

Sec. 7-2-14 Conditions of License.

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

- (a) **Premises Inspections; Consent to Entry.** It shall be a condition of any license issued hereunder that the licensed premises, delivery vehicles and any of the business' books of account, bank statements, billings, invoices, accounts receivable records and any other documents relating specifically to the licensed business may be entered/inspected at any reasonable hour by any law enforcement officer of the Village of Elk Mound without a warrant for the purpose of determining whether the taxes imposed by Secs. 139.01 to 139.25, Wis. Stats., have been fully paid and whether Ch. 125, Wis. Stats., and Village of Elk Mound ordinances are being complied with. The licensee consents, as a condition of license, to the introduction of such items in evidence in any enforcement action or prosecution that may be brought for such offenses.
- (b) **Employment of Minors.** No retail licensed business under this Chapter shall employ any person under age eighteen (18), but this shall not apply to hotels and restaurants. Family members may work on the licensed premises but are not permitted to sell or dispense alcoholic beverages.
- (c) **Disorderly Conduct Prohibited.** Each licensed premises shall, at all times, be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.
- (d) **Licensed Operator on Premises.** There shall be upon premises, and in visual control of such premises, operated under a "Class B", Class "B", or "Class C" license, at all times, the licensee, members of the licensee's immediate family who have attained the legal drinking age, and/or some person who shall have an operator's license issued by the Village of Elk Mound, and who shall be responsible for the acts of all persons serving as waiters, or in any other manner, any fermented malt beverages to customers. No person other than the licensee shall serve fermented malt beverages in any place operated under a "Class B", Class "B", or "Class C" license unless he/she possesses an operator's license, or there is a person with an operator's license upon said premises at the time of such service.
- (e) **Health and Sanitation Regulations.** The rules and regulations of the State Board of Health governing sanitation in restaurants shall apply to all "Class B" liquor or "Class C" licenses issued under this Chapter. No "Class B" or "Class C" license shall be issued unless the premises to be licensed conform to such rules and regulations.
- (f) **Clubs.** No licensee shall give away or provide anyone on the premises with free alcohol, except a club may sell or give away any alcohol beverages to bona fide members and guests invited by members.
- (g) **Gambling Regulations; Video Gambling Machines.** For purposes of this Section, "gambling machine" shall be as defined in Sec. 945.01, Wis. Stats. Except as authorized

by state law, no gambling or game of chance of any type shall be permitted in any form upon any premises licensed under this Chapter or the laws of the State of Wisconsin. The premises for which a Class "B" or "Class B" license has been issued may have not more than five (5) video gambling machines on the licensed premises for entertainment purposes. The regulation and penalties of gambling machines shall be as prescribed in Secs. 945.02 – 945.041, Wis. Stats.

- (h) **Credit Prohibited.** No retail Class "A", Class "B", "Class A", "Class B", or "Class C" liquor, wine, or fermented malt beverage licensee shall sell or offer for sale any alcohol beverage to any person or persons by extending credit, except hotel credit extended to a resident guest or a club to a bona fide member. It shall be unlawful for such licensee or permittee to sell alcohol beverages to any person on a passbook or store order or to receive from any person any goods, ware, merchandise or other articles in exchange for alcohol beverages.
- (i) **Licensee or Permittee Responsible for Acts of Help.** A violation of this Chapter by a duly authorized agent or employee of a licensee or permittee under this Chapter shall constitute a violation by the licensee or permittee. Whenever any licensee or permittee under this Chapter shall violate any portion of this Chapter, proceedings for the suspension or revocation of the license or permit of the holder thereof may be instituted in the manner prescribed in this Chapter.
- (j) **Indoor Pyrotechnic Displays Prohibited.** No indoor pyrotechnic display or fireworks display of any kind is allowed in the licensed premises, nor any unlicensed property attached to the licensed premises.
- (k) **Commencement of Business.** Timely commencement of business and continuation of business is an ongoing condition of an alcohol beverage license issued under this Chapter. The Village Board may cancel or not renew any license pursuant to this Chapter if any of the following occurs:
 - (1) The privileges granted under the license are not exercised within ninety (90) days after the granting of the license;
 - (2) The business for which the license was issued is discontinued; or the business was not opened for business for the purpose of the license for a period of ninety (90) consecutive days or more; or the business was only open intermittently for period of one hundred fifty (150) days or less during the term of such license.
- (l) **Open Container.** It shall be unlawful for any person to whom a license has been granted to permit any person to leave the licensed premises with an open container containing any alcohol beverages.
- (m) **Sell or Serve on Public Street.** It shall be unlawful for any person to sell or serve, or offer to sell or serve any alcoholic beverages upon any public street within the Village of Elk Mound except in areas holding a sidewalk café permit pursuant to Section 7-2-22.
- (n) **Online Ordering and Curbside Pickup of Alcohol Beverages.**
 - (1) **General Licensing Requirements.**
 - a. No licensed establishment shall allow online purchases of alcohol beverages and curbside delivery of such purchases, commonly called a "click and collect" purchase, without first obtaining a change of premises authorization from the

Village to license that portion of the establishment's parking lot that will allow vehicles to park for purposes of picking up their online order.

- b. The licensed establishment shall file a detailed operations plan with their change of premises application which clearly explains how their click and collect operation would function. The operations plan shall include the licensee's protocol for assuring that underage or intoxicated persons do not pick up alcohol through the click and collect system.
 - c. The failure of a licensee to provide a detailed operations plan with their change of premises application shall result in the application not being considered.
- (2) **Compliance Requirements.**
- a. No establishment holding an alcohol beverage license shall allow online purchase and pickup of alcohol beverages unless the sale is consummated on the licensed premises. Alcohol purchases shall be clearly indicated on the sales receipt.
 - b. The pickup area for click and collect purchases shall be clearly defined with visible markings, signs and/or barriers.
 - c. Payment for the purchase shall be completed on the licensed premises and the transaction may not be completed until the purchaser is physically at the licensed premises and has presented valid photo identification that has been verified by a licensed operator employed by and on the premises of the licensed location.
 - d. The licensed operator shall verify that the person who has placed the click and collect order is the same person collecting the order. A third-party identification card is not acceptable.
 - e. If the click and collect purchaser is not the driver of the vehicle into which the order is being loaded, the licensed operator shall verify that the driver is a minimum of twenty-one (21) years old.
 - f. The sale and delivery of click and collect purchases shall be made only by a licensed operator.
 - g. The licensed operator shall report to his/her manager any click and collect purchaser who shows signs of alcohol consumption, and in conjunction with the manager, shall assess sobriety for purposes of approving or denying the sale.
 - h. No alcohol purchase is permitted if the purchaser fails to present valid photo identification.
 - i. The click and collect system used by a licensee must be such that when the sale of alcohol is denied other non-alcohol purchases are not affected.
- (3) **Customer Information to be Obtained and Retained.**
- a. An image (digital photograph, security camera system, etc.) shall be captured and retained by the licensee of each vehicle being loaded with a click and collect transaction involving the sale of alcohol. Such image shall be retained a minimum of thirty (30) days.
 - b. For each click and collect transaction involving alcohol sales, the seller shall collect and retain for thirty (30) days the following information:

1. The name of the purchaser.
 2. The purchaser's date of birth.
 3. The type of photo identification presented and the expiration date of that identification card.
 4. The license plate number and state of issuance of the vehicle into which the order is being loaded.
- (4) **Restrictions on Time of Sales.**
- a. Pick up of click and collect alcohol beverage orders shall be between the hours of 8:00 a.m. and 8:00 p.m. Orders placed after 3:00 p.m. cannot be picked up until the following day.
 - b. No events other than the delivery of click and collect orders shall be allowed within the area of the expanded licensed premises.
- (o) **Video Surveillance Equipment.** Video surveillance equipment may be required to be installed and operable in licensed establishments. Video surveillance is a condition of license when required to assist in ensuring compliance with state and local regulations and maintaining public health and safety.

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

Sec. 7-2-15 Closing Hours.

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

- (a) **Class "B" Licenses.**
- (1) No premises for which a retail "Class B" liquor, Class "B" fermented malt beverage, or "Class C" wine license has been issued shall be permitted to remain open for the sale of liquor or fermented malt beverages or for any other purpose between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday, and 2:30 a.m. and 6:00 a.m., Saturday and Sunday. There shall be no closing hours on January 1st.
 - (2) Hotels and restaurants, the principal business of which is the furnishing of food or lodging to patrons, bowling alleys, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but shall not sell liquor or malt beverages during the closing hours of Subsection (a)(1) above.
 - (3) No person may serve wine after 9:00 p.m. on premises licensed by a Temporary "Class B" wine license issued as provided in Section 125.51(10)b and Section 7-2-4(h) of this Code of Ordinances.

- (b) **Carryout Hours.** Between 9:00 p.m. and 8:00 a.m., no person may sell, remove, carry out or permit to be removed or carried out from any premises having a "Class A" or Class "A" license, intoxicating liquor in original unopened packages, containers or bottles or for consumption away from the premises. On "Class B" intoxicating liquor, Class "B" fermented malt beverage or Class "A" fermented malt beverage licensed premises, carryout shall be prohibited between 12:00 midnight and 6:00 a.m.

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

It shall be unlawful for any person or organization on a temporary basis to sell or offer to sell any alcohol beverage upon any Village-owned property or privately-owned property within the Village of Elk Mound, except through the issuance of a Temporary Class "B" Fermented Malt Beverage License, Temporary "Class B" Wine License or temporary change of licensed place permit under Section 7-2-11(c) issued by the Village of Elk Mound in accordance with Wisconsin Statutes and as set forth in this Section. A Temporary Class "B" Fermented Malt Beverage License or Temporary "Class B" Wine License authorizing the sale and consumption of beer and/or wine on Village-owned property or privately-owned property may be authorized by the Village Board provided the following requirements are met:

- (a) **Compliance with Eligibility Standards.** The organization shall meet the eligibility requirements of a bona fide club, association, lodge or society as set forth in Sec. 125.26(6), Wis. Stats., and shall fully comply with the requirements of this Section and Section 11-4-1. Members of an organization which is issued a temporary license and who are issued operator's licenses for the event may be required to attend a pre-event informational meeting to learn what rules and regulations apply and what the responsibilities of the bartenders and organization will be.
- (b) **Posting of Signs and Licenses.** All organizations issued a temporary license shall post in a conspicuous location at the main point of sale and at all remote points of sale a sufficient number of signs stating that no fermented malt beverage shall be served to any under-age person and that proper identification may be required.
- (c) **Fencing.**
- (1) If necessary due to the physical characteristics of the site, the Village Board may require that organizations install a double fence around the main point of sale to control ingress and egress and continually station a licensed operator, security guard or other competent person at the entrance for the purpose of checking age identification. Where possible, there shall be only one (1) point of ingress and egress. When required, the double fence shall be a minimum of four (4) feet high and a minimum of six (6) feet between fences.
 - (2) For indoor events, the structure used shall have suitable exits and open spaces to accommodate anticipated attendance. It should contain adequate sanitary facilities to accommodate the size of the group.

- (d) **Underage Persons Prohibited.** Except as provided in Section 7-2-4(h)(2)e regarding temporary wine licenses, no underage persons, as defined by the Wisconsin Statutes, shall be allowed to assist in the sale of fermented malt beverages or wine at any point of sale, nor shall they be allowed to enter or linger in the area of any point of sale.
- (e) **Licensed Operators Requirement.** A licensed operator shall be stationed at all points of sales at all times.
- (f) **Waiver.** The Village Board may waive or modify the requirements of this Section due to the physical characteristics of the licensed site.
- (g) **Insurance.** The applicant for a temporary fermented malt beverage or wine license may be required to indemnify, defend and hold the Village and its employees and agents harmless against all claims, death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the license, the applicant may be required to furnish a Certificate of Comprehensive General Liability insurance with the Village of Elk Mound. The applicant may be required to furnish a performance bond prior to being granted the license.

Cross Reference: Section 11-4-1.

Sec. 7-2-17 Revocation or Suspension of Licenses; Demerit Point System; Non-Renewal.

- (a) **Procedure.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 11, Chapter 4, of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by this Section.
- (b) **Failure to Timely Commence Business; Ceased Regular Operations; Loss of Premises.** A license issued under this Chapter may be revoked or not renewed in the event of any of the following situations occurring:
 - (1) **Failure to Timely Commence Business.** Timely commencement of business at a licensed premises is an ongoing condition of an alcohol beverage license issued under this Chapter. The Village Board may revoke, or not renew, any such license issued if the privileges granted under the license are not exercised within ninety (90) days after the granting of the license.
 - (2) **Loss of Premises.** Any licensee holding a license issued under this Chapter who loses the right to operate at that licensed premises shall forfeit any right he/she may have to the continued holding, or renewal, of such license without a license transfer approved by the Village. Abandonment of the premises shall be sufficient grounds for license revocation. The loss of the right to conduct business at the licensed premises

due to foreclosure, loss of a lease or similar occurrence for a period of ninety (90) continuous days or more shall be prima facie evidence of such abandonment, unless such time is extended or the license is transferred by specific action by the Village Board.

(3) ***Ceased Regular Operations; Intermittent Operations.***

a. Being open for business on a regular basis is an ongoing condition of an alcohol license issued under this Chapter. Failure to satisfy any of the following requirements may result in the revocation or nonrenewal of such license. A licensed establishment is deemed to have ceased required regular operations, or operates only on an intermittent basis resulting in the circumventing of the requirements of this Section, when any of the following occurs:

1. The business for which the license was issued is discontinued; or the business was not open for business to the public for the purpose of the license for a period of ninety (90) continuous days or more; or the business was only open intermittently for a period of one hundred fifty (150) days or less during the term of such license, unless such license was issued for a term of less than one hundred eighty (180) days, in which case this Subsection shall not apply; or
2. The alcohol beverage license is surrendered to the Village Clerk-Treasurer absent the issuance of a newly-granted license; or
3. The alcohol beverage license holder fails to maintain open and active accounts with its alcohol and/or food distributors; or
4. The alcohol beverage license holder fails to submit a renewal application to the Village Clerk-Treasurer before the required submittal date.

b. An establishment licensed under this Chapter is not deemed to have ceased regular operations if it is temporarily closed due to remodeling, fire or storm damage, or any type of license suspension and the requirements of this Subsection are met. Upon the occurrence of such an event, the Village may require that the licensee provide documentation regarding proof of good faith efforts to restore the damaged premises within a reasonable time, including, but not limited to, a written agreement with a contractor for performing the repair work within a specific completion timeline, a written statement by the license holder committing to a specific timeline for restoration completion if the license holder is personally performing the work, a copy of the order(s) for necessary repair materials, etc. The Village reserves the right to determine if such information provided is adequate to satisfy the requirements of this Subsection for a temporary exception; the Village may impose a restoration compliance timeline as a condition of license.

