

**CHAPTER 8**

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**ARTICLE I. IN GENERAL**

**SECTION 8-1 FRANCHISE ORDINANCES**

All franchise ordinances now in force in the City are hereby incorporated by reference and shall have the same force and effect as though fully set forth in this Code.

**ARTICLE I-A. HOTEL & MOTEL ROOM TAX**

**SECTION 8-1.1 HOTEL & MOTEL: PERMIT & REGULATIONS.**

(1) Room Tax

(A) In this section:

- (1) "Hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, hotels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins any other buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanitariums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inured to the benefit of any private shareholder or individual.
- (2) "Gross receipts" has the meaning as defined in Wisconsin Statutes, Section 77.51(11)(a)(b) and (c) insofar as applicable.
- (3) "Transient" means any person residing for a continuous period of less than one month in a hotel, motel, or other furnished accommodations available to the public.

(B) Pursuant to Section 66.0615 of the Wisconsin Statutes, a tax is hereby imposed on the privilege and service of furnishing, at retail, of rooms or lodging to transients by hotel keepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Such tax shall be at the rate of ten percent (10%) of the gross receipts from such retail furnishing of rooms or lodging. Such tax shall not be subject to the selective sales tax imposed by Section 77.52(2) of the Wisconsin Statutes. The proceeds of such tax shall be remitted monthly to the City Treasurer.

- (1) Subject to any superior obligation for debt service and operations related to the Oshkosh Centre not otherwise met by the following allocations, the treasurer shall distribute the receipts on a monthly basis, as follows:
  - a. The City shall retain the first two percent (2%), and the first seven percent (7%) of the eight percent (8%) of all receipts attributable to 1 N. Main St.
  - b. The Oshkosh Convention and Visitors Bureau, hereby designated as a tourism entity as that term is defined in Sec. 66.0615, Wis. Stats., shall receive the next one percent (1%).

- c. The remaining seven percent (7%) exclusive of receipts attributable to 1 N. Main St. which the City shall retain, shall be divided as follows:
  - i. 19% to the Grand Opera House Foundation
  - ii. 80% to the Convention and Visitors Bureau
  - iii. 1% to the City of Oshkosh for Centre Operations
- d. Provisions related to City retention of the receipts attributable to 1 N. Main St. shall automatically be repealed upon City repayment of the current indebtedness on the Centre.

**(Note: Per August 28, 2007, 07-233 of the Council Agenda:** Upon final repayment of the Convention Center debt, both present and that contemplated for renovations of the Center in 2008, provisions related to the additional 2% increase are repealed and the room tax is re-established at eight percent (8%).)

- (C) This section shall be administered by the City Treasurer. The tax shall be payable monthly and shall be due on the last day of the month next succeeding the calendar month for which imposed. A return shall be filed with the City Treasurer by those furnishing at retail such rooms and lodging on or before the same date on which such tax is due and payable. Such return shall show the gross room receipts of the preceding calendar month from such retail furnishing of rooms or lodging, the amount of taxes imposed for such period, and such other information as the City Treasurer deems necessary. Every person required to file such monthly return shall, with his first return, elect to file an annual calendar year or fiscal year return. Such annual return shall be filed within 90 days of the close of each such calendar or fiscal year.

The annual return shall summarize the monthly returns, reconcile and adjust for errors in the monthly returns, and shall contain certain such additional information as the City Treasurer requires. Such annual returns shall be signed by the person required to file a return or his duly authorized agent, but need not be verified by oath. The City Treasurer may, for good cause, extend the time of filing any return, but in no event longer than one month from the filing date.

- (D) Every person furnishing rooms or lodging under Subsection (B) shall file with the City Treasurer an application for a permit for each place of business. every application for a permit shall be made upon a form prescribed by the City Treasurer and shall set forth the name under which the applicant transactor intends to transact business, the location of this place of business, and such other information as the City Treasurer requires. The application shall be signed by the owner if a sole proprietor and, if not a sole proprietor, by the person authorized to act on behalf of such sellers. At the time of making an application, the applicant shall pay the City Treasurer a fee of \$2.00 for each permit.
- (E) After compliance with Subsection (D) and Subsection (N) by the applicant, the City Treasurer shall grant and issue to each applicant a separate permit for each place of business within the City. Such permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.
- (F) When any person fails to comply with this section, the City Treasurer may, upon 10 days notification and after affording such person the opportunity to show cause why his permit should not be revoked, revoke or suspend any or all of the permits held by such person.

The City Treasurer shall give to such person written notice of the suspension or revocation of any of his permits. The City Treasurer shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this section. A fee of \$2.00 shall be imposed for the renewal or issuance of a permit which has been previously suspended or revoked.

- (G) If any person liable for any amount of tax under this section sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the City Treasurer that it has been paid or a certificate stating that no amount is due. If a person subject to the tax imposed by this section fails to withhold such amount from the purchase price as required, he shall become personally liable for payment of the amount required to be withheld by him to the extent of the price of the accommodations valued in money.
- (H) The City Treasurer may, by office audit, determine the tax required to be paid to the City or the refund due to any person under this section. This determination may be made upon the basis of the facts contained in the return being audited or on the basis of any other information within the City Treasurer's possession. One or more such office audit determinations may be made of the amount due for any one or for more than one period.
- (I) The City Treasurer may, by field audit, determine the tax required to be paid to the City or the refund due to any person under this section. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information within the City Treasurer's possession. The City Treasurer is authorized to examine and inspect the books, records, memoranda, and property of any person in order to verify the tax liability of that person or another person. Nothing herein shall prevent the City Treasurer from making a determination of tax at any time.
- (J) If any person fails to file a return as required by this section, the City Treasurer shall make an estimate of the amount of the gross receipts under Subsection (B). Such estimate shall be made for the period from which such person failed to make a return and shall be based upon any information which is in the City Treasurer's possession or may come into his possession. On the basis of this estimate, the City Treasurer shall compute and determine the amount required to be paid to the City, adding to the sum arrived at a penalty equal to 10 percent thereof. One or more such determinations may be made for one or more than one period.
- (K) All unpaid taxes under this section shall bear interest at the rate of 7 percent per annum from the due date of the return until the first day of the month following the month in which the tax is paid or deposited with the City Treasurer. All refunded taxes shall bear interest at 7 percent per annum from the due date of the return until the first day of the month following the month in which said taxes are refunded. An extension of time within which to file a return shall not operate to extend the due date of the return for purposes of interest computation. If the City Treasurer determines that any over-payment of tax has been made intentionally or by reason of carelessness or neglect, or if the tax which was overpaid was not accompanied by a complete return, it shall into allow any interest thereon.
- (L) Delinquent tax returns shall be subject to a \$10.00 late filing fee. The tax imposed by this section shall become delinquent if not paid.
  - (1) In the case of a timely filed return, within 30 days after the due date of the return, or

within 30 days after the expiration of an extension period if one has been granted.

