

CHAPTER XIII

LICENSING AND PERMITS

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13.1 INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES.

(1) State Statutes Adopted The provisions of Chapter 125 of the Wisconsin Statutes, relating to the sale of intoxicating liquor and fermented malt beverages, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this Chapter as if fully set forth herein. Any act required to be performed or prohibited by any statutes 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 regulation of alcohol beverage control.

State Law Reference: Chapter 125, Wis. Stats.

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

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

(4) Classes of Licenses.

(a) Class A Licenses.

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

(ii) Class “A” Fermented Malt Beverage Retailer’s License. A retail Class “A” fermented malt beverage license, when issued by the Village Clerk-Treasurer, under the authority of the Village Board, shall entitle the

holder thereof to possess, sell or offer for sale fermented malt beverages only for consumption away from the premises where sold and in the original packages, containers, or bottles.

(b) Class B Licenses.

(i) Retail “Class B” Intoxicating Liquor License. A retail “Class B” intoxicating liquor license, when issued by the Village Clerk-Treasurer, under the authority of the Village Board, shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed and in the original package or container in multiples not to exceed four (4) liters at any one (1) time, to be consumed off the premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.

(ii) Class “B” Fermented Malt Beverage Retailer’s License. A Class “B” fermented malt beverage retailers license, when issued by the Village Clerk-Treasurer, under the authority of the Village Board, shall entitle the holder thereof to possess, sell or offer for sale, fermented malt beverages, either to be consumed upon the premises where sold or away from such premises. The holder may also sell beverages containing less than one-half (1/2) of a percentum of alcohol by volume.

(iii) Temporary Class “B” Fermented Malt Beverage 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.

(iv) Temporary “Class B” Wine License. As provided in Sec. 125.68(3), Wis. Stats., temporary “Class B” wine license 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 authorizing the sale of wine containing not more than six percent (6%) alcohol by volume in an original package, container or bottle or by the glass if the wine is dispensed directly from the original package, container or bottle at a particular picnic association or agricultural society.

(c) Class C Licenses.

(i) Retail “Class C” Wine License. A “Class C” Wine License authorizes the retail sale of wine by the glass or in an opened container for consumption on the premises where sold.

(ii) A “Class C” license may be issued to a person qualified under Section 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.

(ii) For the purpose of this ordinance, “barroom” is defined as a room that is primarily used for the sale or consumption of alcoholic beverages.

(iv) A “Class C” license shall particularly describe the premises for which it is issued.

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

(e) Reserved License. The licenses as calculated in accordance with Wisconsin State Statutes 125.51(4)(br) that are part of the Village’s quota but were not issued on December 1, 1997.

(5) License Annual Fees

- (a) Village Board to establish fees. The fees for licenses issued pursuant to this ordinance shall be established by Resolution of the Village Board.
- (b) All license applications shall include the cost of publication as prescribed by the Village's official newspaper which may change annually
- (c) There shall be no fee for a temporary "Class C" Wine License if obtained along with a Temporary Fermented Malt Beverage License.
- (d) "Class A" Intoxicating Liquor License, "Class B" Intoxicating Liquor License, a Class "B" Fermented Malt Beverage License and a "Class C" Wine License for a period less than a 12 month licensing year shall be prorated.
- (e) "Class B" Intoxicating Liquor License and Class "B" Fermented Malt Beverage 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.

(6) License Application

- (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 Village 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/applicants if an individual or partnership, by the president and secretary of a corporation, and all parties in an LLC.
- (c) Publication. The Village 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) Fermented Malt Beverage or temporary "Class C" wine licenses under Section 125.26, Wis. Stats. The application shall be published once in the official Village 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 a notice in writing of such change within ten (10) days after the occurrence thereof.

(e) License Quotas. the number of persons and places that may be granted a retail “Class B” liquor license under this Section is limited as provided in Chapter 125 Wis. Stats.

(7) Qualifications for Licenses and Permits Qualifications for licenses and permits issued under this ordinance are as set forth in this ordinance and the requirements of *Chapter 125 Wisconsin Statutes*.

(8) Investigation

(a) The Village Clerk-Treasurer shall notify the Chief of Police, Fire Inspector and Building Inspector of each new application, and these officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary to determine whether the application 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 application is a proper recipient of a license. These officials shall furnish to the Village Clerk-Treasurer in writing, who shall forward to the Village Board, the information derived from such investigation, accompanied by a recommendation as to whether a license should be granted or refused, No license shall be renewed without a re-inspection of the premises and report as originally required.

(b) The Administration and Finance Committee shall have the right to call any applicant for a Intoxicating Liquor or a Fermented Malt Beverage license before it for an oral examination as to the matters that appear on the applicant’s written application form and other relevant matters.

(9) Approval of Application.

(a) No license shall be granted for operation on any premises or with any equipment for which taxes, assessments, forfeitures or other financial claims of the Village 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 Village.

(b) Consideration for granting or denial of a license will be based on:

(i) Arrest and conviction record of the applicant, subject to the limitations imposed by Secs. 111.321, 111.322 and 111.335, Wis. Stats.;

(ii) The financial responsibility of the applicant;

(iii) The appropriateness of the location and the premises where the licensed business is to be conducted; and

(iv) 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 Village Board, the village Board reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Board, at its discretion, may, based upon an arrest or conviction record of two (2) or more offenses which are substantially related to the licensed activity within the five (5) years immediately preceding, act to suspend such license for a period of one (1) year or more.

10. Granting of License

(a) 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 Village Board, the Village Clerk-Treasurer shall issue to the applicant a license, upon payment by the applicant of the license fee to the Village.

(b) Whenever an application for renewal of a license has been refused or an application for an original license as been rejected, the applicant shall be notified in writing, by registered mail or personnel service, of the refusal to renew or to issue the license and the reasons for the denial. The applicant shall be entitled to file a written request for hearing before the Village Board to provide evidence as to why the denial should be reversed. The request for hearing shall be filed with the Village Clerk no later than fifteen (15) days after the receipt of notice that the application for renewal or issuance of the license has been rejected. After filing of the application for hearing, such hearing shall be held at the next properly noticed and regularly scheduled meeting of the Village Board of the Village of Elkhart Lake. The applicant shall be informed 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 Village Board consents to the request.

(c) Each license shall be numbered in the order in which issued and shall specifically state the premises for which issued, the date of issuance, the fee paid and the name of the licensee.

(d) With exception of 13.01(5e) all licenses shall remain in force until the first (1st) day of July next after the granting thereof, unless sooner revoked in the manner provided by Sec. 125.12 and 125.13, Wis. Stats.

11. Conditions of License All retain 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 Chapter, and subject to all other Ordinances and regulations of the Village applicable thereto.

(a) Every person licensed in accordance with the provision of this Chapter shall immediately post such license and keep the same posted while in force in 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.

(c)) Closing hours shall be established in conformance with Sec. 125.32(3), Wis. Stats.

(d) Consent to Entry. Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the Village 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 Village Ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought fur such offenses.

(e) 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.

(f) 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.

(g) There shall be at all times, upon the licensed premises the licensee, the agent named in the license if the licensee is a corporation or limited liability company,

or some person who shall have an Operator's License and who shall be responsible for the acts of all persons selling or serving, as waiters or in any other manner, any alcohol beverages to customers. No person other than the licensee, or the agent named in the license if the licensee is a corporation or limited liability company, shall serve or sell alcohol beverages in any place operated under a license unless he/she shall possess such Operator's license, or unless he/she shall be under the immediate supervision of the licensee, agent or a person holding an Operator's license.

(h) 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 and "Class C" wine 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.

12. Revocation, Suspension or Non-Renewal of License The following provisions shall apply to the revocation, suspension or non-renewal of any license issued pursuant to this Ordinance.

(a) Complaint. Any resident of the Village may file a sworn written complaint with the Village Clerk alleging one or more of the following about any person or other entity licensed pursuant to this chapter:

(i) The person has violated any provision of this ordinance.

(ii) The person keeps or maintains a disorderly or riotous, indecent or improper house.

(iii) The person has sold or given away any intoxicant to any underage person, or to persons intoxicated or bordering on intoxication, or to known habitual drunkards.

(iv) The person has failed to maintain the premises according to standards prescribed for sanitation by the State Division of Public Health, or in whose premises persons are permitted to loiter for purposes of prostitution.

