

CHAPTER 4

LICENSES & PERMITS

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4.01 PENALTY. Any person who shall violate any provision of this chapter or who shall fail to obtain a license or permit when required by this chapter shall be subject to a penalty as provided in sec. 25.04 of this Municipal Code.

4.02 INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES.

(1) **STATE STATUTES ADOPTED.** The current and future provisions of Chapter 125, Wis. Stats., defining and regulating the types, sale, procurement, dispensing, and transfer of alcohol beverages, including provisions relating to the penalty to be imposed or the punishment for violation of such statutes, are adopted and made part of this section by reference. A violation of any such provision shall constitute a violation of this section. Any future amendments, revisions, modifications or additions of the statutes incorporated herein, are intended to be made part of this Ordinance in order to secure uniform statewide regulations of alcohol beverages in this State.

(2) **BASIC REQUIREMENTS.**

(A) **Occupancy Permit and/or Approved Plan of Operation Required.** No person on any licensed premises, as defined in this Ordinance, shall conduct any transactions regulated by this Ordinance unless a Licensee holds a valid Occupancy Permit and/or an approved Plan of Operation, as may be required, issued by the Municipality. The Occupancy Permit and/or approved Plan of Operation shall be specific in detail as to what area of the premises shall be licensed for the sale of alcoholic beverages. Any violation is grounds for suspension or revocation of any license or permit issued under this Chapter.

(B) **Seller's Permit Required.** No person on any licensed premises, as defined in this Ordinance, shall conduct any transactions regulated under this section unless a licensee holds and maintains a valid Seller's Permit as required under 77.52 Wis. Stats., issued to the premises and licensee described in the license during the period of licensing. Any violation is grounds for suspension or revocation of any license or permit issued under this Chapter.

(3) **APPLICATIONS.** A written application for any license or permit by the provisions of this Ordinance shall be on the form(s) provided by the Municipal Clerk.

(A) **Content.** All applications other than operator's licenses shall contain all the information required under Section 125.04(3), Wis. Stats., and any other information required by the Municipal Clerk. Operator's license applications shall be on a form prescribed by the Municipal Clerk containing all information deemed necessary, including but not limited to name, residence, age, plus a written request of the holder of the alcohol beverage license hiring the applicant.

(B) **Filing.** All applications for licenses and permits to sell alcohol beverages shall be filed with the Clerk of the Municipality in which the premises are located as required by State law. Operator's licenses and licenses issued under Section 125.26(6), Wis. Stats., for a picnic or other gathering lasting less than four (4) days must be filed with the Clerk at least 24 hours prior to granting of the license or permit.

(4) **FEES.**

(A) Licenses and permits may be issued by the Municipal Clerk under the authority of the Governing Body after payment of the appropriate fees and satisfaction of all conditions, which when so issued shall permit the holder to sell, deal or traffic in alcoholic beverages as provided in Chapter 125.

(B) Any applicable publication fee and/or application fee and/or investigation fee shall be submitted with the license or permit application as established in paragraph (D) below.

(C) The fees for licenses or permits which are not granted shall be refunded after deducting the application fee and all actual publication fees and investigation fees.

(D) Fees for partial licensing years may be prorated at the discretion of the Governing Body. In all cases when an alcohol beverage license is issued for a partial year, a minimum fee of \$25.00 and all actual publication fees and investigation fees must be paid.

(E) Once any license or permit is issued, no return of any payment shall be made regardless of whether the license or permit is used for the entire year.

(F) Fees for the following licenses shall be established by the Village Board from time to time by separate Resolution, provided that the fee shall be in an amount approved by chapter 125 Wisconsin Statutes:

1. Class "A" Fermented Malt Beverages License.
2. "Class A" Intoxicating Liquor License.
3. "Class A" Liquor (Cider Only).
4. Class "B" Fermented Malt Beverages License.
5. Class "B" Picnic License under SS 125.26(6) Wis. Stats.
6. "Class B" Intoxicating Liquor License.
7. The fee for a reserve "Class B" liquor license shall be \$10,000.00 for initial issuance.
8. "Class C" Wine License.
9. Operators' License - Operator licenses shall be issued for not less than a 13 month, nor more than a 24 month period expiring on June 30.
10. Provisional Operator License.
11. Transfer from One Premises to Another.
12. Temporary Operator License.
13. Publication Fee - See 985.08, Wis. Stats.125.04(3)(g)(6).
14. Investigation Fee
15. Booklet Fees
16. Program Fees
17. Application Fee
18. Cigarette and Tobacco Retailer License.