- (2) In the case of no return filed or a return filed late, by the due date of the return.
- (M) If due to negligence no return is filed, or a return is filed late, or an incorrect return is filed, the entire tax finally determined shall be subject to a penalty of 25 percent of the tax, exclusive of any interest or other penalties. If a person fails to file a return when due or files a false or fraudulent return with the intent in either case to defeat or evade the tax imposed by this section, a penalty of 50 percent shall be added to the tax required to be paid, exclusive of interest and other penalties.
- (N) In order to protect the revenue of the City, the City Treasurer may require any person liable for the tax imposed by this section to place with him, before or after a permit is issued, such security, not in excess of \$5,000 as the City Treasurer determines. If any taxpayer fails or refused to place such security the City Treasurer may refuse or revoke such permit. If any taxpayer is delinquent in the payment of the taxes imposed by this section, the City Treasurer may, upon 10 days notice, recover the taxes, interest and penalties from the security placed with the City Treasurer by such taxpayer. No interest shall be paid or allowed by the City to any person for the deposit of such security.
- (O) Every person liable for the tax imposed by this section shall keep or cause to be kept such records, receipts, invoices and other pertinent papers in such form as the City Treasurer requires.
- (P) All tax returns, schedules, exhibits, writings or audit reports relating to such returns, on file with the City Treasurer, are deemed to be confidential, except the City Treasurer may divulge their contents to the following, and no others:
- (1) The person who filed the return.
  - (2) Officers, agents, or employees of the Federal Internal Revenue Service or the State Department of Revenue.
  - (3) Officers, employees, or agents of the City of Oshkosh as may be necessary to enforce collection.
- (Q) No person having an administrative duty under this section shall make known in any manner the business affairs, operations or information obtained by an investigation of records of any person on whom a tax is imposed by this section, or the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person, except as provided in Sub-section (P).
- (R) Any person who is subject to the tax imposed by this section who fails to obtain a permit as required in Subsection (D) or who fails or refuses to permit the inspection of his records by the City Treasurer after such inspection has been duly requested by the City Treasurer, or who fails to file a return as provided in this section, or who violates any provision of this section, shall be subject to a forfeiture not to exceed \$200. Each day, or portion thereof, that such violation continues is hereby deemed to constitute a separate offense.
- (3) REPEALED.
- (4) Separability and Conflict

- (A) If any section, subsection, paragraph, sub-paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.
- (B) All ordinances or parts of ordinances which are inconsistent or contrary to this ordinance are repealed.

**ARTICLE II. REGISTRATION OF ENTERTAINERS**

**SECTION 8-2 REGULATION OF ESCORT SERVICES**

(A) **DEFINITIONS.** For the purposes of this Section, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

- (1) "Escort" means any person who, for a fee commission, salary, hire, profit, payment or other monetary or other valuable considerations, accompanies or offers to accompany another person to or about social affairs, entertainments or places of amusement, or who may consort with another person about any place of public resort or within any private quarters.
- (2) "Escort service" means service provided by any person who, for a fee commission, salary, hire, profit, payment or other monetary or other valuable considerations, furnishes or offers to furnish names of escorts who may accompany or offers to accompany other persons to or about social affairs, entertainments or places of amusement, or who may consort with others about any place of public resort or within any private quarters.
- (3) "Person" means any individual and includes and applies to associations, clubs, societies, firms, partnerships, corporations or other business ventures, and bodies politic and corporate.

(B) **LICENSE/REGISTRATION REQUIRED.**

(1) No escort service shall operate or be maintained in the City without first obtaining from the Common Council a license to operate issued as provided in this Section.

A license may be issued only for one escort service located at a fixed and certain place, and must be displayed at all times in a space fully visible to those on the subject premises. Any person, including partnership or corporation, which desires to operate more than one escort service must have a license for each service.

- (i) The location to be licensed under this Section shall comply with all applicable building and zoning code provisions of this Code.
- (ii) No person, partnership, corporation or other entity shall own, operate, manage, rent, lease, occupy, or exercise control of any building, structure, premises, or portion or part thereof, for which a license is required by this Section, if otherwise allowed, that is located closer than 500 feet from the nearest lot line, that is the legal boundaries of a parcel of property, of a similar establishment, or, if so licensed, of another Class "B"/"Class B" establishment, or any facility governed by Sections 15-19 or 18-9 of this municipal code, or any school (whether pre-school, elementary, middle or high school, whether public or private), or any residentially zoned property, library, church

or chapel, park or playground, or licensed day-care facility.

- (a) No license or interest in a license may be transferred to any person, including partnership or corporation.
- (2) All operators or any person working for any escort service and any independent contractors shall, prior to beginning employment or contracted duties, register and obtain a photo identification card from the City Clerk as provided in this Section. Such card shall be carried on the person at all times and shall be kept available for production upon request; failure to comply with this requirement shall be deemed a violation of this Section.
- (C) APPLICATION. Any person desiring to secure a license or photo identification card under this Section shall make application to the City Clerk, accompanied by a receipt from the City showing payment of the appropriate fee.
- (1) The application shall be on a form approved by the City Clerk. An applicant (which shall include each partner and limited partner of a partnership applicant, each officer and director of a corporate applicant, each stockholder holding 10% or more of the stock or beneficial ownership and every other person who is interested directly in the ownership or operation of the business) shall furnish the following information:
- (a) Name and address, including all aliases;
  - (b) a picture identification card establishing that the individual(s) is(are) at least eighteen (18) years of age;
  - (c) All residential addresses for the applicant(s) for the past ten (10) years;
  - (d) The business, occupation or employment of the applicant(s) for ten (10) years immediately preceding the date of application,
  - (e) Whether the applicant(s) previously operated in this or any other state, county or municipality under an escort service license or similar business license, or registration system; whether the applicant has ever had such a license or photo identification card revoked or suspended, the reason therefor and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;
  - (f) All criminal violations, whether federal or state, or municipal ordinance violation convictions, forfeiture of bond and pleadings of no contest on all charges, except minor traffic violations;
  - (g) Fingerprint registration with the Police Department and photograph on file with the Oshkosh Police Department;
  - (h) The address of the escort service to be operated by the applicant, or the address of the escort service for which the individual will be an escort;
  - (i) 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 agent and all officers and directors of the corporation.
- (D) STANDARDS FOR ISSUANCE. To receive a license to operate an escort service, or to receive an identification card, an applicant must meet the following standards:
- (A) If the applicant is an individual:
- (a) The applicant shall be at least eighteen (18) years of age;
  - (b) Subject to Chapter 111, of the Wisconsin Statutes, the applicant shall not have been