(v) The person has not observed and obeyed any lawful order of the Village Board or police officers of the Village.

(vi) The person does not possess the qualifications required under this chapter to hold the license.

(vii) The person has been convicted of manufacturing or delivering a controlled substance under Sec. 161.41 (1), Wis. Stats.; of possessing with intent to manufacture or deliver, a controlled substance under Sec. 161.41 (1m), Wis. Stats.; or of possessing, with intent to manufacture or deliver, or of manufacturing or delivering a controlled substance under a substantially similar federal law or a substantially similar law of another state.

(viii) The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture or deliver, or to manufacture or deliver a controlled substance.

(b) Notice of Hearing on Complaint. Upon the filing of the complaint, the Village Board shall issue a Notice of Hearing on Complaint, signed by the Clerk and directed to any peace officer in the municipality who shall serve said Notice upon the licensee in the manner provided under Ch. 801, Wis. Stats., for service in civil actions in circuit court. The Notice shall set forth the nature and content of the complaint filed with the Village and shall command the licensee complained of to appear before the Village Board on a day and time and at a place named in the Notice, not less than three (3) days and not more than ten (10) days from the date of issuance, and show cause why the license should not be revoked or suspended. The Notice and a copy of the complaint shall be served on the licensee at least three (3) days before the time at which the licensee is commanded to appear.

(c) Procedure on Hearing.

(i) If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the Village Board finds the allegations sufficient, the license shall be revoked. The Clerk shall give notice of the revocation to the person whose license is revoked.

(iii) The President of the Village Board, or his designee, shall conduct the hearing, administer oaths to all witnesses and may issue subpoenas. So far as practicable, the rules of evidence provided in Sec. 227.45, Wis. Stats., shall be followed. The complainant shall have the burden of proving the charges by a preponderance of the evidence.

(iii) If the licensee appears as required by the notice and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. All proceedings and testimony shall be recorded on tape and transcribed unless waived by both the complainant and licensee. If either party

requests a stenographic recording and transcription, Village staff shall make the necessary arrangements, but the expense shall be borne by the requesting party. The Village Clerk shall mark and receive all exhibits admitted into the record.

(d) Decision of the Village Board.

(i) Within twenty (20) days of the completion of the hearing, the Village Board shall submit its findings of fact, conclusions of law and decision. The Committee shall provide the complainant and the licensee with a copy of the decision.

(ii) The decision of the Village Board shall be a final determination for purposes of judicial review. If the complaint is found to be true, the licensee shall pay to the Village the actual cost of the proceedings.

(ii) If the Village Board finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the Village Board finds the complaint is true, it shall determine the sanctions to be imposed against the licensee. Sanctions include a warning, a fine not to exceed \$500, suspension of license or revocation of license.

(iv) The Village Clerk shall give notice of the sanctions imposed to the licensee.

(e) Effect of Revocation. When a license is revoked under this subsection, the revocation shall be recorded by the Village Clerk and no other license issued under this chapter shall be granted to such licensee or for such premises for a period of twelve (12) months from the date of the revocation.

(f) Judicial Review. The action of the Village Board in granting or failing to grant, suspending or revoking any license, or the failure of the Village Board to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or resident of the Village.

(g) Non-renewal of License. The Village Attorney, or special counsel appointed for such purposes may, after investigation, commence an action before the Village Board to hear evidence that a license issued pursuant to this chapter should not be renewed. The Village Board shall, in writing, notify the licensee of the consideration of non-renewal. Such notification shall be in the form of and shall serve as the summons and complaint and shall include a statement of the reasons for the consideration of the non-renewal of the license in the same specificity required for a summons and complaint for revocation or suspension. If the license is recommended for non-renewal, costs may be assessed against

the licensee and any renewal application fee shall be forfeited. In all other respects, the provisions of Subdivisions (a) and (b) shall apply. The commencement of this action shall stay action by the Village Board on the licensee's application until the decision of the Village Board is final.

(h) Other Provisions. Any license issued pursuant to this order shall be subject to such further regulations and restrictions as may be imposed by the Village Board of the Village of Elkhart Lake by amendment to this section or by the enactment of new ordinances. If any licensee shall fail or neglect to meet the requirements imposed by such new restrictions and regulations her/his license may be revoked in accordance with this section. In case of revocation of any license or any violation of any provision of this ordinance in accordance with this section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made of any part of the license fee.

(i) Demerit Point System.

(i) There is hereby established a point system for the purpose of guiding the Administration and Finance Committee in the suspension or revocation of alcoholic beverage licenses. The number of demerit points is assigned according to the type of violation. This system is intended to identify habitually troublesome liquor licensees who repeatedly violate State Statutes and/or Village of Elkhart Lake ordinances and to take consistent action against such licenses.

(ii) There is hereby assigned the following demerit points for each type of violation:

<u>TYPES OF VIOLATIONS</u>	<u>ORD./WISS #</u>	<u>DEMERIT POINTS (per incident)</u>
Sale to person under age 21		80
Person under age 21 on premises		80
Sale to intoxicated person		80
False statement on application		70
Failure to be licensed		100
Unauthorized transfer/use of license		90
Conducting unlawful business		150

No licensed bartender on premise	40
Open after hours	50
Refusal to allow police to search premises or refusal to cooperate with lawful police investigation	125
After hours carry-outs	50
Gambling/gambling paraphernalia on premises	150
Nude or semi-nude entertainer/employee on premises	150
Failure to display license	25
Owner/employee selling controlled substances	150
Illegal drug paraphernalia on premises	100
Other acts – failure to maintain order/disorderly conduct, exceed capacity, noise complaints, etc.	45
Penalty enhancer for severe offences	100
Enhanced penalty for conduct which:	
(1) results in bodily harm to any individual;	
(2) creates a substantial risk of death or bodily harm;	
(3) involves the use of a firearm or other dangerous weapon; or	
(4) demonstrates an ongoing disregard of the requirements of State law or municipal ordinances.	

<u>HEALTH CODE VIOLATIONS</u>	<u>ORD./WI SS#</u>	<u>DEMERIT POINTS (per incident)</u>
Non-critical violation		35
Critical violation		80

(iii) Calculating violations. In determining the accumulated demerit points, the date of the violation is used as the basis for assigning demerit point per incident. Points shall be assigned only after conviction for violations.

(iv) Suspension and revocation of licenses. The police department shall notify the Administration and Finance Committee of the Village of Elkhart Lake of any conviction which result in the assessment of demerit points against any licensee. Following this notification, or the filing of a complaint pursuant to Wisconsin Statutes 125.12, the Committee shall hold a hearing if required and shall take the following action, after first determining the number of demerit points to be assessed against the licensee:

(1) For demerit points totaling 25-149 within a 12 month period, a warning to the licensee of the consequences of additional violations.

(2) For demerit points totaling 150-199 within a 12-month period, suspension of the license for a period of not less than 10 days nor more than 90 days.

(3) For demerit points totaling 200 or more within an 18- month period, revocation of the license. Whenever any license is revoked, at least six (6) months from the time of such revocation shall elapse before another license shall be granted for the same premises, and twelve (12) months shall elapse before any other license shall be granted to the person whose license was revoked.

(v) Scope. Nothing in this section shall be construed to conflict with, abridge or modify, the rights or procedures established for revocation or suspension of licenses in Wisconsin Statutes 125.12. Notwithstanding the requirements of this section, the Administration and Finance Committee of the Village of Elkhart Lake may require the appearance before it of any licensee at any time.

13. Closing Hours Closing hours shall be established in conformance with Sec. 125.32(3), Wisconsin Statutes.

14. Operator's License Required

(a) An operator's license for retail Class "A", "Class A", Class "B", "Class B" or "Class C" premises pursuant to Sec. 125.17 of the Wisconsin Statutes, may be issued by the Village Board to persons eighteen years of age, of good moral character who have been citizens of the United States and residents of Wisconsin continuously for not less than one year prior to the filing of said application.

