be obtained from the City Clerk-Treasurer only to persons eighteen (18) years of age or older. Operator's licenses shall be operative only within the limits of the City.
- (b) All applications are subject to an investigation by the Chief of Police and/or other appropriate authority to determine whether the applicant and/or premises to be licensed complies with all regulations, ordinances and laws applicable thereto. The investigating authority shall conduct an investigation of the applicant including, but not limited to, requesting information from the State, surrounding municipalities, and/or any community where the applicant has previously resided concerning the applicant's arrest and conviction record. Based upon such investigation, the investigating authority shall recommend, in writing, to the City Clerk-Treasurer approval or denial of the application. If the investigating authority recommends denial, the investigating authority shall provide, in writing, the reasons for such recommendation.

Sec. 7-2-32 Duration.

Licenses issued under the provisions of this Chapter shall be valid for a period of one (1) year and shall expire on the thirtieth (30th) day of June.

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

- (a) **Fee.** The fee for a one (1) year operator's license shall be as prescribed in Section 1-3-1. The non-refundable fee for a provisional license or temporary operator's license shall be as prescribed in Section 1-3-1.
- (b) **Provisional License.** The City Clerk-Treasurer may issue provisional operator's licenses in accordance with Sec. 125.17(5), Wis. Stats. The provisional operator's license shall expire sixty (60) days after its issuance or when an operator's license is issued to the holder, whichever is sooner. Pertinent law enforcement agencies shall, upon request, submit to the City Clerk Treasurer a report regarding the applicant's conviction history, if any. The applicant for such provisional license must present evidence to the City Clerk-Treasurer establishing that the applicant is enrolled in an Alcohol Awareness Training Program established pursuant to Sec. 125.17(a), Wis. Stats. The City Clerk-Treasurer may, upon receiving an application for a temporary provisional license, issue such a license without requiring the successful completion of the approved program as described herein. However, such temporary license shall be used only for the purpose of allowing such applicant the privilege of being licensed as a beverage operator pending his/her successful completion of the approved program, and the applicant shall also apply for a regular operator's license. No such Provisional Operators License shall be issued prior to a waiting period of less than ninety-six (96) hours [four (4) days], and the completion of a background check subject to limitations established by law. A provisional license may not be issued to any person who has been denied an operator's license by the Common Council, who has had his/her operator's license revoked or suspended within the preceding twelve (12) months, or who previously held an operator's license and who failed to complete the Alcohol Awareness Training Program without first successfully completing the program. No person shall be issued more than three (3) provisional licenses in any twelve (12) month period. The City Clerk-Treasurer shall provide an appropriate application form to be completed in full by the applicant. The City Clerk- Treasurer may revoke the provisional license issued if he/she discovers that the holder of the license made a false statement on the application. A provisional license shall not be renewed.
- (b) **Temporary License.** The City Clerk-Treasurer may issue a temporary operator's license provided that:
 - (1) This license may be issued only to operators employed by, or donating their services to, nonprofit corporations.
 - (2) No person may hold more than one (1) license of this kind per year.
 - (3) The license is valid for any period from one (1) day to fourteen (14) days, and the period for which it is valid shall be stated on the license.

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

- (a) After the City Clerk/Treasurer approves the granting of an operator's license, the City Clerk-Treasurer shall issue the license. Such licenses shall be issued and numbered in the order they are granted and shall give the applicant's name and address and the date of the expiration of such license.
- (b) (1) If the application is denied by the Chief of Police, the City Clerk-Treasurer shall, in writing, inform the applicant of the denial, the reasons therefore, and of the opportunity to request a reconsideration of the application by the Common Council in a closed session. Such notice must be sent by registered mail to, or served upon, the applicant at least ten (10) days prior to the Common Council's reconsideration of the matter. At such reconsideration hearing, the applicant may present evidence and testimony as to why the license should be granted.

- (2) If, upon reconsideration, the Council again denies the application, the City Clerk-Treasurer shall notify the applicant in writing of the reasons therefore. An applicant who is denied any license upon reconsideration of the matter, may apply to Circuit Court pursuant to Sec. 125.12(2)(d), Wis. Stats., for review.
- (c) (1) Consideration for the granting or denial of a license will be based on:
 - a. Arrest and conviction record of the applicant, subject to the limitations imposed by Sections 111.321, 111.322, and 111.335, Wis. Stats.;
 - b. The financial responsibility of the applicant;
 - c. The appropriateness of the location and the premises where the licensed business is to be conducted; and
 - d. Generally, the applicant's fitness for the trust to be reposed.
- (2) If a Licensee is convicted of an offense substantially related to the licensed activity, the Common Council may act to revoke or suspend the license.
- (d) An application may be denied based upon the applicant's arrest and conviction record if the applicant has been convicted of a felony (unless duly pardoned) or if the applicant has habitually been a law offender. For purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an arrest or conviction of at least two (2) offenses which are substantially related to the licensed activity within the five (5) years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the Common Council, the Common Council reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Common Council, at its discretion, may, based upon an arrest or conviction record of two (2) or more offenses which are substantially related to the licensed activity within the five (5) years immediately preceding, act to suspend such license for a period of one (1) year or more.

Sec. 7-2-35 Training Course.

- (a) Except as provided in Subsection (b) below, the City Clerk-Treasurer may not issue an operator's license unless the applicant has successfully completed a responsible beverage server training course at any location that is offered by a vocational, technical and adult education district and that conforms to curriculum guidelines specified by the board of vocational, technical and adult education or a comparable training course that is approved by the educational approval board or unless the applicant fulfills one of the following requirements:
 - (1) The person is renewing an operator's license.
 - (2) Within the past two (2) years, the person held a Class "A", Class "B", "Class A", "Class B", or "Class C" license or permit or a manager's or operator's license.
 - (3) Within the past two (2) years, the person has completed such a training course.
- (b) The City Clerk-Treasurer may issue a provisional operator's license to a person who is enrolled in a training course under Subsection (a) above and shall revoke that license if the applicant fails successfully to complete the course in which he or she enrolls.
- (c) The City Clerk-Treasurer may not require that applicants for operators' licenses undergo training in addition to that under Subsection (a), but may require applicants to purchase, at cost, materials that deal with relevant local subjects not covered in the course under Subsection (a).

Sec. 7-2-36 Display of License.

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

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

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

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

Article C: Penalties

Sec. 7-2-40 Penalties.

- (a) Forfeitures for violations of Sections 125.07(1)-(5) and 125.09(2), Wis. Stats., adopted by reference in Section 7-2-1 of the Code of Ordinances of the City of Westby, shall conform to the forfeiture penalty permitted to be imposed for violations of the comparable State Statute, including any variations or increases for subsequent offenses.
- (b) Any person who shall violate any provision of this Chapter of the Code of Ordinances of the City of Westby, 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 City of Westby.
- (c) Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the Wisconsin Statutes.

Title 7 – Chapter 3

Cigarette Licenses

7-3-1 Cigarette Licenses

Sec. 7-3-1 Cigarette Licenses.

- (a) **License Required.** No person, firm or corporation in the City of Westby shall, in any manner, directly or indirectly, upon any premises, or by any device, sell, exchange, barter, dispose of or give away, or keep for sale, any cigarette, cigarette paper or cigarette wrappers, or any substitute therefor, without first obtaining a license as hereinafter provided.
- (b) **Application for License; Fee.** Every person, firm or corporation desiring a license under this Section shall file with the City Clerk-Treasurer 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 City Clerk-Treasurer and shall name the licensee and the place wherein he/she is authorized to conduct such business, and the same shall not be delivered until the applicant shall pay to the City Clerk-Treasurer a license fee as prescribed in Section 1-3-1.
- (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 City Clerk-Treasurer. Each license shall be issued on the first day of July in each year, or thereafter whenever applied for, and shall continue in force from date of issuance until the succeeding June 30th, unless sooner revoked for any violation of this Section.

State Law Reference: Sec. 134.65, Wis. Stats.

Title 7 – Chapter 4

Transient Merchants

7-4-1	Registration Required
7-4-2	Definitions
7-4-3	Exemptions
7-4-4	Registration
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7-4-7	Regulation of Transient Merchants; Farm Produce Sales
7-4-8	Revocation of Registration
7-4-9	Special Event Vending Permit

Sec. 7-4-1 Registration Required.

It shall be unlawful for any transient merchant to engage in direct sales within the City of Westby without being registered for that purpose as provided herein.

State Law Reference: Sec. 66.0423, Wis. Stats.

Sec. 7-4-2 Definitions.

In this Chapter the following definitions shall be applicable:

- (a) **Transient Merchant.** Any individual who engages in the retail sale of merchandise at any place in this state temporarily, and who does not intend to become and does not become a permanent merchant of such place. The term shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the transient merchant for the retention of goods by a donor or prospective customer. For purposes of this Section, sale of merchandise includes a sale in which the personal services rendered upon or in connection with the merchandise constitutes the greatest part of value for the price received, but does not include a farm auction sale conducted by or for a resident farmer of personal property used on the farm, or the sale of produce or other perishable products at retail or wholesale by a resident of this state.
- (b) **Permanent Merchant.** Any person 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 the City; or
 - (2) Has continuously resided in the City and now does business from his/her residence.
- (c) **Merchandise.** Shall include personal property of any kind, and shall include merchandise, goods, or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of merchandise by a donor or prospective customer.
- (d) **Charitable Organization.** Shall include any benevolent, philanthropic, religious, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such, including, for example, Boy Scouts, Girl Scouts, 4-H Clubs and school organizations.
- (e) **Clerk-Treasurer.** The City of Westby Clerk-Treasurer or Deputy Clerk-Treasurer.
- (f) **Person.** All humans of any age or sex, partnerships, corporations, associations, groups, organizations and any other description of a collection of human beings working in concert or for

the same purpose or objective.

Sec. 7-4-3 Exemptions.

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

- (a) **Regular Delivery Routes.** Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;
- (b) **Wholesalers.** Any person selling merchandise at wholesale to dealers in such merchandise;
- (c) **Agricultural Products.** Any person selling Wisconsin agricultural products which the person has grown;
- (d) **Deliveries by Permanent Merchants.** Any permanent merchant or employee thereof who takes orders at the home of the buyer for merchandise regularly offered for sale by such merchant within this county and who delivers such merchandise in their regular course of business;
- (e) **Requested Home Visits.** Any person who has an established place of business where the merchandise being sold or is 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) **Prior Sales Transactions.** 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) **Services Not Offering Merchandise.** Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise;
- (h) **Auctions; Sales Authorized by Statute.** 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) **Charitable Organizations; Limited Exemptions.** 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 City Clerk-Treasurer proof that such charitable organization is registered under Sec. 440.41, Wis. Stats. Any charitable organization engaging in the sale of merchandise and not registered under Sec. 440.41, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this Chapter.
- (j) **Alleged Transient Merchants.** Any person who claims to be a permanent merchant, but against whom complaint has been made to the City Clerk-Treasurer that such person is a transient merchant, provided that there is submitted to the City Clerk-Treasurer proof that such person has leased for at least one (1) year, or purchased, the premises from which he/she is conducting business, or proof that such person has conducted such business in this City for at least one (1) year prior to the date complaint was made.
- (k) **Persons Licensed by Examining Boards.** Any individual licensed by an examining board as defined in Sec. 15.01(7), Wis. Stats.
- (l) **City Authorized Events.** This Chapter does not apply to transient merchants while doing business at special events authorized by the Common Council.
- (m) **Resident Minors.** Minors under eighteen (18) years of age who are residents of the Public School District of which the City of Westby is a part.
- (n) **Solicitors.** Persons not engaged in commercial activity and are soliciting support for political, religious, or similar non-commercial programs or organizations.

Sec. 7-4-4 Registration.

- (a) **Registration Required.** It shall be unlawful for any transient merchant to engage in sales within the City of Westby without being registered for that purpose as provided herein.

- (b) **Registration Information.** Applicants for registration must complete and return to the City Clerk-Treasurer a registration form furnished by the City Clerk-Treasurer which shall require the following information:
- (1) Full name, permanent address and telephone number, and temporary address, if any;
 - (2) Height, weight, color of hair and eyes;,,
 - (3) Date of birth and Social Security number, driver's license number and issuing state and expiration date;
 - (4) Name, address and telephone number of the person, firm, association or corporation that the transient merchant represents or is employed by, or whose merchandise is being sold;
 - (5) Temporary address and telephone number from which business will be conducted, if any;
 - (6) Nature of business to be conducted and a brief description of the merchandise offered and any services offered;
 - (7) Proposed method of delivery of merchandise, if applicable;
 - (8) Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;
 - (9) Last cities, villages, towns, not to exceed three (3), where applicant conducted similar business just prior to making this registration;
 - (10) Place where applicant can be contacted for at least seven (7) days after leaving this City; and
 - (11) 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 offense and the place of conviction.
- (c) **Identification and Certification.** Applicants shall present to the City Clerk-Treasurer for examination:
- (1) A driver's license or some other proof of identity as may be reasonably required;
 - (2) A state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities;
 - (3) A state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than ninety (90) days prior to the date the application for license is made.
- (d) **Registration Fee.**
- (1) At the time of filing applications, a fee as prescribed in Section 1-3-1 shall be paid to the City Clerk-Treasurer to cover the cost of investigation of the facts stated in the applications and for processing said registration. Every member of a group must file a separate registration form. The fee shall include the CIB investigation fee.
 - (2) The applicant shall sign a statement appointing the City Clerk-Treasurer his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally.
 - (3) Upon payment of said fees and the signing of said statement, the City Clerk-Treasurer shall register the applicant as a transient merchant 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 Sec. 7-4-5(b) below.
- (e) **Bond.** Every applicant who is not a resident of Vernon County or who represents a firm whose principal place of business is located outside of the State shall file with the City Clerk-Treasurer a surety bond in the amount of Five Hundred Dollars (\$500.00), conditioned that the applicant will

comply with all provisions of the ordinances of the City and the State laws regulating peddlers, canvassers, solicitors and transient merchants, and guaranteeing to any person doing business with the licensee that all money paid as a down payment will be accounted for and applied according to the representations of the licensee; and further guaranteeing that property purchased for future delivery will be delivered according to the representations of the licensee. Action on such bond may be brought by any person aggrieved.