- convicted of or pleaded no contest, to a violation as outlined in Subsection (G)(1)(c) of this Section, in any jurisdiction within five (5) years immediately preceding the date of the application;
- (c) The applicant shall not have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
- (B) If the applicant is a corporation:
- (a) All officers, directors and others required to be named under this Section shall be at least eighteen (18) years of age;
  - (b) Subject to Chapter 111, of the Wisconsin Statutes, no officer, director or other person to be named under this Section shall have been convicted of or pleaded no contest, to a violation as outlined in Subsection (G)(1)(c) of this Section, in any jurisdiction within five (5) years immediately preceding the date of the application;
  - (c) No officer, director or other person required to be named under this Section shall not have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
- (C) If the applicant is a partnership, joint partnership, or any other type of organization where two or more persons have a financial interest:
- (a) Each person having a financial interest in the partnership, joint partnership or other type of organization shall be at least eighteen (18) years of age;
  - (b) Subject to Chapter 111, of the Wisconsin Statutes, no person having a financial interest in the partnership, joint partnership or other type of organization shall have been convicted of or pleaded no contest, to a violation as outlined in Subsection (G)(1)(c) of this Section, in any jurisdiction within five (5) years immediately preceding the date of the application;
  - (c) No person having a financial interest in the partnership, joint partnership or other type of organization shall have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
- (D) No license or photo identification card, or any renewal thereof, shall be issued unless the Police Department has investigated the applicant's qualifications to be licensed or registered, which shall be completed within five (5) business days of referral to the Department.
- (E) **TERM; RENEWAL.** Every license or identification card issued pursuant to this Section will terminate on December 31st following its issuance, unless sooner revoked, and must be renewed before operation is allowed or escort services provided in the following year. Application for renewal shall be on a form provided by the City Clerk, shall contain the information required in subsection (C) of this Section, and shall be accompanied by a receipt from the City showing payment of the appropriate fee. Subsections (D) and (G) shall apply to all renewals.
- (F) **DENIAL OR NONRENEWAL OF APPLICATION OR REGISTRATION**
- (1) Whenever an initial application or a renewal thereof is denied, the City Clerk shall notify the applicant in writing of the reasons for the decision and shall notify the applicant of any appeal rights. Within five (5) business days of said decision, such notice shall be mailed by

first class mail to the address listed on the application and service shall be deemed complete upon mailing.

- (2) Within ten (10) business days of service of such notice, the applicant shall file with the City Clerk a written appeal of the denial, containing the reasons for such appeal. The Clerk shall then schedule a time at the Common Council's next regular meeting, following the conclusion of the Council's regular agenda, at which time the applicant can present the appeal in person, subject to questioning as may be appropriate. Within five (5) business days of receipt of such appeal, the Clerk shall notify the applicant in writing of the date, time and place when the applicant's appeal shall be heard. Such notice shall be mailed by first class mail to the address listed on the application and service shall be deemed complete upon mailing.
  - (3) The Council shall hear and decide all appeals under this Section by majority vote of the membership of the Council. The Clerk shall notify the applicant of the decision. Within five (5) business days of said decision, such notice shall be mailed by first class mail to the address listed on the application and service shall be deemed complete upon mailing.
  - (4) Any party to an appeal, as outlined in this subsection, may seek review thereof by certiorari to be filed in a court of competent jurisdiction within ten (10) business days of the date of service of the Council's decision. Based only on the record of proceedings before the Council, the court may affirm or reverse the final determination, or remand to the Council for further proceedings consistent with the court's decision. The court may also order costs to the prevailing party as is appropriate.
    - (a) If review is sought, the record of proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at the requester's expense. By stipulation, the court may order a synopsis of the proceedings in lieu of transcript. The court may otherwise limit the requirement for a transcript.
- (G) **SUSPENSION OR REVOCATION OF LICENSE OR CARD.** Any license or photo identification card issued under this Section may be suspended for not less than ten (10) nor more than ninety (90) days, or revoked. To the extent practicable, Section 125.12(2), of the Wisconsin Statutes, shall govern the proceedings for suspension or revocation, and judicial review thereof.
- (1) Grounds for suspension or revocation, non-issuance or non-renewal shall include:
    - (a) Any violation of this Section;
    - (b) The person does not possess the qualifications required under this Section to hold the license or photo identification card;
    - (c) The person has been convicted of violations of alcohol beverage regulations as defined in Chapter 125 of the Wisconsin Statutes and Chapter 4 of this Code, of crimes against life and bodily security as defined in Chapter 940 of the Wisconsin Statutes, of crimes against public health and safety as defined by Chapter 941 of the Wisconsin Statutes, of crimes against property as defined by Chapter 943 of the Wisconsin Statutes, of crimes against sexual morality as defined by Chapter 944 of the Wisconsin Statutes, of crimes of interference with law enforcement as defined by Sections 946.31 through 946.50, inclusive, of the Wisconsin Statutes, of crimes against public peace, order and other interest as defined by Chapter 947 of the Wisconsin Statutes, of crimes against children as defined in Chapter 948 of the Wisconsin Statutes, of violations of the uniform controlled substances act as defined by Chapter 961 of the Wisconsin Statutes, or comparable municipal ordinance, in any

jurisdiction; or the person knowingly allows another person, who is either on the premises for which the license under this Section is issued or is the recipient of an escort service, to commit a violation of the offenses outlined in this paragraph.

- (d) Any act or omission of any employee or independent contractor constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or non-renewed.

(H) RESPONSIBILITIES OF THE OPERATOR

- (1) The operator of an escort service shall maintain a register of all employees, or independent contractors, showing the names and aliases used by said individuals, together with the home address, birth date, sex, telephone numbers, Social Security Number and date of employment or service and termination. The foregoing information on each shall be maintained in the register on the premises for a period of three (3) years following termination.
- (2) The operator of an escort service shall make the register available immediately for inspection by police upon demand at all reasonable times.
- (3) Every act or omission by an employee or independent co-contractor 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. 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.

- (I) FEES. The application fee for a license, or any renewal thereof, shall be \$500. The application fee for a photo identification card, or any renewal thereof, shall be \$100. There is no proration of fees for any license or card issued for less than a one-year period, nor shall there be any prorated refund for license or card that is suspended or revoked. If the application for the initial license or card, or any renewal thereof, is denied, the fee, less any administrative costs, shall be refunded.

- (J) EXEMPTIONS. This Section does not apply to businesses, agencies and persons licensed by the State of Wisconsin or the City of Oshkosh pursuant to a specific statute or ordinance, and employees employed by a business so licensed and which performs as an escort or an escort service function as a service merely incidental to the primary function of such profession, employment or business and which do not hold themselves out to the public as an escort or an escort service.

- (K) PENALTIES. Any person, partnership, corporation or other entity, who violates any of the provisions of this Section shall, upon conviction thereof, be punished by a forfeiture of not less than \$250 nor more than \$1000, together with the costs of prosecution, and in default of payment thereof by imprisonment in the County Jail for a period not to exceed sixty (60) days. In addition, a person convicting of violating this provisions of this Section shall be subject to suspension or revocation by a court of record of his/her operating privileges as provided within Chapter 343 of the Wisconsin Statutes. Each day of violation shall constitute a separate offense.