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

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

- (1) **Purpose and Definitions.** The purpose of this Subsection is to administratively interpret those portions of this Chapter, and related Code of Ordinances provisions, regarding the establishment of an alcohol beverage demerit point system to assist in determining if a license or permit holder should be subject to suspension or revocation procedures. The demerit point values and procedures described in this Section shall apply to the suspension or revocation of alcohol beverage licenses, Outdoor Consumption Permits, and Outdoor Events Permits issued under this Chapter.
- (2) **Point Schedule.** The scale of demerit points is listed according to the type of alcohol beverage violation. This demerit point system is used to identify habitually troublesome license or permit holders who have repeatedly violated state statutes and Village Ordinances for the purpose of recommending suspension or revocation of their alcohol beverage licenses and/or permits issued under this Chapter.

Type of Violation	Point Value
1. Sale of alcohol beverages without license or permit; sale of a controlled substance on licensed premises	100
2. Consumption of alcohol beverages after closing hours on licensed premises by licensee, bartender or employee	100
3. Possession or use of a controlled substance on licensed premises by licensee, bartender or employee	100
4. Use of a controlled substance on licensed premises by a patron	50
5. After hours consumption of alcohol beverages by a patron	50
6. Sale of alcohol beverages to underage person	50
7. Sale of alcohol beverages to intoxicated person	50

8. Underage person on premises	50
9. Intoxicated bartender; disorderly conduct on premises	50
10. Refusal to allow lawful search of the premises or refusal to cooperate with lawful police investigation	50
11. Assault of a police officer by licensee or operator	50
12. Outdoor serving/consumption without a permit	50
13. Outdoor event outside licensed premises without a permit	50
14. Transfer of license/permit without authorization	50
15. False statement on original application	50
16. Failure to post license	50
17. Open after permitted hours	50
18. Outdoor Consumption/Event Permit – open after hours	50
19. Outdoor Consumption/Event Permit – unauthorized sound or music	50
20. Outdoor Consumption/Event Permit – violation of other permit restrictions	50
21. Noise disturbing the public	50
22. Licensee, agent or operator not on premises at all times	25
23. Persons on premises after closing hours; illegal gambling on premises; smoking or vaping activity violating state/local law	25

24. Violations of carry-out hours	25
25. Licensee permitting person to leave licensed premises with open alcohol beverage; click and collect violations	25
26. Unsanitary conditions	25
27. Unlawful quantities in containers	25
28. All other violations of a state statute or local ordinances	25

- (3) **Violations How Calculated.** A twelve (12) month rolling period shall be used in determining the accumulated demerit points against a license/permit holder. The Village of Elk Mound shall use the date each violation was committed as the basis for the determination. A licensee/permittee is automatically assessed demerit points in accordance with the schedule in this Section upon a conviction or adjudication of a violation.
- (4) **Suspension or Revocation of License.**
- a. A licensee whose accumulated demerit points reach the threshold for license suspension or revocation shall, before such actions are taken, first come before the Village Board or a committee thereof. The purpose of such meeting is to inform the licensee that a demerit point threshold has been reached, or soon will be, and to discuss possible ways to remedy such violations. If warranted by the seriousness of the violations, the Village reserves the right to proceed directly to Subsection (d)(4)b-d below.
 - b. The Village Board shall call before it for purposes of revocation or suspension hearing all licensees who have accumulated one hundred (100) points in a twelve (12) month rolling period as a result of court imposed convictions or adjudications.
 - c. If the demerit point accumulation calculated from the date of violation meets or exceeds one hundred (100) points in a rolling twelve (12) month period, one hundred and fifty points in a twenty-four (24) month period or two hundred (200) points in a thirty-six (36) month period, a suspension of not less than three (3) days and nor more than ninety (90) days shall be imposed. If the license/permit is revoked, no other license/permit shall be granted to such licensee/permittee or for such premises for a period of twelve (12) months from the date of revocation. The point accumulation totals in this Subsection shall be cumulative, so that a previous offense within the relevant time period may be considered for purposes

of the suspension/revocation imposed regardless of whether such previous offense resulted in a prior suspension or other penalty.

- d. Demerit points that are assessed or any suspension or revocation imposed against one license/permit shall not affect the continued use of any other license/permit held by the licensee/permittee issued under this Chapter. The Village Board may also initiate a revocation or suspension hearing of a licensee who is subject to a pending criminal charge, or who has been convicted of any felony, misdemeanor or other offense that the circumstances of which substantially relate to the licensed activity regardless of whether such charge or conviction is included in the demerit point schedule.
- e. The procedure to be used for suspension or revocation shall be that found in Subsection (c) above.

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

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

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

of the licensee. All beer taps and automatic dispensers of alcohol beverages ("speed guns") shall be either disconnected, disabled or made inoperable.

Sec. 7-2-19 Outdoor Consumption Permits; Outdoor Events Permits.

- (a) **Purpose.** The Village Board finds that restrictions are necessary for outdoor consumption of alcohol, such as for, but limited to, beer/beverage gardens and sports activities, at premises holding "Class B" and Class "B" liquor and fermented malt beverages or "Class C" wine licenses in the Village of Elk Mound due to concerns arising from noise, disruptive behavior, density and related problems. This Section enacted pursuant to municipal police powers provides a framework for issuance of permits and regulatory controls for outdoor sports activities, beer/beverage gardens, outdoor entertainment, or similar outdoor consumption activities outside of the licensed premises.
- (b) **Outdoor Consumption Permit Required.**
- (1) **Generally.** No licensee shall conduct or sponsor any outdoor consumption of activities, such as beer/beverage gardens, on property forming any part of the real property on which the licensed premises exists without the prior approval of the Village Board and issuance of an Outdoor Consumption Permit pursuant to this Section.
- (2) **Permit Required for Outdoor Consumption.**
- a. No licensee shall permit the consumption of alcohol beverages on any part of the licensed premises not enclosed within the building, except under an Outdoor Consumption Permit granted by the Village Board. Such permits are a privilege in which no rights vest and, therefore, may be revoked by the Village Board at its pleasure at any time or shall otherwise expire on June 30 of each year or as specified in the permit.
- b. No person shall consume or have in his or her possession alcohol beverages on any unenclosed part of a licensed premises which is not described in a valid Outdoor Consumption Permit.
- c. The Village Board may also issue limited duration temporary permits for specified times for special events to be conducted on outdoor areas at licensed areas per Section 7-2-11(c).
- (c) **Permit Required for Outdoor Events/Activities.** No licensee shall conduct, permit or sponsor any outdoor sports activity, live music, or other outdoor event on the licensee's property outside of the licensed building without an Outdoor Event Permit granted by the Village Board. Outdoor Event Permits are a privilege and no rights shall vest in the permit holder; the Village Board may suspend or revoke the Outdoor Event Permit at any time. Annual permits for outdoor events shall expire on June 30 of each year or at such time specified in the permit.

- (d) **Applications for Outdoor Consumption Permits.** All applicants for an Outdoor Consumption Permit must hold a Class "B" or "Class B" license under this Chapter. Applicants shall file an application with the Village Clerk-Treasurer, with the required fee per Section 1-3-1, providing the following information:
- (1) Name of the licensee and address of the licensed premises;
 - (2) Licensee's telephone number and email address;
 - (3) If the application is not for an annual permit, the requested effective date and duration of the permit;
 - (4) An accurate description of the boundary of the area that the licensee seeks to be authorized under a permit and a list of all property owners and their addresses within one hundred and fifty (150) feet of such boundary;
 - (5) A description of the fencing, screening or other measures intended to establish and shield the boundaries of the outdoor consumption area; and
 - (6) A description of the licensee's plan for operating and controlling the outdoor consumption area.
- (e) **Applications for Outdoor Event Permits.** Applications for Outdoor Event Permits shall be filed with the Village Clerk-Treasurer no less than thirty (30) days before the date of the proposed event; the Village Board, however, may reduce this time limit upon showing of exigent circumstances. Applicants shall file an application with the Village Clerk-Treasurer, with the required fee per Section 1-3-1, providing the following information:
- (1) The name, address, telephone number and email address of the person or persons who will be responsible for the actual conduct of the activity or event;
 - (2) The date and duration of time for the proposed activity or event, or if the application is for an annual Outdoor Event Permit, a good faith estimate of the frequency of such events;
 - (3) An accurate description of the boundary of the area that the licensee seeks to be authorized under a permit, and a list of all property owners and their addresses within one hundred and fifty (150) feet of such boundary;
 - (4) A good faith estimate of the number of users, participants and spectators for the beer/beverage garden or proposed activity or event; and
 - (5) The licensee's plan for maintaining the cleanliness of the licensed area.
 - (6) A description of the fencing, screening or other measures intended to establish and shield the boundaries of the outdoor event area;
 - (7) A description of the licensee's plan for operating and controlling the outdoor consumption area, including plans regarding security, lighting and amplified sound.
- (f) **Notification of Application to Adjoining Property Owners.** The Village Clerk-Treasurer shall notify by first class mail all property owners, within one hundred fifty (150) feet of the proposed outdoor consumption area or outdoor event area, that an application for a permit has been submitted.
- (g) **Notice And Consultation With Village Officials.** The Village Clerk-Treasurer shall notify the Chief of Police within seven (7) days of receiving an application for an Outdoor Consumption Permit or Outdoor Event Permit and provide each such official with a copy.

The Village Clerk-Treasurer, Chief of Police and other relevant Village officials, or their representatives, shall meet with the applicant, perform an on-site inspection of the premises, and review the details of the proposed operational plan submitted by the applicant. The Village Clerk-Treasurer and/or Chief of Police shall report to the Village Board any additional details or information provided by the applicant that is not contained in the original application.

(h) **Review of Outdoor Consumption Permit Applications – Standards.** The Village Board shall review Outdoor Consumption Permit applications in light of the objectives of this Section and recommendations from Village officials. The following standards shall be applicable and are conditions applicable to any Outdoor Consumption Permit:

- (1) The outdoor sale of alcohol beverages (bar setup) in the outdoor consumption area is not permitted unless approved by the Village Board. Approval of an Outdoor Consumption Permit application shall not act to permit outdoor consumption of alcohol beverages on the property beyond the area specifically authorized by permit pursuant to this Section.
- (2) The designated outdoor consumption area should be located away from residential structures as much as possible, with a desired distance of a least one hundred (100) feet from any area zoned for residential use, except for conditional residential uses, mixed use premises within business districts, or residential uses located in the same licensed structure. This requirement may be increased or decreased at the discretion of the Village Board if unique site characteristics exist.
- (3) The outdoor consumption area shall be less than fifty percent (50%) of the gross floor area of the adjoining premises within the licensed building.
- (4) The outdoor consumption area shall be clearly designated and enclosed with a physical boundary such as a fence, wall, or other screening approved by the Village Board not less than three (3) feet in height. The Village Board may require further enclosure or screening surrounding the outdoor consumption area to reduce noise, enhance aesthetics, and to otherwise further the purposes of this Section.
- (5) The only entrance to the outdoor consumption area shall be through the principal building of the licensed premises unless an alternate entrance is fully supervised during operation. A licensed operator shall be responsible for supervising the outdoor consumption area at all times during which the outdoor consumption area is in operation.
- (6) Unless exceptional circumstances exist, as determined by the Village Board, the outdoor consumption area shall be at ground level. Unless a special waiver is granted by the Village Board, no outdoor consumption area shall be located closer than five (5) feet to a public right-of-way.
- (7) The outdoor consumption area design and plan for operation should have minimal adverse impacts on existing or potential surrounding land uses, public safety, and the general welfare of the Village. The Village Board may impose additional conditions

- on the permit, such as, but not limited to, restrictions on hours of operation, on amplified music and sound, on outdoor lighting, the need to obtain an Outdoor Events Permit, and other restrictions intended to further the purposes of this Section.
- (8) An Outdoor Consumption Permit shall only be issued if the licensed premise conforms to all applicable Village ordinances, including, but not limited to, zoning, fire code, health and safety, etc., ordinances.
 - (9) The Village Board shall consider the recommendations and reports of Village officials in making determinations regarding Outdoor Consumption Permit applications.
- (i) **Review of Outdoor Events Permit Applications – Standards.** The Village Board shall review Outdoor Events Permit applications in light of the objectives of this Section and recommendations from Village officials. The following standards shall be applicable and are conditions applicable to any Outdoor Events Permit:
- (1) The outdoor sale of alcohol beverages (bar setup) in the outdoor events area is not permitted unless approved by the Village Board. If outdoor consumption of alcohol is intended, the applicant shall be required to obtain a valid Outdoor Consumption Permit. Approval of an Outdoor Events Permit application shall not act to permit outdoor consumption of alcohol beverages on the property beyond the area specifically authorized by issuance of an Outdoor Consumption Permit pursuant to this Section.
 - (2) The designated outdoor events area should be located away from residential structures as much as possible, with a desired distance of a least one hundred (100) feet from any area zoned for residential use, except for conditional residential uses, mixed use premises within business districts, or residential uses located in the same licensed structure. This requirement may be increased or decreased at the discretion of the Village Board if unique site characteristics exist.
 - (3) Parking should be adequate for the proposed event(s).
 - (4) The outdoor events area shall be clearly designated and enclosed with a physical boundary such as a fence, wall, or other screening approved by the Village Board not less than three (3) feet in height. The Village Board may require further enclosure or screening surrounding the outdoor events area to reduce noise, enhance aesthetics, and to otherwise further the purposes of this Section.
 - (5) The design and plan of the outdoor events boundary area should allow for reasonable access for participants and spectators and should restrict access for all other persons. If an Outdoor Consumption Permit is also issued, a licensed operator shall be responsible for supervising the outdoor events area at all times during which the outdoor events area is in operation.
 - (6) Unless exceptional circumstances exist, as determined by the Village Board, the outdoor events area shall be at ground level. Unless a special waiver is granted by the Village Board, no outdoor events area shall be located closer than five (5) feet to a public right-of-way.