- (f) **Solicitors.** Solicitors of funds or donations for charitable or other organizations shall be exempt from registration.

Sec. 7-4-5 Investigation.

- (a) Upon receipt of each application, the City Clerk-Treasurer may refer it immediately to an appropriate member of the Common Council or City-designated law enforcement agencies for an investigation of the statements made in such registration, said investigation to be completed within five (5) days from the time of referral.
- (b) The City Clerk-Treasurer shall refuse to register the applicant and issue a permit if it is determined, pursuant to the investigation above, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have 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 Common Council or, if none has been adopted, under the provisions of Sections 68.07 through 68.16, Wis. Stats.

Sec. 7-4-7 Regulation of Transient Merchants; Farm Produce Sales.

(a) Prohibited Practices.

- (1) ***Sales Prohibited.*** A transient merchant 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) ***Misrepresentation.*** A transient merchant shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any merchandise offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents. A charitable organization transient merchant shall specifically disclose what portion of the sale price of merchandise 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 merchandise.
- (3) ***Use of Public Property; Sales From Private Property.*** No transient merchant shall impede the free use of sidewalks and streets by pedestrians and vehicles. Without express approval from the Common Council, sales activities shall not be conducted from a public

right-of way or public parking lot. Sale of items from private property shall only be as permitted by the City Zoning Code. Other than for occasional garage sales, any person engaged in temporary sales activity from private property shall be required to first register as required by Sections 7-4-4 and 7-4-5; included in, but not limited to, such regulated activities are sales of Christmas trees, food products, fireworks, art works and sports paraphernalia.

- (4) **Noise.** No transient merchant 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) **Refuse.** No transient merchant shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.

(b) **Disclosure Requirements.**

- (1) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of merchandise or services he/she offers to sell.
- (2) If any sale of merchandise is made by a transient merchant or any sales order for the later delivery of merchandise 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 transient merchant takes a sales order for the later delivery of merchandise, he/she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

(c) **Farm Produce and Other Merchandise Sold on Public Property.**

- (1) **Sales on City Streets, Alleys, Sidewalks and Property.** No person may display, market or sell farm or garden produce, or other merchandise on City streets, alleys, sidewalks or public property within the City except as allowed under provisions of this Subsection.
- (2) **Definitions.** As used in this Subsection, the following words and phrases shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
 - a. "Farm or garden produce" is defined as fruits, vegetables, fresh flowers or flowers, shrubs or trees intended for planting.
- (3) **Application for License.** A license to display, market or sell farm or garden produce on City streets, alleys, sidewalks or public property may be granted by the City upon proper application being made therefore in accordance with the following conditions and requirements:
 - a. Such license shall be granted only to exhibitors in connection with a special civic function sanctioned by the Common Council.
 - b. The term of the license shall commence no earlier than the commencement of the event and extend no later than the last day of the event.
 - c. Any person desiring a license under this Subsection shall, at least fifteen (15) days before the event, file with the City Clerk-Treasurer, an application which contains the following:

1. The applicant's name and address.
 2. The exact time and place of the sale.
 3. Whether the applicant will be present and in continuous attendance at the proposed sale.
 4. Whether the applicant has within two (2) years prior to the application conducted or had any connection with a similar sale in the City or any other place in the County, and if so, to give dates and places of such other sales.
- d. The Council shall designate the place where said display or sale may be conducted when granting any license under this Subsection.
- (4) **Fee.** The license fee shall be as prescribed in Section 1-3-1. Each person or group having one (1) stall or exhibit in an event must have a license.
- (5) **Other Merchandise.** Except as provided in Subsection (d) below, non-food product merchandise may only be sold on property zoned private property in compliance with City ordinances.

Sec. 7-4-8 Revocation of Registration.

- (a) Registration may be revoked by the Common Council after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, 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 or pursuant to Section 7-4-4(c) on the registrant at least seventy-two (72) 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.

Sec. 7-4-9 Special Event Vending Permit.

- (a) **Permit Required.** There shall be a per day charge as prescribed in Section 1-3-1 for a special event vending permit. The Common Council will determine whether the applicant qualifies for a special event vending permit. The permit shall set forth the exact dates on which and the exact location where such business shall be carried on and shall be valid only during the dates and at the locations specified. In addition, the vendor shall have adequate liability insurance in force as required by this Section.
- (b) **Exclusive Vending Rights During Special Events.**
- (1) During a special event the Common Council may by resolution and after public hearing suspend specifically enumerated restrictions on transient merchants on any street, alley, sidewalk or public square and public park. Alternative rules and procedures may be established by the Common Council for the special event.
 - (2) To encourage the integrity, comprehensiveness and success of a special event taking place on any street, alley, sidewalk, public square or public park, the Common Council may by resolution and after public hearing reserve up to ten (10) days during any vending year when transient merchant permits will not be valid at a particular location and when some or all categories of transient merchant permits will not be valid in the perimeter of the special event. During any special event, the rules, guidelines and procedures as set forth in the resolution approved by the Common Council shall take precedence.

- (3) For each such specific day during which certain or all vending permits have been declared to be not valid, the Common Council may by separate resolution and after public hearing, authorize the sponsor of a special event to select vendors, salespersons and vending sites for the duration of the special event within its perimeter. The event's sponsor shall contact the Common Council at least one (1) week before the public hearing with an outline of the rules, regulations, fees, areas affected and a proposed resolution for exclusive vending rights. The determinations of the Common Council as to any specific day during which a transient merchant permit will not be valid shall be by resolution adopted at least four (4) weeks in advance of such specific day. Transient merchant permits shall be subject to invalidation for up to ten (10) days each vending year of any one (1) location as provided in this subdivision.
- (4) No person holding a transient merchant permit may sell or offer for sale any goods or foods during a special event when his/her license is not valid unless authorized by the sponsor of the special event as specified above.

Title 7 – Chapter 5

Temporary Public Entertainments

7-5-1 Temporary Public Entertainments

Sec. 7-5-1 Temporary Public Entertainments.

- (a) **License Required.**
- (1) No person shall maintain or operate any temporary public entertainment within the City 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.** "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 City Clerk-Treasurer 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 Common Council 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 City of Westby.
- (d) **Requirements.**
- (1) **Insurance Required.** No license shall be granted unless the applicant therefor shall have filed with the City Clerk-Treasurer a public liability insurance policy in a sum as set by the Common Council from time to time, with the condition that the applicant shall indemnify and save harmless the City 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/her agents of any negligence incident to or connected with the conduct of such carnival, and that the applicant shall pay all judgments, costs and charges that may be recovered against the City or any of its officers or agents by reason of the conducting of such carnival.
 - (2) **License Fees Required.**
 - a. No permit shall be issued unless the applicant shall pay a permit fee for the operation or maintenance of the public entertainment as follows:
 1. Carnivals: See Section 1-3-1.
 2. Circuses: See Section 1-3-1.
 3. Public Entertainment: See Section 1-3-1.
 - b. 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) **Inspection of Mechanical Devices.** The applicant shall indicate the date of the last State of Wisconsin inspection of rides, merry-go-rounds and other mechanical devices. The City reserves the right to require inspections of all mechanical devices that would be available to the public. All inspection costs shall be paid for by the licensee.

- (5) **Revocation.** Any license granted by the Common Council under the provisions of this Section may be revoked by the Mayor or a 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 law enforcement officer or Mayor, the carnival is deemed undesirable. Revocations or suspensions may be appealed to the Common Council.

Title 7 – Chapter 6

Regulation and Licensing of Fireworks

7-6-1 Regulation of Fireworks

Sec. 7-6-1 Regulation of Fireworks.

- (a) **Regulation of Fireworks.** Except as otherwise allowed by this Chapter, no person may possess, sell or use fireworks in the City of Westby. This Chapter shall constitute a local regulation adopted pursuant to Sec. 167.10(5), Wis. Stats.
- (b) **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 than one-quarter (1/4) grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
 - (6) A toy snake which contains no mercury.
 - (7) A model rocket engine.
 - (8) Tobacco and a tobacco product.
 - (9) A sparkler on a wire or wood stick not exceeding thirty-six (36) inches in length that is designed to produce audible or visible effects.
 - (10) A device designed to spray out paper confetti or streamers and which contains less than one-quarter (1/4) grain of explosive mixture.
 - (11) A fuseless device that is designed to produce an audible or visible effect or audible and visible effects, and that contains less than one-quarter (1/4) grain of explosive mixture.
 - (12) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces an audible or visible effect or audible and visible effects.
 - (13) A cylindrical fountain that consists of one or more tubes and that is classified by the federal Department of Transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
 - (14) A cone fountain that is classified by the federal Department of Transportation as a Division .4 explosive as defined in 49 CFR 173.50.
- (c) **Use.**
- (1) **Permit Required.** No person may use fireworks without a user's permit from the Mayor or from an official or employee of the City as designated by the Common Council. No person may use fireworks or a device listed under Subsection (b)(5)-(7) and (9)-(14) while attending a fireworks display for which a permit has been issued to a person listed under Subsection (c)(3) if the display is open to the general public. A fee as prescribed by Section 1-3-1 shall be paid at the time of application.
 - (2) **Permit Exceptions.** Subparagraph (c)(1) above does not apply to:
 - a. The City, except that 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 Commerce.
 - c. The disposal of hazardous substances in accordance with rules adopted by the Wisconsin Department of Natural Resources.
 - d. The possession or use of explosive or combustible materials in any manufacturing process.
 - e. The possession or use of explosive or combustible materials in connection with classes conducted by educational institutions.
 - f. A possessor 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.
 - g. A possessor of fireworks within the City while transporting the fireworks to a city, town or village where the possession of the fireworks is authorized by permit or ordinance, if such person does not remain within the City for a period of more than twelve (12) hours.
- (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. A group of resident or nonresident individuals.
 - g. 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 Mayor or other authorized party issuing a permit under this Subsection may 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 City, 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 with the officer of the City.
- (6) **Required Information for Permit.** A permit under this Subsection shall specify all of the following:
- a. The name and address of the permit holder.
 - b. The date on and after which fireworks may be purchased.
 - c. The kind and quantity of fireworks which may be purchased.
 - d. The date and location of permitted use.
- (7) **Copy of Permit.** A copy of a permit under this Subsection shall be given to fire and law enforcement officials at least two (2) days before the date of authorized use.
- (8) **Minors Prohibited.** A permit under this Subsection may not be issued to a minor.

- (9) **Out of State.** This Section does not prohibit a resident wholesaler or jobber from selling fireworks to a person outside of this state or to person or group granted a permit under this Section. A resident wholesaler or jobber that ships the fireworks sold under this Subsection shall package and ship the fireworks in accordance with applicable state and federal law by, as defined in Sec. 194.01(1)(2) and (11), Wis. Stats., common motor carrier, contract motor carrier or private motor carrier.
- (10) **Use Restrictions.** Permitted fireworks may only be used if such use is a minimum of twenty-five (25) feet away from any structure. Use of fireworks is prohibited after 12:30 a.m.

(d) **Possession of Fireworks.**

- (1) **Limitations on Possession.** No person shall have within their possession, to own, hold on consignment or to otherwise be physically and/or legally in control of fireworks without a permit under this Subsection.
- (2) **Possession Permit.** An authorized seller of fireworks may issue a possession permit to a person to possess fireworks within the City for purposes of possessing the fireworks while transporting them through the City. A possessor's permit does not authorize the holder of such permit to use fireworks within the City. The holder of possessor's permit may not use fireworks within the City. The City designates licensed sellers of fireworks as agents for the City for the sale of possession permits. The City Clerk-Treasurer shall provide an appropriate permit form as approved by the Common Council. The holder of a seller's permit who issues a possessor's permit shall maintain adequate records of the permits issued.
- (3) **Possessor's Permit Fee.** The charge for each possession permit shall be as prescribed in Section 1-3-1.

(e) **Sale of Fireworks.**

- (1) **Limitations on Sale.** No person may sell or possess with intent to sell fireworks except:
 - a. To a person holding a permit under Subsection (d)(2)-(3) or (e)(2);
 - b. To a municipality; or
 - c. For a purpose specified under this Section.
- (2) **Seller's Permit.** No person may sell or possess with intent to sell fireworks without a seller's permit from the City Clerk-Treasurer. The fee for a seller's permit shall be as prescribed in Section 1-3-1 per calendar year.
 - a. The entire permit fee shall be charged for every seller's permit for the whole or fraction of a year, and shall be paid when application is made for such permit.
 - b. The City Clerk-Treasurer shall provide an appropriate permit form as approved by the Common Council and shall maintain adequate records of the permits issued.
 - c. The applicant shall particularly describe the address and structure where the permit will be used and shall at all times publicly and continuously display such permit at such location. Such permit may be transferred to a new location upon payment of a transfer fee as prescribed in Section 1-3-1.
 - d. All holders of seller's permits shall comply with all local ordinances and federal and state regulations and statutes regarding the sale, transport or storage of flammable or explosive materials.

(f) **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 fifty feet of a dwelling.
- (5) ***Restrictions on Storage.*** No person may store fireworks within fifty (50) feet of a public assemblage or place where gasoline or volatile liquid is sold in quantities exceeding one (1) gallon.

State Law Reference: Sec. 167.10, Wis. Stats.

Title 7 – Chapter 7

Special Event Street Use and Block Party Permits

7-7-1 Special Event Street Use and Block Party Permits

Sec. 7-7-1 Special Event Street Use and Block Party Permits.