SECTION 8-3           RESERVED  
SECTION 8-4           RESERVED

**ARTICLE III. RESERVED**

SECTION 8-5	RESERVED
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**ARTICLE IV. RESERVED**

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**ARTICLE V. AUCTIONS**

**SECTION 8-39 AUCTIONS AND AUCTIONEERS; LICENSE REQUIRED.**

No person shall sell any goods, ware, merchandise or other thing whatever at auction in any place in the City (unless exempt from obtaining an auctioneer's license by the laws of Wisconsin) unless a license therefor is first obtained from the City Manager as hereinafter provided, except that no license shall be required when a sale by auction is made by virtue of any rule, order or judgment of any Court, or when made by or on behalf of any executor or administrator of any estate, or for auction of household goods which have been used as such by the person making the sale, with or without an agent auctioneer,

providing, however, that in the case of an auction of household goods other than by virtue of a court order, twenty-four (24) hours notice in writing shall e given the Police department.

**SECTION 8-40 APPLICATION**

Application for a license shall be made in writing to the Clerk accompanied by the prescribed fee, setting forth therein the proposed place of business. In no case shall such license be transferable, or the place of business be changed without the consent, in writing, of the City Manager. Such license shall be signed by the City Manager and Clerk after being granted by the City Manager.

**SECTION 8-41 FEE.**

- (A) The fee shall be Twenty-five (\$25.00) Dollars per day for an auction.
- (B) The City Manager may grant licenses to applicants to sell goods, wares and merchandise at auction for one (1) year or fraction thereof upon payment into the treasury of Three Hundred Dollars (\$300.00), but all such licenses shall expire on the following June 30.

**SECTION 8-42 FALSE STATEMENTS**

No auctioneer or other person connected with or in any manner interested in any auction sale, being present when any article or thing is offered for sale at auction, shall knowingly and with intent to induce any person or persons to purchase same or any part thereof, make any false representations or statements as to the ownership, character or quality of the article or articles so offered for sale.

**ARTICLE VI. RESERVED**

- SECTION 8-43 RESERVED
- SECTION 8-44 RESERVED

**ARTICLE VII. DIRECT SELLERS AND SOLICITORS**

**SECTION 8-45 INTENT OF REGULATIONS**

The intent of these regulations is to protect the peaceful enjoyment of the residents of Oshkosh in their residence and throughout the community and to protect residents from commercial fraud whenever possible. The Common Council recognizes that constitutional limitations restrict extensive and broad prohibitions against direct sales and solicitations, but it believes that reasonable regulations are essential to promote privacy among city residents given that door-to-door type activities as contemplated herein are not traditional public forums.

**SECTION 8-46 REGISTRATION REQUIRED**

It shall be unlawful for any person to engage in direct sales or solicitation within the City of Oshkosh without first being registered for that purpose and complying with the provisions of this Article as provided herein.

**SECTION 8-47        DEFINITIONS**

When used in this Article, the following terms shall have the following meanings:

- (A) "Charitable Organization" shall include any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.
- (B) "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, solicitors and transient merchants. The sale of goods or services includes donations required by the direct seller for the retention of goods or services by a donor or prospective customer.
- (C) "Goods" shall include personal property of any kind, and shall include goods provided incidental to services offered or sold.
- (D) "Permanent Merchant" means a direct seller who operates an established business in this city from a permanent location in compliance with the provisions of Chapter 30 of this Municipal Code.
- (E) "Services" shall include the performance of a duty or labor for the benefit of another and shall include services provided incidental to goods offered or sold.
- (F) "Solicitor" means any individual who, for him/herself, or for a partnership, association or corporation, appears for contributions of money, time, support or personal property of any kind or value.

**SECTION 8-48        SCOPE OF ARTICLE**

- (A) The registration requirements of this Article shall not apply to the following:
  - (1) artists or craftsmen selling their own creations;
  - (2) employees, members, officers or agents of a charitable organization engaging in direct sales or solicitation for or on behalf of said organization, provided that there is submitted to the City Clerk satisfactory evidence of registration under Section 440.41 of the Wisconsin Statutes, provided there is compliance with the provisions of Section 8-54 of this Article. Any organization not so registered, or which is exempt from such registration requirements except for veterans organizations incorporated under Chapter 188 of the Wisconsin Statutes or chartered under federal law, shall be required to register under this Article;
  - (3) individuals delivering newspapers, fuel, dairy products or bakery goods to regular customers or established routes or to prospective customers for sales for future delivery;
  - (4) individuals selling personal property at wholesale to dealers in such goods;
  - (5) permanent merchants, their employees or designee, who take orders away from the established place of business for goods regularly offered for sale by such merchants and who deliver said goods in the regular course of their business;
  - (6) persons who have had, or one who represents a direct seller upon proper identification who has had, a prior business transaction with the prospective customer, or who have been

contacted by the buyer who specifically requested a home visit;

- (7) persons selling agricultural products which such persons have grown or produced.
- (B) Nothing contained in this Article shall be construed to prohibit or restrict any sale required by statute or by order of any Court, or to prevent any person conducting a bona fide auction pursuant to law.

## **SECTION 8-49          REGISTRATION**

- (A) Applicants for registration must complete and return to the city Clerk a registration form furnished by the City Clerk which shall require the following information:
- (1) name, permanent address and telephone number, and temporary address, if any;
  - (2) age, height, weight, color of hair and eyes;
  - (3) name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by, or whose merchandise is being sold;
  - (4) temporary address and telephone number from which business will be conducted, if any;
  - (5) nature of business to be conducted and a brief description of the goods offered, and any services offered;
  - (6) proposed method of delivery of goods, if applicable.
  - (7) make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;
  - (8) last cities, villages, towns, not to exceed three, where applicant conducted similar business, if any; and, where employer conducted similar business;
  - (9) place where applicant can be contacted for at least seven days after leaving Oshkosh;
  - (10) statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five years; the nature of the offense and the place of conviction;
  - (11) date of request for registration.
- (B) Applicants shall present to the City Clerk for examination:
- (1) a driver's license or some other proof of identity as may be reasonably required;
  - (2) a state certificate of examination and approval from the City Sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities;
  - (3) a state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.
- (C) At the time the registration is returned for filing with the City Clerk, the applicant shall have paid to the City Treasurer a fee of \$40.00 and shall display to the City Clerk a receipt for payment thereof.
- (1) The applicant shall sign a statement appointing the City Clerk as his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with any activities. The City Clerk shall immediately forward by first class mail any such court papers to the permanent address of the applicant as listed on the application for registration.
- (D) Upon receipt of each application and display of receipt for payment of fee, the City Clerk shall immediately refer it to the Chief of Police or designee for investigation, to be completed within ten

business days of referral, of the statements made in the application.