- (7) The outdoor events area design and plan for operation should have minimal adverse impacts on existing or potential surrounding land uses, public safety, and the general welfare of the Village. The Village Board may impose additional conditions on the permit, such as, but not limited to, restrictions on hours of operation, on amplified music and sound, on outdoor lighting, and other restrictions intended to further the purposes of this Section. Any amplified sound or music for the event(s) shall not exceed seventy-five (75) dB, measured at any boundary of the licensee's real property. Amplified music is only permitted if authorized in the Outdoor Events Permit.
 - (8) Sanitary facilities shall be adequate for the estimated frequency of events and the number of anticipated participants. The Village Board may require additional temporary restroom facilities to protect the public health.
 - (9) All garbage, debris, and other refuse from the event(s) shall be disposed of a minimum of once every twenty-four (24) hours during the activity and within twenty-four (24) hours after the event.
 - (10) Outdoor volleyball courts, horseshoe pits, or other similar such sports areas shall cease operation after 11:00 p.m. of each day in such outdoor areas.
 - (11) An Outdoor Events Permit shall only be issued if the licensed premise conforms to all applicable Village ordinances, including, but not limited to, zoning, fire code, health and safety, etc., ordinances.
 - (12) The Village Board shall consider the recommendations and reports of Village officials in making determinations regarding Outdoor Events Permit applications.
- (j) **Fencing.**
- (1) A Class "B" fermented malt beverage and/or intoxicating liquor or "Class C" wine license holder whose premises are expanded to front, rear and/or side yard outdoor areas such as patios, volleyball pits, outdoor sports areas, beer/beverage gardens and the like may be required to install fencing around the perimeter of the outside premises. Such fencing may consist of Village Board-approved wire mesh, solid vegetation, wood, plastic, or other similar material or a wall which will provide for an enclosed area on the outside of the licensed premises. Such barrier shall be a minimum of three (3) feet in height. The Village Board may modify or waive these fencing/screening requirement when a front yard use is proposed.
 - (2) Prior to installation of such fencing, screening or wall, a diagram of the proposed barrier shall be submitted to the Village to ensure that the proposed barrier will adequately protect neighbors, limit noise, and prevent or limit access by underage individuals, while still providing sufficient visibility to law enforcement and other authorities to ensure the premises is complying with alcohol beverage and other requirements.
 - (3) That in lieu of the fencing or barrier required above, the Village may authorize the use of security personnel to patrol such outdoor premises on a full time basis during such times that the outdoor premises are open for business.

- (4) Access to the outdoor consumption or event area shall *only* be through the main entrance to the Class "B" intoxicating liquor, Class "B" fermented malt beverage, and "Class C" wine licensed premises.
- (k) **State Statutes Enforced.**
- (1) Every permittee under this Section shall comply with and enforce all provisions of Chapter 125, Wis. Stats., applicable to Class "B" licensed premises, except insofar as such provisions are clearly inapplicable. Violation of the provisions of Chapter 125, Wis. Stats., shall be grounds for immediate revocation of the Outdoor Consumption Permit or Outdoor Events Permit by the Village Board.
- (2) All applicable statutes and ordinances shall be in full force and effect.
- (l) **Authority to Suspend Outdoor Alcoholic Beverages Permit.** Law enforcement officers shall have the authority to order any outdoor area regulated under this Section to be closed down at any time an Officer believes its continued operation is in violation of this Section, any other applicable Village ordinance, or provisions of Ch. 125, Wis. Stats.
- (m) **Violations.** Failure of the licensee to comply with any of the provisions of this Section shall be grounds for suspension, nonrenewal or revocation of the licensee's alcohol beverage license or permits under this Section.

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

- (a) **Authority.**
- (1) The Village Board of the Village of Elk Mound has explicit authority under Sec. 125.10(1), Wis. Stats., to adopt regulations governing the sale of alcohol beverages which are in addition to those set forth in Ch. 125, Wis. Stats.; and
- (2) The Village Board has authority under its general police powers set forth in Ch. 61, Wis. Stats., to act for the good order of the municipality and for the health, safety and welfare of the public; and may carry out its powers by regulation and suppression; and
- (3) The Village Board recognizes it lacks authority to regulate obscenity per Sec. 66.0107(3), Wis. Stats., and does not intend by adopting this Section to regulate obscenity, since nudity in and of itself is not obscene, it declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, non-obscene, erotic dancing in bars and taverns; and
- (4) Bars and taverns featuring live totally nude, non-obscene, erotic dancing have in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of real property, to harm the economic welfare of the communities and to negatively affect the quality of life of the communities; and such secondary effects are detrimental to the public health, safety and general welfare of citizens; and

- (5) The Village Board recognizes the U.S. Supreme Court has held that nude dancing is expressive conduct within the outer perimeters of the First Amendment to the United States Constitution and therefore entitled to some limited protection under the First Amendment, and the governing body further recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights; and
 - (6) However, the Village Board is aware, based on the experiences of other communities, that bars and taverns in which live, totally nude, non-obscene, erotic dancing occurs may and do generate secondary effects which the governing body believes are detrimental to the public health, safety and welfare of the citizens of the Village of Elk Mound; and
 - (7) Among these secondary effects are:
 - a. The potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses;
 - b. The potential depreciation of property values in neighborhoods where bars and taverns featuring nude dancing exist;
 - c. Health risks associated with the spread of sexually transmitted diseases; and
 - d. The potential for infiltration by organized crime for the purpose of unlawful conduct.
 - (8) The Village Board desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the Village of Elk Mound; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and
 - (9) The Village Board has determined that enactment of an ordinance prohibiting live, totally nude, non-obscene, erotic dancing in bars and taverns licensed to serve alcohol beverages promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such activity.
- (b) **Nude Dancing in Licensed Establishments Prohibited.** It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a licensed establishment which:
- (1) Shows his/her genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering; or
 - (2) Shows any portion of the female breast below a point immediately above the top of the areola; or
 - (3) Shows the covered male genitals in a discernably turgid state.
- (c) **Exemptions.** The provisions of this Section does not apply to the following licensed establishments; theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on

a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude erotic dancing.

- (d) **Definitions.** For purposes of this Section, the term "licensed establishment" means any establishment licensed by the Village Board of the Village of Elk Mound to sell alcohol beverages pursuant to Ch. 125, Wis. Stats. The term "licensee" means the holder of a retail "Class A", "Class B", Class "B", Class "A", or "Class C" licensee granted by the Village Board of the Village of Elk Mound pursuant to Ch. 125, Wis. Stats.
- (e) **Penalties.** Any person, partnership or corporation who violates any of the provisions of this Section shall be subject to a forfeiture pursuant to Section 1-1-6. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this Section constitutes sufficient grounds for suspending, revoking or non-renewing an alcohol beverage license under Sec. 125.12, Wis. Stats.

Sec. 7-2-21 Sidewalk Cafés.

(a) **Introduction; Purpose.**

- (1) No establishment may operate a sidewalk café without first having obtained approval of the Village Board, subject to the conditions of this Section. The provisions of this Section are applicable to all sidewalk cafés whether licensed or not to sell alcohol beverages.
- (2) There may exist a need for outdoor eating facilities in certain areas of the Village of Elk Mound to provide a unique environment for relaxation, social interaction, and food consumption.
- (3) Sidewalk cafés will permit enhanced use of the available public rights of way, will complement the restaurants operating from fixed premises, and will promote economic activity in an area.
- (4) The existence of sidewalk cafés encourages commerce but their presence may impede the safe flow of pedestrians. Therefore, a need exists for standards for the existence and operation of sidewalk cafés to ensure a safe environment.
- (5) The establishment of permit conditions and safety standards for sidewalk cafés is necessary to protect and promote public health, safety and welfare.

(b) **Definitions.**

- (1) **Sidewalk Café.** An expansion of a full service restaurant creating an outdoor dining facility on part of the public right of way that immediately adjoins the licensed premises for the purpose of consuming food or beverages prepared at the full service restaurant adjacent thereto.

- (2) **Full Service Restaurant.** An establishment whose food sales are greater than fifty percent (50%) of its gross receipts.
- (c) **Application; Permit Fee.**
 - (1) **Application Information.** An application for expansion of the premises or the licensed premises to include a sidewalk café shall be filed with the Village Clerk-Treasurer with the following information:
 - a. The name, address, email address, and telephone number of the person or persons who will be responsible for the sidewalk café;
 - b. An accurate detailed description and/or design including dimensions of the property and the licensee's property, if serving alcohol.
 - (2) **Permit Term.** Each permit shall be effective for one (1) year, from April 1 until March 31.
 - (3) **Transfer.** The permit issued may be transferred to a new owner only for the location and area listed in the permit. The transferred permit shall be valid only for the remainder of the period for which it was originally issued. A new certificate of insurance must be filed with the Village within thirty (30) days of the permit transfer.
 - (4) **Fee.** The application shall be accompanied by payment of a fee as prescribed in Section 1-3-1 for review of the application. The application shall expire on June 30th of each year.
- (d) **Requirements.** Sidewalk cafés approved under this Section shall be subject to the following requirements. The Village Board may impose additional requirements at its discretion:
 - (1) **Hours of Operation.** The service and consumption of alcohol beverages in the sidewalk café shall be limited to the hours of operation of the sidewalk café and Village ordinances.
 - (2) **Patrons.**
 - a. Alcohol beverages shall only be served to patrons of the establishment by a properly licensed server in the sidewalk café.
 - b. Patrons of the sidewalk café shall remain seated at the table when consuming alcohol beverages.
 - c. Alcohol beverages shall only be served to patrons of the establishment with food service in the sidewalk café.
 - (3) **Approved Site.** All sidewalk cafés shall be placed within approved boundaries of the sidewalk café site as determined by the Village Board. The Village Board shall make said determination by considering the following minimum factors: the distance the table and chairs of said café can extend into the sidewalk, upon considering the width of the sidewalk; no obstruction or interference with the public pedestrian walkway or interference with automobile traffic is allowed.
 - (4) **Paved Area Requirement.** The entire sidewalk surface for the proposed sidewalk café shall be paved. A "paved surface" includes concrete, asphalt, cement, brick,

pavers, or other impervious surface. Paved areas of the establishment's private property may be included within the boundary of the proposed café, if immediately adjacent to the paved public sidewalk. Trash receptacles shall be provided within the sidewalk café.

- (5) **Miscellaneous Requirements.** An establishment is not eligible for a permit if, in the opinion of the Village Board, the sidewalk café has obstructions on the adjacent sidewalk which interfere with the public right-of-way. The sidewalk café shall have at least one (1) unobstructed entrance, the position of which allows sufficient access to the public entrance for ingress and egress from and to the restaurant.
- (e) **Case-by-Determination.** Given unique circumstances, the Village Board may on a case-by-case basis modify or add to the above requirements.
- (f) **Responsibility of Permittee.** The permit holder shall, in addition to all other requirements of the law, the Village of Elk Mound alcohol beverage license, and this Section, take reasonable steps to ensure that alcohol beverages are consumed only by patrons of the establishment who are of legal drinking age, and not by passersby or persons who are not of age or who are obviously intoxicated. Reasonable steps may include, but not be limited to, the use of portable barriers or fences, supervision of the outside area by security and staff personnel, or electronic surveillance monitors. Failure to take reasonable steps and use them at all times in the sidewalk café is grounds for suspension or revocation of the sidewalk café permit.
- (g) **Responsibility of Patrons.** No person shall leave the sidewalk café area listed in the permit with an alcohol beverage. Any person doing so shall be in violation of the Village of Elk Mound outdoor consumption ordinance prohibiting the consumption of alcohol or possession of open containers on the streets.
- (h) **State Statutes Enforced.** Every permittee under this Section shall comply with and enforce all provisions of Ch. 125, Wis. Stats. Violation of the provisions of Ch. 125, Wis. Stats., shall be grounds for immediate revocation of the sidewalk café permit.
- (i) **Violations.** Failure of the permittee to comply with any of the provisions of this Section shall be grounds for suspension, non-renewal or revocation of the sidewalk café permit and/or the licensee's alcohol beverage license or licenses.

Sec. 7-2-22 Brewpubs.

- (a) **Definition.** The term "brewpub" shall mean a permittee who has been issued a permit by the Wisconsin Department of Revenue under Sec. 125.295, Wis. Stats., and which permits a small brewery to be operated in conjunction with a bar or restaurant type establishment for fermented malt beverages consumption on the premises.
- (b) **Statutory Standards.**
- (1) The manufacture of fermented malt beverages is permissible by a qualified permittee on the brewpub premises provided the entire manufacturing process occurs on the

- premises and not more than ten thousand (10,000) barrels of fermented malt beverage are manufactured in a calendar year by the permittee's brewpub group. A brewpub's brewpub group may sell, ship and deliver up to one thousand (1,000) barrels of fermented malt beverages in any calendar year to outside retailers. A brewpub may also package and sell in refillable containers exceeding twenty-four (24) ounces in volume ("growlers"), at the request of a customer and sold on the brewpub premises, of fermented malt beverages that have been manufactured on the licensed premises.
- (2) Section 125.295(2), Wis. Stats., requires that a brewpub also have issued or pending certain Village alcohol beverage licenses and a State-issued restaurant permit under Sec. 254.64, Wis. Stats.
 - (3) In all other respects brewpubs shall comply with the locational and operational requirements for taverns, bars and restaurants under Title 7, Chapter 2 of the Village of Elk Mound Code of Ordinances and zoning requirements of Title 13, Chapter 1 of the Village of Elk Mound Code of Ordinances.

Sec. 7-2-23 through Sec. 7-2-29 Reserved for Future Use.

Article B: Operator's License

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

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

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

Sec. 7-2-31 Procedure Upon Application.

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

7-2-31

requesting information from the State, surrounding municipalities, and/or any community where the applicant has previously resided concerning the applicant's arrest and conviction record. Based upon such investigation, the law enforcement authorities or other investigating authority, shall recommend, in writing, to the Village Board approval or denial of the application. If the law enforcement authorities or other investigating authority recommends denial, the investigating authority shall provide, in writing, the reasons for such recommendation.

Sec. 7-2-32 Duration.