- (b) The written application shall be filed with the village Clerk-Treasurer stating the name, residence, age and sex of the applicant, together with such pertinent information as to fitness of the applicant as the Clerk-Treasurer shall require.
- (c)) A certificate of completion of a State of Wisconsin certified Bartender's Awareness Course shall accompany the written application.
- (d) A fee shall accompany the application which will be set by resolution of the Board of Trustees of the Village of Elkhart Lake from time to time.
- (e) The Clerk-Treasurer shall forward the application to the Chief of Police for further investigation as is relevant.
- (f) After approval by the Chief of Police the License shall be forwarded to the Administration and Finance Committee of the Village of Elkhart Lake who may call the applicant in for an oral examination as to the matters that appear on their application or other matters that are deemed relevant to the committee.
- (g) The Administration and Finance Committee will forward with a recommendation the Operator License application to the Village Board to approve or deny.
- (h) A granted operator's license shall be in effect until June 30th of the year next ensuing.

15. Provisional or Temporary Licenses

- (a) Provisional Licenses. The Village Clerk-Treasurer may issue provisional operator's license in accordance with Sec. 125.17(5) Wisconsin Statutes. 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.
 - (i) The applicant for such provisional license must present evidence to the Clerk-Treasurer establishing that the applicant is enrolled in an Alcohol Awareness Training Program established pursuant to Sec. 125.17(a) Wisconsin Statutes.
 - (ii) A fee shall accompany the application which will be set by resolution of the Board of Trustees of the Village of Elkhart Lake from time to time.
 - (iii) A provisional license may not be issued to a person who has been denied and operator's license or to any person who has had his operator's license revoked or suspended within the preceding twelve months.
 - (iv) The Village Clerk-Treasurer may revoke the provisional license issued if he discovers that the holder of the license made a false statement on the application.

(b) Temporary License. The Clerk-Treasurer may issue a temporary operator's license provided that:

(i) This license may be issued only to operators employed by, or donating their services to, nonprofit corporations.

(ii) The license is valid for any period from one (1) to fourteen (14) days, and the period for which it is valid shall be stated on the license.

(iii) No person may hold more than three (3) licenses of this kind per licensing year.

16. Issuance or Denial of Operator's Licenses

(a) Issuing an Operator's License. After the Village Board approves the granting of an operator's license, the Village Clerk-Treasurer shall issue the license. Such licenses shall be issued and numbered in the order that they are granted and shall give the applicant's name and address and the date of the expiration of such license.

(b) Denying an Operator's License.

(i) If the application is denied by the Village Board, the Village 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 Village Board in a closed session. Such notice must be sent by registered mail to, or served upon, the applicant at least ten (10) days prior to the Board's reconsideration of the matter. At such reconsideration hearing, the applicant may present evidence and testimony as to why the license should be granted.

(ii) If, upon reconsideration, the Board again denies the application, the Village 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), Wisconsin Statutes, for review.

(c)) Consideration for the Granting or Denial of a License will be based on:

(i) Arrest and conviction record of the applicant, subject to the limitations imposed by Secs. 111.321, 111.322, 111.335, Wisconsin Statutes;

(ii) The financial responsibility of the applicant:

(iii) The appropriateness of the location and the premises where the licensed business is to be conducted; and

(iv) 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 Village Board, the Village Board reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Village Board, at its discretion, may, based upon an arrest or conviction record of two (2) or more offenses which are substantially related to the licensed activity within the (5) years immediately preceding, act to suspend such license for a period of one (1) year or more.

17. Training Course

(a) Except as provided in Subsection (b) below, the Village Board may not issue a liquor license to a sole proprietor or LLC, an operator, or appoint an agent for a corporation unless the applicant has successfully completed a responsible beverage server training course certified by the State of Wisconsin unless the applicant fulfills one of the following requirements:

(i) The applicant is renewing an operator's license.

(ii) Within the past two (2) years, the applicant has held a Class "A", Class "B", "Class A", "Class B", or "Class C" license or permit or a manager's or operator's license within the State of Wisconsin.

(iii) Within the last two (2) years, the person has completed such a training course.

(b) The 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 is enrolled.

18. Enforcement A violation of this section by a duly authorized agent or employee of a licensee or permit holder shall constitute a violation by the licensee or permit holder. Whenever the holder of any license or permit under this section shall violate any portion of this section or any regulation adopted pursuant thereto, proceedings for the revocation of said license or permit

may be instituted in the manner and under the procedure established by Secs. 125.12 and 125.13 of the Wisconsin Statutes, and the provisions therein relating to the granting of a new license shall likewise be applicable.

19. Penalties

(a) Forfeitures for violations of Secs. 125.07(1)-(5) and 125.09(2) of the Wisconsin Statutes, adopted by reference in Section 13.01 of the Code of Ordinances of the Village of Elkhart Lake, shall conform to the forfeiture penalty permitted to be imposed for violations of the comparable State Statute, including and variations or increases for subsequent offenses.

(b) Any person who shall violate any provision of this Chapter of the Code of Ordinances of the Village of Elkhart Lake, 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 by Resolution of the Board of Trustees of the Village of Elkhart Lake from time to time plus the costs of prosecution; and in case such forfeiture and costs are not paid forthwith, then by imprisonment in the County Jail until paid or until discharged by due course if law, but in any case, not less than three (3) months, nor more than one year.

(c) If, for a violation of any other provision of this section, by a forfeiture as provided by Resolution of the Board of Trustees of the Village of Elkhart Lake from time to time plus the costs of prosecution; and in case such forfeiture and costs are not paid forthwith, then by imprisonment in the County Jail until paid or until discharged by due course if law, but in any case, not more than (60) days, and any license issued shall be subject to revocation by the court which tried the violation, or as provided by subsection (12) in this Chapter. In the event of conviction for second offense under this section, or any conviction for a violation of Chapter 125 of the Wisconsin Statutes, any license which may have been issued by the Village shall, without notice, be forthwith forfeited by the order of the court which tried the violation, and such court and the clerk thereof shall file a copy of such order in the off of the Clerk-Treasurer of the Village of Elkhart Lake.

(d) Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the Wisconsin Statutes.

20. Delinquent Taxes And Assessments No alcohol beverage license shall be granted for any premises for which taxes, assessments, water and sewer charges, or other claims of the Village of Elkhart Lake are delinquent and unpaid. No licenses shall be granted to any person:

(a) Delinquent in payment of any taxes, assessments or other claims owed to the Village of Elkhart Lake;

(b) Delinquent in payment of any water and sewer charges to the Village of Elkhart Lake Water Utility.

(c) Delinquent in payment of a forfeiture resulting from a violation of any ordinance of the Village of Elkhart Lake; or

(d) Delinquent in payment to the State of Wisconsin of any state taxes owed.

21. Failure To Use License The failure of any license holder to use the “Class B” and Class “B” liquor and malt beverage license by not operating a business thereunder for a period of not less than ninety (90) consecutive days during the license year may be grounds for forfeiture of the licenses during the license period of for non-renewal of the license pursuant to Wisconsin Statutes Section 125.12.

13.2 VENDING MACHINE LICENSE REQUIRED.

(1) Any person placing a vending machine of any kind adjacent to a public sidewalk, or in any area not completely enclosed by a structure, shall be required to obtain a license prior to placement of the vending machine. The license fee shall be paid to the clerk and shall be in the amount of \$15.00 per year per premises and shall be applied for annually. Any application for said license shall include, at a minimum, the location of the machine on the premises and the product that will be vended from the machine.

(2) Any person applying for a vending machine license shall be required to appear at a public hearing to be scheduled by the clerk. There shall be only one public hearing required of any applicant per placement of any vending machine. Notice of such hearing shall be given to all property owners owning property within a 100-foot radius of the borders of the premises for which a vending machine license is being requested, by mailing such notice to said owners postmarked at least ten days prior to the date of hearing. The hearing shall be conducted by the Village Board for the Village of Elkhart Lake, and in granting or denying the license the Board shall consider the architecture in the neighborhood, whether a vending machine would be visually offensive in light of the historic uses incident to the area, and other factors consistent with the health, safety and welfare of the neighborhood in the Village of Elkhart Lake in general. The applicant shall bear all costs of the public hearing. If there is any substantial change in the placement of the vending machine subsequent to the initial granting of the license, the Village Board, at its discretion, may require an additional public hearing in accordance with the terms of this ordinance.

13.3 DIRECT SALES & SOLICITATIONS.

(1) Registration Required. It shall be unlawful for any direct seller or solicitor to engage in direct sales or solicitations within the Village of Elkhart Lake without being registered and licensed for that purpose as provided herein.