- (1) The City Clerk shall refuse to register the applicant if it is determined, pursuant to the investigation, any one of the following:
    - (a) the application contains any material omission or materially inaccurate statement;
    - (b) valid or substantial complaints of material nature against the applicant received by authorities in the communities where the applicant conducted similar business;
    - (c) the applicant had his/her registration revoked by the City Council and six months since the date of revocation, or decision or appeal, have not elapsed;
    - (d) the applicant was convicted of, or is subject to pending charge of, a crime, statutory or regulatory violations, or ordinance violation within the last five (5) years for an offense which is substantially related to the circumstances of the particular job or licensed activity or the nature of which is directly related to the applicant's fitness to engage in direct selling or solicitation;
    - (e) the applicant failed to comply with any applicable provision of subsections (B) or (C) above.
  - (2) Upon completion of such investigation, the City Clerk shall, subject to the restrictions contained in subsection (1) above, register the applicant as a direct seller or solicitor and shall issue to the applicant an identification card.
    - (a) the registration shall be valid for a period not exceeding twelve months;
    - (b) all registrations shall expire on December 31st of the year entered.
  - (3) The identification card shall contain the applicant's name and representation, a current photograph of the applicant, the date of registration and the date of expiration, a and a disclaimer that the City, despite registration requirements, does not endorse or condone the activities of the applicant. Said card shall be embossed in plastic and shall be issued to the applicant upon registration.
    - a) such card shall be visibly displayed at all times the applicant is conducting direct sale or solicitations;
    - b) no applicant may engage in direct sales or solicitations prior to registration and issuance of such identification;
    - c) the City Clerk shall require payment of ten dollars (\$10.00) to issue a replacement card.
- (E) Any person denied registration may appeal the denial. Sections 68.07 through 68.16 of the Wisconsin Statutes shall govern any appeal and the City Attorney or designee is hereby appointed as impartial decision maker for any hearing on administrative appeal.

## **SECTION 8-50 REGULATIONS**

- (A) The following practices are hereby prohibited:
- (1) Calling at any dwelling or other place between the hours of 9:00 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" or "No Solicitors" or words of similar meaning;

- (3) Calling at the rear door of any dwelling place unless previously arranged;
  - (4) Remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises;
  - (5) Misrepresenting or making false, deceptive or misleading statements concerning the quality, quantity or character of any goods or services offered for sale, the purpose of the visit, the identity of the caller or the identity of the organization represented;
    - a) a direct seller for a charitable organization shall specifically disclose what portion of the sale price of goods or services offered will actually be used for the charitable purpose for which the organization is seeking assistance, and said portion shall be expressed as a percentage of the sale price of the goods or services.
  - (6) Failing to outwardly display at all times while engaged in direct selling or soliciting the city-issued identification, if registration is required, or failing to display when requested a document identifying the direct seller or solicitor as representing an individual, a partnership, an association or a corporation, if exempt from the registration requirements of this Article;
    - a) failing to display, when requested to do so by any law enforcement officer, such identification or document.
  - (7) Impeding the free use of sidewalks, streets and other rights of way by pedestrians and vehicle;
    - a) where sales or solicitations are made by vehicles, all traffic and parking regulations shall be observed.
  - (8) Making any loud noises or using any sound amplifying devices to attract customers if the noise produced is capable of being plainly heard outside a one-hundred (100) foot radius of the source.
  - (9) Littering or allowing rubbish or litter to accumulate in or around the area where he/she is conducting activities.
- (B) The following shall be additional requirements for direct sellers:
- (1) After the initial greeting and before any other statement is made to a prospective customer, a direct seller 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 service he/she offers to sell.
  - (2) If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than 425, in accordance with the procedure as set forth in sec. 423.203, Stats.; 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(l)(a)(b) and (c), (2) and (3), Stats.
  - (3) 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.

## **SECTION 8-51        RECORDS**

The Chief of Police or designee shall report to the City Clerk all convictions for violation of this ordinance. The City Clerk shall note any such violation on the record of the individual and shall report any such conviction to the City council and to the partnership, association or corporation on whose behalf the individual represents.

## **SECTION 8-52        REVOCATION OF REGISTRATION**

- (A) Registration may be revoked by the City Council after notice and hearing for any of the following:
- (1) making any material omission or materially inaccurate statement in the application for registration;
  - (2) making any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in the direct sales of soliciting;
  - (3) violating any provisions of the Article;
  - (4) being convicted of any crime or any statutory, regulatory or ordinance violation which is directly related to the registrants' fitness to engage in direct selling or soliciting;
  - (5) conducting direct sales or solicitations in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- (B) Written notice of the hearing for revocation shall be given by the City Clerk setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed postage prepaid to the registrant at his/her last known address, as listed on the application, at least five (5) days prior to the date set for hearing or shall be served in the same manner as a summons in a civil matter at least three (3) days prior to the date set for hearing.
- (C) The hearing, final determination and any judicial review shall be governed by Sections 68.11(2) and (3), 60.12 and 68.13 of the Wisconsin Statutes.
- (1) The City Attorney shall act as prosecutor of any complaint;
  - (2) Final determination shall be by the City Council and shall be mailed postage prepaid, by the City Clerk to the individual at the last known address as listed on the application or as provided by the individual at the hearing.

## **SECTION 8-53        REAPPLICATION**

No individual whose registration has been revoked shall make further application until a period of six (6) months shall have elapsed since the date of the last previous revocation by the City Council or as determined on appeal.

**SECTION 8-54 EXEMPT CHARITABLE ORGANIZATIONS**

In the event an organization is exempt from the registration requirements of this Article, said organization shall still be required to file an application with the City Clerk furnishing the following information:

- (A) Name of the organization and purpose of the cause for which direct sales or solicitation is being conducted;
- (B) Names and addresses of the organization and of the officers and of the directors of the organization;
- (C) Period during which direct sales or solicitation is to be carried on;
- (D) Whether or not any commissions, fees, wages or emoluments are to be expended in connection with such direct sales or solicitations and the amount thereof;
- (E) Type of identification or documentation is to be used by individuals engaging in direct sales or soliciting on behalf of the organization;
- (F) Satisfactory evidence of registration under Section 440.41 of the Wisconsin State Statutes.

All other provisions and regulations of this Article, as may be applicable, shall be complied with.

**SECTION 8-55 SEVERANCE CLAUSE**

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

- SECTION 8-56 RESERVED
- SECTION 8-57 RESERVED
- SECTION 8-58 RESERVED
- SECTION 8-59 RESERVED
- SECTION 8-60 RESERVED
- SECTION 8-61 RESERVED

**ARTICLE VIII. PAWNBROKERS AND SECONDHAND ARTICLE AND JEWELRY DEALERS**

**SECTION 8-62 STATE STATUTES ADOPTED**

Except as otherwise specifically provided by this article, all provisions of Section 134.71 Wis. Stats. defining and describing the regulations with respect to pawnbrokers and secondhand article and secondhand jewelry dealers are hereby adopted by reference and made a part of this code as if fully set forth herein. It is the intention of this article to include within such references all provisions of section 134.71 Wis. Stats. in effect at the time of adoption of this article together with any applicable revisions and all future recodifications, renumberings, and amendments unless otherwise expressly provided in such references. It is the intention of this article that any act required to be performed or prohibited by section 134.71 Wis. Stats. presently in effect or as may be amended in the future is an act required to be performed or is an act prohibited by this section.

**SECTION 8-63 LICENSE REQUIRED**

No person shall carry on the business of a pawnbroker, or secondhand article or secondhand jewelry dealer within the city without first having obtained a license therefor.