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

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

- (a) **Fee.** The fee for a one (1) year standard operator's license, temporary operator's license, and provisional operator's license shall be as prescribed in Section 1-3-1. The non-refundable fee for a provisional license or temporary operator's license shall be as prescribed in Section 1-3-1, subject to change by the Village Board.
- (b) **Provisional Operator's License.**
 - (1) The Village Clerk-Treasurer may issue provisional operator's licenses in accordance with Sec. 125.17(5), Wis. Stats. The provisional operator's license shall expire sixty (60) days after its issuance or when an operator's license is issued to the holder, whichever is sooner.
 - (2) Pertinent law enforcement agencies shall, upon request, submit to the Village Clerk-Treasurer a report regarding the applicant's conviction history, if any.
 - (3) The applicant for such provisional license must present evidence to the Village Clerk-Treasurer establishing that the applicant is enrolled in an Alcohol Awareness Training Program established pursuant to Sec. 125.17(a), Wis. Stats.
 - (4) The Village Clerk-Treasurer may, upon receiving an application for a temporary provisional license, issue such a license without requiring the successful completion of the approved program as described herein. However, such provisional license shall be used only for the purpose of allowing such applicant the privilege of being licensed as a beverage operator pending his/her successful completion of the approved program, and the applicant shall also apply for a regular operator's license. No such provisional operators license shall be issued prior to a waiting period of less than ninety-six (96) hours [four (4) days], and the completion of a background check subject to limitations established by law.

- (5) A provisional operator's license may not be issued to any person who has been denied an operator's license by the Village Board, who has had his/her operator's license revoked or suspended within the preceding twelve (12) months, or who previously held an operator's license and who failed to complete the Alcohol Awareness Training Program without first successfully completing the program.
 - (6) No person shall be issued more than three (3) provisional licenses in any twelve (12) month period.
 - (7) The Village Clerk-Treasurer shall provide an appropriate application form to be completed in full by the applicant.
 - (8) The Village Clerk-Treasurer may revoke the provisional license issued if he/she discovers that the holder of the license made a false statement on the application.
 - (9) A provisional license shall not be renewed.
- (c) **Temporary Operator's License.** The Village Clerk-Treasurer may issue a temporary operator's license provided that:
- (1) The temporary operator's license may be issued only to operators employed by, or donating their services temporarily to, nonprofit corporations.
 - (2) No person may hold more than two (2) temporary operator's licenses per year.
 - (3) The temporary operator's license is valid for any period from one (1) day to fourteen (14) days, and the period for which it is valid shall be stated on the license.

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

- (a) **Post-Approval License Issuance.** 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 they are granted and shall give the applicant's name and address and the date of the expiration of such license.
- (b) **Denial Notice; Reconsideration.**
 - (1) 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 certified mail to, or served upon, the applicant at least ten (10) days prior to the Village Board's reconsideration of the matter. At such reconsideration hearing, the applicant may present evidence and testimony as to why the license should be granted.
 - (2) If, upon reconsideration, the Village 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), Wis. Stats., for review.
- (c) **Licensing Criteria.**
 - (1) Consideration for the granting or denial of a license will be based on:

- a. Arrest and conviction record of the applicant, subject to the limitations imposed by Sections 111.321, 111.322, and 111.335, Wis. Stats.;
 - b. The financial responsibility of the applicant;
 - c. The appropriateness of the location and the premises where the licensed operator's work is to be conducted; and
 - d. Generally, the applicant's fitness for the trust to be reposed.
- (2) If a licensee is convicted of an offense substantially related to the licensed activity, the Village Board may act to revoke or suspend the license.
- (d) **Consideration of Past Offenses.** 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 five (5) years immediately preceding, act to suspend such license for a period of one (1) year or more.

Sec. 7-2-35 Training Course.

- (a) **Responsible Beverage Server Training Course Requirement.** Except as provided in Subsection (b) below, the Village Board may not issue an operator's license unless the applicant has successfully completed a responsible beverage server training course at any location that is offered by a vocational, technical and adult education district and that conforms to curriculum guidelines specified by the board of vocational, technical and adult education or a comparable training course that is approved by the educational approval board or unless the applicant fulfills one of the following requirements:
- (1) The person is renewing an operator's license.
 - (2) Within the past two (2) years, the person held a Class "A", Class "B", "Class A", "Class B", or "Class C" license or permit or a manager's or operator's license.
 - (3) Within the past two (2) years, the person has completed such a training course.
- (b) **Provisional License Issuance Upon Course Enrollment.** The Village Board may issue a provisional operator's license to a person who is enrolled in a training course under Subsection (a) above and shall revoke that license if the applicant fails successfully to complete the course in which he or she enrolls.

- (c) **Additional Training Materials.** The Village Board may not require that applicants for operators' licenses undergo training in addition to that under Subsection (a), but may require applicants to purchase, at cost, materials that deal with relevant local subjects not covered in the course under Subsection (a).

Sec. 7-2-36 Display of License.

Each license issued under the provisions of Sections 7-2-30 through 7-2-37 shall be posted on the premises whenever the operator dispenses beverages or be in his/her possession, or carry a license card.

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

Violation of any of the terms or provisions of the State law or of this Chapter relating to operator's licenses by any person holding such operator's license shall be cause for revocation of the license. The demerit point system of Section 7-2-17 shall be applicable to holders of an operator's license.

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

Article C: Penalties

Sec. 7-2-40 Penalties.

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

Title 7 ► Chapter 3

Cigarette Licenses

7-3-1 Cigarette Licenses

Sec. 7-3-1 Cigarette Licenses.

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

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

Title 7 ► Chapter 4

Direct Sales; Transient Merchants; Mobile Food Establishments

7-4-1	Registration Required
7-4-2	Definitions
7-4-3	Exemptions
7-4-4	Registration
7-4-5	Investigation
7-4-6	Appeals
7-4-7	Regulation of Sales or Solicitation Practices
7-4-8	Suspension or Revocation of Registration
7-4-9	Special Event Vending Permit
7-4-10	Mobile Food Establishments

Sec. 7-4-1 Registration Required.

The purpose of this Chapter is to protect the residents of the Village of Elk Mound in direct consumer transactions, solicitation activities, sales from mobile food establishments. It shall be unlawful for any person, business or organization to engage in such activities within the Village of Elk Mound without being registered for that purpose as provided herein.

Sec. 7-4-2 Definitions.

In this Chapter the following definitions shall be applicable:

- (a) **Charitable Organization.** Shall include any benevolent, philanthropic, religious, patriotic or eleemosynary person, partnership, corporation, association or organization, or one purporting to be such registered under Sec. 440.42, Wis. Stats. Examples are, but not limited to, Boy/Girl Scouts, FFA, American Heart Association, etc.
- (b) **Clerk-Treasurer.** The Village of Elk Mound Clerk-Treasurer or Deputy Clerk-Treasurer.
- (c) **Direct Seller.** Any individual who, for himself or herself, or for a partnership, association, organization or business, sells goods or takes sales orders for the later delivery of goods, at any location other than the permanent business place or residence of said individual,

- partnership, association, organization or business, and shall include, but not be limited to, peddlers and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a prospective customer or donor.
- (d) **Goods.** Personal property of any kind, and shall include goods provided incidental to services offered or sold.
 - (e) **Merchandise.** Shall include personal property of any kind, and shall include merchandise, goods, or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of merchandise by a donor or prospective customer.
 - (f) **Permanent Merchant.** Any person who, for at least one (1) year prior to the consideration of the application of this Chapter to said merchant:
 - (1) Has continuously operated an established place of business within the Village of Elk Mound; or
 - (2) Has continuously resided in the Village and does business from his/her residence.
 - (g) **Person.** All humans of any age or sex, partnerships, corporations, associations or organizations, groups and any other description of a collection of people working in concert or for the same purpose or objective.
 - (h) **Solicitor.** Any person who plans, conducts, manages or carries on any campaign or drive in the Village for the purpose of soliciting contributions, travels from residence to residence for or on behalf of any charitable organization or any other person, organization, or who engages in the business of, or holds himself/herself out to persons in the State as independently engaged in the business of soliciting contributions for such purpose.
 - (i) **Transient Merchant.** Any direct seller who engages in the retail sale of merchandise at any place in the Village of Elk Mound temporarily, and who does not intend to become and does not become a permanent merchant of such place. The sale of goods includes donations required by the transient merchant for the retention of goods by a donor or prospective customer. For purposes of this Chapter, sale of merchandise includes a sale in which the personal services rendered upon or in connection with the merchandise constitutes the greatest part of value for the price received, but does not include a farm auction sale conducted by or for a resident farmer of personal property used on the farm, or the sale of produce or other perishable products at retail or wholesale by a resident of this state.

Sec. 7-4-3 Exemptions.

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

- (a) **Regular Delivery Routes.** Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
- (b) **Wholesalers.** Any person selling merchandise at wholesale to dealers in such merchandise.
- (c) **Agricultural Products.** Any person selling Wisconsin agricultural products which the person has grown.

- (d) **Deliveries by Permanent Merchants.** Any permanent merchant or employee thereof who takes orders at the home of the buyer for merchandise regularly offered for sale by such merchant within this county and who delivers such merchandise in their regular course of business.
- (e) **Requested Home Visits.** Any person who has an established place of business where the merchandise being sold or is offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested, a home visit by, said person.
- (f) **Prior Sales Transactions.** Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer.
- (g) **Services Not Offering Merchandise.** Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise.
- (h) **Auctions; Sales Authorized by Statute.** Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- (i) **Charitable Organizations; Limited Exemptions.** Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the Village Clerk-Treasurer proof that such charitable organization is registered under Sec. 440.41, Wis. Stats. Any charitable organization engaging in the sale of merchandise and not registered under Sec. 440.41, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this Chapter.
- (j) **Alleged Transient Merchants.** Any person who claims to be a permanent merchant, but against whom complaint has been made to the Village Clerk-Treasurer or Police Department that such person is a transient merchant, provided that there is submitted to the Village Clerk-Treasurer or Police Department proof that such person has leased for at least one (1) year, or purchased, the premises from which he/she is conducting business, or proof that such person has conducted such business in this Village for at least one (1) year prior to the date complaint was made.
- (k) **Persons Licensed by Examining Boards.** Any individual licensed by an examining board as defined in Sec. 15.01(7), Wis. Stats.
- (l) **Village Authorized Events.** This Chapter does not apply to transient merchants while doing business at special events authorized by the Village Board.
- (m) **Resident Minors; School Extracurricular Activities Fundraising.** Minors under eighteen (18) years of age who are residents of the Public School District of which the Village of Elk Mound is a part, and any other person regardless of age who is a participant in or is raising money for local school extracurricular programs, youth programs, or local sports organizations.
- (n) **School Fundraising.** Any group or individual selling merchandise for the primary purpose of raising funds for a public or private school engaged in the education of children from kindergarten through high school or any extracurricular group affiliated with such a school.

- (o) **Estate Sales.** Any family member holding an estate sale of the personal property of a deceased member of their family.
- (p) **Garage Sales.** Any person holding an occasional sale of personal property items from their residence (i.e., garage sale).
- (q) **Political or Religious Activities.** Any individual engaged in proselytizing, canvassing, campaigning or pamphleteering regarding political or religious views and not engaged in selling any merchandise or soliciting any funds or services.

Sec. 7-4-4 Registration.

It shall be unlawful for any direct seller, transient merchant or solicitor to engage in direct sales or solicitation for contributions of money or other items of value within the Village of Elk Mound without registration as provided herein:

- (a) **Application Information.** Applicants for registration must complete and return to the Village Clerk-Treasurer a registration form furnished by the Village which shall require the following information:
 - (1) Name, permanent address, email address, and telephone number, and temporary address, if any, of the person(s) conducting the sales or solicitation activities; such information shall be kept current with the Village Clerk-Treasurer during the application review period and at all times a registration is in effect;
 - (2) Height, weight, color of hair and eyes, and date of birth;
 - (3) Name, address and telephone number of the person, firm, association, organization or business that the transient merchant, direct seller or solicitor represents or is employed by, acts as agent for, or whose merchandise is being sold;
 - (4) Temporary address and telephone number from which business will be conducted, if any, and documentation that the applicant has permission to be at that temporary address;
 - (5) Copy of current driver's license or other form of current photographic identification;
 - (6) Nature of the business or solicitation to be conducted and a brief description of the merchandise offered and any services offered or the purpose of the organization for which solicitation is performed;
 - (7) Proposed method of delivery of merchandise, if applicable;
 - (8) Make, model and license number of any vehicle(s) to be used by applicant in the conduct of his/her business or solicitation;
 - (9) The last three (3) cities, villages, or towns where applicant conducted similar business or solicitation activities just prior to making this registration.
 - (10) Place where applicant can be contacted for at least seven (7) days after leaving the Village of Elk Mound; and
 - (11) Statement as to whether the applicant has been convicted of any crime or ordinance violation within the last five (5) years; the nature of the offense and the place of conviction.

- (b) **Identification and Certification.** Applicants shall also present to the Village Clerk-Treasurer for examination:
- (1) 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; and
 - (2) A state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than ninety (90) days prior to the date the application for license is made.
- (c) **Registration Fee.**
- (1) At the time of filing applications, a registration fee per Section 1-3-1 shall be paid to the Village Clerk-Treasurer to cover the cost of investigation of the facts stated in the applications and for processing said registration. Every member of a group must file a separate registration form. The primary applicant shall pay a registration fee per Section 1-3-1 plus a CIB investigation fee; each assistant under the application shall also be required to pay the CIB records check fee.
 - (2) The applicant shall sign a statement appointing the Village Clerk-Treasurer his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally.
 - (3) Upon payment of said fees and the signing of said statement, the Village Clerk-Treasurer may register the applicant as a transient merchant, direct seller or solicitor and date the entry. Registration fees shall be paid prior to the registration and prior to sales or solicitation activities starting. The registration fee shall be doubled in the event such activity is commenced prior to registration approval.
 - (4) Said registration shall be valid for a period of one (1) year from the date of entry, subject to subsequent refusal as provided in Sec. 7-4-5(b) below.
 - (5) No registration fee shall be charged to a charitable organization, its agents or employees. Solicitors of funds/donations for charitable or other such organizations from outside Dunn County shall comply with all disclosure and registration requirements herein, including payment of the cost of the CIB records check.
 - (6) Such registration shall be for a calendar year and shall expire on December 31 following its issuance, provided however, that the fee shall be one-half (1/2) of the amount stipulated for a calendar year if registration is applied for on or after July 1 of any year.
- (d) **Bond.** Every applicant who is not a resident of Dunn County or who represents a firm whose principal place of business is located outside of the State of Wisconsin shall file with the Village Clerk-Treasurer a surety bond in the amount of Five Hundred Dollars (\$500.00), conditioned that the applicant will comply with all provisions of the ordinances of the

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

Sec. 7-4-5 Investigation.