(2) Definitions In this ordinance:

(a) "Direct seller" means any individual who, for him/herself, or for a partnership, association, or corporation, sells goods or services or takes sales orders for the later delivery of goods or services at any location other than the permanent business place or residence of said individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, canvassers and transient merchants. The sale of goods and services includes donations requested or required by the direct seller for the retention of goods or services by a donor or prospective customer.

(b) "Permanent merchant" means a direct seller or one representing a merchant who, for at least one year prior to the submission of an application pursuant to this ordinance, has continuously operated an established place of business in this Village or has continuously resided in this Village and now does business from his/her residence.

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

(d) "Solicitor" means any individual who, for him/herself or for any other person, organization, society, association, or corporation, personally solicits money, property, or financial assistance of any kind from persons other than members of such organization, society, association, or corporation.

(e) "Charitable organization" shall mean any benevolent, philanthropic, patriotic, or eleemosynary person, partnership, association, or corporation for which there is provided proof of tax exempt status pursuant to Sec. 501(c) (3) or (4) of the United States Internal Revenue Code.

(f) "Clerk" shall mean the Village Clerk.

(g) "Applicant" shall mean each individual applying for registration and licensing as a direct seller or solicitor.

(h) "Registrant" shall mean each individual the registered by the Clerk and to whom a license has been issued.

(3) Exemptions

(a) The following shall be exempt from all provisions of this ordinance:

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

(ii) Any person selling goods at wholesale to dealers in such goods.

(iii) Any farmer or truck gardener selling agricultural products of the farm or garden occupied or cultivated by such person.

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

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

(vi) 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 a prospective customer.

(vii) 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.

(viii) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Clerk that such person is a transient merchant; provided that there is submitted to the Clerk, proof that such person has purchased or leased for at least one year the premises from which he/she is conducting business or proof that such person has conducted such business in this city for at least one year prior to the date complaint was made.

(b) Charitable organizations shall be exempt from the requirements set forth in Subsections (4)(c) and (6) if the organization has provided the individual representing it with credentials stating the name of the organization, the name of the representative and the purpose of the solicitation and provided, further, that said individuals provide the Clerk with the following information:

(i) The individual's name and permanent address.

(ii) The name and address of the organization represented.

(iii) The name and address of the officers or directors of the organization.

(iv) The nature of the sales or solicitations.

(v) Proposed dates and time of sales or solicitations.

A license operative for the dates provided to the Clerk shall be issued without charge upon compliance with the foregoing. The Clerk shall then forward the information and notice of the issuance of a license to the Chief of Police.

(c) Any religious organizations for which there is provided proof of tax exempt status pursuant to Sec. 501(c)(3) of the United States Internal Revenue Code shall be exempt from the requirements set forth in Subsections (4) (a), (4) (c) and (6). The provisions of Subsection (3) (b) above shall be applicable to such organizations.

(d) Any veteran who holds a special state license pursuant to sec. 440.51, Stats., shall be exempt from the provisions of subsections (4) and (6) provided that such veteran provides the clerk with the following information:

(i) The veteran's name and permanent address.

(ii) The nature of the sales or solicitations.

(iii). Proposed dates and times of sales or solicitations.

The Clerk shall then forward the above information to the Chief of Police.

(4) Registration Requirements

(a) Applicants for licenses must complete and return to the Clerk a registration form furnished by the Clerk which shall require the following information:

(i) Name, permanent address, telephone number and temporary address, if any.

(ii) Age, height, weight, and color of hair and eyes.

(iii) Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by or whose merchandise is being sold.

(iv) Temporary address and telephone number from which sales or solicitations will be conducted, if any.

(v) Nature of sales or solicitations to be conducted and a brief description of the goods and/or services offered.

- (vi) Proposed dates and times of sales or solicitations.
- (vii) Proposed method of delivery of goods, if applicable.
- (viii) Make, model and license number of any vehicle to be used by applicant in the conduct of sales or solicitations.
- (ix) Last three cities, villages, and towns where applicant conducted similar sales or solicitations.
- (x) Place where applicant can be contacted for at least seven days after leaving this Village.
- (xi) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's sales or solicitations or other transient merchant activities within the last five years, the nature of the offense and the place of conviction.
- (xii) A statement including the location of where the sales or solicitations will take place in the Village and attached thereto shall be the signatures of all property owners subject to the aforestated sales or solicitations.

(b) Applicants shall present the following items to the Clerk for examination:

- (i) A driver's license or some other proof of identity as may be reasonably required.
- (ii) 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.
- (iii) 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 90 days prior to the date the application for license is made.

(c) No application shall be processed until the application fee has been paid to the Clerk to cover the cost of processing said application. Said fee shall be \$15.00 if the applicant is a resident of this Village or the organization represented by the applicant has been conducting its business activities in this Village for one year prior to submission of the application. The fee for all other applicants shall be \$25.00.

(d) No application shall be processed until the applicant signs a statement appointing the Clerk his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale, service performed or solicitation by the applicant in connection with the direct sales or solicitation activities of the applicant in the event the applicant cannot, after reasonable effort, be served personally.

(5) Investigation: Denial of Application

(a) Upon receipt of a completed registration form the Clerk shall immediately refer it to the Chief of Police to make an investigation.

(b) The Clerk shall refuse to issue a license to the applicant for any of the following reasons:

(i) The application contains any material omission or materially inaccurate statement.

(ii) Complaints of a material nature have been received against the applicant by authorities in any of the last three cities, villages or towns in which the applicant conducted similar business.

(iii) The applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling or solicitation.

(iv) The applicant failed to comply with any applicable provision of Sec. (4)(b) above.

(c) Any person denied application for a license may appeal such action by filing with the Village Board within 14 days after written notice of the denial a written statement requesting a hearing and setting forth the grounds for the appeal. The Village Board shall set a time and place for the hearing. Written notice of the time and place of the hearing shall be given to the applicant at least 72 hours prior to the time set for the hearing.

(6) Registration & Issuance of License

(a) Upon compliance with the foregoing requirements, filing of a bond and payment of the license fee as hereinafter set forth the Clerk shall register the applicant as a direct seller or solicitor and issue a license to the applicant. The license shall be operative only during the days requested on the registration form.

(b) Such license shall contain the signature of the Clerk, the name and address of the direct seller or solicitor, the type of goods or services being sold or the nature of the

solicitation, the dates during which the license is operative and the license number of any vehicle used for sales or solicitation.

(c) Registrants shall exhibit their license at the request of any citizen or police officer.

(d) Every applicant who intends to take sales orders and down payments for the later delivery of goods and services and is not a resident of Sheboygan County, Wisconsin, or who is such a resident and represents a business or organization whose principal place of business is located outside the State of Wisconsin, shall file with the Clerk a surety bond, for a term of one year from the date of issuance of license, running to the Village in the amount of \$5,000.00 with surety acceptable to the Village President, conditioned that the applicant comply with all applicable ordinances of this Village and statutes of the State of Wisconsin regulating peddlers, canvassers, solicitors and transient merchants. Such bond shall guarantee to any citizen of this Village that all money paid as a down payment will be accounted for and applied according to the representations of the seller and that the property purchased will be delivered according to the representations of the seller. Action on such bond may be brought by the person aggrieved and for whose benefit, among others, the bond is given. The surety may, pursuant to a court order, pay the face amount of the bond to the Clerk of Court in which suit is commenced and be relieved of all further liability.

(e) Every applicant shall pay a license fee of \$5.00 per day, but no applicant shall be required to pay more than \$50.00 for any one period of continuous operation.

(7) Regulation of Direct Sellers and Solicitors

(a) Prohibited Practices:

(i) A direct seller or solicitor shall be prohibited from:

(1) Calling at any dwelling or other place between the hours of 8:00 p.m. and 9:00 a.m. except by appointment.

(2) Calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers", "No Solicitors" or words of similar meaning.

(3) Calling at the rear door of any dwelling place.

(4) Remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

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

(iii) No direct seller or solicitor shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales or solicitations are made from vehicles, all traffic and parking regulations shall be observed. No direct seller or solicitor shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon in excess of 15 minutes, nor shall any be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. Any move from a stationary location shall be to a place not less than 100 feet from such location, and the seller or solicitor shall not return to within 100 feet of any previously occupied location within four hours of having moved from said location. For the purpose of this section, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced.

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

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

(b) Disclosure Requirements.

(i) After the initial greeting and before any other statement is made to a prospective customer or donor, a direct seller or solicitor shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of goods or services he/she offers to sell.