(5) INVESTIGATION. Upon receipt of a license application under the provisions of this Ordinance, the Municipal Clerk shall forward a copy of the application to the appropriate persons to conduct an investigation of the applicant(s) as set forth below.

(A) All Alcoholic Beverage Licenses. The Police Department, Fire Department, Health Department, and Building Inspector and other persons authorized, may conduct an investigation and inspection of the premises mentioned in the applications, to determine if the premises comply with all applicable regulations, ordinances and laws. The Village shall investigate all persons included in the application to determine the suitability and character of the applicants.

(B) Operator's Licenses. The Village shall conduct an investigation of all applicants to determine the suitability and character of the applicant.

(C) Reports. Upon completion of all investigations, written reports shall be submitted to the Municipal Clerk. The Clerk will then forward the application to the Governing Body for action, if such action is necessary in accordance with Village Operator License approval policy.

(D) Review. The Governing Body may refer any and all licenses to the appropriate committee for review and recommendation prior to action by the Governing Body.

(6) OPERATOR'S LICENSE.

(A) Kinds of Licenses and Permits.

1. Regular Operator's License. Regular Operator's License. Regular operator's licenses may be granted to individuals by the Village Administrator or their designee and thereafter issued by the Municipal Clerk for the purposes of complying with Section 125.32(2) and 125.68(2), Wis. Stats., and this Chapter.
2. Provisional Operator's License.
 - a. The Municipal Clerk upon authorization by the Village Administrator or their designee, may issue a provisional operator's license to an applicant in case of a bona fide emergency. An emergency shall be caused by such things as death, disability, absence of the regular operator on the premises and the like. The Village Administrator or their designee, before authorizing such issuance, shall determine that the applicant has a satisfactory record, and probably would be issued a regular operator's license. The license shall be valid for a period of not to exceed 60 days unless sooner revoked by the Governing Body.
 - b. A Municipal Governing Body or its authorized designee may issue a provisional operator's license to a person who is enrolled in a training course and has applied for a regular operator's license pursuant to Section 125.17(6).
3. Temporary Operator's Licenses. Temporary operator's licenses may be granted to individuals pursuant to Section 125.17(4), Wis. Stats., by the Village Administrator or their designee for the purpose of allowing said individuals to dispense and serve alcohol beverages under a license issued under Section 125.26(6) or Section 125.51(10), Wis. Stats., to a non profit organization. No person may hold more than one license of this kind per year. Any temporary operator's license issued under this section shall be valid for any period from one day to 14 days, and the period for which it is valid shall be on the license.

(B) The Village Administrator or their designee may grant operator's licenses pursuant to this section as they deem fit.

(C) All operator's licenses issued under this section shall expire on June 30 of each year.

(D) All operator's licenses issued under this section entitle the holder thereon to be an operator in any licensed premise in the municipality.

(7) RESTRICTION ON GRANTING LICENSES.

(A) Statutory Requirements. Licenses and permits shall be issued only to those persons eligible under Chapter 125 Wis. Stats. Licenses and permits granted in error shall be void.

(B) Health and Sanitation Requirements. No retail Class A or Class B alcohol beverage license shall be issued for any premises which does not conform to the sanitary safety and health requirements of the State of Wisconsin, Department of Industry, Labor, and Human Relations pertaining to buildings electrical and plumbing, to the rules and regulations of the State Department of Health and Social Services applicable to restaurants, if the premise is licensed to serve food, and to all such rules and regulations as to building, health and sanitation adopted by the Municipality, the County, the State or the Federal government.

(C) Delinquent Taxes, Assessments, Claims, et al.