- (a) **Purpose.** The streets in possession of the City of Westby are primarily for the use of the public for vehicular travel. However, under proper circumstances, the Common Council may grant a permit for a special 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 special Event Street Use/Block Party Permit to the end that the health, safety and general welfare of the public and the good order of the City of Westby can be protected and maintained. Said authority to regulate is contained in Sec. 349.185, Wis. Stats.
- (b) **Permit Required.** It is unlawful for a special event to take place without a Special Event Street Use/Block Party Permit. The Common Council, in its discretion, shall determine whether a proposed event is most appropriately licensed under this Chapter or the provisions of Section 7-8-1 governing Large Public Gatherings/Assemblies Permits.
- (c) **Definitions.** As used in this Chapter:
- (1) **Processions, Parades, Runs, Walks, Marathons, Bicycle Races, Etc.** Shall have their usual and customary meaning, and are special events under this Chapter.
 - (2) **Highways or Streets.** Has the meaning set forth in Sec. 340.01, Wis. Stats., and also includes area owned by the City of Westby which are used primarily for pedestrian or vehicular traffic.
 - (3) **Special Events.**
 - a. Community events such as parades on City streets, athletic events, charity walks and runs, music festivals, and other events that meet the definition in this Chapter. Such events are allowed subject to the reasonable requirements of this Chapter and of the policies and procedures of the City pertaining to parks and recreation. The Common Council finds such requirements necessary to promote the equitable use of limited public lands, to allow for the efficient use of limited City staff resources through proper planning for such events, and to protect the public health, safety and welfare.
 - b. Specifically, a special event shall mean a scheduled public gathering of persons, on City streets or property, to which the public is invited and over five hundred (500) persons are expected to attend in a single day; or at which over six (6) half barrels of beer are to be present; and which will reasonably require, based on City policies and procedures, the provision of City support services to accommodate the event on public property. A special event is open to the public at a predetermined location on public property, including, but not limited to, City parks, streets, and sidewalks. (Note: exceptionally large assemblies shall also be subject to the requirements of Title 7, Chapter 8 of this Code of Ordinances.)
- (d) **Exceptions.**
- (1) This Chapter shall not apply to any of the following:
 - a. Any march, public assembly, or other activity protected by the First Amendment to the United States Constitution.

- b. City-sponsored events.
 - c. Funeral processions or military convoys.
 - d. Events exempted by contract with the City of Westby.
- (2) Any parade, etc., sponsored by any agency of the federal or state government, acting in its governmental capacity within the scope of its authority, shall be required to obtain a permit; however, it shall be exempt from the permit fee and insurance requirements contained herein.
- (e) **Application.** A written application for a Special Event Street Use/Block Party Permit by persons or groups desiring the same shall be made on a form provided by the City Clerk-Treasurer and shall be filed with the City Clerk-Treasurer. A non-refundable application fee as prescribed by Section 1-3-1 shall be paid at the time of application. The Common Council may approve an agreement with a permit holder that provides for actual cost recovery by the City in lieu of the fees stated in Section 1-3-1. 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 proposed to be used, including a map.
 - (6) The approximate number of persons for whom use of the proposed street area is requested, or the estimated number of participants or units comprising the usage.
 - (7) The proposed use, described in detail, for which the Special Event Street Use/Block Party Permit is requested.
 - (8) The assembly area, starting point, route to be traveled and the termination point, as applicable.
 - (9) Copy of a current tax exempt identification number, if applicable.
 - (10) Any additional information which City officials find necessary for a fair determination as to whether a permit should be issued.
- (f) **When Application Must Be Made.** A written application for a permit for any above-described function on the streets, highways or other public grounds under the jurisdiction of the City shall be made by one of the organizers or officers to the City Clerk-Treasurer no less than seven (7) days prior to the Common Council meeting at which the application is to be considered.
- (g) **Recommendations of Governmental Agencies.** The City Clerk-Treasurer shall submit a copy of the application to the Chief of Police and Director of Public Works for their recommendations.
- (h) **Representative at Meeting.** The person or representative of the group making application for a Special Event Street Use/Block Party Permit shall be present when the Common Council gives consideration to the granting of said Special Event Street Use/Block Party Permit to provide any additional information which is reasonable necessary to make a fair determination as to whether a permit should be granted.
- (i) **Discretionary Denial of Special Event Street Use/Block Party Permit.** An application for a Special Event Street Use/Block Party Permit may be denied if:
- (1) The proposed street or public property use is primarily for private or commercial gain.
 - (2) The proposed street or public property use would violate any federal or state law or any Ordinance of the City of Westby.

- (3) The proposed street or public property use will substantially hinder the movement of police, fire or emergency vehicles, constituting a risk to persons or property.
 - (4) The application for a Special Event Street Use/Block Party Permit does not contain the information required above.
 - (5) The application requests a period for the use of the street or public property in excess of five (5) days.
 - (6) If sufficient supervision would not be provided as to reasonably assure the orderly conduct of the usage.
 - (7) The policing of the usage will require so large a number of persons and vehicles, including ambulances, as to prevent adequate service of the needs of the rest of the municipality.
 - (8) The usage will seriously hinder the movement of police and fire and other emergency vehicles as to create a substantial risk to persons and property.
 - (9) The conduct of the usage will substantially interrupt the safe and orderly movement of other traffic contiguous to its route.
 - (10) The usage is so poorly organized that participants are likely to engage in unsafe or destructive activity.
 - (11) The proposed use could equally be held in a public park or other location. In addition to the requirements that the application for a Special Event Street Use/Block Party Permit shall be denied, as hereinabove set forth, the Common Council may deny a permit for any other reason or reasons if it concludes that the health, safety and general welfare of the public cannot adequately be protected and maintained if the permit is granted.
- (j) **Alcohol Sales.** It is the responsibility of the Special Event Street Use/Block Party Permit holder to obtain a Temporary Class “B” Fermented Malt Beverage license per Title 7, Chapter 2 of this Code of Ordinances, if alcohol is to be sold at the special event. The license holder shall, in addition to all other requirements of the law, the City fermented malt beverage and/or liquor license, and this Section, take reasonable steps to ensure that alcohol beverages are consumed only by persons who are of legal drinking age, and not be persons who are not of age or who are intoxicated. Reasonable steps shall include, but not be limited to, the use of barriers and fences to enclose the area where alcohol is to be consumed, and supervision of the area by security and staff personnel. Failure to take reasonable steps and use them at all times when alcohol is sold is grounds for termination of the event, issuance of a City ordinance citation, or denial of the fermented malt beverage or liquor license or Special Event Street Use/Block Party Permit in the future.
- (k) **Parks-Public Grounds.** A Special Event Street Use/Block Party Permit shall not exempt the permit holder or guests from the requirements of Title 12 of this Code of Ordinances regulating parks and public grounds.
- (l) **Public Streets and Sidewalks.** All use of public streets and sidewalks for special events shall be on routes approved by the Chief of Police or designee. The Chief of Police may designate what streets and sidewalks or what portions thereof may be used for a special event. It shall be the duty of the permit holder to obey any such designation when made. Failure to obey shall be a violation of this Subsection by the permit holder and may result in the termination of the event or issuance of a City ordinance citation. A future Special Event Street Use/Block Party Permit may be denied based on a past violation of this Section.
- (m) **Insurance.** The applicant for a Special Event Street Use/Block Party Permit may be required to indemnify, defend and hold the City of Westby and its employees and agents harmless against all claims, liability, loss, damage or expense incurred by the City 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 shall be required to furnish a Certificate of Comprehensive General Liability Insurance with the City of Westby. The Special Event Street Use/Block Party Permit holder shall provide proof of liability and property damage insurance in the amount of at least One Million dollars (\$1,000,000.00) per occurrence, with the City of Westby named as an additional insured. The applicant may also be required to furnish a performance bond or make a cash deposit with the City (all or some of which may be refunded post-event) prior to being granted the permit.

- (n) **Special Community Event Exception.** The requirements of Subsections (i) and (o) are not applicable to certain community events recognized by the Common Council as falling within this exception. Open consumption and/or sales of alcoholic beverages may be allowed for these limited community events.
- (o) **Consent to Conducting a Block Party.** In addition to the fee required by this Section, each application for a permit for a residential neighborhood block party shall be accompanied by a petition designating the proposed area of the street to be used and time for said block party proposed use, said petition to be signed by not less than sixty percent (60%) of the residents over eighteen (18) years of age residing along that portion of the street designation for the proposed block party. Said petition shall be verified and shall be submitted in substantially the following form:

PEITION FOR STREET USE PERMIT FOR BLOCK PARTY

We, the undersigned residents of the _____ hundred block of _____ Street in the City of Westby, hereby consent to the _____ recreational or business use of this street for a block party between the hours of _____ and _____ on _____, the _____ day of _____, 20 __, for the purpose of _____ and do hereby consent to the City of Westby to grant a Special Event Street Use/Block Party Permit for use of the said portion of said street for block party use and do hereby agree to abide by such conditions of such use as the City of Westby shall attach to the granting of the requested Special Event Street Use/Block Party Permit. We further understand that the permit will not be granted for longer than twelve (12) 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 block party event for which a permit is granted.

We designate _____ as the responsible person or persons who shall apply for an application for a Special Event Street Use/Block Party Permit

- (p) **Charge for Increased Costs.**
 - (1) Where the Common Council determines that the cost of municipal services incident to the staging of the usage will be significantly increased because of the usage, the Common Council may require the permittee to make an additional payment into the general fund of the City of Westby, in an amount equal to the increased costs.
 - (2) An applicant for a permit may be required to pay to the City, before the permit is issued, a traffic-control fee in an amount established by the Chief of Police or designee. The traffic-control fee shall be based on consideration of the following information which shall serve as a standard to guide his/her discretion in setting the fee:
 - a. The route for the event;
 - b. The time of the day the event or public assembly is to take place;
 - c. The date and day of the week proposed.

- d. The general traffic conditions in the area requested, both vehicular and pedestrian, with special attention being given to the rerouting of vehicles or pedestrians normally using the requested area.
 - e. The number of marked and unmarked intersections along the route requested, together with the traffic-control devices present;
 - f. The number of marked and unmarked intersections and traffic-control devices if traffic must be completely rerouted from the area;
 - g. The estimated number of participants and vehicles;
 - h. The nature, composition, format, and configuration of the event or public assembly;
 - i. The anticipated weather conditions;
 - j. The estimated time or duration of the event or public assembly;
 - k. The plan of the applicant for emergency medical services;
 - l. Sufficient parking near the route to accommodate the number of vehicles reasonably expected, including provisions arranged for and made by the applicant for handicapped parking; and
 - m. Applicable fees as stated in Section 1-3-1.
- (3) The traffic-control fee shall cover the cost to the City of providing sufficient officers to regulate traffic and maintain public order incident to the proposed event, march or public assembly. The fee shall not be increased by consideration of the nature, substance, or content of the subject matter or speech for which the event, march or public assembly is organized.
- (q) **Cleanup Requirements.** The holder of any Special Event Street Use/Block Party Permit issued under this Section shall return the street to the condition that existed prior to the use, by the time the permit expires. The City will make such restoration in the event that the permit holder fails to do so and bill the permittee for the cost incurred by the City in performing this work. Failure to make timely payment within a reasonable time after receiving the statement for cleaning work shall constitute grounds for refusal to grant the permit holder any other permit in the future.
- (r) **Termination of a Special Event Street Use/Block Party Permit.** A Special Event Street Use/Block Party Permit for an event in progress may be terminated by the Mayor or a law enforcement officer 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 City of Westby. The Mayor or a law enforcement officer has the authority to revoke a permit or terminate an event in progress in the event organizers fail to comply with any of the regulations in the street use policy or conditions stated in the permit.

Title 7 – Chapter 8

Regulation of Large Assemblies of Persons

7-8-1 Permits for Large Public Gatherings

Sec. 7-8-1 Permits for Large Public Gatherings.

(a) **Intent.**

- (1) It is the purpose of the Common Council to regulate the assemblage of large numbers of people, in excess of those normally needing the health, sanitary, fire, police, transportation and utility services regularly provided in the City of Westby, in order that the health, safety and welfare of all persons in the City, residents and visitors alike, may be protected. The Common Council may waive the requirements of this Chapter for certain community wide events.
- (2) The purpose and intent of this Section is to establish site approval for locations in the City of Westby used temporarily for large gatherings, as defined in Subsection (b) below, it being recognized that the character and type of such gatherings vary widely and the facilities required to carry out the general purpose and intent of this Section should be the subject of a Public Gathering Permit issued only after public hearing and a determination by the Common Council that there will be compliance with the standards set forth in this Section.

- (b) **Scope.** This Section shall apply to all public and private gatherings, rallies, assemblies or festivals at which attendance is greater than one thousand (1,000) persons for a one (1) day or a two (2) day or more event. The requirement for a Public Gathering Permit shall not apply to events held in any regularly established permanent place of worship, stadium, school, athletic field, arena or other similar permanently established structure designed for assemblies, for local civic, community or charitable events, or to church picnic events which do not exceed by more than three hundred (300) people the maximum seating capacity of the structure where the assembly is held. The Common Council, in its discretion, shall determine whether a proposed event is most appropriately licensed under this Chapter or the provisions of Section 7-7-1 governing Special Event Street Use and Block Party Permits.

- (c) **Definitions.** The following definitions shall be applicable in this Section:

- (1) **Person.** Any individual, partnership, corporation, firm, organization, company, association, society or group.
- (2) **Assembly.** A company of persons gathered together at any location at any single time for any purpose, and may be considered a large public gathering if it falls within the definition in Subsection (b) above. The Common Council, in its discretion, shall determine whether a proposed event is most appropriately licensed under this Chapter or the provisions of Section 7-7-1 governing Special Event Street Use and Block Party Permits.
- (3) **Public Gathering.** Shall be as defined in Subsection (b) above.

- (d) **Permit Required.** No person shall permit, maintain, promote, conduct, advertise, act as entrepreneur, undertake, organize, manage or sell or give away tickets to an actual or reasonably anticipated large gathering, whether on public or private property, unless a Public Gathering Permit to hold the assembly has first been issued by the Common Council. A permit to hold an assembly issued to one person shall permit any person to engage in any lawful activity in connection with the holding of the licensed assembly.

(e) **Application for Permit.**

- (1) **Applicant.** Applications for a Public Gathering Permit shall be made by the owner or a person having a contractual interest in lands proposed as the site for a public or private gathering, rally, assembly or festival as defined in this Section. The application shall contain a statement made upon oath or affirmation that the statements contained therein are true and correct to the best knowledge of the applicant and shall be signed and sworn to or affirmed by the individual making application in the case of an individual, by all officers in the case of a corporation, by all partners in the case of a partnership or by all officers of an unincorporated association, organization, society or group or, if there be no officers, by all members of such association, organization, society or group.
- (2) **Filing Period.** An application for a Public Gathering Permit shall be filed with the City Clerk-Treasurer not less than forty-five (45) days nor more than one hundred twenty (120) days before the date on which it is proposed to conduct the event.