(ii) If any sale of goods or services is made by a direct seller, or any sales order for the later delivery of goods or services 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 \$25.00, in accordance with the procedure as set forth in Sec. 423.203, Wisconsin Statutes; the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Secs. 423.203(1)(a)(b) and (c), (2) and (3) Wisconsin Statutes.

(iii) If the direct seller takes a sales order for the later delivery of goods, he/she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial, or no advance payment is made; the name, address and telephone number of the seller; the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

(8) Records of Violation

The Chief of Police shall report to the Clerk all convictions for violations of this ordinance and the Clerk shall note any such violation on the record of the registrant convicted. The Clerk shall note any complaint or report of an alleged violation made by a resident of this village or a police officer.

(9) Revocation of License

(a) The registrant's license may be revoked by the Village Board after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales or solicitation, violated any provision of this ordinance 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 or solicitations.

(b) Written notice of the hearing shall be served personally on the registrant at least 72 hours prior to the time set for the hearing. Such notice shall contain the time and place of hearing and a statement of the acts or omissions upon which the hearing will be based.

(10) Penalty

Any person convicted of violating any provision of this ordinance shall forfeit not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00) for each violation, plus the costs of prosecution and/or may be subject to an injunction upon a second or subsequent violation. Each violation shall constitute a separate offense.

(11) Severance Clause

The provisions of this ordinance are declared to be severable, and if any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance; they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

13.4 MOBILE HOMES: HOUSE TRAILERS.

(1) No house trailer or mobile home shall be parked on any parcel of land in the Village for a period longer than 48 hours, unless a permit for parking such vehicle has first been obtained.

(2) For periods in excess of 48 hours, a parking permit shall be obtained from the Clerk-Treasurer by the owner of the parcel of land upon whose property the trailer is to be parked. Said permit must contain the legal description of the land and the location of the trailer thereon. Permits shall be issued upon proper application and payment of a fee of \$15.00 for the first month or fraction thereof. All permits shall expire monthly after the date of issue but may be extended on a month to-month basis upon the payment of a \$15.00 fee in advance. A permit may be revoked at any time by action of the Village Board.

(3) Any person violating the provisions of this section shall, upon conviction thereof, forfeit not less than \$5.00, nor more than \$50.00 and the costs of prosecution, and in default of payment of such forfeiture and costs, shall be imprisoned in the County Jail until payment of such forfeiture and the costs of prosecution, but not to exceed 30 days for each violation. Each day of violation shall constitute a separate offense.

13.5 PARADE REGULATIONS.

(1) **Definitions:**

(a) "Parade" is any parade, march, ceremony, show exhibition, pageant, or procession of any kind, or any similar display, in or upon any street, park, or other public place in the Village.

(b) "Parade Permit" is a permit as required by this ordinance.

(c) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.

(2) **Permit Required.** No person shall engage in, participate in, aid, form, or start any parade, unless a parade permit shall have been obtained from the Chief of Police.

(a) Exception. This ordinance shall not apply to:

1. Funeral processions;

2. Students going to and from school classes or participating in educational activities, providing such conduct is under the immediate direction and supervision of the proper school authorities.

3. A governmental agency acting with the scope of its functions.

(3) Application. A person seeking issuance of a parade permit shall file an application with the Chief of Police on forms provided by such officer.

(a) **Filing Period.** An application for a parade permit shall be filed with the Chief of Police not less than 30 days nor more than 90 days before the date on which it is proposed to conduct the parade.

(b) **Contents.** The application for a parade permit shall set forth the following information:

(i) The name, address, and telephone number of the person seeking to conduct such parade;

(ii) If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address, and telephone number of the headquarters of the organization, and the authorized and responsible heads of such organization;

(iii) The name, address, and telephone number of the person who will be the parade chair and who will be responsible for its conduct.

(iv) The date when the parade is to be conducted;

(v) The route to be traveled, the starting point, and the termination point;

(vi) The approximate number of persons who, and animals and vehicles which, will constitute such parade; the type of animals and description of the vehicles;

(vii) The hours when such parade will start and terminate;

(viii) A statement as to whether the parade will occupy all or only a portion of the width of the streets proposed to be traversed;

(ix) The location by streets of any assembly areas for such parades;

(x) The time at which units of the parade will begin to assemble at any such assembly area or areas;

(xi) The interval of space to be maintained between units of such parade;

(xii) If the parade is to be conducted by or for any person other than the applicant, the applicant for such permit shall file with the Chief of Police a communication in writing from the person proposing to hold the parade authorizing the applicant to apply for the permit on his behalf.

(xiii) Any additional information which the Chief of Police shall find reasonably necessary to a fair determination as to whether a permit shall be issued.

(c) **Late Application.** The Chief of Police, where good cause is shown therefore, shall have the authority to consider any application hereunder which is filed less than 30 days before the date such parade is proposed to be conducted.

(4) Standards for Issuance. The Chief of Police shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may be otherwise obtained, he finds that:

(a) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route.

(b) The conduct of the parade will not require the diversion of so great a number of police officers of the Village to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to the Village.

(c) The conduct of such parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the Village other than that to be occupied by the proposed line of march and area contiguous thereto.

(d) The concentration of persons, animals, and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of or ambulance service to areas contiguous to such assembly areas.

(e) The conduct of such parade will not interfere with the movement of the firefighting equipment enroute to a fire.

(f) The conduct of the parade is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct, or create a disturbance.

(g) The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays enroute.

(h) The parade is not to be held for the sole purpose of advertising any product, goods, or event, and is not designed to be held purely for private profit.

(5) Discretionary Denial. An application for a parade permit may be denied by the Chief of Police if:

- (a) It is for a parade that is to be held on a work day during hours when and at places where, in addition to the proposed parade, the flow of vehicular and pedestrian traffic is usually delayed by its own volume.
- (b) It is for a parade that is to be held between the hours of 10:00 P.M. and 6:00 A.M.
- (c) Sufficient parade marshals are not provided as to reasonably ensure the orderly conduct of the parade.
- (d) More than one assembly area or more than one dispersal area is proposed.

(6) Mandatory Denial. An application for a parade permit shall be denied by the Chief of Police if:

- (a) It is made less than 30 days in advance of the time the parade is scheduled to commence.
- (b) It is for a parade that is primarily for private or commercial economic gain.
- (c) It is for a parade which would involve violation of federal or state highway law or of other applicable provisions of this code or city ordinances.
- (d) The granting of the permit would conflict with another permit already granted or for which application is already pending.
- (e) The application does not contain the information required.

(7) Notice of Rejection. The Chief of Police shall act upon the application for a parade permit within seven days after the filing thereof. If the Chief of Police disapproves the application, he shall mail to the applicant within seven days after the date upon which the application was filed, a notice of his action, stating the reasons for his denial of the permit. Said notice shall be mailed to the post office address stated on that application.

(8) Appeal Procedure. Any person aggrieved shall have the right to appeal the denial of a parade permit to the Village Board. The appeal shall be taken within five days after notice. The Village Board shall act upon the appeal at its next regular Board meeting.

(9) Alternative Permit. The Chief of Police, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time, or over a route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within five days after the notice of acceptance with the Chief of Police, file a written notice

of acceptance with the Chief of Police. An alternate parade permit shall conform to the requirements of, and shall have the effect of a parade permit.

(10) Notice to Village and Other Officials. Immediately upon the issuance of a parade permit, the Chief of Police shall send a copy thereof to the following:

- (a) The Village Board President;
- (b) The Village Clerk;
- (c) The Fire Chief.

(11) Content of Permit. Each parade permit shall state the following information:

- (a) Starting time;
- (b) Lapsed time for completion of parade;
- (c) The portions of the streets to be traversed that may be occupied by the parade;
- (d) Such other information as the Chief of Police shall find necessary to the enforcement of this ordinance.

(12) Duties of Permittee. A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances. The parade chairman or other person heading or leading such activity shall carry the parade permit upon his person during the conduct of the parade.

(13) Public Conduct During Parades.

- (a) Interference. No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or parades assembly or with any person, vehicle or animal participating or used in a parade.
- (b) Driving through parades. No driver of a vehicle shall drive between the vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.
- (c) Parking on parade route. The Chief of Police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a highway or part thereof constituting a part of the route of the parade. The Chief of Police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. Any vehicle parked in violation of a no parking on parade route notice may be towed. The owner of the vehicle shall be responsible for the

costs of towing. No person shall be liable for parking on a street unposted in violation of this ordinance.