**SECTION 8-63.1 DEFINITIONS**

- (a) "Article" means any of the following articles except jewelry:
- (1) Audio-visual equipment, including but not limited to stereos, cassette recorders, compact disc players, stereo components, cameras, videotape recorders, video cameras, portable stereos, audio tapes, compact discs, recording tapes, video tapes, albums, visual or electromagnetic tapes, and similar materials.
  - (2) Bicycles.
  - (3) China.
  - (4) Computers, printers, software, hardware, and computer supplies.
  - (5) Computer games and toys.
  - (6) Crystal.
  - (7) Electronic equipment.
  - (8) Fur coats and other fur clothing.
  - (9) Ammunition and knives.
  - (10) Microwave ovens.
  - (11) Office equipment.
  - (12) Pianos, organs, guitars, keyboards and other musical instruments.
  - (13) Silverware and flatware.
  - (14) small electrical appliances.
  - (15) telephones and answering machines.
- (b) Any word not defined herein shall have that meaning specified within section 134.71 Wis. Stats.

**SECTION 8-64 PROPERTY TRANSACTION RECORDS**

For each transaction of purchase, receipt, or exchange of any secondhand article or secondhand jewelry, from a customer, a pawnbroker, secondhand article or secondhand jewelry dealer shall complete the appropriate property transaction form.

- (a) Forms shall be obtained from the Oshkosh Police Department. Forms are identified by number and the pawnbroker, secondhand article or secondhand jewelry dealer shall be solely responsible for each form. A copy of each form shall be provided to the Oshkosh Police Department upon request. Each form must be accounted for by the pawnbroker, secondhand article or secondhand jewelry dealer.
- (b) This form shall be completed by the pawnbroker or secondhand article or secondhand jewelry dealer and signed by the customer.
- (c) The form shall be completed in ink. Entries must be legible. No entry on such form may be erased, mutilated or changed.

- (d) The form shall be completed in its entirety. All articles must be described and documented in detail sufficient to differentiate the article from other like articles. If the item has a serial number or other identifying information or unique characteristics such information shall be noted on the form.
- (e) The pawnbroker, secondhand article or secondhand jewelry dealer shall retain an original of each form for not less than one year from the date of the transaction. Duplicate forms shall be provided to law enforcement agencies upon request.
- (f) Forms shall be made available for inspection during business hours by the Oshkosh Police Department or other law enforcement agency upon request.
- (g) Each form shall be physically kept with the article(s) detailed upon the form for the required holding period.
- (h) The pawnbroker, secondhand article or secondhand jewelry dealer shall, in addition to the property transaction forms, keep a written inventory and records of declaration of ownership as required by state statute.

#### **SECTION 8-65          HOLDING PERIODS**

- (a) Any secondhand article or secondhand jewelry purchased or received by a pawnbroker as a secondhand article shall be kept on the pawnbroker's premises or other place for safekeeping for not less than 30 days after the date of purchase or receipt, unless the person known by the pawnbroker to be the lawful owner of the secondhand article or secondhand jewelry recovers it.
- (b) Any secondhand article or secondhand jewelry, purchased or received by a secondhand dealer as a secondhand article shall be kept on the secondhand dealers premises or other place for safekeeping for not less than 15 days after the date of purchase or receipt.
- (c) Subsections (a) and (b) above shall not apply to articles consigned to a pawnbroker, secondhand article or secondhand jewelry dealer.
- (d) During the holding period the secondhand article or secondhand jewelry shall be held separate and apart from any other merchandise carried by the dealer and shall not be altered or modified in any manner.
- (e) During the holding period the pawnbroker, secondhand article or secondhand jewelry dealer shall permit any law enforcement officer to inspect the article. Articles held off premises shall be made available for inspection under this section within 24 hours, or a reasonable time in the case of weekends or holidays, of a request by a law enforcement officer.
- (f) Any law enforcement officer who has reason to believe any secondhand article or secondhand jewelry was not sold or exchanged by the lawful owner may direct a pawnbroker, secondhand article or secondhand jewelry dealer to hold that article for a reasonable length of time which the law enforcement officer considers necessary to identify it.

#### **SECTION 8-66          MINORS**

No pawnbroker, secondhand article or secondhand jewelry dealer shall engage in a transaction of purchase, exchange or receipt of any secondhand article or secondhand jewelry from a minor unless the

minor is accompanied by the minor's parent or guardian.

**SECTION 8-67 COINS, CURRENCY, AND BULLION**

Any pawnbroker, secondhand article or secondhand jewelry dealer receiving any coin or currency, any gold or silver coin or gold or silver bullion shall not be required to comply with the holding periods within section 8-65 but shall otherwise be required to comply with the provisions of this article.

**SECTION 8-67.1 RIGHT TO INSPECT**

A license holder under this article shall make available for inspection, by any law enforcement officer at any reasonable time, the licensed premises and any items on the licensed premises. Any items stored off-premises shall be made available for inspection under this section upon request by a law enforcement officer.

**SECTION 8-68 PENALTIES**

- (a) Upon conviction for a first offense under this article, a person shall forfeit not less than \$75 nor more than \$1000.
- (b) Upon conviction for a second offense under this article, a person shall forfeit not less than \$525 nor more than \$2000.

**ARTICLE IX. RESERVED**

SECTION 8-69	RESERVED
SECTION 8-70	RESERVED
SECTION 8-71	RESERVED
SECTION 8-72	RESERVED
SECTION 8-73	RESERVED
SECTION 8-74	RESERVED
SECTION 8-74.1	RESERVED
SECTION 8-74.2	RESERVED

**ARTICLE X. JUNK YARDS AND COLLECTORS**

***DIVISION 1. JUNK YARDS***

**SECTION 8-75 LICENSE REQUIRED.**

No person, firm or corporation shall store at any place in the City any old iron, old bottles, old rags, paper, old auto tires, or any other kind of junk until a license therefor shall have been secured as provided in this Section.

**SECTION 8-76 APPLICATION FOR LICENSE.**

- (A) Application for license accompanied by the prescribed fee shall be made to the City Clerk and shall state the property to be used for the storage junk and other things mentioned in Section 8-75, the name of the applicant, the name of the owner of the property, and, if the property is leased, a copy of applicant's lease. The City Clerk shall refer said application to the Common Council which may in its discretion grant said applicant a license.

Upon the allowance of a license by the Common Council, the City Clerk shall issue said license.

**SECTION 8-77 LICENSE FEE; TERM.**

The license fee shall be Twenty Dollars (\$20.00) for a period of one (1) year or fraction thereof, and shall expire on the 30th day of June after its date, unless revoked as hereinafter provided. All licenses that expire on June 30, 1968, under this ordinance shall receive a refund of Ten Dollars (\$10.00).

**SECTION 8-78 LOCATION RESTRICTED.**

No license shall be issued to store any of the things mentioned in Section 8-75 within two hundred fifty feet (250') of any dwelling house, in an area other than the heavy industrial district east of South Main Street and south of the Fox River, on the same street, or at any place within one hundred fifty feet (150') of North or South Main Street.