(f) **Required Application Information.** The application for a Public Gathering Permit shall contain and disclose all of the following information:

- (1) The name, residence and mailing address of all persons required to sign the application by Subsection (e)(1) above and, in the case of a corporation, a certified copy of the articles of incorporation together with the name, age, residence and mailing address of each person holding ten percent (10%) or more of the stock of such corporations.
- (2) The name and mailing address of the promoter and/or sponsor of the gathering.
- (3) The address and legal description of all property upon which the assembly is to be held, together with the name, residence and mailing address of the owner of record of all such property. This description shall be by plat of survey to a scale of one (1) inch equals one hundred (100) feet prepared by a registered land surveyor showing the location, boundaries, dimensions, type, elevations and size of the following: subject site, existing or proposed wells, buildings, fences, woods, streams, lakes or water courses, as well as the vertical contour interval two (2) feet above the ordinary highwater level.
- (4) Proof of ownership of all property upon which the assembly is to be held or a statement made upon oath or affirmation by the record owner of all such property that the applicant has permission to use such property for an assembly of two hundred fifty (250) or more persons.
- (5) The nature or purpose of the assembly.
- (6) The total number of days and/or hours during which the assembly is to last.
- (7) The maximum number of persons which the applicant shall permit to assemble at any time, not to exceed the maximum number which can reasonably assemble at the location of the assembly, in consideration of the nature of the assembly, or the maximum number of persons allowed to sleep within the boundaries of the location of the assembly by the zoning ordinances of the City if the assembly is to continue overnight.
- (8) The maximum number of tickets to be sold, if any.
- (9) The plans of the applicant to limit the maximum number of people permitted to assemble.
- (10) The plans for fencing the location of the assembly and the gates contained in such fence.
- (11) The plans for supplying potable water including the source, amount available and location of outlets.
- (12) The plans for providing toilet and lavatory facilities including the source, number and location, type and the means of disposing of waste deposited.
- (13) The plans for holding, collection and disposing of solid waste material.

- (14) The plans to provide for medical facilities including the location and construction of a medical structure, the names and addresses and hours of availability of physicians and nurses, and provisions for emergency ambulance service.
- (15) The plans, if any, to illuminate the location of the assembly including the source and amount of power and the location of lamps.
- (16) The plans for parking vehicles including size and location of lots, points of highway access and interior roads including routes between highway access and parking lots.
- (17) The plans for camping facilities, if any, including facilities available and their location.
- (18) The plans for security including the number of guards, their deployment, command arrangements, and their names, addresses, credentials and hours of availability.
- (19) The plans for fire protection including the number, type and location of all protective devices including alarms and extinguishers, and the number of emergency fire personnel available to operate the equipment.
- (20) The plans for sound control and sound amplification, if any, including number, location and power of amplifiers and speakers.
- (21) The plans for food concessions and concessionaires who will be allowed to operate on the grounds including the names and addresses of all concessionaires and their license or permit numbers.
- (22) The application shall include the bond required in Subsection (g) and the permit fee.
- (g) **Bond.** The Common Council shall have authority to require the applicant and site owners to file a cash bond or establish an escrow account in an amount to be determined by the Common Council, but not exceeding One Hundred Thousand Dollars (\$100,000.00), conditioned on complete compliance by the applicant and site owner with all provisions of this Section, the terms and conditions of the Public Gathering Permit, including cleaning up the site, and the payment of any damages, administrative and law enforcement costs, fines, forfeitures or penalties imposed by reason of violation thereof. Such bond or escrow account information shall be filed with the City Clerk-Treasurer prior to the issuance of a permit.
- (h) **Charge for Increased Costs.** Where the Common Council determines that the cost of municipal services incident to the staging of the usage will be significantly increased because of the usage, the Common Council may require the permittee to make an additional payment into the general fund of the City in an amount equal to the increased costs.
- (i) **Hearing; Determination.** Prior to considering an application for a Public Gathering Permit, the Common Council shall conduct a public hearing on the matter. Written notice of such hearing shall be mailed to the applicant and all property owners adjacent to the site of the proposed assembly. The Common Council shall, based on evidence presented at the hearing, make a finding of the number of persons expected to attend the event. Such finding shall be final and conclusive on the applicant for the purpose of determining the amount of the permit fee and the applicability of those standards set forth herein which are dependent upon the number of persons attending the event.
- (j) **Standards.** A Public Gathering Permit shall not be issued unless it is determined, based on evidence produced at the hearing or submitted with application materials, that the following standards are or will be met; the applicant may be required to file with the City Clerk-Treasurer copies of properly executed contracts establishing the ability to fully provide the services required under this Section:
 - (1) For events scheduled for two (2) successive days or more, at least one (1) acre of land, exclusive of roads, parking lots and required yards shall be provided for each one hundred (100) persons attending.

- (2) Every site proposed for a Public Gathering Permit shall be on generally well-drained ground and shall not be on ground on which storm or other waters accumulate or on ground which is wet or muddy due to subsoil moisture.
- (3) Due to the physical characteristics of the site, the Common Council may require that the applicant shall provide proof that he/she will furnish, at his own expense, a minimum of two (2) days before the assembly commences, a snow-fence type fence completely enclosing the proposed location of sufficient height and strength to prevent people in excess of the maximum permissible number from gaining access to the assembly grounds, which shall have at least four (4) gates, at least one (1) at or near four (4) opposite points of the compass.
- (4) The applicant shall provide proof that he/she has contracted for local EMS services to provide emergency ambulance and EMT services, at the applicant's expense, for events at which over one thousand (1,000) persons will be in attendance.
- (5) The applicant shall provide proof that he/she will furnish, at his/her own expense before the assembly commences if the assembly is to continue during hours of darkness, illumination sufficient to light the entire area of the assembly at the rate of at least five (5) foot candles, but not to shine unreasonably beyond the boundaries of the enclosed location of the assembly.
- (6) The applicant shall provide proof that he/she will furnish, at his/her own expense before the assembly commences, a free parking area inside of the assembly grounds sufficient to provide parking space for the maximum number of people to be assembled at the rate of at least one (1) parking space for every four (4) persons.
- (7) The applicant shall provide proof that he/she will furnish, at his/her own expense before the assembly guards, either regularly employed, duly sworn, off-duty Wisconsin peace officers or private guards, licensed in Wisconsin, sufficient to provide adequate security for the maximum number of people to be assembled at the rate of at least one (1) security guard for every five hundred (500) people. If it is determined by the Mayor that additional police protection shall be required, he/she may contact the County Sheriffs Department; and all costs for the additional protection required shall be deducted from the posted cash bond.
- (8) The applicant shall provide proof that he/she will furnish, at his/her own expense before the assembly commences, fire protection, including alarms, extinguishing devices and fire lanes and escapes, sufficient to meet all state and local standards for the location of the assembly as set forth in the Wisconsin Administrative Code and ordinances of the County and City, and sufficient emergency personnel to efficiently operate the required equipment.
- (9) The applicant shall provide an adequate source of pure water with sufficient supply outlets for drinking and other purposes to comfortably accommodate the number of persons expected to attend the event at the rate of one (1) gallon per person per day. Where a public water supply is not available, potable water, meeting all federal and state requirements for purity, may be used. Any well or wells supplying any such site shall comply with the Wisconsin Administrative Code.
- (10) The applicant shall provide separate enclosed toilets for males and females, meeting all state and local specifications, conveniently located throughout the grounds, sufficient to provide facilities for the maximum number of people to be assembled at the rate of at least one (1) toilet for every one hundred (100) females and at least one toilet for every two hundred (200) males together with an efficient, sanitary means of disposing of waste matter deposited, which is in compliance with all state and local laws and regulations; a

lavatory with running water under pressure and a continuous supply of soap and paper towels shall be provided with each toilet.

(11) The applicant shall provide a sanitary method of disposing of solid waste, in compliance with state and local laws and regulations, sufficient to dispose of the solid waste production of the maximum number of people to be assembled at the rate of at least two and one-half (2.5) pounds of solid waste per person per day, together with a plan for holding and a plan for collection of all such waste at least once each day of the assembly and sufficient trash cans with tight fitting lids and personnel to perform the task.

(12) If the assembly is to continue overnight, camping facilities shall be provided in compliance with all state and local requirements as set forth in the Wisconsin Administrative Code and ordinances of the City and county, sufficient to provide camping accommodations for the maximum number of people to be assembled.

(k) **Reasons for Denial.** Applicants may be denied for any of the following non-exclusive reasons:

(1) It is for a use which would involve a violation of federal or state law or any City or county ordinance.

(2) The granting of the permit would conflict with another permit already granted or for which application is already pending.

(3) The application does not contain the information or does not properly satisfy the conditions required by this Section.

(4) The application is made less than the required days in advance of the proposed assembly.

(5) The policing of the assembly will require so large a number of persons and vehicles, including ambulances, as to prevent adequate service of the needs of the rest of the community.

(6) The assembly will substantially hinder the movement of police and fire and other emergency vehicles as to create a substantial risk to persons and property.

(7) The assembly will reasonably create a substantial risk of injury to persons or damage to property.

(8) The assembly use is so poorly organized that participants are likely to engage in aggressive or destructive activity.

(l) **Class B Fermented Malt Beverage Licenses.** When fermented malt beverages are sold at any event authorized by this Section, a valid Temporary Fermented Malt Beverage license shall be obtained and applicable City ordinances shall be fully complied with. Said license must be possessed by the person who filed for the license and shall be presented to any law enforcement officer upon request.

(m) **Recommendations of Governmental Agencies.** The City Clerk-Treasurer may submit a copy of the application to the County Sheriff's Department and other governmental agencies for their recommendations.

(n) **Permit Revocation.** Any law enforcement officer, the City Clerk-Treasurer, or the Common Council may revoke a permit already issued if it is deemed that such action is justified by an actual or potential emergency due to weather, fire, riot, other catastrophe or likelihood of a breach of the peace or by a change in the conditions forming the basis of the standards of issuance. In lieu of revoking a permit, an above-named official may require the permittee to file evidence of good and sufficient sureties, insurance in force or other evidence of adequate financial responsibility, running to the City and such third parties as may be injured or damaged, in an amount depending upon the likelihood of injury or damage as a direct and proximate result of the holding of the usage sufficient to indemnify the City and such third parties as may be injured or damaged thereby, caused by the permittee, its agents or participants.

- (o) **Fees.** The following fees shall be applicable under this Section:
- (1) ***Gatherings of One Thousand (1,000) to Two Thousand Five Hundred (2,500).*** A fee as prescribed in Section 1-3-1.
 - (2) ***Gatherings of Over Five Thousand (5,000).*** A fee of as prescribed in Section 1-3-1.

Title 7 – Chapter 9

Pawnbrokers and Second Hand Article and Jewelry Dealers

7-9-1 Regulation of Pawnbrokers and Second Hand Article and Jewelry Dealers

Sec. 7-9-1 Regulation of Pawnbrokers and Second Hand Article and Jewelry Dealers.

- (a) **Statutory Authorization.** This Section is adopted pursuant to authorization in Sec. 134.71, Wis. Stats.
- (b) **Title.** This Section shall be known as the Pawnbrokers and Second Hand Article and Dealers Ordinance for the City of Westby.
- (c) **Terms.** All of the terms of Sec. 134.71, Wis. Stats., except as otherwise provided herein, are expressly incorporated herein and made a part of this Section.
- (d) **License Application.** As an additional requirement to obtain a license from the City to operate as a pawnbroker, second hand article dealer or second hand jewelry dealer, the applicant shall provide a photograph of the applicant. The photograph shall be kept on file with the City Clerk-Treasurer. In the event an applicant is more than one person or is a corporation, a photograph of each and every person who is applying or all shareholders, officers and directors of the corporation shall be provided to the City. Additionally, all employees of the applicant shall be photographed and such photographs provided to the City Clerk-Treasurer. This is a continuing obligation, in other words, at the time that the licensed pawnbroker or second hand article business has any new or additional owner, agent, officer, director or employee, the dealer shall provide a photograph of the new or additional party to the City Clerk-Treasurer.
- (e) **Penalties.** The penalties of Sec. 134.71, Wis. Stats., are also incorporated herein, except that the City of Westby shall be entitled to collect such penalties as an ordinance forfeiture herein. Additionally, the failure of a dealer or its owners, officers, directors or employees to comply with the photograph requirements set forth above shall constitute a violation of this Section and subject said persons to the same penalties as otherwise provided in this Section.

State Law Reference: Sec. 134.71, Wis. Stats.

Title 7 – Chapter 10

Massage Therapists and Bodyworkers

7-10-1 Registry of Massage Therapists and Bodyworkers

Sec. 7·10·1 Registry of Massage Therapists and Bodyworkers.

- (a) **Purpose.** 1997 Wisconsin Act 156 created Subchapter XI (as renumbered by the revisor) of Ch. 440 (as renumbered by the revisor), Wis. Stats., providing for the registration and regulation of massage therapists and bodyworkers, effective February 1, 1999. The Common Council having reviewed such registration and regulation requirements and having determined the same to be reasonable minimum requirements for any person to engage in the practice of massage therapy or bodywork within the City of Westby.
- (b) **Registry of Massage Therapists and Bodyworkers Required.** No person or entity shall engage in the practice of massage therapy or bodywork or perform massage therapy or bodywork for gain, unless such person has previously been issued and holds a valid license of registration under Subchapter XI of Ch. 440, Wis. Stats., as amended.

State Law Reference: Subchapter XI of Ch. 440, Wis. Stats.

Title 7 – Chapter 11

Regulation of Nonmetallic Mining

7-11-1	Statutory Provisions Adopted
7-11-2	Definitions
7-11-3	Existing Nonmetallic Mining Operations
7-11-4	Exempt Activities
7-11-5	Permit Required for Nonmetallic Mining
7-11-6	Permit Revocation
7-11-7	Blasting and/or Rock Crushing

Sec. 7-11-1 Statutory Provisions Adopted.

This Chapter is adopted pursuant to Section 66.038, Wis. Stats., which is adopted by reference and made a part of this Chapter as if fully set forth herein.

Sec. 7-11-2 Definitions.