(d) Disobedience of officers. No person who leads or participates in a parade shall disobey or encourage others to disobey this article after a police officer has directly and presently informed him of any of the provisions of this article of the terms of the parade permit that he is violating.

(e) Compliance by permittee with laws. A permittee under this article shall comply with all applicable directions and conditions, all council approved parade rules, and with all applicable laws and ordinances.

(f) Distribution of items:

(i) No person participating in a parade shall throw, toss, pitch, or otherwise distribute any items by any means other than personally handing such items to spectators along the parade route and, then, only if such personal distribution is made in such a manner as not to induce spectators to leave the sidelines to enter into the path of the parade.

(ii) Any participant who intends to hand items to spectators along the parade route shall, prior to commencement of the parade, notify the parade director of the type and kind of items to be distributed.

(14) Proof of Insurance. The person issuing a permit under the division shall require a policy of liability insurance for the payment of all claims that may arise because of injuries to person or property as the result of any activity related to the permit. The insurance policy shall be in the minimum amount of \$1,000,000.00 and shall name the Village as an additional insured as its interests may appear. The policy shall be filed with the application for a parade permit.

(15) Revocation of Permit. The Chief of Police shall have the authority to revoke a parade permit issued hereunder upon application of the standards for issuance as herein set forth.

(16) Penalties. Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$25.00 nor more than \$500.00 and in default of said payment together with the cost of prosecution and may be ordered to pay restitution, towing costs, and complete community service.

13.6 USE OF BEACHES OR PARKS OWNED OR LEASED BY VILLAGE.

(1) The use of public beaches owned or leased by the Village shall be limited to residents of the Elkhart Lake-Glenbeulah Joint School District No. 1 and guests accompanying such residents. As a prerequisite to the use of public beaches owned or leased by the Village, such

residents of the Elkhart Lake-Glenbeulah Joint School District No. 1 shall purchase identification tags from the Village Clerk or designee. The Village Board shall, on or before September 1 of each year, set a schedule of fees for the purchase of identification tags. The schedule of fees may be amended from time to time and is incorporated into this section as though fully set forth herein and shall be on file with the Village Clerk.

(2) No identification tag shall be required of any person who has not reached the age of six years old. All persons required to purchase identification tags, while using the public beaches, upon request, shall exhibit to the person supervising the area for the Village the identification tag.

(3) No person shall allow a dog to be on any public beaches owned or leased by the Village.

(4) No person shall picnic on the public beaches owned or leased by the Village.

(5) No person shall use or possess beverages containing alcohol on the public beaches owned or leased by the Village.

(6) No person shall ignite nor maintain fires of any kind on the public beaches owned or leased by the Village.

(7) No person shall be in any Village owned or leased park or beach between 10:00 P.M. and 6:00 A.M. except at the Elkhart Lake-Glenbeulah Athletic Association Park. The Elkhart Lake-Glenbeulah Athletic Association Park shall be closed between the hours of 10:30 P.M. until 6:00 A.M. Sunday through Thursday and from 11:00 P.M. until 6:00 A.M. Friday and Saturday.

(8) Any person who violates any provision of this section may be ejected from the park or public beach area and is subject to a forfeiture of not more than \$200.00 and may be required to complete community service and pay restitution.

ELKHART LAKE/ELKHART LAKE-GLENBEULAH ATHLETIC ASSOCIATION PARK RULES AND REGULATIONS:

(1) Park Regulations:

(a) Purpose and Definition. In order to provide for appropriate use of the Elkhart Lake/Elkhart Lake-Glenbeulah Athletic Park (Park), and to prevent damage to the park or its facilities, these regulations have been approved by the Park Commission.

(b) Specific Regulations.

- (i) Littering Prohibited. As specified in Chapter 8.15 of the Village Code, no person shall litter, dump, or deposit any rubbish, refuse, earth, or other material in the park. Such refuse must be deposited in containers provided in the park.
- (ii) Sound Devices. No person shall operate or play any amplifying system unless specific authority is obtained from the Elkhart lake-Glenbeulah Athletic Association (ELGAA). The use of any sound system must adhere to requirements and provisions of Chapter 8.03 of the Village Code.
- (iii) Bill Posting. No person shall post, paste, fasten, paint, or attach any placard, bill, notice, sign, or advertising matter upon any structure, tree, or other natural object in any park, except park regulations and other signs authorized by the Park Commission.
- (iv) Throwing Stones and Missiles Prohibited. No person shall throw stones or other missiles in or into the park. Excepted from this sub-section are baseballs, basketballs, Frisbees, and other objects that may be approved the Park Commission or the ELGAA.
- (v) Removal of Park Equipment Prohibited. No benches, seats, tables, or other park equipment shall be removed from the park except by Village maintenance personnel or the ELGAA.
- (vi) Fires in Park. No person shall start, tend, or maintain a fire in the park except personal grills or fireplaces in locations designated by the Park Commission or the ELGAA and only during times specifically authorized. Excepted from this provision is the concession stand when operated by the ELGAA or operated under the authority or supervision of the ELGAA.
- (vii) Protection of Park Property. No person shall kill, injure, or disturb or attempt to injure or disturb waterfowl, birds, or animals, wild or domestic, within the park. No person shall climb any tree or remove flowers or fruit, wild or cultivated, or break, cut down, trample upon, remove or injure or deface, any tree, shrub, flower, flowerbed, turf, soil, sand, fountain, ornament, building, structure, apparatus, bench, table, official notice, sign, or other property within the park.
- (viii) Motorized Vehicles. Except for authorized maintenance or emergency vehicles, no person shall operate an unlicensed or licensed motorized vehicle outside of areas specifically permitted. Motor vehicles are restricted to the roads and drives and parking areas. No motor vehicles of any nature may be used on the grass areas of the park except vehicles that have specific authorization from the Park Commission or the ELGAA.

(ix) Snowmobiles. No person shall operate a snowmobile in the park except if specifically approved by the Park Commission or the ELGAA. When permitted, the use of a snowmobile must be operated in full compliance with Chapter 8.32 of the Village Code.

(x) Driving Rules. No person shall operate a vehicle in the park in an unsafe or reckless manner, meeting all the applicable provisions of Chapter VI of the Village Code.

(xi) Parking in Park. Except for authorized vehicles, no person shall park any motor vehicle in the park except in a designated parking area.

(xii) Golfing. No golfing or practicing golf in the park shall be allowed.

(xiii) Vendors Restricted. No article, food item, or beverage may be sold or dispensed in the park except at the concession stand unless specifically permitted by the ELGAA.

(xiv) Pets. No pets of any kind shall be permitted in the park except dogs for handicapped individuals, pets that are properly restrained or for events or activities approved by the Park Commission or the ELGAA. In addition, the provisions of Chapters 8.27 (Regulation of Dogs), 8.28 (Cats) and 8.29 (Animal Feces) must be fully observed.

(xv) Skateboards. Except in specifically designated areas of the park, no skateboard may be operated or used in the park or in any adjacent roadways or walkways.

(xvi) Orderly Conduct. All persons using the park shall conduct themselves in an orderly manner and observe the applicable sections of Chapter VIII of the Village Code.

(2) Operation of Remote or Radio Controlled Devices of Any Type Prohibited It shall be unlawful for any person to fly, operate, or make use of any remote or radio-controlled model airplane, helicopter, vehicle, or any other such device in the park unless specifically authorized by the park commission or the ELGAA.

(3) Turf Protection on Park Property Except as authorized by the Park Commission or the ELGAA, no person shall dig into the turf of the park for any purpose whatsoever or remove any trees or flowers.

(4) Park Lighting All field lights in the park shall be directed in such a manner as to minimize light intrusion outside of the park. All lights must be extinguished one-half hour before the closure of the park except those lights that are used to provide safety and security.

(5) Park Hours The park shall be closed between the hours of 10:30 P.M. and 6:00 A.M. Sunday through Thursday, and from 11:00 P.M. to 6:00 A.M., Friday and Saturday. No person shall be present within the park during the hours when the park is closed. The hours set forth in this section apply only to this park and not any other park in the Village of Elkhart Lake.