1. No initial or renewal alcohol beverage license shall be issued for any premises or property for which taxes, assessments, forfeitures, or claims for the Municipality are delinquent and unpaid.
2. No initial or renewal license or permit shall be issued under this Code to any person who is:
 - a. Delinquent in the payment of any taxes, assessments, or other claims owed the Municipality.
 - b. Delinquent in the payment of a forfeiture resulting from the violation of any ordinance of the Municipality.
 - c. Delinquent in the payment of any taxes to the State or County.

(D) Location. No license shall be issued hereunder for any of the following premises:

1. Any premises in a residential district.
2. Any premises which does not comply with Section 125.68(3), Wis. Stats.

(E) Separate Premises or Limited Access Area. Every person, firm or corporation applying for a new or renewal of an existing Class "A" Fermented Malt Beverage License, a "Class A" Intoxicating Liquor License, a "Class A" Liquor (Cider Only) License, a combination Class "A" Fermented Malt Beverage License and "Class A" Liquor (Cider Only) License or combination Class "A" Fermented Malt Beverage License and "Class A" Intoxicating Liquor License shall submit to the Finance Committee and receive approval from the Village Board of a site plan and plan of operation with a diagram or photograph of the proposed or existing sale and display area for the intoxicating liquors and/or fermented malt beverages prior to the issuance of any such license(s). The Finance Committee shall review the proposed plan of operation and shall make a recommendation to the Village Board as to its approval or disapproval; in addition to other standards created for the issuance of liquor licenses set forth in this ordinance and the Wisconsin Statutes. The site plan and plan of operation shall be such as to insure that minors do not have reasonable access to acquire intoxicating liquors and fermented malt beverages as well as satisfying the following requirements:

1. For Class "A" Fermented Malt Beverage Licensees, and Combination Class "A" Fermented Malt Beverage and "Class A" Liquor (Cider Only) Licensees one of the following is required:
 - a. An area must be designated for the display of intoxicating liquors and fermented malt beverages and; said area must be able to be closed off from reasonable access during the closing hours set forth in 4.02(9)(e) and; the licensee location must have multiple employees on duty at all times while the store is open who are in a position to supervise the sale of the intoxicating liquors and fermented malt beverages and; the licensee shall provide a detailed security plan which will be subject to approval by the Director of Police Services to ensure that minors do not have reasonable access to acquire intoxicating liquors and fermented

malt beverages.

OR:

- b. A partition between that portion of the premises used for display and sale of intoxicating liquors and fermented malt beverages and incidental sale of snacks and foods, and that portion of the premises used for sale and display of other merchandise so as to completely separate a self-service liquor department from other departments. Ingress and egress shall not be permitted between such department and other departments by the public except for emergencies.

OR:

- c. An area for sale and display of intoxicating liquors and fermented malt beverages access to which shall be limited to employees of the licensee only.

- 2. For "Class A" Intoxicating Liquor Licensees, and Combination Class "A" Fermented Malt Beverage and "Class A" Intoxicating Liquor Licensees one of the following is required:

- a. An area must be designated for the display of intoxicating liquors and fermented malt beverages and; said area must be able to be closed off from reasonable access during the closing hours set forth in 4.02(9)(e) and; the licensee location must have 4 or more employees on duty at all times while the store is open who are in a position to supervise the sale and prevent the theft of the intoxicating liquors and fermented malt beverages and; the licensee shall provide a detailed security plan which will be subject to approval by the Director of Police Services to ensure that minors do not have reasonable access to acquire intoxicating liquors and fermented malt beverages and to prevent theft of the beverages. To meet this standard a licensee must demonstrate to the Director of Police Services, layers of access control, accountability of personnel, and sufficient procedures for dealing with theft to minimize police service impacts from the same.

OR:

- b. A partition between that portion of the premises used for display and sale of intoxicating liquors and fermented malt beverages and incidental sale of snacks and foods, and that portion of the premises used for sale and display of other merchandise so as to completely separate a self-service liquor department from other departments and provide a detailed security plan, which will be subject to approval by the Director of Police Services to ensure that minors do not have reasonable access to acquire intoxicating liquors and fermented malt beverages and to prevent theft of the beverages. To meet this standard a licensee must demonstrate to the Director of Police Services, accountability of personnel, and sufficient procedures for dealing with theft to minimize police service impacts from the same. Ingress and egress shall not be permitted between such department and other departments by the public except for emergencies.