As used in this Chapter:

- (a) **Environmental Pollution** has the meaning specified under Sec. 144.01(3), Wis. Stats.
- (b) **Nonmetallic Mining or Nonmetallic Mining Operation** means operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates such as stone, sand and gravel, fill material and nonmetallic minerals such as asbestos, beryl, clay, feldspar, peat and talc, related operations or activities such as excavation, grading or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes such as crushing, screening, scalping, dewatering and blending.
- (c) **Nonmetallic Mining Refuse** means waste soil, rock, mineral, liquid, vegetation and other waste material resulting from a nonmetallic mining operation. This term does not include merchantable by-products resulting directly from or displaced by the nonmetallic mining operation.
- (d) **Nonmetallic Mining Site or Site** means the location where a nonmetallic mining operation is proposed or conducted, including all surface areas from which materials are removed, related storage and processing areas, areas where nonmetallic mining refuse is deposited and areas disturbed by the nonmetallic mining operation by activities such as the construction or improvement of roads or haulageways.
- (e) **Operator** means any person who is engaged in a nonmetallic mining operation or nonmetallic mining site reclamation or who applies for or holds a nonmetallic mining permit issued under this nonmetallic mining reclamation ordinance whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.
- (f) **Reclamation** means the rehabilitation of a nonmetallic mining site including, but not limited to, removal of nonmetallic mining refuse, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, construction of fences and, if practical, restoration of plant, fish and wildlife habitat.
- (g) **Replacement of Topsoil** means the replacement of the topsoil which was removed or disturbed by a nonmetallic mining operation or the provision of soil which is at least as adequate as the topsoil which was removed or disturbed for the purposes of providing adequate vegetative cover and stabilization of soil conditions.

Sec. 7-11-3 Existing Nonmetallic Mining Operations.

This nonmetallic mining reclamation Chapter shall apply to any portion of a nonmetallic mining site, including unreclaimed portions of a site which were mined prior to the effective date of this Chapter.

Sec. 7-11-4 Exempt Activities.

This nonmetallic mining reclamation Chapter shall not apply to the following activities:

- (a) Excavations or grading by a person solely for domestic use at his or her residence.
- (b) Excavations or grading conducted for highway construction purposes within the highway right-of-way.
- (c) Grading conducted for farming, preparing a construction site or restoring land following a flood or natural disaster.
- (d) Excavations for building construction purposes.
- (e) Any mining operation, the reclamation of which is required in a permit obtained under Sections 144.80 to 144.94, Wis. Stats.
- (f) Any activities conducted at a solid or hazardous waste disposal site required to prepare, operate or close a solid waste disposal facility under Sections 144.435 to 144.445, Wis. Stats., or a hazardous waste disposal facility under Sections 144.60 to 144.74, Wis. Stats., but a nonmetallic mining reclamation ordinance may apply to activities related to solid or hazardous waste disposal which are conducted at a nonmetallic site separate from the solid or hazardous waste disposal facility such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

Sec. 7-11-5 Permit Required for Nonmetallic Mining.

- (a) **Permit Required.** No person shall operate any nonmetallic mining site or operation within the City unless he obtains a nonmetallic mining permit from the Common Council. The fee for such permit shall be per Section 1-3-1, plus any actual City administrative expenses, payable by certified check. Operators of existing nonmetallic mining operations shall apply for such permit within thirty (30) days of the effective date of this Chapter.
- (b) **Required Permit Information.** An application for a nonmetallic mining permit shall be submitted by the operator and shall include:
 - (1) An adequate description of the operation, including a legal description of the property;
 - (2) A plan of the site showing the proposed and existing roads and drives, and the sources, quantity and disposition of water to be used, if any;
 - (3) Estimated dates for completion of the extraction and commencement and completion dates for the reclamation;
 - (4) A reclamation plan and such other information as may be necessary to determine the nature of the operation and the effect on the surrounding area;
 - (5) Methods of screening from adjacent properties;
 - (6) Hours of operation;
 - (7) Dust and noise control;
 - (8) Maximum depth;
 - (9) Blasting procedures;
 - (10) Location and height of stockpiles; and
 - (11) Such other information the Common Council deems pertinent to the operation.
- (c) **Reclamation Plan.** The reclamation plan shall contain adequate provision that:

- (1) All final slopes around the area be flatter than a three (3) to one (1) horizontal slope in a sand, gravel or borrow pit operation, or in a safe angle or repose in a quarrying operation;
 - (2) Excavations below the grade of the nearest abutting public street or highway shall be set back from the street or highway a distance not less than that required for buildings and structures in the same zoning district;
 - (3) Excavations made to a water-producing depth shall be not less than three (3) feet measured from the low water mark;
 - (4) All final slopes shall be covered with adequate topsoil and seeded to prevent erosion;
 - (5) The plan shall require that, after completion of the anticipated operation, the area shall be cleared of all debris and be left in a workmanlike condition, subject to the approval of the Common Council;
 - (6) There is a timetable for completion of various stages of reclamation of the nonmetallic mining site.
- (d) **Applications.** All applications for a license hereunder shall be made in writing upon the written form provided by the City and distributed by the City Clerk-Treasurer. All applications for permits hereunder shall be signed by the applicant and filed with the City Clerk-Treasurer at least sixty (60) days prior to the licensing period. The City Clerk-Treasurer shall immediately refer all applications for a license hereunder to the Common Council for public hearing and approval. The operator shall receive written notice of the public hearing. The license shall be for a period of time as stated in the application or as modified by the Common Council. Modification of the application or reclamation plan may be permitted or additional conditions may be required upon application. The Council shall consider the effect of the operation and the proposed reclamation upon existing and future conditions, including streets, neighboring land development, land use drainage, water supply, water pollution, air pollution, soil erosion, natural beauty and land value of the locality. The Common Council may approve, approve conditionally or reject the application and reclamation plan.
- (e) **Financial Assurance.** Before a license and reclamation plan is approved by the Common Council, the operator shall submit an agreement and performance bond or cash escrow agreement to assure the following:
- (1) The operator shall pay for the cost of all improvements required in the reclamation plan by the Common Council.
 - (2) Guaranteed completion of the required reclamation within a period determined by the Common Council.
 - (3) Payment by the operator for all costs incurred by the City for review and inspection. This would include preparation and review of plans and specifications by the City Engineer and Attorney, as well as other costs of a similar nature.
 - (4) The City may elect to have stages of the reclamation plan performed under the terms of a cash escrow agreement.
 - (5) The required performance bond or cash escrow agreement shall be equal to one and one-quarter (1-1/4) times the City Engineer's estimated cost of the required improvements.
 - (6) If the required reclamation is not complete within the designated period, all amounts held under the escrow agreement or performance bond shall be turned over and delivered to the City and applied to the cost of the required reclamation. Any balance remaining after such reclamation has been done shall be returned to the operator. The Common Council, at its option, may extend the bond period for additional periods.
- (f) **Fences.** Prior to reclamation, nonmetallic mining sites abutting areas zoned residential shall be enclosed by a security fence of not less than four (4) feet in height. Fence gates shall be locked or secured when the site is unattended so as to prevent uncontrolled access by children to the site.

- (g) **Inspection.** An authorized agent of the City may enter the premises of a nonmetallic mining operation in the performance of his or her official duties by permission of the property owner or operator or pursuant to a special inspection warrant issued under Sec. 66.0119, Wis. Stats., in order to inspect those premises and to ascertain compliance with this nonmetallic mining reclamation Chapter.
- (h) **Prohibitions and Orders.** Nonmetallic mining operations within the City are prohibited if the nonmetallic mining site cannot be reclaimed in compliance with the standards of this Chapter or if other requirements of this Chapter are not met.

Sec. 7-11-6 Permit Revocation.

If any permit is revoked, cancelled, rescinded or terminated, the operator shall be given written notice of any charges or violations against him or the reasons proposed for revocation and shall have an opportunity to be heard before the Common Council.

Sec. 7-11-7 Blasting and/or Rock Crushing.

- (a) **Definitions.** The following definitions shall apply in the interpretation and enforcement of this Section:
 - (1) **Blasting.** A method of loosening, moving or shattering masses of solid matter by use of explosive compounds to prepare stone for crushing, to prepare stone for building and/or ornamental use, or to prepare property for development.
 - (2) **Person.** Any individual, partner, corporation, company, trustee or association, together with the respective servants, agents and employees thereof.
 - (3) **Rock Crusher.** Any device, machine, apparatus or equipment used either individually or in conjunction with any other device, machine, apparatus or equipment for the purpose of crushing, grinding, breaking or pulverizing rock or stone.
- (b) **Operation.** No person within the City shall operate a rock crusher or perform blasting in such a manner so that any dust, dirt or vibration from such operation shall, in any way, damage or injure any person or property within the City. All blasting within the City shall be performed according to the requirements of Ch. IND 5, Explosives and Blasting Agents, Wis. Adm. Code, and all subsequent amendments thereto.
- (c) **Permit.**
 - (1) **Permit Required.** No person within the City shall operate a rock crusher or perform blasting who does not possess a proper permit therefor from the City.
 - (2) **Applications.** All applications for permits hereunder shall be made in writing upon the written form provided by the City and distributed by the City Clerk-Treasurer. All applications for permits hereunder shall be signed by the applicant and filed with the City Clerk-Treasurer at least sixty (60) days prior to the licensing period. The City Clerk-Treasurer shall immediately refer all applications for permits hereunder to the City Engineer. The City Clerk-Treasurer shall issue a permit hereunder only after first receiving the recommendation of the City Engineer, the duly executed certified check for the permit fee as hereinafter provided and the submittal of the Plan of Operation, if required, as approved by the City Engineer.
 - (3) **Certified Check.** Each application for a permit hereunder shall be accompanied by a certified check in the sum of the required permit fee as hereinafter provided, or a renewal thereof, the same to be payable to the City.

- (4) **Plan of Operation.** Each application to permit a rock crusher hereunder or renewal thereof shall be accompanied by a Plan of Operation which shall include: methods of screening from adjacent properties, hours of operation, hours of blasting and operation of rock crusher, dust and noise control, blasting procedures, location and height of stock piles, whether a rock crusher will be needed and how often, water supply, drainage course, maximum depth, legal description of property in question and other information the City Engineer deems pertinent to the proposed operation. Such Plan of Reorganization shall be approved by the City Engineer.
- (5) Each application for a blasting permit shall be accompanied by a Certificate of Insurance identifying the City of Westby as a party insured in the amount of Five Hundred Thousand Dollars (\$500,000.00) for damage to property, and Five Hundred Thousand Dollars (\$500,000.00) for injury to one (1) person and One Million Dollars (\$1,000,000.00) for injury to more than one (1) person caused by the blasting.
- (d) **Renewals.** All requests for renewals of permits hereunder shall be made at least sixty (60) days prior to the expiration date of the permit and must comply with all requirements of Subsection (c) above.
- (3) **Blasting Procedures and Controls.**
- (1) **Energy Ratio.** The allowable vibration of any blast at the nearest occupied or used building off the subject premises shall not exceed an energy ratio of 0.5 or resultant particle velocity of 1.35" per second based on the following formula:
- Energy ratio = 0.5 = 10.823 f²A² where: f = frequency in cycles per second, A = Amplitude or displacement in inches
- Energy ratio = .274 V² (V = resultant particles velocity expressed in inches per second)
- (2) **Measurement of Blasts.** The operator of the quarry operation, when requested to do so by the City Engineer, shall measure and submit data to substantiate compliance with the above formula and the operator of the quarry operation, when requested to do so by the City Engineer, shall measure air blast. This verification shall be performed by a seismological engineering firm acceptable to the City or by the City Engineer. Instrumentation shall be by seismograph similar to YME Seismolog Model "B" and approved seismograph sound measuring equipment or approved equivalents. All expenses for these tests shall be paid by the quarry operator.
- (3) **Blasting Log.** A log in duplicate shall be kept of each blast on forms similar to the one on file with the City Clerk-Treasurer. The original copy of this blasting log shall be filed with the City Clerk-Treasurer within forty-eight (48) hours after the blast, and a copy shall be kept on file at the quarry office.
- (4) **Cover Material.** Operators of quarries for building and/or ornamental stone removal shall cover Primacord, other detonating cord or surface-laid blasting devices with at least one foot (1') of dirt or other suitable cover material.
- (f) **Permit Fee.** The permit fee for any permit issued pursuant to this Section shall be as set forth below. No permit fee shall be prorated. All permits issued hereunder shall expire on December 31 following the date of issue:
- (1) Quarries using blasting to supply buildings and/or ornamental stone: per Section 1-3-1 per blasting period.
- (2) Gravel crushing operations using portable or fixed crushing equipment less than thirty days per year: per Section 1-3-1 per year.

- (g) **Penalty.** Any person who shall violate any of the provisions of this Section shall be subject to a penalty as provided in Sec. 1-1-7 of this Code of Ordinances. However, upon conviction for the violation of any of the provisions of this Section by the holder of a permit issued hereunder, and in addition to the forfeiture provided, such permit shall thereupon be cancelled, revoked, rescinded and terminated.
- (h) **Enforcement.** Before renewal of any license issued under this Section is refused or any license is revoked, cancelled, rescinded or terminated, the licensee shall be given written notice of any charges or violations against him/her or the reasons proposed for nonrenewal or revocation and shall have an opportunity to be heard before the Common Council.

Title 7 – Chapter 12

Regulation and Licensing of Amusement Arcades

7-12-1	Definitions
7-12-2	Amusement Arcade License
7-12-3	Hours of Operation for Amusement Arcades
7-12-4	General Requirements for Amusement Arcades
7-12-5	License Revocation

Sec. 7-12-1 Definitions.

The following definitions shall be applicable in this Chapter:

- (a) **Amusement Arcade.** Any premises operated by any organization, whether incorporated or not, which is the owner, lessee, or occupant of a building whose primary purpose or object of its existence or operation is that of providing use of "amusement devices" to the public at retail, and/or any premises operated by any organization, whether incorporated or not, which is the owner, lessee or occupant of a building, the majority of whose gross receipts are derived from the providing of use of "amusement devices" to the public at retail.
- (b) **Amusement Device.** Any table, platform, mechanical device, or apparatus operated or intended to be operated for amusement, pleasure, test of skill, competition, or sport, the use or operation of which is conditioned upon payment or consideration either by insertion of coin or token in a slot or otherwise. Such amusement device shall include, but not be limited to, devices commonly known as baseball, football, basketball, hockey, pinball, shuffleboard, ray guns, bowling games, bumper games, skiball, electronic video games, and shall also include billiard tables and pool tables (whether coin operated or not). Such definition does not include a bowling alley, juke box or other coin operated music machine or a mechanical children's amusement riding device.