- (a) **Background Investigation.** Upon receipt of each application, the Village Clerk-Treasurer shall refer the application to the Police Department, and other appropriate law enforcement agency if deemed appropriate, which will be requested to make and complete an investigation of the statements made in such registration, said investigation to be completed within five (5) days from the time of referral.
- (b) **Basis for Denial of Application.** The Village Clerk-Treasurer shall refuse to register the applicant and issue a permit if it is determined, pursuant to the investigation above, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding three (3), in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five (5) years, the nature of which is directly related to the applicant's fitness to engage in direct selling or solicitation; or the applicant failed to comply with any applicable provision of Section 7-4-4(b) above.

Sec. 7-4-6 Appeals.

Any person denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the Village Board or, if none has been adopted, under the provisions of Sections 68.07 through 68.16, Wis. Stats. (Title 4 of this Code of Ordinances).

Sec. 7-4-7 Regulation of Sales or Solicitation Practices.

- (a) **Prohibited Practices.** Transient merchants, direct sellers and solicitors shall:
 - (1) Be prohibited from calling at any dwelling or other place between the hours of 9:00 p.m. and 9:00 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place; or remaining on

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

- (2) Not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any merchandise offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents. A charitable organization solicitor shall specifically disclose what portion of the sale price of merchandise being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the merchandise.
 - (3) Not impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
 - (4) Not make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one hundred (100) foot radius of the source.
 - (5) Allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.
- (b) **Disclosure Requirements.**
- (1) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant, 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 merchandise or services he/she offers to sell.
 - (2) If any sale of merchandise is made by a transient merchant, direct seller or solicitor or any sales order for the later delivery of merchandise is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than Twenty-five Dollars (\$25.00), in accordance with the procedure as set forth in Sec. 423.203, Wis. Stats.; the seller shall give the buyer two (2) copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Sections 423.203(1)(a)(b) and (c), (2) and (3), Wis. Stats.
 - (3) If the transient merchant or direct seller takes a sales order for the later delivery of merchandise, he/she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.
- (c) **Credit Cards.**
- (1) No transient merchant, direct seller or solicitor may present to or deposit into a credit card system for payment, or cause another another person to present or deposit into a credit card sales draft generated by a direct sale or contribution that is not a sale or contribution by that seller or solicitor to the holder of the credit card.

- (2) No transient merchant, direct seller or solicitor may, by means of a business relationship with a merchant, obtain access to a credit card system unless the access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer registered or authorized by the credit card system operator.
- (d) **Misrepresentations.** No person may employ, solicit or cause a merchant to violate this Section. No transient merchant, direct seller or solicitor may do any of the following, directly or by implication, in contacting a person for purpose of solicitation or sales:
- (1) Misrepresent the transient merchant's, direct seller's or solicitor's identity, affiliation, location or characteristics.
 - (2) Misrepresent the nature, purpose, or intended length of a direct sale or solicitation.
 - (3) Misrepresent the terms of the transaction or solicitation, or any document related to that transaction or solicitation.
 - (4) Misrepresent the cost of the goods or services offered or promoted by the direct seller or transient merchant, or fail to disclose the material cost payable by the consumer.
 - (5) Misrepresent the nature, quantity, material characteristics, performance or efficiency of the goods or services offered or promoted by the transient merchant or direct seller.
 - (6) Misrepresent or fail to disclose restrictions, limitations or conditions on the purchase, receipt, use or return of the goods or services offered or promoted by the direct seller or transient merchant.
 - (7) Misrepresent the material terms of a direct seller/transient merchant refund, cancellation, exchange, repurchase or warranties policies.
 - (8) Misrepresent that the direct seller/transient merchant is offering consumer goods or services free of charge or at a reduced price.
 - (9) Misrepresent that the direct seller/transient merchant/solicitor is affiliated with any governmental or third-party organization or association.
 - (10) Misrepresent any aspect of a personal investment opportunity offered to the customer, including any aspect such as risk liquidity, earnings potential or profitability.
 - (11) Represent that the transient merchant/direct seller has specially selected the customer unless such representation is true and the transient merchant/direct seller discloses to the consumer the specific basis on which the transient merchant/direct seller makes the representation.
 - (12) Represent that the direct seller or transient merchant is conducting a special sales promotion, is making a special limited offer to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered foods or services in a limited number of residences unless the representation is true and the direct seller/transient merchant concurrently discloses to the consumer the specific basis on which the representation is made.
 - (13) Represent that the direct seller/transient merchant is participating in a contest or conducting a survey unless such representation is accurate.

- (14) Fail to disclose, in connection with any purported offer of free goods or services in a direct sale, any cost which the consumer must incur and any and all conditions which the consumer must meet in order to receive those free goods or services.
- (15) Make any false, deceptive or misleading representation to the customer.

Sec. 7-4-8 Suspension or Revocation of Registration.

- (a) **Revocation of Registration.** Registration may be revoked by the Village President, Village Clerk-Treasurer or a law enforcement officer after notice 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 Chapter or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling or solicitation. The permittee may request, in writing, a hearing before the Village Board on such revocation.
- (b) **Hearing Notice.** Written notice of the hearing shall be served personally or pursuant to Section 7-4-4(c) on the registrant at least seventy-two (72) hours prior to the time set for the hearing; such notice contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

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

- (a) **Permit Required.** There shall be a per day fee for a Special Event Vending Permit per Section 1-3-1. The Village Board will determine whether an applicant party or organization qualifies for a Special Event Vending Permit to conduct specified activity related to a civic event, fair, festival or community promotion event on municipal property and public right-of-ways. The permit shall set forth the dates of the special event, its location parameters, and the location(s) where such business or vending will occur. Such permit shall be valid only during the dates and at the locations specified. In addition, the vendor shall have adequate liability insurance in force as required by this Section.
- (b) **Exclusive Vending Rights During Special Events.**
 - (1) During a special event the Village Board may, and after public hearing, suspend specifically enumerated restrictions on transient merchants, direct sellers and/or mobile food establishments on any street, alley, sidewalk, public property, boat landing and/or public park or recreation area. Alternative rules and procedures may be established by the Village Board for the special event.
 - (2) To encourage the integrity, comprehensiveness and success of a special event taking place on any street, alley, sidewalk, public property, boat landing or public park or

recreation area, the Village Board may, after public hearing, reserve up to fourteen (14) days during any vending year when some or all aspects of licensing and regulation of transient merchants, direct sellers, and/or mobile food establishments will be suspended in the perimeter of the special event. During any special event, the rules, guidelines and procedures as set forth in the resolution approved by the Village Board shall take precedence.

- (3) For each such specific day during which certain or all vending permits have been declared to be suspended, the Village Board may by separate resolution and after public hearing, authorize the sponsor of a special event to select vendors, mobile food establishments, salespersons and vending sites for the duration of the special event within its perimeter. The event's sponsor shall contact the Village Board at least one (1) week before the public hearing with an outline of the rules, regulations, fees, areas affected and a proposed resolution for exclusive vending rights. The determinations of the Village Board as to any specific day during which a transient merchant, direct seller and/or mobile food establishment permit will not be suspended shall be by resolution adopted in advance of such specific day.
- (4) No person holding a transient merchant, direct seller, solicitor, or mobile food establishment permit may sell or offer for sale any goods or foods during a Village-authorized special event unless authorized by the sponsor of the special event as specified above.

Sec. 7-4-10 Mobile Food Establishments.

- (a) **Purpose.** The purpose of this Section is to establish standards for mobile food vending activities with the objective of protecting the public health, safety and welfare, while accommodating a variety of commercial uses within appropriate areas in the Village of Elk Mound which promote an active and social pedestrian, business and tourism environment. This Section also recognizes the importance of conventional restaurant establishments ("brick and mortar" businesses with physical fixed structures) in the Village given their investments, property taxes generated, and the ongoing vitality they bring to the community; such establishments are generally open to serve the needs of the public throughout the calendar year. An overall objective of this Section is to provide a positive business climate in the Village of Elk Mound which provides fair business opportunities for both conventional fixed location restaurants and mobile food vending operations offering the public a variety of food choices.
- (b) **Definitions.** The following definitions and terms shall be applicable when used in this Section, except where the context clearly indicates a different meaning:
 - (1) **Edible Goods.** Includes, but are not limited to:
 - a. On-site prepared food, including, but not limited to, sandwiches, wraps, tacos, burritos and shaved ice.

- b. Prepackaged and mostly prepared food including, but not limited to, sausages, weiners, pizza, ice cream, and desserts.
- (2) **Ice Cream Truck.** A mobile food establishment which sells either frozen dessert, ice cream or frozen yogurt servings that are pre-packaged or enclosed in a wrapper or container having been wrapped, packaged or manufactured elsewhere or ice cream or similar frozen product that is not pre-packaged. An ice cream truck is considered to be a "mobile desserts establishment."
- (3) **Licensee.** A mobile food vendor that holds required permits and licenses necessary for operating a mobile food establishment from the Village of Elk Mound, the County, and the State of Wisconsin and its agencies.
- (4) **Mobile Desserts Establishment.** A mobile food establishment that serves individual portions of ice cream, ice milk, frozen custard, frozen yogurt, dessert mix, sundaes, and other frozen desserts which are either placed in a bowl or edible cone or are pre-packaged having been manufactured, prepared or wrapped in a licensed food preparation establishment. A mobile desserts establishment is a "mobile food establishment" under this Section.
- (5) **Mobile Food Establishment.** A restaurant or retail food establishment where food is served or sold from a movable vehicle, push cart, stand, trailer, boat or similar such unit which periodically changes, or is capable of changing, locations and requires a service base to accommodate the unit for servicing, cleaning, inspections and maintenance. It includes retail food service operations which are built to be mobile by design and constructed on wheels, a push cart or a motorized vehicle, vessel, truck, van, trailer, or boat to sell or serve food directly to the public. This definition includes movable concession stands and similar temporary stations not operating from a properly zoned and licensed fixed location restaurant and which are designed to operate as temporary or traveling food service establishments as those terms are used in ATCP 75, Wis. Adm. Code, "Appendix" ("Wisconsin Food Code") and Ch. 97, Wis. Stats. Not included in this definition/term are vehicles used solely to transport or deliver food, a common carrier regulated by the federal or state government, or an establishment under hire, contract or special request to provide food catering service to a private group, organization or business and is not serving directly to the general public on a retail basis, provided the establishment is in compliance with all state and county health and food code requirements.
- (6) **Mobile Food Vendor.** The licensed owner of a mobile food establishment, or the owner's employee or agent, or any business which sells edible goods from a mobile food establishment within the Village of Elk Mound.
- (7) **Sell.** The act of exchanging a good for profit or in return for a donation.
- (8) **Service Base.** An establishment operated under license or permit of an appropriate regulatory authority where food is manufactured, prepared, stored, portioned or packaged, or any combination of these processes, where such food is intended for

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consumption at another place, and where such units are serviced, cleaned, supplied, and/or maintained, and where the equipment, utensils, and facilities are serviced, cleaned and sanitized. The service base may also be the location where food for the mobile unit is prepared. All equipment at the service base must be in full compliance with the requirements of the Wisconsin Food Code [Ch. ATCP 75, Wis. Adm. Code – Appendix].

- (9) **Vehicle.** Any motor vehicle as defined in Sec. 340.01(35), Wis. Stats., or trailer as defined in Sec. 340.01(17), Wis. Stats. "Vehicle" shall also include any bicycle, boat, or other self-propelled device.
- (10) **Vend.** To sell or transfer the ownership of an article to another person for a price in money.

(c) **Licensing Requirements.**

(1) **License Required; Fees.**

- a. Unless operating in conjunction with a Special Event Vending Permit per Section 7-4-9, no mobile food establishment or mobile food vendor shall sell or vend, or offer to sell or vend, food products, goods, wares, merchandise, produce or any other similar items whatsoever in the Village without first having obtained a license from the Village Clerk-Treasurer and, in addition, licenses and permits from appropriate county and state agencies and authorities.
 - b. Each mobile food establishment unit or stand shall be licensed individually and separately.
 - c. Permits shall be issued on an annual basis, effective from January 1 through December 31 of the same year.
 - d. The license fee to operate a mobile food establishment shall be as established in Section 1-3-1. If an applicant requests a license under this Section for an existing Village-based restaurant or other business which also sells food to additionally vend from a mobile food establishment location, such license fee shall be as prescribed in Section 1-3-1.
 - e. Required fees shall be paid at the time of license application.
 - f. Mobile food establishments exempt from the fee requirements of this Section are those operated by tax-exempt, non-profit organizations granted exemption under Section 501(c)(3) of the Internal Revenue Code or other educational institutions, churches, religious organizations, educational or benevolent organizations, or youth organizations operating not for profit for local benefit for the area including, but not limited to the Village of Elk Mound, to raise funds for such purposes; or operated by the Village of Elk Mound.
- (2) **License Renewals.** Upon renewal of a mobile food establishment license, each applicant shall reapply and provide the Village Clerk-Treasurer with documentation of information which is new or changed from the original application, along with the renewal fee prescribed in Section 1-3-1. The applicant shall submit the application

and renewal fee within thirty (30) calendar days after the expiration to be considered a renewal request.

- (3) **Transfer of License; Unit Specific License.** A license issued under this Section shall not be transferable from person to person; in such circumstances, a new application is required. A license is valid for one (1) vehicle, cart, trailer or other vending unit and shall not be transferable between vehicles.
- (4) **Alteration of License; Failure to Display License.** No person shall alter or change in any manner a license issued under this Section, and such alteration or the failure to display the license in a conspicuous location on the mobile unit or stand or to show the license upon the demand of any Village enforcement official or actual or prospective customer shall be cause for license suspension or revocation.

(d) **License Application Requirements.**

- (1) **Required Applicant Information.** Applications to operate a mobile food establishment unit shall be filed by the owner of the unit with the Village Clerk-Treasurer and shall include the following information:
 - a. Name, address, telephone number(s) and email address of the person, firm, association, or business that owns the unit.
 - b. Birth date, height, weight, and eye/hair color of the applicant.
 - c. The length of time for which the right to conduct business is requested.
 - d. The location(s) from which the applicant desires to operate the unit.
 - e. The make, model and license number of any mobile food establishment and transport vehicle to be used in the operation.
 - f. A copy of the applicant's valid food and beverage licenses/permits required and issued by the State of Wisconsin and the County, including, but not limited to, a Seller's Permit from the Wisconsin Department of Revenue, and a Mobile Food Establishment License and Service Base License issued by the Wisconsin Department of Agriculture, Trade and Consumer Protection.
 - g. A copy of any written permission to operate on private property, if applicable.
 - h. The address and ownership of the service base.
 - i. A copy of the vendor's proof of liability insurance as required herein.
 - j. A general description of the type of food products which will be offered to the public.
 - k. A general description explaining:
 1. Any power needs of the unit, including sources.
 2. Wastewater and solid waste storage of the unit and disposal of such wastes.
 3. Food preparation, cooking and storage that will occur on the unit.
 4. Potable water source.
 5. Any transportation or use of liquid or compressed fuels with the unit.
 - l. An explanation of the zoning district(s) in which the mobile food establishment would be located.