(F) Quotas. The number of Licenses shall be limited based upon the most recent decennial Federal Census or special census conducted by the Village under contract with the U.S. Bureau of the Census in the following manner:

1. No Class A Liquor License shall be issued in the Village except as a Combination License with a Class A Fermented Malt Beverage License.
2. No regular yearly Class B Fermented Malt Beverage Licenses shall be issued in the Village except as a Combination License with a Class B Intoxicating Liquor License.
3. No more than one six-month Class B Fermented Malt Beverage License shall be issued for each 2,000 population or fraction thereof.
4. No more than one Class B Fermented Malt Beverage License for local, non-profit civic groups shall be issued for each 1,000 population or fraction thereof.
5. No more than one Class B Intoxicating Liquor License shall be issued for each 500 population or fraction thereof.

(8) CONDITIONS OF LICENSE.

(A) Consent to Inspection. Every applicant obtaining a license thereby consents to the entry of the police or other authorized representatives of the Municipality or the State at any reasonable time for the purpose of inspection and search, and consents to the removal from said premises all things found in violation of Municipal Ordinances or State Law and consents to the introduction of such things as evidence in any prosecution that may be brought for such offenses.

(B) Safety and Sanitation Requirements. Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose being used.

(C) Sales by Operators Only. No person other than a Class "B" or "Class B" licensee or licensed operator or member of the licensee's immediate family living on the premises who is at least of age to consume alcoholic beverages shall serve any alcoholic beverages on any premises operated under a Class B license. The Village Board may grant an exception to this section to holder of six-month Class B Beer licenses issued under SS. 125.26(5) and Class B Picnic licenses under SS. 125.26(6) provided that such licensee shall have at least one licensed operator on the premises at all times who shall be responsible for supervising all persons dispensing fermented malt beverages under such licenses.

(D) Sales on Credit Prohibited. No retail licensee shall sell or offer to sell any alcohol beverage to any person on credit except by a hotel to a resident guest, by a restaurant to a patron, a club to a bona fide member, and by grocers and pharmacists who maintain a credit system in connection with other purchases. No licensee shall sell alcohol beverages on a passbook or store order, or receive goods, wares, or merchandise in exchange for alcohol beverages.

(E) Orderly Conduct Required. Every licensed premise shall be conducted in an orderly manner and no disorderly, riotous or indecent conduct shall be allowed.

(F) Gambling Prohibited. Gambling shall not be permitted on a licensed premise, unless authorized by State law. Slot machines or other devices of chance are prohibited and shall not be kept on the premises, unless authorized by State Law.

(G) Lewd, Obscene Performances, etc. Prohibited. No licensee shall advertise, produce, perform or allow any lewd, obscene, or indecent performance of any kind on the premises.

(H) Sale to Intoxicated Persons Prohibited. No licensee, agent, operator or server shall sell, give, procure or otherwise furnish any alcohol beverages to an intoxicated person.

(I) Underage Persons. No licensee shall employ any underage person to serve, sell, dispense, or give away an alcohol beverage unless authorized by State Law or the General Codes of the Municipality. The current and future provisions of Section 125.10(2), Wis. Stats., and Sections 125.07(4)(a), (b) or (bm), and 125.09(2), are adopted and made a part of this section by reference. A violation of any such provision shall constitute a violation of this section. Any future amendments, revisions, modifications or additions of the statutes incorporated herein are intended to be made part of this ordinance in order to secure uniform statewide regulations of alcohol beverages in this state.

(J) Controlled Substance Use Prohibited. Any licensee, partner, agent, authorized representative or employee who is convicted of the use, possession, delivery or intent to deliver, any controlled substance defined and regulated under Chapter 161, Wis. Stats., may be considered grounds for the revocation or suspension of any license provided for in this ordinance.

(K) Regulation of Entertainment and Entertainers. No Class B licensee shall employ or permit to perform on the premises any entertainer, except a member of a band, a vocalist, a piano or organ player or a comedian. All such entertainers shall be fully clothed in such a manner as is acceptable in all public places. No licensee shall allow any entertainment which makes an appeal to prurient interests. Dancing among patrons, but not between patron and employee is permitted upon permit and with the approval of location by the Fire Chief.