Sec. 7-12-2 Amusement Arcade License.

- (a) **License Required.** No person, firm, or corporation shall operate or keep an amusement parlor or arcade, as defined herein, without having obtained and posted on the premises, in plain view, a license to operate such parlor. Application shall be made to the City Clerk-Treasurer on the form provided by such office, accompanied by an application fee as prescribed in Section 1-3-1, which shall cover the cost of processing the application and shall be non-refundable. The application shall set forth the following information:
 - (1) The name and address of the applicant, or, if a partnership, the name and addresses of all the partners, or, if a corporation, the names and addresses of the principal officers and registered agent thereof, and the name and address of the person who will supervise the game room.
 - (2) The name and addresses of the owners of the amusement devices to be located on the licensed premises, if such owners are different from that of the applicant. If the owners of the amusement devices is a partnership, the names and addresses of all the partners, or if a corporation, the names and addresses of the principal officers and registered agent thereof.
 - (3) A building plan of the premises to be licensed specifically describing and otherwise showing all dimensions, indicating the intended division of floor space, exits and entrances, the areas to be used for amusement devices, and the common aisles.

- (4) A site plan of the premises to be licensed which shall include the proposed landscaping for the subject premises, and all the improvements, parking and driveway areas, and landscaping located on property adjacent to and within twenty (20) feet of the property lines of the premises to be licensed.
 - (5) If the applicant operates other game rooms in other areas, the names and addresses of such other licensed establishments.
 - (6) Such application shall also contain such additional information as the City deems necessary to assist it in determining the qualifications of the applicant for such license.
- (b) **Public Hearing.** The application shall be forwarded to the Common Council which shall hold a public hearing prior to the granting or denial of any amusement arcade license. In reviewing each application, the Common Council shall find:
- (1) That the establishment, maintenance, or operation of an amusement arcade at the location requested will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
 - (2) That the proposed amusement arcade will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
 - (3) That the establishment of the amusement arcade will not impede the normal orderly development and improvement of the surrounding property for uses permitted in the district.
 - (4) That adequate measures have been or will be taken to maintain good order surrounding the location thereof.
- (c) **Issuance of License; Term.** The City Clerk-Treasurer shall issue a license upon approval of the application by the Common Council, upon the payment by the applicant of an annual license fee of as prescribed in Section 1-3-1. All licenses issued herein shall be for one (1) year ending on the 30th day of June and shall not be transferable.

Sec. 7-12-3 Hours of Operation for Amusement Arcades.

- (a) No premises for which an amusement arcade license has been issued shall be permitted to remain open for the offering of electronic amusement devices to the public at retail between the hours of 10:00 p.m. and 10:00 a.m., except on Friday and Saturday when the closing hours shall be between 12:00 midnight and 10:00 a.m.
- (b) No premises for which an amusement arcade license has been issued and which is less than one thousand (1,000) feet from the main entrance of any established public or parochial school, shall be permitted to remain open for the offering of amusement devices to the public at retail between the hours of 10:00 p.m. and 3:00 p.m. on any day in which such school is in regular session.
- (c) For the purpose of this Section, the term "public school or parochial school" shall be any institution providing learning facilities for grades kindergarten through eight (K-8). The one thousand (1,000) foot distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school to the main entrance of such premises.

Sec. 7-12-4 General Requirements for Amusement Arcades.

The following general requirements shall apply to all amusement arcades licensed in accordance with this Chapter:

- (a) All amusement arcades shall have an adult supervisor on the premises at all times in which the game room is open to the public.

- (b) Every amusement arcade shall provide an adequate area and number of bicycle racks for the orderly parking of bicycles, which area shall be separate from a required vehicle parking stall and shall be so located as to not occupy any portion of a public sidewalk or to otherwise obstruct pedestrian passage to and from the premises.
- (c) Game rooms licensed herein shall comply with all other building, fire code, and applicable City laws and regulations.

Sec. 7-12-5 License Revocation.

Licenses may be revoked by the Common Council after a hearing, in the event an amusement arcade's location or operation fails to conform to standards provided in this Chapter, or violates any other provision of this Code of Ordinances.

Title 7 – Chapter 13

Tattooing and Body Piercing

7-13-1	Applicability
7-13-2	Definitions
7-13-3	Administration
7-13-4	Tattooing, Body Piercing – Permit Required
7-13-5	Health and Sanitary Requirements
7-13-6	Temporary Facility or Temporary Combined Facility
7-13-7	Record Retention
7-13-8	Appeals
7-13-9	Regulation, Rules and Laws Adopted by Reference

Sec. 7-13-1 Applicability.

The provisions of this Chapter shall apply to tattoo and body piercing facilities, tattoo artists and body piercers, and the practice of tattooing and body piercing.

Sec. 7-13-2 Definitions.

The following definitions shall be applicable in this Chapter, unless otherwise specifically indicated:

- (a) **Health Authorities.** County or state agencies/officials having regulatory and inspection responsibilities and authority regarding health matters associated with tattooing and body piercing practices and facilities. City-designated inspectors, law enforcement authorities, or the Building Inspector may perform some of these functions if so directed by the health authorities.
- (b) **Sterilize.** Submission to the steam pressure (autoclave) method with at least fifteen (15) pounds of pressure per square inch at two hundred fifty (250) degrees Fahrenheit for at least thirty (30) minutes, such that all forms of microbial life, including spores, viruses, bacteria and fungi, are destroyed.
- (c) **Tattoo Artist.** Any person engaged in the practice of tattooing.
- (d) **Tattoo Facility.** The location where tattooing is practiced.
- (e) **Tattooing.** Means and includes any method of placing or removing designs, letters, scrolls, figures, symbols, or any other marks upon or under the skin of a person with ink or color by the aid of needles or instruments.
- (f) **Temporary Facility.** A single building, structure, area or location where a tattoo artist or body piercer performs tattooing or body piercing for a maximum of seven (7) days per event.
- (g) **Body Piercer.** A person who performs body piercing on another person at that person's request.
- (h) **Body Piercing.** Perforating any human body part or tissue, except an ear, and placing a foreign object in the perforation to prevent the perforation from closing.
- (i) **Body Piercing Facility.** The premises where a body piercer performs body piercing.
- (j) **Temporary Combined Facility.** A single building, structure, area, or location where both tattooing and body piercing are performed for a maximum of seven (7) days per event.

Sec. 7-13-3 Administration.

The provisions of this Chapter shall be administered by or under the direction of the City Clerk-Treasurer, in consultation with health authorities and City law enforcement authorities, who in person or by duly authorized representative, shall have the right to enter, at reasonable hours, upon premises affected by this Chapter, to inspect the premises, examine and copy relevant documents and records, or obtain photographic or other evidence needed to enforce the provisions of this Chapter.

Sec. 7-13-4 Tattooing, Body Piercing - Permit Required.

- (a) **Permit Required.** No person shall engage in the practice of tattooing or body piercing or shall carry on the business of operating a tattoo or body piercing facility or a combined tattoo and body piercing facility within the City of Westby unless he/she has a valid permit issued by the City Clerk-Treasurer for each and every such place of business.
- (b) **Application.** Application for permits shall be made in writing to the City Clerk-Treasurer, stating the name and address of the applicant and the name and address of the proposed tattoo or body piercing facility or a combined tattoo and body piercing facility, together with such other information as may be required.
- (c) **Fee.** An annual fee shall accompany the permit application as follows:
 - (1) Tattoo or body piercing facility permit: Per Section 1-3-1.
 - (2) Tattoo artist permit: Per Section 1-3-1.
 - (3) Temporary facility or temporary combined facility permit: Per Section 1-3-1.
 - (4) Body piercer's permit: Per Section 1-3-1.
 - (5) Combined tattoo and body piercing facility permit: Per Section 1-3-1.
 - (6) Inspection of new facility: Per Section 1-3-1.
- (d) **Permit.** Permits shall be posted in a conspicuous place in the tattoo or body piercing facility. Permits are not transferable and, except for temporary tattoo or body piercing facility permits, shall expire on June 30 following their issuance.
 - (1) ***Tattoo or Body Piercing Facility Permit.*** A separate permit is required for each tattoo or body piercing facility. A permit shall not be transferable to a location other than the one for which it was issued. Such permits shall expire on June 30 following their issuance, unless they are issued between April 1 and June 30, in which case they shall expire on June 30 of the following year.
 - (2) ***Tattoo Artist or Body Piercer Permit.*** A separate permit is required for each tattoo artist or body piercer engaged in the practice of tattooing or body piercing. Such permits shall expire on June 30 following their issuance, unless they are issued between April 1 and June 30, in which case they shall expire on June 30 of the following year.
 - (3) ***Temporary facility or temporary combined facility permit.*** A separate permit is required for each temporary facility or temporary combined facility. Such permit is not transferrable to a location other than the one for which it was issued and shall expire seven days after the date it was issued.
- (e) **Permit Suspension and Revocation.** Such permit may be temporarily suspended by City-designated authorities, law enforcement authorities, the Building Inspector or health authorities for violations that present an immediate health hazard or may be revoked after repeated violations of this Chapter. Any person affected by such suspension or revocation shall have the right to appeal pursuant to Section 7-13-8.

Sec. 7-13-5 Health and Sanitary Requirements.

(a) Premises.

- (1) Floor surfaces in the room in which the tattoo or body piercing is administered shall be impervious, smooth and washable. Carpeting is not allowed.
- (2) A handwashing facility supplied with hot and cold water under pressure, soap, and single-service towels shall be conveniently located in the tattoo or body piercing area, in addition to what is provided in the toilet room.
- (3) Approved waste containers with non-absorbent, durable plastic liners shall be used for all tissues, towels, gauze pads and other similar items used on the client. Any infectious waste shall be disposed of as required by Ch. NR 526, Wis. Adm. Code.
- (4) Adequate cabinets with washable surfaces shall be provided for exclusive storage of instruments, dyes, pigments, stencils, and other equipment used in the practice of tattooing or body piercing.
- (5) All tattoo or body piercing facilities shall be maintained in a clean, sanitary condition and in good repair.
- (6) The tattoo or body piercing facility application area where the procedure is performed shall be adequately lighted to a minimum of fifty (50) foot candles.
- (7) Tattooing or body piercing shall be performed by a tattoo artist or body piercer in a tattoo or body piercing facility completely separated from any living quarters by a solid permanent partition. A solid door leading to the living quarters is permitted, provided it remains closed during business hours. A direct outside entrance to the tattoo or body piercing facility shall be provided.

(b) Equipment.

- (1) **Autoclaves.** All tattoo or body piercing facilities shall be equipped with an autoclave which is in good working order and which is manufactured with temperature and pressure gauges marked and visible on the outside of the unit:
 - a. As an alternative to requiring a pressure gauge, spore strips or suspensions shall be used at least weekly and results recorded for performance checks of the autoclave.
 - b. A record must be maintained for each sterilization cycle, including date, sterilizing temperature, length of time at sterilizing temperature, and what was autoclaved.
 - c. A minimum of one time sterile indicator tape shall be included with each load sterilized and the results recorded and the autoclave shall be spore tested at least monthly. Spore kill effectiveness testing shall be conducted by an independent laboratory.
 - d. The autoclave shall be of sufficient size and shall be operated in accordance with manufacturer's recommendations and in a manner to prevent crowding of the chamber.
 - e. The autoclave chamber temperature shall be checked at least weekly with a maximum registering thermometer and results recorded.
- (2) **Sterilized Instruments.** All instruments used in the practice of tattooing or body piercing shall be sterilized before use:
 - a. All instruments shall be thoroughly cleaned before being sterilized. This may be done with an ultrasonic cleaner or with a probe, needles, or brush able to enter the smallest opening of the instrument. The cleaning of instruments shall be done with detergent and hot water or other methods approved by health authorities.

- b. All instruments used in the tattoo or body piercing procedure shall be stored in a clean, dry manner after sterilization and handled in a way that will prevent recontamination.
 - (3) **Needles.** Needles shall be disposable, sterile, single-patron use.
 - (4) **Stencils.**
 - a. Plastic stencils shall be thoroughly cleaned with soap and water and sanitized after each use. They are to be sanitized by immersion for thirty (30) minutes in a chlorine disinfectant solution prepared by mixing one (1) tablespoon of household bleach containing five percent (5%) chlorine with one (1) pint of water and allowed to air dry.
 - b. Prior to use, each pre-cleaned and sanitized plastic stencil shall be rinsed in a seventy percent (70%) isopropyl alcohol solution and allowed to air dry.
 - c. Paper stencils shall only be used once. New paper stencils shall be used for every individual.
 - (5) **Dyes and Inks.**
 - a. The licensee shall submit in writing to the health authorities the source of all dyes and inks used in administering tattoos.
 - b. Non-toxic dyes or inks shall be taken only from effectively covered squeeze bottle containers that are easy to clean and disinfect.
 - c. Immediately before applying a tattoo; the dye to be used for the tattoo shall be squeezed from the dye bottles into disposable cups. The disposable cups shall be stored and handled in a manner to prevent them from becoming contaminated. Upon completion of the tattoo, the cups and dye shall be discarded. Any dye in which the needles were dipped shall not be used on another person.
- (c) **Skin Preparation.**
- (1) **Aseptic Technique.** Aseptic technique must be utilized in the practice of tattooing or body piercing:
 - a. Each tattoo artist or body piercer is required to scrub his/her hands with liquid soap (i.e., tincture of green soap) and water thoroughly before commencing tattooing or body piercing on the client.
 - b. If the client's skin is to be shaved, the skin shall be washed with a cleansing antiseptic/antimicrobial skin cleaner before shaving. A safety razor shall be used. A new blade shall be used for each client. The blade shall be discarded after each use. Reusable blade holders shall be sterilized after each use. If disposable blade holders are used, they may be used on one client only and then must be discarded.
 - c. The skin area to be tattooed or body pierced shall first be cleansed with soap and water and then prepared with antiseptic such as seventy percent (70%) alcohol (and allowed to air dry) or other method approved by the health authorities.
 - d. Single-use gauze pads or towels shall be used in the skin cleaning and preparation.
 - e. Petroleum jelly applied on the tattoo area shall be dispensed from a single-use disposable container or with a sterile tongue blade or sterile applicator stick which shall be discarded after each use.
 - (2) **Antibacterial Ointments.** After the tattooing or body piercing is completed, only antibacterial ointments shall be applied on the tattoo or body piercing, and if a dressing is to be used, it must be a sterile, non-sticking dressing.
 - (3) **Instructions.** Persons tattooed or body pierced shall be provided with printed instructions regarding tattoo or body pierce care during the healing process.