- m. If applicable, the three (3) locations where the applicant conducted business preceding the application, including a listing of any licenses or permits required and the governmental entity of issuance.
 - n. A statement as to whether the applicant has been arrested or convicted of any crime or ordinance violation, including the nature of the offense and the place of arrest and/or conviction.
 - o. If any persons other than the applicant will be operating the unit without the presence of the applicant, such persons shall also provide, as applicable, the information required in this Subsection.
- (2) **Identification.** At the time of filing of an application pursuant to this Section, the applicant shall present to the Village Clerk-Treasurer a driver's license or some other acceptable form of proof of identity with photograph.
- (3) **Insurance.** At the time of application, the applicant shall provide the Village Clerk-Treasurer with proof of liability insurance for each mobile food establishment. As evidence of liability insurance, the licensee shall provide a certificate of insurance, in a form acceptable to the Village, evidencing having in effect liability insurance and with a photocopy of the endorsement naming the Village and its officials, employees and agents as additionally named insured (a statement of such coverage on the certificate of insurance alone is not sufficient) in an aggregate amount of not less than One Million Dollars (\$1,000,000.00). If such policy is cancelled, not renewed, or is materially changed, the licensee shall promptly notify the Village in writing.
- (e) **Issuance of License or Denial.**
- (1) **Background Investigation.** Upon receipt of a complete application, the Village Clerk-Treasurer shall forward the application to the Police Department, other appropriate law enforcement agency and/or any other applicable municipal departments to review the application, conduct a background investigation, and make a recommendation regarding issuance of a license.
 - (2) **Application Determination.** Following review of the application for compliance with the requirements of this Section and receipt of the law enforcement authority's recommendation, the Village Clerk-Treasurer shall issue the mobile food establishment license, deny the application, or issue the license with conditions.
 - (3) **Application Denials.** An applicant for a mobile food establishment license may be denied when it is determined that:
 - a. The application contains a material omission or materially inaccurate statement.
 - b. The applicant is under eighteen (18) years of age.
 - c. The applicant has been convicted of any felony, misdemeanor, or ordinance offense which substantially relates to the licensed activity.
 - d. The circumstances of a pending criminal charge against the applicant substantially related to the licensed activity.
 - e. The applicant is found to have unpaid civil judgment(s) which relate to the responsibilities of the licensed activities. The relevance of such judgments shall

- be considered by the Village in light of the nature and the amount of the judgment and the relationship of the judgment to the purpose of the license.
- f. The applicant has failed to comply with any regulatory requirement of this Section and that, in the Village's sole discretion, there is a public safety, health or general welfare reason that supports the denial of the license application.
 - g. Complaints of a material nature have been received against the applicant in other communities in which the applicant conducted similar business.
- (4) **Appeals.** If the Village Clerk-Treasurer denies an application for a mobile food establishment license, the applicant may file a written appeals request with the Village Clerk-Treasurer within fifteen (15) days after the Village has mailed a notice of denial to the applicant. If the applicant files a timely appeals request, the Village Clerk-Treasurer shall schedule an appeals hearing before the Village Board or designated committee thereof. Following such hearing, the Village Board, or designated committee thereof, may only approve the application on appeal if the applicant is qualified under this Section, and conditions may be placed on such approval.
 - (5) **License Suspension or Revocation.** The Village Board, after notice and hearing, may revoke or suspend any license issued under this Section, for no less than ten (10) and no more than ninety (90) days, for violation of any provision of this Section, any state law or local ordinance which would make continued vending contrary to the public health, safety or welfare, or for fraud or misrepresentation in sales or solicitation under this Section. Written notice of the hearing shall be provided to the licensee a minimum of seventy-two (72) hours prior to the hearing date. The notice shall state the time and location of the statement and include a statement of the facts which the proposed revocation or suspension is based.
- (f) **Conduct of Business Requirements.** Mobile food establishments operating within the Village, and as a condition of license, shall comply with all of the following regulations:
 - (1) **Compliance With Regulations.** A licensee shall comply with all applicable state, county and local food, safety and health regulations and permits applicable to the unit and the related sale, storage and preparation of food and beverages, including, but not limited to, the Wisconsin Food Code.
 - (2) **Display of Licenses and Permits.** All state, county and local permits and licenses shall be conspicuously displayed on the mobile food establishment unit while in operation.
 - (3) **Inspections.** Licensees of a mobile food establishment and their employees shall permit inspections by state, county and local health and sanitation authorities. Public health and sanitation authorities may conduct follow-up inspections upon finding violations of sanitation and health requirements to verify compliance.
 - (4) **Service Base Requirements.**
 - a. Every mobile food establishment shall have a designated service base meeting the requirements of the Wisconsin Food Code [Ch. ATCP 75, Wis. Adm. Code – Appendix] to store and prepare food and supplies.

- b. A mobile food establishment shall return to its service base a minimum of once every twenty-four (24) hours for service, unit storage, equipment cleaning, discharging of solid or liquid wastes, refilling water tanks and ice bins, and storing of single-serve food items.
- (5) **Misrepresentation.** A licensee shall not fraudulently misrepresent the character, quality or quantity of any food article offered for sale or offer for sale any tainted or spoiled food, nor intentionally misrepresent to any prospective customer the purpose of his/her solicitation, the name of the business and its owner, the supply source of the food or goods for sale, or the disposition of the sale proceeds.
- (6) **Permitted Public Property Vending Locations; Authorized Zoning Districts.**
- a. The Village Board by resolution and accompanying map, adopted herein by reference, shall designate specific Mobile Food Establishment Vending Locations within the Village where vending from mobile food establishments is permitted, subject to compliance with the requirements of this Section. Vending is prohibited in other non-designated locations.
 - b. Mobile food establishments shall only operate in designated public right-of-way locations or municipal parking lots. Such locations are not reserved and may be used on a "first come/first used" basis. Mobile food establishments shall at all times comply with applicable traffic and parking regulations in such locations.
 - c. Mobile food establishments shall not operate in public parks, boat landings and recreational areas unless permitted under a Special Event Vending Permit [Section 7-4-9] or as authorized as part of a community, civic or promotional event specifically authorized by the Village Board (i.e., festival, special community event, food cart night, parade, etc.).
 - d. Unless otherwise excepted herein, no designated vending location shall be in an area zoned residential.
 - e. Venders shall only offer to the public food items from a mobile food establishment unit.
- (7) **Limits on Public Property Vending Locations; Required Setbacks; Vending Hours.**
- a. No mobile food establishment shall be located or conduct sales within two hundred (200) feet of a conventional restaurant unless the owner of such restaurant gives written permission to locate and operate at a closer distance. A copy of such written permission shall be provided to the Village.
 - b. A mobile food establishment unit owned and operated by a restaurant or other business may be permitted to be placed and operated on that business property located in the Village, provided all other applicable licensing, fees and regulatory provisions of this Section are complied with.
 - c. No mobile food establishment shall be operated within three hundred (300) feet of a school property.
 - d. No mobile food establishment shall be operated within two hundred (200) feet of a Village park, boat landing or recreation area during hours any authorized concessions are being sold from any building or pavillion therein.

- e. No mobile food establishment shall be operated within five hundred (500) feet of any carnival, fair, festival, special event or civic event sanctioned by the Village or under a Special Event Vending Permit unless written permission is given by the sponsoring organization of such event. A copy of such written permission shall be provided to the Village.
 - f. No more than two (2) mobile food establishment units shall be located per block.
 - g. No mobile food establishment on public property shall operate more than six (6) hours per day at a stationary location.
 - h. Permitted vending hours from public property are 8:00 a.m. to 9:00 p.m.
- (8) ***Vending From Private Property Locations.***
- a. Provided written permission is given by a private property owner, mobile food establishments may operate from that owner's private property. A copy of such permission shall be provided to the Village.
 - b. Mobile food establishment vending from private property locations may only be conducted on non-residential properties zoned commercial or industrial.
 - c. No more than two (2) mobile food establishments may operate from a private property parcel at one time.
 - d. All applicable licensing, fees and regulatory provisions of this Section shall be complied with when there is vending from private property locations.
- (9) ***Mobile Desserts Vending Locations.*** Mobile desserts establishments (i.e., ice cream vending trucks) may vend curbside from public right-of-way locations in any zoning district, excluding Village parks, boat landings and recreation areas. Mobile desserts establishments shall comply with all other licensing, fees and regulatory provisions of this Section.
- (10) ***Safety and Refuse Disposal Requirements.***
- a. Mobile food establishment units shall not obstruct any public street, terrace, trail access or visibility of street corners, driveways, cross walks, or intersections. No licensee shall locate a mobile food establishment within twenty (20) feet of the intersection of a sidewalk with any other sidewalk. Licensees shall take affirmative steps to direct customers waiting for service to refrain from causing any such obstructions.
 - b. No mobile food establishment shall be located within fifteen (15) feet of the extension of any building entrance or doorway to the curb line.
 - c. Mobile food establishments operating in an authorized public right-of-way shall serve and dispense food products from the curbside of the unit only at all times.
 - d. Mobile food establishments shall not create any dining area within a public right-of-way, including, but not limited to, stools, chairs, tables, benches or stand-up counters.
 - e. No food service shall be prepared, sold or displayed outside of the mobile food establishment.

- f. Mobile food establishments authorized to conduct business on a terrace or sidewalk area shall maintain within twenty-five (25) feet of its sales location a clean, sanitary, and hazard-free area, and shall not discharge or dispose of any material onto the street, terrace, sidewalk, ditch, gutters or storm drain. Such area shall be kept clean and free from refuse and litter at all times.
 - g. Operators of mobile food establishments shall provide a minimum of one (1) leak-proof container for deposit of waste.
 - h. Mobile food establishment licensees shall remove or otherwise properly dispose of all garbage, waste and litter generated by their operations and customers on a daily basis, including that waste and litter which may be reasonably viewed from the operation area of the unit on the ground or otherwise not properly disposed of.
- (11) **Utilities.** Mobile food establishments shall not connect to any public source of water, sewer disposal or electricity facilities unless specifically authorized by the Village prior to such use.
- (12) **Signage; Improper Use of Public Property.**
- a. Mobile food establishments shall not use any public property, such as, but not limited to, traffic signs, utility poles, municipal flower beds, or other amenities to attach, affix or place any signs, posters, electrical cords, ropes or other things used in its operations.
 - b. Signage may only be permitted when placed on the mobile food establishment unit. No separate free-standing signs are permitted.
 - c. All mobile food establishment units shall display signage which indicates the name of the operator and a valid telephone number. Such signage lettering shall be a minimum of three (3) inches in height and be in plain view to all patrons.
- (13) **Permitted Operators.** An on-street mobile food establishment shall only be operated by the person who has obtained a license under this Section or by an employee of the person who obtained a license under this Section.
- (14) **Vehicle Standards.**
- a. All mobile food establishments shall be in compliance with all applicable federal, state, county or municipal regulations regarding vehicle size. Any vehicle, trailer or other on-street units used for vending food shall be designed and manufactured specifically for the purpose of food vending.
 - b. All mobile food establishments shall be self-contained in regard to water, gas, electricity and equipment necessary for unit operation.
 - c. Mobile food establishment vehicles and trailers shall have valid registration and license plates as required by Chapter 341, Wis. Stats.
 - d. No flashing, blinking, chaser, or strobe lights are permitted on any mobile food establishment unit.
 - e. Amplified sound or music from a mobile food establishment unit is prohibited.

- (15) **Farmers Markets; Auctions.** Vendors selling produce and similar food products (i.e., honey, cheese, jams, cider, etc.) at a Village-sponsored farmers market are exempt from the provisions of this Section, as are food trucks serving attendees at a bona fide auction or estate sale.
- (g) **Penalties.** A licensee who violates any provision of this Section, or any condition of license, regulation or order made hereunder, shall be subject to the penalties found in Section 1-1-6, and be subject to possible license suspension or revocation.

State Law Reference: Ch. 97, Wis. Stats.; Ch. ATCP 75, Wis. Adm. Code

Title 7 ► Chapter 5

Regulation and Licensing of Fireworks

7-5-1 Regulation of Fireworks

Sec. 7-5-1 Regulation of Fireworks.

- (a) **Regulation of Fireworks.** Except as otherwise allowed by this Chapter, no person may possess, sell or use fireworks in the Village of Elk Mound. This Chapter shall constitute a local regulation adopted pursuant to Sec. 167.10(5), Wis. Stats.
- (b) **Definitions.** In this Section, "fireworks" means anything manufactured, processed or packaged for exploding, flying, jumping, emitting sparks or combustion. Common regulated fireworks include, but are not limited to:
 - (1) Firecrackers; M-60 or M-80 explosive devices; sky rockets or mortars; display wheels; torpedoes; bottle rockets; Roman candles; aerial salutes; or any fireworks of like construction or function; or
 - (2) Any devices commonly sold as fireworks containing nitrates, chlorates, oxalates, sulfides of lead, barium, antimony, mercury, arsenic, nitroglycerine phosphorus, or any of the same.
- (c) **Exclusions.** The general prohibition against fireworks in this Chapter shall not include any of the following (referred to as "Allowable Devices"). These are the only types of devices which may be possessed or used without a fireworks display permit or that may be sold to a person who does not have a permit by a party holding a non-temporary sales permit or a temporary stand permit:
 - (1) Fuel or a lubricant.
 - (2) A firearm cartridge, shotgun shell, ammunition, and/or blasting agents utilized or handled as provided by law or ordinance.
 - (3) The use, possession or sale of blank cartridges for theatrical purposes, for signal purposes at authorized athletic/sporting events, or use by law enforcement or military authorities.
 - (4) A flare used, possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
 - (5) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
 - (6) Tobacco or a tobacco product.