(L) Solicitation of Drinks Prohibited. No person shall solicit or be allowed to solicit drinks on a licensed premise.

(M) Sales by Clubs. No club shall sell alcoholic beverages except to members and to guests invited by members.

(N) Identification Records. In accordance with SS 125.07(7) Wis. Stats., every retail Class A licensee shall cause a book to be kept by such licensee or their employee, or both, shall require any person who has shown documentary proof of age, who substantiates their age to allow the legal purchase of intoxicating liquor, to sign such book if the age of such person is questioned. The book shall show the date of purchase, the identification used in making the purchase, the address of the purchaser and their signature.

(9) MISCELLANEOUS GENERAL PROVISIONS.

(A) Transfer of Licenses.

1. The transfer of every alcohol beverage license shall be governed by 125.04(12), Wis. Stats.
2. No transfer of operator's license is permitted.
3. If the transfer is approved by the Governing Body pursuant to 125.04(12)4, all conditions set forth under this Code shall be complied with.
4. Failure to conform with the terms of license transfer shall be grounds for denial, suspension or revocation of license.

(B) Non-Use of License. If a license or permit issued under this ordinance is not used within ninety (90) days after its issuance or its usage is discontinued for a period of ninety (90) days or more, such non-use shall be grounds for cancellation, suspension, revocation or non-renewal of the license or permit in accordance with the provisions of this ordinance and the laws of Wisconsin.

(C) Non-Renewal of License. Before renewal of any license or permit issued under this ordinance is refused, the licensee or permittee shall be given written notice of any charges or violations or reasons proposed for non-renewal, and shall have an opportunity to be heard before the Governing Body.

(D) Violations by Agents and Employees. A violation of this ordinance by an authorized agent or employee of the licensee shall constitute a violation by the licensee.

(E) Closing Hours. Closing hours shall be as set by State Statute with the following applicable local options:

1. If a wholesale license, between 5 p.m. and 8 a.m., except on Saturday when the closing hour shall be 9 p.m.
2. If a Retail Class "A" Fermented Malt Beverage License, between 9 p.m. and 6 a.m.
3. If a Retail "Class A" Intoxicating Liquor License, between 9 p.m. and 6 a.m.

(F) Local Option. The holder of a Retail "Class B" Liquor License shall be permitted to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises and in the original packages or containers in multiples not to exceed four (4) liters at any one time and to be consumed off the licensed premises. Off premise sales shall cease at midnight of each day. It is intended by this Section that the packaged sales from Class "B" licensed premises will not be permitted after midnight under the option granted herein and further provided, however, that no single-container sale of fermented malt beverages can be made unless originally packaged as a single container or if a smaller package exists within a larger container.

(10) REVOCATION AND SUSPENSION OF LICENSES.

(A) Whenever the holder of any alcohol beverage license under this Ordinance violates any portion of this ordinance, proceedings for the revocation or suspension of the license may be instituted in the manner and under the provisions established under Chapter 125.12, Wis. Stats. In addition, the Governing Body, by its own motion by adoption of a resolution may begin proceedings for the revocation or suspension of such license.

(B) Whenever the Governing Body or the Municipal Clerk, as agent thereof, is made aware of an incompatibility in the operation of a licensed premises in relation to its surrounding or nearby environment or a licensed premises is in violation of any condition established or required at the issuance of the license or of this Code or the State law including all requirements regarding the duty to supervise employees, proceedings for the purpose of revoking, establishing new conditions, or continuing the license under previous conditions will be initiated under the same procedures as provided in sub. (A).

(C) Any license holder as provided in Chapter 4, who is convicted of violating any Village Ordinance, such violation is grounds for the revocation of the license.

(D) Operator's Licenses. Suspension or revocation of operator's licenses granted pursuant to this ordinance shall be governed as follows:

1. Any committee as established by the Governing Body may revoke or suspend an operator's license following a hearing held by the Committee. Notice shall be mailed to the licensee not less than eight (8) days prior to the hearing or upon personal service of notice not less than two (2) days prior to the hearing.

2. Appeal from the decision of the Committee may be made by the licensee upon filing a petition for review by the full Governing Body by presenting the petition and paying a fee of \$100.00 to the Municipal Clerk. The Governing Body shall schedule a hearing not more than thirty (30) days from the date the appeal is filed.