**SECTION 8-79 INSPECTION AND INVESTIGATION.**

- (A) Every licensee shall permit inspection of his premises and junk by the police officers of the City at all reasonable hours.
- (B) The City health Department and the Chief of the Fire Department shall cause to be investigated each and every junk yard at least once each year.

**SECTION 8-80 REVOCATION OF LICENSE.**

- (A) The Council may, upon evidence being submitted that any junk yard is being conducted in any unsanitary manner, or that there is a fire hazard created by the said junk yard, or that the said junk yard licensee has violated any ordinance of the City or law of the State relating to buying or storage of junk, revoke said license, and no license shall thereafter be issued to any one to conduct a junk yard upon the premises for a period of one (1) year.
- (B) The fact that a license has been issued shall not be deemed to make the City a party to such business, and shall not be a bar to any party in an action to abate a nuisance.

**SECTION 8-81 SANITARY CONDITION REQUIRED**

Each licensee shall keep his said junk yard in a sanitary condition, and shall keep inflammable material in such a manner so that there will be minimum fire danger.

**SECTION 8-82 HEIGHT LIMIT ON JUNK PILES.**

No iron, scrap or other material shall be piled over fifteen feet (15') high in any junk yard.

**SECTION 8-83 RESTRICTIONS ON DISMANTLING.**

No vehicle, or other article of junk shall be broken up, or dismantled upon any street or alley and no part of the same shall be left by any licensee in any street or alley. No junk shall be stored within fifteen feet (15') of any street unless enclosed in a building as concealed from view from said street.

***DIVISION 2. JUNK COLLECTORS.***

**SECTION 8-84 LICENSE REQUIRED.**

No person shall carry on the business of what is commonly called a "junk collector", traveling or going from place to place and house to house, in, upon and along the streets of the City for the purchase of and sale of junk, old rope, iron, brass, copper, zinc, tin, lead, rags, slush, empty bottles, paper, bagging, etc., with any vehicle, without having a license therefor as provided in Section 8-85 for every vehicle used by him in the conduct of his business.

**SECTION 8-85 GRANTING LICENSE; FEE.**

- (A) The City Manager shall grant licenses to such persons producing satisfactory evidence of good character.
- (B) Every person licensed as "junk collector" shall pay to the City Clerk the sum of Ten Dollars (\$10.00) annually for every vehicle used by him in the conduct of his business.
- (C) Licenses issued hereunder shall expire on the thirtieth (30th) day of June after its date.

**SECTION 8-86 TRADE RESTRICTIONS.**

No "junk collector" shall buy or sell any coins of any description, or any article of gold or silver, or any wearing apparel or any article of household furniture or any implement, tool or utensil in a sound, unbroken or undamaged condition, nor shall such dealer receive in the line of his business any article or thing by the way of pledge or pawn, nor shall he loan or advance any sum of money on the security of any such article or thing.

**SECTION 8-87 BUYING JUNK FROM UNLICENSED DEALER PROHIBITED.**

No resident or non-resident of the City shall in said City buy any old rubber, rope, iron, brass, copper, zinc, tin, lead, rags, slush, empty bottles, paper, bagging or junk, except from a dealer duly licensed by the City,

unless a license so to do shall have been issued in accordance with the provisions of Division 2 of this Chapter.

## ARTICLE XI. NON-ISSUANCE OF LICENSES AND PERMITS

### SECTION 8-88 NON-ISSUANCE OF CITY LICENSES AND PERMITS/DELINQUENT TAXES, ASSESSMENTS AND SPECIAL CHARGES

- (A) Unless otherwise specifically provided within this municipal code, licenses and permits required for the carrying on of a trade or business within the City may be granted or renewed but shall not be issued:
- 1) Premises. For any premises for which taxes, assessments, or special charges are delinquent and unpaid.
    - a. This subsection 1) shall not apply to prohibit the issuance of a license for any premises if:
      - i. the unpaid taxes, assessments or special charges were levied against the premises; and
      - ii. the license is necessary for the conduct of business on the premises by a lessee of the premises; and
      - iii. the licensee and owner have no immediate or extended family, business, or financial relationship with one another other than as landlord and tenant.
  - 2) Persons. To any person who is delinquent in the payment of taxes, assessments or special charges related to the business or property for which the license or permit is sought.
- (B) Appeal. Alleged errors in the determination of non-issuance of the license may be appealed to the Finance Director within 5 days of notice of the non-issuance of the license or permit. The Finance Director shall issue a notice setting forth a date and time for hearing on the matter, not less than three (3) days nor more than fifteen (15) days after the date of the notice of hearing. At the hearing, the complainant and a representative of the City may be represented by counsel, may present evidence and call and examine witnesses and cross examine witnesses of another party. Such witnesses shall be sworn or affirmed by the person conducting the hearing. The Finance Director shall act as the decision maker. If the Finance Director is unable to so act, a decision maker shall be appointed by the City Manager.

A written determination shall be made directing the continued holding of the license or permit or the issuance of such license or permit. Within ten (10) days of the hearing, the written determination shall be mailed to all interested parties and shall be placed on file with the City Clerk by the decision maker. The written decision shall specify the reasons for the decision made.

Within ten days of the date of posting of the written decision, any person aggrieved thereby may appeal such decision to the Common Council. Appeals shall be taken by filing a notice of appeal specifying the grounds therefor with the City Clerk. On Appeal the Finance Director or other decision maker shall forthwith transmit all papers relating to such appeal to the City Clerk. The Clerk shall give notice of the appeal to the Common Council at its next regular meeting. The Council shall then fix a reasonable time for hearing of the same and give public notice thereof, as well as notice to the parties interested, and shall promptly decide the appeal. Any party to the

proceeding as well as any person who may be adversely affected by a decision of the Council may appear at the hearing and may produce witnesses and be represented by counsel. In addition to any other witnesses presented, the council may subpoena and examine such other persons as it may deem necessary for a fair and impartial hearing of the appeal. The Clerk shall swear or affirm all persons testifying before the council in regard to the appeal, and shall maintain a record of all testimony and other evidence as may be presented.

The Council may reverse, affirm, or modify the decision of the Finance Director or other decision maker appealed from, and to this end may direct issuance or non-issuance of any license or permit.

Within ten (10) days after the decision on any appeal, the City Clerk shall cause due notice thereof in writing to be mailed to all parties to the appeal as well as any other persons who may have appeared therein at their last known post office address. Such notice shall specify the grounds for the decision.

Any person aggrieved by the decision of the Common Council on appeal may seek such other legal relief as may be available.

- SECTION 8-89            RESERVED
- SECTION 8-90            RESERVED
- SECTION 8-91            RESERVED
- SECTION 8-92            RESERVED

**ARTICLE XII. UTILITY PIPES, POWER LINES AND POLES**

**SECTION 8-93            PIPE AND CONDUIT REGULATIONS; SCOPE.**

All water and gas pipes and all conduits for laying or protecting telephone, telegraph, or other electric wires in the public streets, alleys, or other public places of the City shall be subject to and governed by the following rules and regulations.