- (7) A cap containing not more than one-quarter (1/4) grain of explosive mixture, if the cap is used, possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
 - (8) A toy snake which contains no mercury.
 - (9) A model rocket engine.
 - (10) A sparkler on a wire or wood stick not exceeding thirty-six (36) inches in length or 0.25 inches in outside diameter that is designed to produce visible effects and which does not contain chlorate, perchlorate or magnesium.
 - (11) A device designed to spray out paper confetti or streamers and which contains less than one-quarter (1/4) grain of explosive mixture.
 - (12) A device designed to produce an audible sound but which does not explode, spark, move, fly or emit an external flame after ignition and which does not exceed three (3) grams in total weight.
 - (13) A fuseless device that is designed to produce an audible and visible effect(s), and that contains less than one-quarter (1/4) grain of explosive mixture.
 - (14) A stationary device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces an audible or visible effects.
 - (15) A stationary cylindrical fountain that consists of one or more tubes and that is classified by the federal Department of Transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
 - (16) A stationary cone fountain that is classified by the federal Department of Transportation as a Division 1.4 explosive as defined in 49 CFR 173.50.
- (d) **Fireworks Display Permits.**
- (1) ***Fireworks Display Permit Required.***
 - a. No person may use, ignite or display fireworks in the Village of Elk Mound without a fireworks display permit issued under this Subsection.
 - b. Fireworks display permits are issued, pursuant to state law, by the Village President or from the Fire Chief of the Village of Elk Mound as designated by the Village President to perform such function. Applications shall be made to the Village Clerk-Treasurer.
 - c. The Fire Department and law enforcement authorities shall be requested to provide recommendations regarding permit issuance, including possible permit conditions. A site inspection may be required before issuance of a permit.
 - (2) ***Fireworks Display Permit Exceptions.*** Subparagraph (d)(1) above does not apply to:
 - a. The possession or use of explosives in accordance with rules or general orders of the Wisconsin Department of Safety and Professional Services (SPS).
 - b. The disposal of hazardous substances in accordance with rules adopted by the Wisconsin Department of Natural Resources.
 - c. The possession or lawful use of explosive or combustible materials in any manufacturing process.
 - d. The possession or use of explosive or combustible materials in connection with classes conducted by educational institutions.

- e. A possessor or manufacturer of explosives in possession of a license or permit under 18 U.S.C. 841 to 848 if the possession of the fireworks is authorized under the license or permit.
- (3) **Who May Obtain Permit.** A permit under this Subsection may be issued only to the following:
- a. A public authority.
 - b. A fair association.
 - c. An amusement park.
 - d. A park board.
 - e. A civic organization.
 - f. Any individual or group of group of individuals.
 - g. An agricultural producer for the protection of crops from predatory birds or animals.
- (4) **Fireworks Display Permit Applications.**
- a. Applications for fireworks display permits shall be made in writing to the Village Clerk-Treasurer at least fifteen (15) days in advance of the date of the display, unless good cause can be shown for the necessity for a shorter time period. Such application shall provide the following information:
 - 1. Name, address, telephone number (landline and cellphone), and email address of the permit holder.
 - 2. The name of the permit holder organization.
 - 3. Proposed date and location of the display. A permit shall not be issued for multiple locations.
 - 4. Location and address where the fireworks will be stored, and the type of storage building.
 - 5. An adequate description of the kind and quantity of fireworks to be purchased and displayed.
 - 6. A site plan describing the premises.
 - 7. Payment of the fee for a fireworks display permit as prescribed in the Village's fee schedule in Section 1-3-1.
 - 8. Proof of liability insurance shall be filed with the Village at the time of application. Every permittee shall have and maintain adequate liability insurance with minimum limits of \$1,000,000.00 bodily injury and property damage, combined single limit coverage. The insurance policy shall name the Village of Elk Mound, its officers, employees and agents as additional named insureds. Said policy shall indemnify and defend the Village of Elk Mound, its officers, employees and agents against all claims, liability, damages, losses or expenses, whether caused by or contributed to by any alleged negligence of the Village, its officers, employees, or agents. Said policy shall specify that the Village of Elk Mound shall receive written notice thirty (30) days prior to any cancellation, non-renewal, or material changes in the policy.

9. Such other information as the Village may require to adequately review the application.
 - b. The Village may issue fireworks display permits allowing for the use and discharge of fireworks with a permit during the period from _____ to _____ only.
 - c. After a fireworks display permit has been issued, the sale, possession, use, and distribution of fireworks under such permit shall only be for that lawful purpose and event, and is non-transferable. A fireworks display permit shall not be issued for multiple dates, times and/or locations.
 - d. A fireworks display permit is only valid in the Village of Elk Mound.
 - e. A fireworks display permit may be rescinded after issuance by the Village should weather conditions become unfavorable.
- (5) **Fireworks Display Permit Application Provisions.** A fireworks display permit issued under this Chapter shall specify the following:
- a. The name and address of the permit holder.
 - b. The date, time and location of permitted fireworks use.
 - c. The date after which fireworks may be purchased.
 - d. The kind and quantity of fireworks which may be purchased.
 - e. Other requirements which the Village may impose as conditions of permit issuance (for example: times and manner of use; distances from spectators or buildings, etc.).
- (6) **Copy of Permit.** A copy of a fireworks display permit under this Subsection shall be given by the Village to fire and law enforcement officials at least two (2) days before the date of authorized use, per Sec. 167.10(3)(g), Wis. Stats. [Note: This requirement does not apply to small consumer fireworks which require a permit, such as those classified as Division 1.4 explosives under CFR 173.50, or those fireworks listed under Subsection (c) above. Display fireworks are those classified as Division 1.3 explosives under CFR 173.50].
- (7) **Minors Prohibited.** A fireworks display permit under this Subsection shall not be issued to a minor.
- (8) **Fireworks Display Permit Use Restrictions.**
- a. Every such display shall be handled and supervised by a competent adult operator.
 - b. The permittee group may authorize an individual to make purchases on its behalf. The authorized buyer for a permittee organization may only purchase the types and quantities of fireworks specified in the organization's permit. A permittee organization may not issue a blanket authorization to all of its members to purchase on behalf of the group. A person purchasing fireworks on behalf of the permittee organization shall possess a copy of the group's permit and the written authorization of the organization.

- c. The fireworks display permit shall specify the date on and after which fireworks can be purchased.
 - d. The fireworks to be displayed shall be of such composition, size, character, and so located, discharged or fired as to not be hazardous to property or unduly endanger any persons, as in the opinion of the Fire Chief and law enforcement authorities.
 - e. Fireworks used may only be discharged and displayed if such use is a minimum of twenty-five (25) feet away from any structure.
 - f. Use of fireworks under a display permit or devices exempt from permit requirements under Subsection (c) above are prohibited after 12:00 midnight.
 - g. A person issued a fireworks display permit for crop protection shall erect appropriate warning signs disclosing the use of fireworks for crop protection.
 - h. Any fireworks which remain unfired after the display shall be immediately disposed of in a safe manner in accordance with any applicable regulations of the State of Wisconsin. The permittee shall be responsible for inspecting the display site after the fireworks display for any undischarged fireworks.
- (9) **Limits on Use of All Classes of Fireworks at Public Display Sites.** No unauthorized person may use any type of fireworks described in Subsections (b) and (c) above at a site authorized under a fireworks display permit if the site and display is open to the general public.
- (e) **Possession of Fireworks – Fireworks Possession Permit.**
- (1) **Limitations on Possession.** No person shall have within their possession, own, hold on consignment, or otherwise be physically and/or legally in control of fireworks without a fireworks possession permit under this Subsection or a fireworks display permit or appropriate sales permit under this Chapter.
 - (2) **Fireworks Possession Permit.**
 - a. An authorized seller of fireworks may issue a possession permit to a person to possess fireworks within the Village of Elk Mound for purposes of possessing the fireworks while transporting them through the Village. A fireworks possession permit does not authorize the holder of such permit to use or resell fireworks within the Village of Elk Mound. The Village designates licensed sellers of fireworks as agents for the Village for the sale of possession permits. The Village Clerk-Treasurer shall approve the form of fireworks possession permits. The holder of a fireworks seller's permit who issues a fireworks possession permit shall maintain adequate records of the permits issued.
 - b. Resident fireworks wholesalers or jobbers may sell fireworks to non-residents pursuant to Sec. 167.10(4), Wis. Stats., but a non-resident may not use or possess fireworks within the Village without a proper permit.
 - c. No wholesaler, jobber or dealer may store or handle fireworks in premises unless the premises are equipped with fire extinguishers approved by the Fire Department.

- d. "No Smoking" signs shall be clearly displayed on the premises and the prohibition against smoking on the premises shall be enforced.
- e. No wholesaler, jobber or dealer may store fireworks within fifty (50) feet of a dwelling, a public assemblage location, or a place where gasoline or other flammable liquids are stored or sold in quantities of more than one (1) gallon.
- (3) **Fireworks Possession Permit Fee.** The charge for each fireworks possession permit shall be as prescribed in the Village's schedule of fees in Section 1-3-1.
- (f) **Limitations on Sale of Fireworks – Generally.** No person may sell or possess with intent to sell fireworks except:
 - (1) To a person holding a permit under Subsections (d) or (e)(2);
 - (2) To a municipality; or
 - (3) For a purpose specified under this Chapter.
- (g) **Fireworks Sales Permit – Non-Temporary Location.**
 - (1) **Permit Requirement.** No person may sell or possess with intent to sell fireworks from a non-temporary permanent location without a non-temporary fireworks sales permit from the Village Clerk-Treasurer. A non-temporary fireworks sales permit is required for a permittee and his/her premises where fireworks sales are conducted from a non-temporary permanent structure for three (3) months or more per calendar year. A non-temporary fireworks sales permit shall not be issued to a minor.
 - (2) **Permit Fee.** The annual fee for a non-temporary fireworks sales permit shall be as prescribed in the Village's schedule of fees. The entire permit fee shall be charged for every non-temporary fireworks sales permit for the whole or fraction of a year, and shall be paid when application is made for such permit.
 - (3) **Application Information.** The applicant shall provide with the application:
 - a. The address and structure description where the permit will be used;
 - b. The applicant's name, address, telephone number (landline and cellphone) and email address;
 - c. A description of the allowable devices to be stored and sold; and
 - d. The same application information for the owner of the property if not the same as the applicant operating the business enterprise.
 - (4) **Display of Permit.** The permittee shall at all times publicly and continuously display such non-temporary fireworks sales permit at such location. Such permit may only be transferred to a new location upon approval by the Village Board and payment of a transfer fee as prescribed in the Village's schedule of fees in Section 1-3-1.
 - (5) **Permissible Types of Fireworks for Sale.** Holders of non-temporary fireworks sales permits are permitted to sell or offer to sell fireworks devices defined in Subsections (b) and (c) above.
 - (6) **Compliance With Regulations.** All holders of a non-temporary fireworks sales permit shall comply with all local ordinances and federal and state regulations and statutes regarding the sale, transport or storage of flammable or explosive materials.

(h) **Fireworks Sales Permit – Temporary Stands.**

- (1) **Permit Requirement.** No person shall sell or offer to sell in the Village of Elk Mound allowable fireworks devices, as defined in Subsection (c) above, from a temporary sales stand without the issuance of a temporary fireworks sales stand permit from the Village Clerk-Treasurer. A temporary fireworks sales stand permit is required for a permittee and his/her premises where fireworks sales are conducted from a temporary structure, such as a tent, or location for three (3) months or less per calendar year. As a condition of permit application, the Village is authorized to conduct an investigation of the applicant to determine whether the applicant possesses the qualifications necessary for issuance of a permit under this Subsection. The investigating officials shall have five (5) business days from the time of application in which to report to the Village Clerk-Treasurer their findings and recommendations. A temporary fireworks sales stand permit shall not be issued to a minor.
- (2) **Permit Fee.** The fee for a temporary fireworks sales stand permit shall be as prescribed in the Village's schedule of fees in Section 1-3-1. The entire permit fee shall be charged and the fee shall not be pro-rated for period of less than three (3) months.
- (3) **Application Information.** The applicant shall provide with the application:
 - a. The address and stand description where the permit will be used;
 - b. The applicant's name, address, telephone number (landline and cellphone) and email address;
 - c. A description of the allowable devices to be stored and sold; and
 - d. The same application information for the owner of the property if not the same as the applicant operating the temporary sales stand. If the parties are different, written permission from the property owner to engage in such sales shall be filed with the application.
- (4) **Permissible Temporary Sales Locations.** Sales from temporary stands shall only be permitted from properties zoned commercial or industrial under the Village Zoning Code. Sales are prohibited from properties in other zoning classifications or from public properties or right-of-ways.
- (5) **Display of Permit.** The permittee shall at all times publicly and continuously display such temporary fireworks sales stand permit at such permitted location. Such temporary fireworks sales stand permit cannot be transferred to another party or location.
- (6) **Permissible Types of Fireworks for Sale.** All holders of a temporary fireworks sales stand permit are permitted to sell or offer to sell fireworks devices as defined in Subsections (b) and (c) above.
- (7) **Compliance With Regulations.** All holders of a temporary fireworks sales stand permit shall comply with all local ordinances and federal and state regulations and statutes regarding the sale, transport or storage of flammable or explosive materials.
- (8) **Additional Requirements.**
 - a. All signs associated with sales activities shall be located only on the premises for which the permit has been issued and shall comply with the Village's sign regulations. Such signs shall not be attached to any traffic control device or

- utility pole and shall not be located in a public right-of-way or encroach on the vision clearance triangle of any intersection.
- b. Each sales tent is required to have a Certificate of Flame Resistance" (most tents rented from commercial renters will meet this requirement). A copy of this Certificate shall be available for inspection. Tents that do not meet such flame resistance requirements cannot be used as a retail fireworks stand.
 - c. Sales tents/stands shall be located a minimum of fifty (50) feet from any place of public assemblage or place where gasoline or other flammable materials are being sold.
 - d. Each temporary stand shall be equipped with at least one five (5) pound ABC fire extinguisher. Based on the size of the tent, additional fire extinguishers may be required. Each fire extinguisher shall meet NFPA 10 service standards, shall be located in a visible location, and shall have an attached certified inspection tag.
 - e. A "No Smoking" sign shall be posted inside the tent and another such sign on the outside of the tent at the main entrance. Such signs shall be easily visible. The smoking prohibition shall be strictly enforced by all employees.
 - f. Each tent is required to provide at least one main aisle of five (5) feet unobstructed width maintained at all times. Main aisles shall be clearly marked with an "Exit" sign.
 - g. Fireworks for sale shall be unpacked and displayed on tables.
 - h. Any electric extension cords located where vehicles may drive over them or customers can walk over them shall be protected to prevent abrasion or breakage from traffic and minimize tripping hazards. Any extension cord shall be a commercial-grade heavy-duty cord approved for outdoor use.
 - i. If a portable generator is to be used with the stand, the generator shall be located a minimum of twenty (20) feet away from the fireworks stand. A barricade shall be constructed around the generator to prevent the public from coming into contact with the generator. Fuel for gasoline-powered generators shall be stored a minimum of fifty (50) feet away from the tent/stand.
- (i) **Seizure of Violating Materials.** The Fire Inspector or law enforcement authorities may seize, at the expense of the owner of the materials, all fireworks stored, handled, sold, offered for sale, possessed, or used by any person who violates this Chapter.
 - (j) **Fireworks Sales to Non-State Residents.** Per Sec. 167.10(2)(bg), Wis. Stats., fireworks vendors may sell fireworks to a person who is not a Wisconsin resident, but the nonresident person may not possess or use fireworks without a valid Village permit. A nonresident who lawfully purchases fireworks under a Village permit can possess and use those permitted fireworks in the Village pursuant to the terms of the permit or may transport the fireworks out of state.
 - (k) **Parental Liability.** A parent or legal guardian of any minor who knowingly permits such minor to have in his/her possession or to discharge fireworks prohibited by this Chapter shall be liable for any damage caused by such possession or discharge of fireworks.