(E) Automatic Revocation. Any license or permit issued under this ordinance may be revoked without further proceedings upon the conviction of the licensee, agent, employee or representative thereof, pursuant to Section 125.11, Wis. Stats.

(11) PENALTIES. Any person, firm, corporation or the employee or agent of any licensee under this ordinance, who shall violate any provisions set forth, shall upon conviction be punished by a forfeiture not less than \$20.00 nor more than \$400.00 plus costs of prosecution; and in default of payment of the forfeiture and costs, shall be imprisoned in the County Jail for not more than ninety (90) days. Each day of which the violation continues shall constitute a separate offense.

4.03 PEDDLERS, CANVASSERS, SOLICITORS AND TRANSIENT MERCHANTS.

(1) LICENSE REQUIRED. No person shall engage in the business of peddler, hawker, trucker, solicitor, canvasser or transient merchant within the Village without first obtaining a license in compliance with the provision of this section. The license shall be obtained from the Village Administrator or the Village Administrator's designee. The Village Administrator or the Village Administrator's designee, in their discretion, may refer the matter to the Finance and Personnel Evaluation Committee for review and recommendation to the Village Board, in which case issuance of the permit shall be subject to the action of the Village Board. In the event of such referral, the matter shall be considered at the next regularly scheduled Finance and Personnel Evaluation Committee meeting to which proper notice can be given, and following the issuance of their recommendation, the matter shall be considered at the next regularly Village Board meeting.

(2) EXEMPTIONS. This section shall not apply to the following: newspaper delivery persons, merchants delivering goods in the regular course of business, vendors of milk, bakery goods, groceries or ice distributing products to only regular customers on established routes; farmers and truck gardeners, religious, charitable, patriotic or philanthropic organizations, persons selling property at wholesale to dealers, persons holding a state license issued pursuant to 440.51, Wis. Stats.; but such persons shall comply with the provisions of Sub. (8) (c), (d) and (e) of this section.

(3) APPLICATION. At the time of filing application, an investigation fee in the amount of the Actual Cost shall be paid to the Village to cover the cost of investigation of the facts stated in the application. The application shall be sworn to by the applicant and filed with the Village and shall contain such information as the Village shall require for the effective enforcement of this section and the safeguarding of the residents of the Village from fraud, misconduct or abuse.

(4) INVESTIGATION; ISSUANCE. Upon receipt of each such application, the Village Administrator or designee shall immediately institute such investigation of applicant's business and moral character as the Village Administrator or designee deems necessary for the protection of the public good, and shall endorse their approval or disapproval upon said application within 72 hours after it has been filed with the Village, and shall issue or deny the license in accordance with their findings after presentation by the applicant of a receipt of the Village Treasurer showing payment of the required fee.

(5) FEE. The fee for a license as herein provided shall be as set forth and modified from time to time from the Village Board by Resolution. No fee shall be required for a solicitor's or canvasser's license.

Peddlers and transient merchants may employ one assistant without payment of an additional license fee, but such persons must comply with the other provisions of this section.

(6) **BOND.** If the Village determines from its investigation of said application that the interests of the Village or of inhabitants of the Village require protection against possible misconduct of the licensee or that the applicant is otherwise qualified but due to causes beyond their control is unable to supply all of the information required by sub. (3), the Village may require the applicant to file with the Village Clerk a bond in the sum of \$500.00 with surety acceptable to the Village President running to the Village conditioned that the Licensee will fully comply with the ordinances of the Village and laws of the State relating to peddlers, canvassers or transient merchants and guaranteeing to any citizen of the Village doing business with them that the property purchased will be delivered according to the representation of applicant, provided that action to recover on any such bond shall be commenced within 6 months after the expiration of the license of the principal.

(7) **EXPIRATION: RENEWAL: TRANSFER.** The Village shall date all licenses issued hereunder and shall specify thereon the fee paid and date of expiration. Annual licenses shall be issued on a calendar year basis and expire December 31 of the year of issue. Applications for renewals shall be handled in the same manner as original applications. Licenses issued under this section are personal and may not be transferred.