- (d) **General Supplies.**
- (1) All tattoo or body piercing facilities shall have clean, laundered towels, washcloths or disposable paper towels in sufficient quantity for the sanitary operation of the practice of tattooing or body piercing.
 - (2) A clean towel and washcloth shall be used for each client.
 - (3) Clean towels and washcloths shall be stored in a closed, dustproof container.
 - (4) Soiled towels and washcloths shall be stored in an approved covered container.
 - (5) All tattoo artists or body piercers shall wear clean, washable garments.
 - (6) The operating table, chair, and supply tables shall be constructed of a material capable of being easily and thoroughly cleaned and disinfected.
- (e) **Tattoo Artist and Body Piercer Requirements.**
- (1) The tattoo artist or body piercer shall be free of infectious or contagious disease that may be transmitted by the practice of tattooing or body piercing.
 - (2) Tattoo artists or body piercers with open sores or skin infections on the hand or hands shall not be permitted to engage in the practice of tattooing or body piercing. The tattoo artist or body piercer shall wear single-use disposable latex or vinyl gloves during tattooing or body piercing.
 - (3) Smoking or consumption of food or drink shall not be allowed in the immediate vicinity where the tattoo or body piercing procedure is being performed.
 - (4) The tattoo artist or body piercer shall wash his/her hands thoroughly with liquid soap and water before any skin preparation, tattooing, or body piercing and after removing gloves. The hands shall be dried with individual single-service towels.
 - (5) No person shall be present in the immediate vicinity of the area in which tattoos or body piercing are administered unless authorized by the tattoo artist or body piercer.
 - (6) No animals, except guide dogs, are allowed in the tattoo or body piercing facility.
 - (7) The work areas, such as counter tops, must be cleaned and wiped with a disinfectant between clients.
 - (8) Physical examination of tattoo artists or body piercers may be required. Health authorities shall have the power to require any tattoo artist or body piercer to submit to a practicing physician for a physical examination whenever the tattoo artist or body piercer is reasonably suspected of having any infectious or contagious disease that may be transmitted by the practice of tattooing or body piercing. The expense of the physical examination shall be the responsibility of the tattoo artist or body piercer. All medical records shall remain confidential, except as otherwise provided by law. Failure to obtain the required physical examination shall result in suspension or revocation of the tattoo artist or body piercing permit.
- (f) **Clients.**
- (1) Inquiry shall be made and no tattooing or body piercing shall be performed on any person who is suspected of having jaundice or hepatitis or who has recovered from jaundice or hepatitis within the preceding six (6) months.
 - (2) Tattooing or body piercing shall not be performed on any person in an area with an evident skin infection or other skin disease or condition, including, but not limited to, rashes, pimples, boils or infections.

Sec. 7-13-6 Temporary Facility or Temporary Combined Facility.

The requirements contained in this Chapter shall apply to temporary facilities and temporary combined facilities, except where superseded by the following:

- (a) **Permit.**
 - (1) No temporary facility or temporary combined facility may be operated before being granted a permit by the City Clerk-Treasurer.
 - (2) No permit may be issued without prior inspection.
 - (3) The permit issued by the City Clerk-Treasurer shall be conspicuously displayed in the temporary facility or temporary combined facility.
 - (4) A tattoo artist or body piercer operating a temporary facility or combined temporary facility, found to be an habitual violator of this Chapter by the City Clerk-Treasurer, may be denied a permit to operate or may have the permit revoked.
- (b) **Premises.**
 - (1) Floors shall be maintained in a sanitary condition. Dirt floors shall be covered by an approved material which will provide protection from dust.
 - a. When water is available under pressure, handwashing facilities with approved liquid waste disposal shall be reasonably accessible to the tattoo artist or body piercer.
 - b. When water is not available under pressure, a minimum of two (2) basins or a two (2) compartment basin shall be provided.
 - (3) Water in sufficient quantity shall be hauled and stored in containers that are easily cleanable, provided with tight-fitting covers, and maintained in a clean and sanitary condition.
 - (4) Liquid soap and single-service towels for handwashing and drying hands shall be provided.
- (c) **Equipment.** If an approved autoclave/sterilizer is not provided, only pre-sterilized instruments that are prewrapped with time sterile indicator tape attached and stored in a clean, dry manner may be used in the practice of tattooing or body piercing.

Sec. 7-13-7 Record Retention.

Records shall be kept by each permittee of all tattoos and body piercings administered, including the name of the client, date, general identification of the tattoo or body piercing, and tattoo artist's or body piercer's name. Records shall be kept on the premises of the tattoo or body piercing facility where tattoos or body piercings are administered. These records shall be available for inspection for a period of two (2) years after the date the tattoo or body piercing is completed.

Sec. 7-13-8 Appeals.

Appeals from orders or permit denials under this Chapter shall be in conformance with the procedures for conducting appeals enumerated in Sec. 68, Wis. Stats., codified in Title 4 of this Code of Ordinances. An appeal does not eliminate the City's right to seek court intervention in the form of injunctive or other relief.

Sec. 7-13-9 Regulations, Rules and Laws Adopted by Reference.

The applicable regulations, rules and laws set forth in Secs. 252.23, 252.24 and 252.245, Wis. Stats., and HFS 173, Wis. Adm. Code, are incorporated in this Chapter by reference and they shall be construed, read and interpreted as though fully set forth herein. The express provisions of this Chapter shall control where more restrictive.

State Law Reference: Secs. 252.23, 252.24 and 252.245, Wis. Stats.; HFS 173 and NR 526, Wis. Adm. Code.

Title 7 – Chapter 14

Flea Markets and Garage Sales

- 7-14-1 Regulation of Flea Markets
7-14-2 Garage Sales

Sec. 7-14-1 Regulation of Flea Markets.

- (a) **Definitions.** As used in this Section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:
- (1) **Flea market:** A market, indoors or out of doors, where new or used items are sold from individual locations, with each location being operated independently from the other locations. Items sold include, but are not limited to, household items, antiques, rare items, decorations, used books and used magazines.
 - (2) **Flea market seller:** A person, firm or corporation selling items or offering items for sale at a flea market.
 - (3) **Market:** A place where goods are sold to the public.
- (b) **License Required.** No person, firm or corporation shall operate the business of renting space or allocating space to flea market sellers without first obtaining a license therefor from the Common Council. Applications for license shall be made to the City Clerk-Treasurer on forms to be provided by the City Clerk-Treasurer. Only one (1) license shall be required for each flea market, and the individual flea market sellers shall not be required to obtain a license under this Section. The fee for such license shall be as prescribed in Section 1-3-1. The Common Council may restrict the license for use on certain dates and times. The site for the flea market shall comply with City zoning requirements.
- (c) **Information to be Filed.** The information to be filed with the City Clerk-Treasurer, pursuant to this Section, shall be as follows:
- (1) Name of person, firm, group, corporation, association or organization conducting said sale.
 - (2) Name of owner of the property on which said sale is to be conducted, and consent of owner if applicant is other than the owner.
 - (3) Location at which sale is to be conducted.
 - (4) Number of days of sale.
 - (5) Date, nature of any past sale.
 - (6) Relationship or connection applicant may have had with any other person, firm, group, organization, association or corporation conducting said sale and the date or dates of such sale.
 - (7) Whether or not applicant has been issued any other vendor's license by any local, state or federal agency.
 - (8) Sworn statement or affirmation by the person signing that the information therein given is full and true and known to him/her to be so.
- (d) **Records to be Kept by Licensee.** Each person required by this Section to obtain a license shall keep accurate records of the names and addresses of each flea market seller, together with a brief description of the type or types of merchandise offered for sale by that seller.

- (e) **Secondhand Stores Excepted.** No person, firm or corporation having a license as a secondhand store shall be required to obtain a license under this Section for the same business location.
- (f) **More than One Market.** Any person, firm or corporation renting or allocating space to flea market sellers in more than one (1) place of business shall be required to obtain a license for each place of business, provided that one (1) license shall be adequate for locations that are on the same lot, adjacent lots or lots separated only by an alley.
- (g) **Unlawful Transactions.** No person shall sell or offer for sale at any flea market any goods known to such person to be stolen.
- (h) **Purchases From Children.** No flea market seller shall purchase any used household item, antique or used article whatsoever from any person under the age of eighteen (18) years, unless such person is accompanied by the person's parent or guardian.
- (i) **Hours.** Flea markets may remain open for business between the hours of 9:00 a.m. and 8:00 p.m., unless otherwise specified on the license by the Common Council at the time of issuance.
- (j) **Penalty.** In addition to the suspension or revocation of a license issued under this Section, any person who shall violate any provision of this Section or any regulation, rule or order made hereunder shall be subject to a penalty as provided in Sec. 1-1-7 of this Code of Ordinances.

Sec. 7-14-2 Garage Sales.

- (a) **Frequency of Sales; Ownership of Merchandise.**
 - (1) Garage sales, yard sales and similar merchandise sales may be held no more than six (6) times per year at any residence and for a total of not more than eighteen (18) days in that year. All goods offered for sale shall be household goods or personal possessions from the residence where the sale is being held or, in the case of a group sale, from the residences of the participating households. In no case shall any sales become outlets for wholesale or retail commercial sales.
 - (2) Any garage sales, yard sales and similar merchandise sales by nonprofit, philanthropic or civic organizations must be approved by the City Clerk-Treasurer and may be held no more than three (3) times per year for not more than a total of six (6) days in that year. In no case shall any sales become outlets for wholesale or retail commercial sales.
- (b) **Hours.** Garage sales shall be conducted between 7:30 a.m. and 8:00 p.m. Each sale shall last no longer than four (4) consecutive days.
- (c) **Signs.**
 - (1) Garage sale signs may not have an area more than six (6) square feet with a maximum of two (2) faces. Garage sale signs shall identify the location of the sale and must be located off of the City right-of-way.
 - (2) No garage sale sign may be located on utility poles, traffic control devices or on property or the adjoining right-of-way of property the owner of which has not given explicit permission for its location.
 - (3) No garage sale sign shall be displayed more than one (1) day before the sale or one (1) day following the sale.
 - (4) No more than one (1) garage sale sign may be located at the sale site and no more than two (2) garage sale signs may be located off the site, except that two (2) signs are permitted on corner lots, one (1) facing each street.
- (d) **Definitions.** The following definitions are applicable to this Section:
 - (1) **Garage Sale.** All general sales open to the public, conducted from or on a residential premises, for the purpose of disposing of personal property, including but not limited to all sales entitled rummage, lawn, yard, porch, room, backyard, patio or garage sale.

- (2) ***Personal Property.*** Property which is owned, utilized and maintained and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment.

Title 7 – Chapter 15

Coin Operated Devices

7-15-1 Coin Operated Devices Licensed

Sec. 7-15-1 Coin Operated Devices Licensed.

- (a) **Use of Coin Operated Music Devices.** It shall be unlawful for any person, firm or corporation to keep for public use or entertainment any coin operated record player, musical device, or juke box in any public place in the City of Westby without having first obtained a license for each such device as hereinafter provided.
- (b) **Licenses for Music Devices.** Licenses for the use of such coin operated music devices shall be issued by the City Clerk-Treasurer upon the payment of a fee per Section 1-3-1 for each such music device. Every license shall be issued on the first day of July in each year or thereafter, whenever applied for and shall continue in force from date of issuance until the succeeding June 30th unless sooner revoked for a violation of this Chapter.
- (c) **Hours of Permitted Use and Other Regulations.** Such mechanical record player, music device or juke box so licensed shall only be operated in any public place in the City of Westby between the hours of permitted operation for Class "B" and "Class B" alcoholic beverage establishments and during the permitted hours of operation such licensed music device shall not be operated in a manner that thereby creates unnecessary noise or disturbance which constitutes a public nuisance.
- (d) **Use of Various Coin-Operated Amusement Devices.** It shall be unlawful for any person, firm or corporation to keep for public use or operation any coin operated device, such as pin ball machines and similar machines or devices which one (1) games of skill or chance, and which are used for amusement purposes in any public place in the City of Westby. This does not include music devices mentioned in Subsection (a) and does not include coin operated vending machines which dispense merchandise for a stated price with no element of chance involved.

Title 7 - Chapter 16

Synthetic Drug Establishments

7-16-1	Findings of Fact; Statement of Purpose
7-16-2	Definitions
7-16-3	Licensing of Synthetic Drug Establishments
7-16-4	Prohibited Acts and Conduct

Sec. 7-16-1 Findings of Fact; Statement of Purpose.

- (a) **Findings of Fact.** The Common Council of the City of Westby finds the following facts to exist:
- (1) Law enforcement authorities have advised City officials that the increased use of synthetic drugs is negatively affecting the health, safety and welfare of the public.
 - (2) Synthetic drugs are commonly marketed as a safe and legal alternative to marijuana or other controlled substances regulated by Chapter 961, Wis. Stats.
 - (3) Ingestion of synthetic drugs has been shown to produce dangerous side effects such as, but not limited to:
 - a. Nausea;
 - b. Vomiting;
 - c. Hallucinations;
 - d. Blurred vision;
 - e. Delusions;
 - f. Headaches;
 - g. Agitation;
 - h. Anxiety;
 - i. Insomnia;
 - j. Convulsions;
 - k. Addiction;
 - l. Psychosis;
 - m. Elevated blood pressure;
 - n. Loss of consciousness;
 - o. Tremors;
 - p. Suicidal thoughts;
 - q. Seizures;
 - r. Paranoid behavior;
 - s. Elevated or irregular heart rates; and
 - t. Death.
 - (4) Due to the manner in which such synthetic substances are marketed, the manufacture and sale of synthetic drugs is purportedly not fully regulated by the federal Food And Drug Administration (FDA) and/or federal drug enforcement authorities.
 - (5) Because slight molecular alterations can be made to chemical compounds, law enforcement authorities have often found it difficult to take enforcement actions against manufacturers and sellers of synthetic drug products. Synthetic drugs are currently being sold without even basic regulation and licensing requirements of the type other businesses in the City must comply with.
 - (6) Like the marketing of synthetic cannabinoids [such as, but not limited to, Spice/K2], as incense, these substances are commercially available and in some instances are marketed

as "bath salts" under such names as Bliss, Vanilla Sky, White Lightning, Ivory Snow, Red Dove and Hurricane Charlie, or are packaged or marketed as potpourri, incense, plant food, spice, tobacco, or dietary supplements.