(l) **Penalties.**

- (1) **Permit Violations.** A person who possesses or uses fireworks without a valid permit, or who sells fireworks to a person who does not have a valid permit, is subject to a forfeiture pursuant to Section 1-1-6. Such forfeiture may not exceed One Thousand Dollars (\$1,000.00) per Sec. 167.10(9)(b), Wis. Stats. Each firework illegally possessed, used, or sold may be a separate violation.
- (2) **Parents and Legal Guardians.** A parent or legal guardian who allows a minor to possess or use fireworks, excluding allowable devices under Subsection (c) above, is subject to a forfeiture pursuant to Section 1-1-6. Such forfeiture may not exceed One Thousand Dollars (\$1,000.00) per Sec. 167.10(9)(c), Wis. Stats.
- (3) **Injunctive Relief.** The Village of Elk Mound may obtain an injunction prohibiting a person from violating offenses under Sec. 167.10(8)(a), Wis. Stats.

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

Title 7 ► Chapter 6

Special Event Street Use and Block Party Permits

7-6-1 Special Event Street Use and Block Party Permits

Sec. 7-6-1 Special Event Street Use and Block Party Permits.

- (a) **Purpose.** The streets in possession of the Village of Elk Mound are primarily for the use of the public for vehicular travel. However, under proper circumstances, the Village Board may grant a permit for a special street use, subject to reasonable municipal regulation and control. Therefore, this Chapter is enacted to regulate and control the use of streets pursuant to a Special Event Street Use/Block Party Permit to the end that the health, safety and general welfare of the public and the good order of the Village of Elk Mound can be protected and maintained. Said authority to regulate is contained in Sec. 349.185, Wis. Stats.
- (b) **Permit Required.** It is unlawful for a special event to take place without a Special Event Street Use/Block Party Permit. The Village Board, in its discretion, shall determine whether a proposed event is most appropriately licensed under this Chapter or the provisions of Section 7-7-1 governing Large Public Gatherings/Assemblies Permits.
- (c) **Definitions.** As used in this Chapter:
 - (1) **Processions, Parades, Runs, Walks, Marathons, Bicycles Races, Etc.** Shall have their usual and customary meaning, and are special events under this Chapter.
 - (2) **Highways or Streets.** Has the meaning set forth in Sec. 340.01, Wis. Stats., and also includes areas owned by the Village of Elk Mound which are used primarily for pedestrian or vehicular traffic.
 - (3) **Special Events.**
 - a. Community events such as parades on Village streets, athletic events, charity walks and runs, music festivals, and other events that meet the definition in this Chapter. Such events are allowed subject to the reasonable requirements of this Chapter and of the policies and procedures of the Village pertaining to parks and recreation. The Village Board finds such requirements necessary to promote the equitable use of limited public lands, to allow for the efficient use of limited Village staff resources through proper planning for such events, and to protect the public health, safety and welfare.

- b. Specifically, a special event shall mean a scheduled public gathering of persons, on Village streets or property, to which the public is invited and over five hundred (500) persons are expected to attend in a single day; or at which over six (6) half barrels of beer are to be present; and which will reasonably require, based on Village of Elk Mound policies and procedures, the provision of Village support services to accommodate the event on public property. A special event is open to the public at a predetermined location on public property, including, but not limited to, Village parks, streets, and sidewalks. (Note: exceptionally large assemblies shall also be subject to the requirements of Title 7, Chapter 7 of this Code of Ordinances.)

(d) **Exceptions.**

- (1) This Chapter shall not apply to any of the following:
 - a. Any march, public assembly, or other activity protected by the First Amendment to the United States Constitution.
 - b. Village-sponsored events.
 - c. Funeral processions or military convoys.
 - d. Events exempted by contract with the Village of Elk Mound.
- (2) Any parade, etc., sponsored by any agency of the federal or state government, acting in its governmental capacity within the scope of its authority, shall be required to obtain a permit, however, it shall be exempt from the permit fee and insurance requirements contained herein.

(e) **Application.** A written application for a Special Event Street Use/Block Party Permit by persons or groups desiring the same shall be made on a form provided by the Village and shall be filed with the Village Clerk-Treasurer. A non-refundable application fee as prescribed by Section 1-3-1 shall be paid at the time of application. The Village Board may approve an agreement with a permit holder that provides for actual cost recovery by the Village in lieu of the fees stated in Section 1-3-1. The application shall set forth the following information regarding the proposed street use:

- (1) The name, address and telephone number of the applicant or applicants.
- (2) If the proposed street use is to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization and of the authorizing responsible heads of such organization.
- (3) The name, address and telephone number of the person or persons who will be responsible for conducting the proposed use of the street.
- (4) The date and duration of time for which the requested use of the street is proposed to occur.
- (5) An accurate description of that portion of the street proposed to be used, including a map.
- (6) The approximate number of persons for whom use of the proposed street area is requested, or the estimated number of participants or units comprising the usage.
- (7) The proposed use, described in detail, for which the Special Event Street Use/Block Party Permit is requested.

- (8) The assembly area, starting point, route to to be traveled and the termination point, as applicable.
 - (9) Copy of a current tax exempt identification number, if applicable.
 - (10) Any additional information which Village officials find necessary for a fair determination as to whether a permit should be issued.
- (f) **When Application Must Be Made.** A written application for a permit for any above-described function on the streets, highways or other public grounds under the jurisdiction of the Village shall be made by one of the organizers or officers to the Village Clerk-Treasurer no less than seven (7) days prior to the Village Board meeting at which the application is to be considered.
- (g) **Recommendations of Governmental Agencies.** The Village Clerk-Treasurer shall submit a copy of the application to pertinent law enforcement agencies and the Public Works Department for their recommendations.
- (h) **Representative at Meeting.** The person or representative of the group making application for a Special Event Street Use/Block Party Permit shall be present when the Village Board gives consideration to the granting of said Special Event Street Use/Block Party Permit to provide any additional information which is reasonably necessary to make a fair determination as to whether a permit should be granted.
- (i) **Discretionary Denial of Special Event Street Use/Block Party Permit.** An application for a Special Event Street Use/Block Party Permit may be denied if:
- (1) The proposed street or public property use is primarily for private or commercial gain.
 - (2) The proposed street or public property use would violate any federal or state law or any Ordinance of the Village of Elk Mound.
 - (3) The proposed street or public property use will substantially hinder the movement of police, fire or emergency vehicles, constituting a risk to persons or property.
 - (4) The application for a Special Event Street Use/Block Party Permit does not contain the information required above.
 - (5) The application requests a period for the use of the street or public property in excess of five (5) days.
 - (6) If sufficient supervision would not be provided as to reasonably assure the orderly conduct of the usage.
 - (7) The policing of the usage will require so large a number of persons and vehicles, including ambulances, as to prevent adequate service of the needs of the rest of the municipality.
 - (8) The usage will seriously hinder the movement of police and fire and other emergency vehicles as to create a substantial risk to persons and property.
 - (9) The conduct of the usage will substantially interrupt the safe and orderly movement of other traffic contiguous to its route.
 - (10) The usage is so poorly organized that participants are likely to engage in unsafe or destructive activity.

- (11) The proposed use could equally be held in a public park or other location. In addition to the requirements that the application for a Special Event Street Use/Block Party Permit shall be denied, as hereinabove set forth, the Village Board may deny a permit for any other reason or reasons if it concludes that the health, safety and general welfare of the public cannot adequately be protected and maintained if the permit is granted.
- (j) **Alcohol Sales.** It is the responsibility of the Special Event Street Use/Block Party Permit holder to obtain a Temporary Class "B" Fermented Malt Beverage license per Title 7, Chapter 2 of this Code of Ordinances, if alcohol is to be sold at the special event. The license holder shall, in addition to all other requirements of the law, the Village fermented malt beverage and/or liquor license, and this Section, take reasonable steps to ensure that alcohol beverages are consumed only by persons who are of legal drinking age, and not by persons who are not of age or who are intoxicated. Reasonable steps shall include, but not be limited to, the use of barriers and fences to enclose the area where alcohol is to be consumed, and supervision of the area by security and staff personnel. Failure to take reasonable steps and use them at all times when alcohol is sold is grounds for termination of the event, issuance of a Village ordinance citation, or denial of the fermented malt beverage or liquor license or Special Event Street Use/Block Party Permit in the future.
- (k) **Parks-Public Grounds.** A Special Event Street Use/Block Party Permit shall not exempt the permit holder or guests from the requirements of Title 12 of this Code of Ordinances regulating parks and public grounds.
- (l) **Public Streets and Sidewalks.** All use of public streets and sidewalks for special events shall be on routes approved by the Village Board or designee. The Village Board may designate what streets and sidewalks or what portions thereof may be used for a special event. It shall be the duty of the permit holder to obey any such designation when made. Failure to obey shall be a violation of this Subsection by the permit holder and may result in the termination of the event or issuance of a Village ordinance citation. A future Special Event Street Use/Block Party Permit may be denied based on a past violation of this Section.
- (m) **Insurance.** The applicant for a Special Event Street Use/Block Party Permit may be required to indemnify, defend and hold the Village and its officials/employees and agents harmless against all claims, liability, loss, damage or expense incurred by the Village on account of any injury to or death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the permit, the applicant shall be required to furnish a Certificate of Comprehensive General Liability Insurance with the Village of Elk Mound. The Special Event Street Use/Block Party Permit holder shall provide proof of liability and property damage insurance in the amount of at least One Million Dollars (\$1,000,000.00) per occurrence, with the Village of Elk Mound listed as an additional named insured. The applicant may also be required to furnish a performance bond or make a cash deposit with the Village of Elk Mound (all or some of which may be refunded post-event) prior to being granted the permit.

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

PETITION FOR STREET USE PERMIT FOR BLOCK PARTY

We, the undersigned residents of the _____ hundred block of _____ Street in the Village of Elk Mound, hereby consent to the _____ recreational or business use of this street for a block party between the hours of _____ and _____ on _____, the _____ day of _____, 20____, for the purpose of _____ and do hereby consent to the Village of Elk Mound to grant a Special Event Street Use/Block Party Permit for use of the said portion of said street for block party use and do hereby agree to abide by such conditions of such use as the Village of Elk Mound shall attach to the granting of the requested Special Event Street Use/Block Party Permit. We further understand that the permit will not be granted for longer than twelve (12) hours on the date hereinabove specified, and agree to remove from the street prior to the end of said period all equipment, vehicles and other personal property placed or driven thereon during the block party event for which a permit is granted.

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

(p) **Charge for Increased Costs.**

- (1) Where the Village Board determines that the cost of municipal services incident to the staging of the usage will be significantly increased because of the usage, the Village Board may require the permittee to make an additional payment into the general fund of the Village of Elk Mound, in an amount equal to the increased costs.
- (2) An applicant for a permit may be required to pay to the Village, before the permit is issued, a traffic-control fee in an amount established by the Public Works Department or designee. The traffic-control fee shall be based on consideration of the following information which shall serve as a standard to guide his/her discretion in setting the fee:
 - a. The route for the event;
 - b. The time of day the event or public assembly is to take place;
 - c. The date and day of the week proposed;
 - d. The general traffic conditions in the area requested, both vehicular and pedestrian, with special attention being given to the rerouting of vehicles or pedestrians normally using the requested area;
 - e. The number of marked and unmarked intersections along the route requested, together with the traffic-control devices present;
 - f. The number of marked and unmarked intersections and traffic-control devices if traffic must be completely rerouted from the area;
 - g. The estimated number of participants and vehicles;
 - h. The nature, composition, format, and configuration of the event or public assembly;
 - i. The anticipated weather conditions;
 - j. The estimated time or duration of the event or public assembly;
 - k. The plan of the applicant for emergency medical services;
 - l. Sufficient parking near the route to accommodate the number of vehicles reasonably expected, including provisions arranged for and made by the applicant for handicapped parking; and
 - m. Applicable fees as stated in Section 1-3-1.
- (3) The traffic-control fee shall cover the cost to the Village of providing sufficient officers to regulate traffic and maintain public order incident to the proposed event, march or public assembly. The fee shall not be increased by consideration of the nature, substance, or content of the subject matter or speech for which the event, march or public assembly is organized.

- (q) **Cleanup Requirements.** The holder of any Special Event Street Use/Block Party Permit issued under this Section shall return the street to the condition that existed prior to the use, by the time the permit expires. The Village will make such restoration in the event that the permit holder fails to do so and bill the permittee for the cost incurred by the Village in performing this work. Failure to make timely payment within a reasonable time after

receiving the statement for cleaning work shall constitute grounds for refusal to grant the permit holder any other permit in the future.

- (r) **Termination of a Special Event Street Use/Block Party Permit.** A Special Event Street Use/Block Party Permit for an event in progress may be terminated by the Village President, Village Clerk-Treasurer or a law enforcement officer if the health, safety and welfare of the public appears to be endangered by activities generated as a result of the event or the event is in violation of any of the conditions of the permits or ordinances of the Village of Elk Mound. The Village President, Village Clerk-Treasurer or a law enforcement officer has the authority to revoke a permit or terminate an event in progress if the event organizers fail to comply with any of the regulations in the street use policy or conditions stated in the permit.