(8) **REGULATIONS AND RESTRICTIONS.**

(A) **Consent Required.** No peddler, solicitor, canvasser or transient merchant as herein defined shall go in or upon any private residence, business establishment or office in the Village for the purpose of soliciting subscriptions for magazines or other periodicals without having been requested or invited to do so by the owner or owners, occupant or occupants of said place.

(B) **Display of License.** Persons licensed under this section shall carry their licenses with them while engaged in licensed activities and shall display such licenses to any police officer or citizen upon request.

(C) **Misrepresentation Prohibited.** No licensee shall intentionally misrepresent to any prospective customer the purpose of their visit or solicitation, nor the name or business of the principal, if any, nor the source of supply of the goods, wares or merchandise which they sell or offers for sale nor the disposition of the proceeds or profits of their sales.

(D) **Loud Noises and Speaking Devices.** No licensee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the streets, alleys, parks or other public places of the Village or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

(E) **Use of Streets.** No licensee shall have any exclusive right to any location in the public streets, nor shall any licensee be permitted a stationary location thereon nor be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. For the purpose of this ordinance, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced.

(F) **Closed Right of Ways.** No licensee shall operate in a right of way that is closed per Section 7.49 of this Code without the written permission of the street closure permittee.

(9) **SUSPENSION OR REVOCATION OF LICENSE.** Licenses issued hereunder may be revoked or suspended by the Village Administrator, or designee for a period not to exceed 5 days pending hearing by the Village Board for fraud, misrepresentation or incorrect statement contained in the application or made in the course of carrying on business; conviction of licensee of any crime or misdemeanor or conducting the licensed business in an unlawful or disorderly manner or in such a manner as to menace the health, safety or general welfare of the public.

4.035 MOBILE FOOD VENDOR.

(1) **DEFINITIONS.**

(A) "Mobile Food Vendor" or "Vendor" means the owner, owner's agent or employee of a mobile food establishment within the Village of Sussex.

(B) "Mobile Food Establishment" means a restaurant or retail food establishment where food is served or sold from a vehicle, trailer, cart, or similar portable device which may or should be capable of periodically changing locations.

(C) "Food" means all articles used for food, non-alcoholic drink or condiment including ice or water used by humans whether simple, mixed or compound and articles used or intended for use as ingredients in the composition or preparation thereof.

(2) **LICENSE REQUIRED.**

(A) No Mobile Food Vendor shall serve or sell any food whatsoever in the Village of Sussex without first obtaining an approved license from the Village Board unless exempted in this section. The following are exempt from Mobile Food Vendor license requirements:

1. Home delivery of food or beverage items.
2. Temporary food stands or produce stands which are regulated by a peddlers permit, outdoor establishment permit or by other Village codes.
3. Rentals at Village facilities where mobile food establishment services are not available to the public, and
4. Where the mobile food establishment is exclusively serving a private event not open to the general public on private property.

(B) All Vendors shall be licensed for such use by the Waukesha County Health Department and all other applicable agencies. Mobile food vendors shall acquire the appropriate licenses and permits for any additional food items not required under this subchapter if deemed necessary by the Waukesha County Health Department.

(C) A license shall be applied for annually. A permit, when granted shall be displayed at all times at the mobile food establishment. The license shall be valid from April 1 through November 30 unless the Village Board approves alternative dates. All licenses shall expire on March 31 each year. Applications for renewals shall be handled in the same manner as original applications but may be approved by the Village Administrator or their designee.

(D) Vendors are allowed on the streets of Miller Way, Village Drive, Sussex Road, North Corporate Circle, South Corporate Circle, Executive Drive only in the area between North Corporate Circle and South Corporate Circle, on private property with written permission and as allowed by the Park and Recreation Department for the Farmers Market and Special Events. The licensee may not be located on one street or one private property lot for more than 4 hours within a 24 hour period.

This time restriction does not apply to Park and Recreation Department authorized permits for the Farmers Market or Special Events.

(E) Operation. Mobile food vendors are allowed to operate in the Village Monday through Sunday between 6:00 a.m. and 7:00 p.m.

(F) A license shall be issued to a person or legal entity. A license shall not be transferable. A license is valid for one vehicle only and shall not be transferrable between vehicles.