(6) Use of Park Space The park is a Village park and is open to the public. The ELGAA can charge reasonable fees for league participation and athletic viewing. The park is open to the public and facilities not used for league play or athletic viewing will be available to the general public. It is expected that people and organizations using the park will leave it in a clean condition with refuse deposited in designated containers. The ELGAA will be responsible for operating the concession stand, maintaining the baseball diamonds, playing fields, and basketball courts, cutting the grass, maintaining the berm and parking lot, and cleaning the restroom facilities and the concession stand. The Village will plow the parking lot and park entrance.

Hours for baseball games and practice, and other athletic activities will be from 7:30 A.M. to 10:00 P.M. every day of the week. No athletic events or activity are allowed outside of those hours.

A Class B Fermented Malt part-time license for the sale of beer may be secured by the ELGAA. The license requires that the provisions and restrictions noted in Section 13.01 of the Village code be complied with. Sale of beer will be limited to the hours of 11:00 A.M. to 9:30 P.M., Sunday through Thursday, and from 11:00 A.M. to 10:00 P.M., on Friday and Saturday.

(7) Reservation of Park Space Space in the park for activities other than normal athletic and park uses may be reserved by contacting the ELGAA. Individuals and organizations reserving space in the park must abide by all park rules and regulations and leave the park in clean condition. Failure to do so may result in the denial of a future reservation application as determined by the ELGAA.

(8) Penalty Any person who violates any provision of this section may be ejected from the Elkhart Lake-Glenbeulah Athletic Association Park and is subject to a forfeiture of not more than \$200.00 and may be required to complete community service and pay restitution.

13.7 REGULATION OF ADULT-ORIENTED ESTABLISHMENTS.

(1) Authority The Village Board has the specific authority, powers, and duties pursuant to Chapter 61 of the Wisconsin Statutes, to regulate and control certain uses, activities, establishments and operations in the Village of Elkhart Lake.

(2) Definitions

(a) **Adult Bookstore** An establishment that has a facility or facilities, including but not limited to, booths, cubicles, rooms or stalls for the presentation of "adult entertainment," including adult-oriented films, movies, or live performances for observation by patrons therein; or an establishment having a substantial or significant portion of its stock-in-trade for sale, rent, trade, lease, inspection, or viewing of books, films, video cassettes, magazines, or other periodicals, which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to specified anatomical areas or specified sexual activities as defined below.

(b) **Adult Cabaret.** Any commercial premises, including any cabaret premises, to which any member of the public is invited or admitted and where an entertainer provides live adult entertainment to any member of the public. For the purposes of this Ordinance "Cabaret" means any room, place or space whatsoever in the Village in which any music, singing, dancing, or other similar entertainment is permitted in connection with any hotel, restaurant, cafe, club, tavern, eating place, directly selling, serving, or providing the public, with or without charge, food or beverages (whether or not alcoholic beverages). "Employee" means any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any Adult Cabaret.

(c) **Adult Entertainment** Any exhibition of any motion picture, live performance, display, or dance of any type, which has as its dominant theme or is distinguished or characterized by an emphasis on any actual or simulated specified sexual activities or specified anatomical areas as defined below.

(d) **Adult Motion Picture Theater** An enclosed building used for presenting material having as its dominant theme or distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined below for observation by patrons of the building.

(e) **Adult-Oriented Establishment** Any premises including, without limitation, "adult bookstores," or "adult motion picture theaters." It further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments, or stalls separate from the common area of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member, whether or such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect. "Adult-Oriented Establishment" further includes, without limitation, any premises physically arranged and used as such whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio, or any other term of like import.

(f) Booths/Cubicles/Rooms/Compartments/Stalls Enclosures that are specifically offered to the public or members of an adult-oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure. This shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, "booth," "cubicle," "room," "compartment," or "stall" does not mean such enclosures that are private offices used by the owners, managers, or persons employed on the premises for attending to the tasks of

(g) their employment, which enclosures are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing entertainment for a fee, are not open to any person other than employees, nor shall this definition apply to hotels, motels, or other similar establishments licensed by the State of Wisconsin pursuant to Wisconsin law.

(h) Operators Any person, partnership, or corporation operating, conducting, maintaining, or owning any adult-oriented establishment.

(i) Specified Anatomical Areas Less than completely and opaquely-covered human genitals, pubic region, buttocks, female breasts below the point immediately above the top of the areola; or, human male genitals in a discernible turgid state, even if opaquely covered.

(j) Specified Sexual Activities Simulated or actual:

(i) showing of human genitals in a state of sexual stimulation or arousal;

(ii) acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, or cunnilingus; or

(iii) fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

(3) License

(a) Except as provided below, from and after the effective date of this ordinance, no adult-oriented establishment shall be operated or maintained in the Village without first obtaining a license to operate issued by the Village Board. A license may be issued only for one adult-oriented establishment located at a fixed and certain location. Any person who desires to operate more than one adult-oriented establishment must have a license for each. No license or interest in a license may be transferred to any person. All adult-oriented establishments existing at the time of the passage of this ordinance must submit

an application for a license within 90 days of the passage of this ordinance. A license fee of \$500.00 shall be submitted with the application for a license. If the application is denied, 1/2 of the fee shall be returned. A license renewal fee of \$250.00 shall be submitted with the application for renewal. A license must be renewed every year.

(b) Application for License Any person desiring to secure a license shall make application to the Village Clerk. The applicant for a license shall furnish the following information under oath:

- (i) the name and address of the intended operator;
- (ii) the name and address of the owner of the premises if different from the operator;
- (iii) the name and address of the adult-oriented establishment to be operated by the applicant;
- (iv) written proof that the individual is at least 18 years of age;
- (v) the address of the adult-oriented establishment to be operated by the applicant;
- (vi) if the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agents, and the name and address of all shareholders owning more than 5% of the stock in such corporation and all officers and directors of the corporation;
- (vii) if the establishment is in operation, the date on which the owner acquired the establishment for which the license is sought. The date on which the establishment began operations as an adult-oriented business at the location for which the license is sought;
- (viii) if the establishment is a corporation, a certified copy of the Articles of Incorporation and a certified copy of a certificate of good standing disclosing that the corporation is authorized to transact business in the State of Wisconsin;
- (xi) proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of a recorded deed; and
- (x) if the operator is not the fee owner of the tract of land, then the lease,

purchase contract, purchase option contract, lease option contract, or other documents evidencing the legally-enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract of land for the establishment.

(c) Issuance of License The Village shall approve the issuance of a license to the applicant within 45 days after receipt of the application unless the Village finds one or more of the following to be true:

- (i) the applicant is under 18 years of age;
- (ii) the applicant or the applicant's spouse is overdue in the payment of Village taxes, fines, or penalties assessed against the applicant or imposed upon the applicant in relation to an adult-oriented establishment;
- (iii) the applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application;
- (iv) the applicant is residing with a person who has been denied a license by the Village to operate an adult-oriented establishment within the preceding 12 months, or residing with a person whose license to operate an adult-oriented establishment has been revoked within the preceding 12 months;
- (v) The premises to be used have not been approved by the Village's Building Inspector, the Village's Fire Department, or other Village authorities who are required to inspect the premises. The inspection shall be limited to confirmation that the premises comply with all applicable building and zoning codes and a determination by the Village that the premises have adequate on-site parking for the proposed business activity. The adequacy of the on-site parking shall be determined by reference to State building codes contained in the Wisconsin Administrative Code.
- (vi) the fee required by this ordinance has not been paid; or
- (vii) any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult-oriented establishment.

(d) Hearing. The Village Board, before revoking or suspending any license or permit, shall give the operator at least ten (10) days' written notice of the charges against him and the opportunity for a public hearing before the Village Board or its designated committee as provided herein. The Board or its designated committee shall provide a written determination whether to revoke or suspend the license or permit within five (5) days of

the public hearing. Any appeal from the determination of the Board or its designated committee shall be taken pursuant to Chapter 68 of the Wisconsin Statutes.

(e) Transfer. The transfer of a license or any interest therein, shall automatically and immediately revoke the license.

(f) Inspection. Any applicant or licensee shall permit representatives of the County Sheriff's Department, County Health Department, Village Fire Department, Building Inspector, or other Village or state departments or agencies to inspect the premises of an adult-oriented establishment for the purpose of ensuring compliance with this ordinance and all relevant local, state and federal laws.