**SECTION 8-94            LOCATION AND ALTERATION.**

The City shall have the right at any time to designate the location of all water pipes, gas pipes, conduits, man-holes, distributing posts and other necessary appliances, and reserves the right, as against any improvements of the City, to order alterations in the location of such pipes, conduits, and appliances connected therewith. Before any such alteration is made, however, at least five (5) days notice in writing shall be given the president or the local officer in charge of the company, or person, or persons, affected by the proposed alteration, and reasonable opportunity shall be afforded such person or persons, or the representative of such company, or any citizens interested, to be heard thereon; but when any such alteration shall be so ordered, the owner or owners of said pipe or conduit shall, within ten (10) days thereafter, commence such alteration and complete the same as soon as practicable. Upon their failure so to do, the City may perform said work at the proper charge or cost to the said owner, and the person failing to comply with said order shall be deemed in violation of this Section.

**SECTION 8-95            APPROVAL OF MATERIAL, SIZE, ETC.**

All conduits, manholes and other appliances or fixtures shall be of such material, size and dimensions as shall be approved by the City Manager, the City Engineer, Board of Public Works, and the City Attorney.

#### **SECTION 8-96 PLAN TO BE SUBMITTED.**

Before any person shall lay a conduit for telephone, telegraph or other electric wires upon any street or alley, such person, persons corporation or association shall submit to the City Manager, Engineer, Board of Public Works and City Attorney the route of proposed conduit, stating the name of the streets or alleys thereof, and the exact line and location of the proposed conduit, its distance from the gutter, its depth, the manner of laying the same and of carrying said wires or cables, and location of the manholes and distributing poles. No such conduit shall be laid until the written consent and approval of the City Manager, City Engineer, Board of Public Works and the City Attorney shall first be obtained.

#### **SECTION 8-97 MANNER OF LAYING CONDUIT.**

- (A) The conduit shall be laid so as not to interfere with the drainage of the street, or interfere with or damage the streets, water or sewer pipes, or other public or private property. When the conduit would come into contact with any water, sewer, gas or other pipe, it shall be laid as directed by the City Engineer. Nothing herein contained shall prevent the laying of conduits under any stream or electric railway. It shall be the duty of the City Manager, City Engineer, Board of Public Works and City Attorney to see that the grade of said conduit is sufficiently deep so that it shall not be necessary thereafter to relay said conduit in improving the street; but whenever it shall be necessary to lower said conduit, the work shall be done at the expense of the owner or owners thereof.
- (B) The person laying said conduit shall immediately follow the opening of the ditch with the laying of the conduit, and not more than one (1) block of ditch shall be open at one time. The ditch shall be re-filled as directed by the City Engineer and Board of Public Works. The ditch shall be so filled as to leave the street in good condition as it was in before the work was commenced. If at any time within one (1) year after the work is completed, the street is defective by reason of laying such conduit, it shall be repaired at the cost of the person laying the same.

#### **SECTION 8-98 CITY TO HAVE USE OF CONDUIT**

The City shall have the right to use, free of cost, for the use of its Fire and Police Departments, any conduits laid in the streets, alleys or other public places, and the owner of the conduit shall furnish to the City, at reasonable cost, all the wires necessary for the use of said Fire and Police Departments; and no such conduit shall be removed by the owner, or any other person, until the Chiefs of police and Fire Departments shall have been reasonably notified of the contemplated removal. The Chief of the Fire Department may remove any telephone, telegraph or other electric wire interfering with the proper operation of the Fire Department.

#### **SECTION 8-99 INDEMNITY AGREEMENT.**

Every person laying any conduit as herein mentioned shall prior to the laying of the same, file an agreement with the City Clerk, saving the City harmless from any and all injury and damage of every kind resulting therefrom or from negligence in the construction or operation thereof, or from the wires therewith connected; and also an agreement giving to the City the use of the conduit, as hereinbefore prescribed.

**SECTION 8-100 SAFE ERECTION OF WIRES.**

All such wires must be so carried, placed and protected to avoid all danger of communicating fire by means of contact with other wires or conductors, or in any other manner to avoid to public or private property injury.

**SECTION 8-101 FRANCHISES.**

The construction or laying of any such conduit shall be deemed an acceptance by the person so laying or constructing the same, of all the conditions and provisions herein contained; and this Chapter so far as applicable, shall be deemed and become a part of all franchises heretofore or hereafter granted for the use of telephone, telegraph or other electric wires.

**SECTION 8-102 DECISIONS OF OFFICIALS.**

- (A) In all matters referred to the City Manager, City Engineer, Board of Public Works and City Attorney, they shall act as one body, the City Manager being chairman thereof; and their proceedings, decisions and orders shall be reduced to writing, signed, and filed with the City Clerk, who shall report the same from time to time to the Common Council.
- (B) Should the City Manager, City Engineer, Board of Public Works and City Attorney fail to agree on any matters referred to them for decision, the said matters shall be referred to the Common Council for its decision.

**SECTION 8-103 POWERS RESERVED.**

Nothing contained in this Article shall be construed so as to in any manner affect the right of the City in the future to prescribe any other mode of conducting such wires over or under its thoroughfares. The terms and provisions of this Article shall apply as well to renewals of or changes in existing lines as to the original construction of any line of conduits in the City, and no conduit shall be laid unless some of the parts thereof are intended for present use.

**SECTION 8-104 WIRES PROHIBITED ON CERTAIN STREETS.**

- (A) No wires carrying or capable of carrying electric current shall be strung or suspended over or along or permitted to remain so strung or suspended upon the following streets: High Avenue from Commerce Street to Division Street; Pearl Avenue from the east side of Commerce Street to the east of Market Street; Market Street from Algoma Blvd. to the north side of Pearl Avenue.
- (B) This Section shall not apply to the wires now existing on the east side of Market Street its junction with Commerce Street north to Algoma Blvd., nor to the necessary wires now suspended over street intersections supporting electric lamps used by the City.
- (C) No telegraph or telephone wires shall be strung or suspended over or along the following named streets, to-wit: State Street from Washington Avenue to Ceape Avenue, Washington Avenue from North Main Street to State Street, Waugoo Avenue from North Main Street to State Street, Otter

Avenue from North Main Street to State Street, nor on any other street or parts of streets where underground conduits have been laid for such wires.

**SECTION 8-105      REMOVAL OF IMPROPERLY ERECTED WIRES.**

Any wires maintained or erected contrary to the terms of the preceding Section, may be summarily removed by order of the Board of Public Works.

**ARTICLE XIII.    PENALTIES**

**SECTION 8-106      PENALTIES.**

Any person who shall violate any of the provisions of this Chapter or of any Section thereof, shall upon conviction thereof, be punished by a forfeiture of not less than \$75.00 nor more than \$500.00, together with the costs of prosecution, and in default of payment thereof, by imprisonment in the County Jail for a period not to exceed sixty (60) days. Each day of violation shall constitute a separate offense.