(7) The establishment of retail points of sale for synthetic drug products in the City of Westby would increase the use of synthetic drugs, and would likely have negative secondary effects on nearby businesses and residences.

(b) **Statement of Purpose.** This Chapter provides certain minimum licensing standards for establishments making available to the public synthetic drugs. The purpose of this Chapter is not to condone illegal activity nor is it to legitimize activity that may now, or in the future, be considered illegal activity under state or federal laws or local ordinances.

Sec. 7-16-2 Definitions.

For purposes of this Chapter, the following words and phrases shall have the following meanings:

- (a) **Synthetic Drug.** The term "synthetic drug" means one (1) or more of the following:
- (1) A substance that a reasonable person would believe is a synthetic drug;
 - (2) A substance that a reasonable person would believe is being purchased, sold or given away as a synthetic drug;
 - (3) A substance which has been listed as a regular synthetic drug in the Wisconsin Statutes or City ordinances, and their derivatives, analogues, homologues, salts, optical isomers and salts of optical isomers with substantially similar chemical structure and pharmacological activity as a synthetic drug or other controlled substance; or
 - (4) A substance that a person knows or should have known was intended to be consumed by ingestion, inhalation, injection or any other immediate means, and consumption was intended to cause or simulate a depressant, stimulant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the depressant, stimulant or hallucinogenic effect on the central nervous system of a controlled substance on Schedule I through V as defined in Chapter 961, Wis. Stats. "Synthetic drug" does not mean legal food or drug ingredients, prescription drugs, alcohol, tobacco or dietary supplements.
- (b) **Synthetic Drug Establishment.** Any business establishment where a person engages in the sale or giving away of synthetic drugs.

Sec. 7-16-3 Licensing of Synthetic Drug Establishments.

- (a) **License Required.** No person shall engage in the business of owning and/or operating a synthetic drug establishment, either exclusively or in connection with any other business enterprise, in the City of Westby without first obtaining a license for each synthetic drug establishment. Each licensee shall be eighteen (18) years of age or older.
- (b) **License Applications.**
- (1) An application for a synthetic drug establishment license shall be made to the City Clerk-Treasurer in letter format or on forms supplied by the City containing the following information:
 - a. A description of the business, including a general description of the types of merchandise sold;
 - b. A description of the location of the premises to be licensed;
 - c. The full names and addresses of the property owner, business owner, business manager or agent, lessee, and business operator, and the date of birth and contact information (email address; cellphone, landline and fax numbers) of each;

- d. If the applicant is a partnership, limited liability corporation or corporation, the full names and residence addresses of each of the partners including limited partners, and the address of the business entity if different from the address of the synthetic drug establishment; and
 - e. A statement from each of the above individuals as to whether any of the aforementioned individuals have ever been convicted of any crime or offense other than a traffic offense, and if so, a description of the offense, including date, time, place and disposition.
- (2) An annual license in the amount of Five Hundred Dollars (\$500.00) shall be paid at the time the application is filed with the City Clerk-Treasurer. The fee will not be prorated and is non-refundable. A separate license shall be obtained for each place of business. Unless suspended or revoked, a license shall be effective from January I through December 31 annually.
- (c) **Investigation; Report; Delinquent Taxes.**
- (1) The City Clerk-Treasurer shall notify the Chief of Police and, as appropriate, other pertinent law enforcement agencies, Fire Inspector and health inspection officials of each new and renewal application. Such authorities shall investigate whether the applicant and/or premises subject to licensing will be able to comply with all regulations, ordinances and laws applicable thereto, including, but not limited to, requesting information from the State of Wisconsin, other states, municipalities and/or any community where the applicant has previously resided or operated a business concerning the applicant's arrest and conviction record.
 - (2) Based upon such investigations, the Chief of Police, other pertinent law enforcement agencies, Fire Inspector and health inspection officials shall recommend, in writing, to the Common Council approval, conditional approval or denial, with the reasons provided for such recommendation.
 - (3) No license shall be renewed without an investigative report as originally required.
 - (4) No license shall be issued for operations on any premises or with any equipment for which taxes, assessments, forfeitures or other financial claims of the City are delinquent and unpaid.
- (d) **License Determination.**
- (1) Opportunity shall be given by the Common Council to any person to be heard for or against the granting of a license.
 - (2) If the Common Council, Chief of Police or other City official finds that they have insufficient information to evaluate the license application, they may request that the applicant or his/her agent file an amended application or appear at a reasonable time and place to give under oath information concerning the application. No license shall be granted to any applicant who refuses to cooperate with the investigation process or who fails to appear, personally or by his/her agent, before the Common Council when the license application is under consideration.
 - (3) No license under this Chapter shall be issued unless it is approved by the Common Council, upon the recommendation of the Chief of Police and other investigating/inspecting authorities, and unless the establishment has passed fire and health inspections. The Common Council shall not approve any new or renewal license application if there are reasonable grounds to believe that:
 - a. The granting of said license would result in a violation(s) of the law;
 - b. The license application contains false or misleading information or statements;
 - c. The location of the proposed licensed premises is not appropriate; and/or
 - d. Other good cause exists for denying the license.

- (4) An application may be denied based upon the applicant's or his/her manager's arrest and conviction record if the applicant or his/her manager has been convicted of a felony (unless duly pardoned) or if the applicant or manager has habitually been a law offender. For purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an attest or conviction of at least two (2) offenses which are substantially related to the licensed activity within the five (5) years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the Common Council, the Common Council reserves the right to consider the severity, and the facts and circumstances of the offense when making its determination to grant, deny or not renew a license. In addition, the Common Council, at its discretion, may, based upon an arrest or conviction of two (2) or more offenses which are substantially related to the licensed activity within five (5) years immediately preceding, act to suspend such license for a period of up to one year or revoke the license.
- (5) If the Common Council denies the license, the applicant shall be notified, in writing, by personal service or certified mail, of the reasons for the denial. The notice shall also inform the applicant of the opportunity to appear before the Common Council and to provide evidence as to why the denial should be reversed. Written notice of any reconsideration shall be mailed to the applicant a minimum of seven (7) days prior to the Council meeting at which the application is to be reconsidered.
- (e) **Posting of License.** Every person licensed in accordance with the provisions of this Chapter shall post such license and keep the same posted in a conspicuous place on the premises.
- (f) **Suspension or Revocation of Licenses.** The Common Council may suspend or revoke any license issued under this Chapter, if, after giving the licensee the opportunity to be heard on the matter, the Council finds:
 - (1) The licensee has violated a provision of this Chapter or any other law relating to the conduct of its operation including, but not limited to, federal, state or local laws;
 - (2) The licensee secured the license through misrepresentation or fraud regarding any material fact in the license application;
 - (3) The failure of the licensee to cooperate with law enforcement, fire or health authorities in any investigation relating to their operations or failure to admit law enforcement officers into the establishment at any time when people are present in the establishment;
 - (4) The establishment is operated in such a way as to endanger public health or safety; or
 - (5) The establishment is operated in such a way as to constitute a public nuisance under Sec. 823.07, Wis. Stats., or City ordinances.
- (g) **Consent to Entry.** Every applicant procuring a license thereby consents to the entry of law enforcement authorities or duly authorized representatives of the City at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles that are in violation of City ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.
- (h) **Licensee or Permittee Responsible for Acts of Help.** A violation of this Chapter by a duly authorized agent or employee of a licensee under this Chapter shall constitute a violation by the licensee.

Sec. 7-16-4 Prohibited Acts and Conduct.

No synthetic drug establishment shall:

- (a) Remain open for business between the hours of 9:00 p.m. and 8:00 a.m.
- (b) Sell synthetic drug products that do not include the name, address and telephone number of the manufacturer, packer and distributor of the product.
- (c) Sell synthetic drug products that do not identify all commodities within the package, including organic and non-organic, chemically synthesized substances and compounds.
- (d) Sell synthetic products to any individual under the age of twenty-one (21).
- (e) Sell synthetic drug products that do not comply with all state and federal laws and regulations, including those related to packaging, labeling and weights and measures.
- (f) Be located within three hundred (300) feet of any park, school, daycare facility or area zoned residential or mixed-use.

Title 7 – Chapter 17

Licensees to Pay Local Claims; Appellate Procedures

7-17-1	Licensees Required to Pay Local Taxes, Assessments and Claims; Appellate Procedures
7-17-2	Issuance of Licenses
7-17-3	Criminal History Record Information Searches

Sec. 7-17-1 Licensees Required to Pay Local Taxes, Assessments and Claims.

- (a) **Nonpayment of Taxes or Forfeitures.** The City shall not issue or renew any license to transact any business within the City of Westby:
- (1) For any purposes for which taxes, assessments or other claims of the City are delinquent and unpaid.
 - (2) For any person who is delinquent in payment:
 - a. Of any taxes, assessments or other claims owed the City; or
 - b. Of any forfeiture resulting from a violation of any City Ordinance.
- (b) **Applicability.** 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) **Denial of Renewal.** An application for renewal of a license subject to this Chapter shall be denied pursuant to the provisions of Subsection (a) only following notice and opportunity for hearing as provided by Subsection (d) below.
- (d) **Hearing.** 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 Common Council or its assignee shall notify the applicant in writing of the City'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 Common Council. If the applicant shall fail to appear before the Council on the date indicated on the notice, the Council shall deny the application for renewal. If the applicant appears before the Council on the date indicated in the notice and denies that the reasons for nonrenewal exist, the Common Council shall conduct a hearing with respect to the matter. At the hearing, both the City 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 Common Council determines the applicant shall not be entitled to renewal pursuant to Subsection (a), the application for renewal shall be denied.
- (e) **Other Grounds for Hearing.** Where an individual, business or corporation wishes to appeal the City Clerk-Treasurer'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 City Clerk-Treasurer that the matter be referred to the Common Council. A public hearing shall be scheduled within fourteen (14) calendar days by the Common Council. All

parties may be represented by counsel. The Council shall consider all relevant information and shall render a decision which shall be binding.

State Law Reference: Sec. 66.0115, Wis. Stats.

Sec. 7-17-2 Issuance of Licenses.

- (a) **Application.** Applications for licenses under this Title shall be made to the City Clerk-Treasurer on a form furnished by the City of Westby. Such application shall contain such information as may be required by the provisions of this Chapter or as may be otherwise required by the Common Council.
- (b) **Payment of License Fee.** License fees imposed under this Title shall accompany the license application. If a license is granted, the City Clerk-Treasurer shall issue the applicant a receipt for his/her license fee.
- (c) **Refund of License Fee.** No fee paid shall be refunded unless the license is denied.
- (d) **Terms of Licenses.** All licenses issued hereunder shall expire on June 30, in the year of issuance unless issued for a shorter term, when they shall expire on midnight of the last effective day of the license, or unless otherwise provided by these Ordinances or State laws.
- (e) **Form of License.** All licenses issued hereunder shall show the date of issue, the activity licensed, and the term of the license, and shall be signed by the City Clerk-Treasurer and be impressed with the City Seal, if any.
- (f) **Record of Licenses.** The City Clerk-Treasurer shall keep a record of all licenses issued.
- (g) **Display of Licenses.** All licenses hereunder shall be displayed upon the premises or vehicle for which issued, or if carried on the person shall be displayed to any officer of the City upon request.
- (h) **Compliance With Ordinances Required.** It shall be a condition of holding a license under this title that the Licensee comply with all ordinances of the City. Failure to do so shall be cause for revocation of the license.
- (i) **Transfer of Licenses.** All licenses issued hereunder shall be personal to whom issued and shall not be transferred except with the consent of the Common Council.
- (j) **Consent to Inspection.** An applicant for a license under this Chapter thereby consents to the entry of police or authorized representatives of the city upon licensed premises at all reasonable hours for the purposes of inspection and search, and consents to removal from the premises and introduction into evidence in prosecutions for violations of this title all things found therein in violation of this Chapter or State Law.

Sec. 7-17-3 Criminal History Record Information Searches.

- (a) **General Provisions; Purpose.**
 - (1) **Purpose.** This Section is adopted for the purpose of providing the City of Westby and law enforcement agencies serving the City of Westby with the authority to request criminal history record information from the State of Wisconsin or the federal government when required by ordinance or if requested by the City Clerk-Treasurer or a City department head.
 - (2) **State Requirements.** The City of Westby is a municipal corporation which provides government services to its citizens and the general public, and in order to efficiently provide services, it is necessary to conduct criminal history record searches concerning certain persons. This Section is enacted in order to comply with any applicable State

of Wisconsin requirement that a municipality that requests that the state provide them with criminal history record information concerning an individual under certain circumstances have an ordinance, resolution or department policy enacted authorizing such requests.

- (b) **Authority.** If required by ordinance or if requested by the City Clerk-Treasurer or a City department head, law enforcement agencies serving the City of Westby shall conduct a criminal history records information search concerning the following persons:
- (1) Alcohol license and permit applicants.
 - (2) Transient merchant license applicants.
 - (3) Applicants for City employment.
 - (4) Firefighter applicants when requested by the Fire Chief.
 - (5) Rescue squad applicants when requested by the Emergency Medical Service.
 - (6) Hunting permit applicants.
 - (7) Ride-along participants.
 - (8) Applicants for all other licenses and permits which may be issued by the City.
 - (9) An officer or partner of any corporate or partnership applicant for licenses or permits from the City.
 - (10) Any other person for whom a department head or the City Clerk-Treasurer requests criminal history information due to interaction with municipal services. A request under this Subsection must be based on a reasonable belief that the criminal history information is necessary to assist in the safe and efficient operation of local government and/or to safeguard the public health and safety.
- (c) **Fees.** The cost of the criminal history record information search shall be paid as provided by ordinance, or if not specifically specified in an ordinance, as directed by the City Clerk-Treasurer.