(4) Physical Layout and Operation

(a) Exterior It shall be unlawful for an owner or operator of an adult-oriented establishment:

(i) to allow the merchandise or activities of the establishment to be visible from a point outside the establishment;

(ii) to allow the exterior portion of the adult-oriented establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by this ordinance;

(iii) to allow exterior portions of the establishment to be painted in a color other than a single color.

(b) Signage. The operator shall comply with the Village's Sign Ordinance. In addition, the display surfaces of the sign shall not contain any flashing lights or photographs, silhouettes, drawings, or pictorial representations of any manner, except for the name of the enterprise.

(c) Booth/Room/Cubicle. Any adult-oriented establishment having available for customers, patrons, or members, in a booth, room, or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

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

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

1. each booth, room or cubicle shall be separated from adjacent booths, rooms, or cubicles and any non-public areas by a wall;
2. have at least one side totally open to a public lighted isle so that there is an unobstructed view at all times of anyone occupying the same;
3. all walls shall be solid and without any openings, extended from floor to a height of not less than 6 feet and be light-colored, non-absorbent, smooth textured and easily cleanable;
4. the floor must be light-colored, non-absorbent, smooth textured and easily cleanable;
5. the lighting level of each booth, room, or cubicle, when not in use shall be a minimum of 10 foot candles at all times, as measured from the floor.

(iii) only one individual shall occupy a booth, room, or cubicle at any time. No occupants shall engage in any type of sexual activity, cause any bodily discharge, or litter while in the booth. No individual shall damage or deface any portion of the booth.

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

(e) Minors. It shall be unlawful to allow a person who is younger than 18 years of age to enter or be on the premises of an adult-oriented establishment at any time that the establishment is open for business. The operator must ensure that an attendant is stationed at each public entrance at all times during regular business hours. The attendant shall prohibit any person under the age of 18 from entering the establishment. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished either a valid operator's drivers license or a valid personal identification certificate issued by a State reflecting that the person is 18 years of age or older.

(f) Hours. An adult-oriented establishment may remain open for business no longer than the hours from between 10:00 a.m. to 12 midnight, seven days a week.

(5) Locational Restrictions. Adult-oriented establishments are permitted in any Business District provided that the establishment may not be operated within 1,000 feet of:

- (a) a Church, Synagogue, or regular place of religious worship;
- (b) a public or private elementary or secondary school;
- (c) a boundary of any residential district;
- (d) a public park;
- (e) a licensed day-care center; or
- (f) another adult-oriented establishment.

(6) Measurement For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects from the nearest portion of the building or structure used as part of the premises where an adult-oriented establishment is conducted, to the nearest property line of the premises of a Church, Synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, Residential District, or residential lot, or licensed day-care center. The distance between any two adult-oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which such business is located.

(7) Standards of Conduct and Operation in Adult Cabarets

(a)) Standards of Conduct. The following standards of conduct must be adhered to by employees of any Adult Cabaret while in any area in which members of the public are allowed to be present:

(i) No employee or entertainer shall be unclothed or in such less-than-opaque and complete attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, except upon a stage at least 18 inches above the immediate floor level and removed at least 6 feet from the nearest member of the public.

(ii) No employee or entertainer mingling with members of the public shall be unclothed or in less-than-opaque and complete attire, costume or clothing as described in subsection 7.1 (a) above, nor shall any male employee or entertainer at any time appear with his genitals in a discernibly turgid state, even if

completely and opaquely covered, or wear or use any device or covering which simulates the same.

(iii) No employee or entertainer shall caress, fondle, or erotically touch any member of the public. No employee or entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or entertainer.

(iv) No employee or entertainer mingling with members of the public shall conduct any dance, performance, or exhibition in or about the nonstage area of the Adult Cabaret unless that dance, performance, or exhibition is performed at a distance of no less than 6 feet from any member of the public.

(v) No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any entertainer performing upon any stage area must be placed into a receptacle provided for receipt of gratuities by the Adult Cabaret or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any performance, dance or exhibition in or about the nonstage area of the Adult Cabaret shall be placed into the hand of the adult entertainer or into a receptacle provided by the adult entertainer, and not upon the person or into the clothing of the adult entertainer.

(vi) No member of the public shall be permitted at any time to enter into any of the nonpublic portions of the Adult Cabaret, which shall include but are not limited to the dressing rooms of the entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; except that person, who in the ordinary course of business, deliver goods, materials, food or beverages, or perform maintenance or repairs to the premises or equipment on the premises may be permitted into nonpublic areas to the extent required to perform their job duties.

(b) Premise-Specifications. The following specifications shall apply to all Adult Cabarets located in the Village of Elkhart Lake:

(i) The performance area of the Adult Cabaret where adult entertainment is provided shall be a stage or platform at least 18 inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least 6 feet from all areas of the premises to which members of the public have access. A continuous railing at least 3 feet in height and located at least 6 feet from all points of the performance area shall separate the performance area and the patron seating areas. The stage and the entire interior portion of cubicles, rooms or stalls wherein adult entertainment is provided must be visible from the common areas of the premises. Visibility shall not be blocked or obstructed by doors, curtains, drapes or any other obstruction whatsoever.

(ii) Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times. A minimum lighting level of 30 lux horizontal, measured at 30 inches from the floor and on 10-foot centers is hereby established for all areas of the Adult Cabaret where members of the public are admitted.

(iii) A sign at least 2 feet by 2 feet, with letters at least 1 inch high shall be conspicuously displayed in the public area(s) of the premises stating the following:

1. THIS ADULT CABARET IS REGULATED BY THE VILLAGE OF ELKHART LAKE. ENTERTAINERS ARE:

A. NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT.

B. NOT PERMITTED TO APPEAR SEMI-NUDE OR NUDE, EXCEPT ON STAGE.

C. NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE.

D. NOT PERMITTED TO ACCEPT TIPS DIRECTLY FROM PATRONS WHILE PERFORMING UPON ANY STAGE AREA.

(c) Inspections. In order to insure compliance with this Ordinance all areas of Adult Cabarets that are open to members of the public shall be open to inspection by Village

agents and employees or law enforcement officers during the hours when the premises are open for business. The purpose of such inspections shall be to determine if the premises are operated in accordance with the requirements of this Ordinance. It is hereby expressly declared that unannounced inspections are necessary to assure compliance with this Ordinance.

(d) Performances Not Prohibited This Ordinance shall not be construed to prohibit:

- (i) Plays, operas, musicals, or other dramatic works that are not obscene;
- (ii) Classes, seminars and lectures that are held for serious scientific or educational purposes and which are not obscene; or
- (iii) Exhibitions, performances, expressions, or dances that are not obscene.

(e)) Determination of Obscenity Whether or not activity is obscene shall be judged by consideration of the following factors:

- (i) Whether the average person, applying contemporary community standards would find that the activity taken as a whole appeals to the prurient interest in sex; and
- (ii) Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in this Ordinance; and
- (iii) Whether the activity taken as a whole lacks serious literary, artistic, political, or scientific value.

(8) Non-Conforming Uses. Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period of not to exceed 2 years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. The non-conforming use is required to submit an application for a permit and otherwise comply with the requirements of this ordinance.

(9) Miscellaneous

(a)) Penalties Any person who fails to comply with any provisions of this ordinance shall be subject to a forfeiture of not less than \$500.00 or more than \$1,000.00 and the costs of prosecution, including reasonable attorneys' fees, for each violation. Each day that a violation exists or continues shall constitute a separate offense.

(b) Other Remedies In addition to other remedies the Village reserves the right to institute appropriate action or proceedings to prevent, restrain, correct, or abate a violation of this ordinance or to prevent any illegal act, conduct, business, or use in or about the subject premises.

(c) Interpretation The provisions of this ordinance are considered minimum requirements. Where the provisions of this ordinance impose greater restrictions than any statute or other regulation, the provisions of this ordinance shall apply. Where the provisions of any statute or other regulation impose greater restrictions, the provisions of the statute or regulation shall prevail.

(d) Severability If any provision of this ordinance is declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of this ordinance in its entirety, or any part thereof, other than that so declared to be invalid. The balance of the ordinance not found invalid shall be enforced.

(e) Rules of Construction In the construction of this ordinance references to the male gender include the female and references to the singular include the plural. References to "person" or "persons" extends to natural persons, firms, corporations, partnerships, limited liability companies or other entities.