(G) Any mobile food vendor shall fully and without haste comply with any order of a Sherriff's Officer of Fire Department officer to ensure the safety of the public. Failure to comply may result in suspension or revocation of the license and/or issuance of a citation as allowed by law.

(H) The number of licenses allowed to be issued per year and the fee for a license as herein provided shall be as set forth and modified from time to time from the Village Board by Resolution.

(3) APPLICATION PROCESS.

(A) Any person desiring to operate a mobile food establishment shall apply for a license and pay the established license and investigation fee. At the time of filing an application, an investigation fee in the amount of the Actual Cost shall be paid to the Village to cover the cost of investigation of the facts stated in the application. The application shall be sworn to by the applicant and filed with the Village and shall contain such information as the Village shall require for the effective enforcement of this section and the safeguarding of the residents of the Village from fraud, misconduct or abuse.

(B) Upon receipt of each such application, the Village Administrator or designee shall immediately institute such investigation of applicant's business and moral character as the Village Administrator or designee deems necessary for the protection of the public good, and shall provide recommendation to the Village's Finance and Personnel Committee, who shall review and recommend to the Village Board the application. The Village Board shall issue with or without conditions, or deny the license in accordance with their findings. In approving a license, the Village Board may impose such conditions as it deem appropriate to protect the public health, safety and general welfare. Subsequent annual renewals of a license may be processed administratively without additional Village Board approval if the conditions of the original license issuance are maintained at the discretion of the Village Administrator or designee.

(4) APPLICATION REQUIREMENTS.

(A) A completed Mobile Food Vendor Application with signature and payment of fees.

(B) The applicant shall submit a copy of the vehicle inspection report from the Waukesha County Health Department.

(C) The applicant shall provide a Mobile Food Vendor License plan addressing sanitation, pedestrian and traffic safety including the following standards:

1. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian/vehicle conflicts or pedestrian safety hazards or impede building ingress/egress.
2. The proposed plan will not create any significantly adverse impacts on neighboring properties as a result of:
 - a. The accumulation of garbage, trash or other waste.
 - b. Noise created by operation of the equipment.
 - c. Light and glare.

d. Odors and noxious fumes.

3. The proposed plan will not be detrimental to the public health, safety, or general welfare.
4. No mobile food vendor shall be located on any private property without written permission from the property owner. A copy of the written permission shall be submitted at the time of application if the vendor wishes to operate on private property.
5. For Park and Recreation Department approvals granted for the Farmer's Market or Special Events, said conditions of approval shall be filed with the application and incorporated therein.

(D) All vehicles must pass inspection by the Sussex Fire Department. A copy of a passing inspection report must be submitted prior to approval of the application.

(5) **REVOCAION OR SUSPENSION OF LICENSE.**

(A) The Village Board may revoke or suspend any license issued under this subchapter for violation by any vendor or the vendor's employee or agent of any provision of State law or Village ordinance which renders future vending contrary to the public health, safety or welfare; or for fraud or misrepresentation in solicitation under this chapter. Prior to revocation or suspension, the Village shall send written notice to the address on the license about the concerns or issues and provide 15 days for the vendor to correct the issue or concern to the satisfaction of the Village. If the concern is not addressed within 15 days from the date of mailing the letter, the Village may place the issue of revocation and or suspension before the Village Board for possible action. The Vendor and/or their agent may appear before the Village Board to present information and respond to the issues of concern. The Clerk shall send written notice to the Vendor at the address on the application about the date and time of the meeting for consideration of the matter. Said notice shall be post marked at least 5 days prior to the Board meeting.

(B) An exception to this process exists in that any Public Health, Sussex Police or Fire Officer may immediately order the mobile food vendor to stop service and the mobile food vending shall not restart again until deemed safe by the appropriate authority if said public health, Sussex Police or Fire Officer identify an immediate risk to the public health, safety or welfare of the community from the operation of the mobile food vendor.

(6) **APPEAL OF ADMINISTRATIVE DECISION.** A Vendor has the right to appeal an order by any Village Administrative Staff under this subsection through the process found in Chapter 24 of the Village Municipal Code

4.04 DANCE HALLS.

(1) **DEFINITIONS.** "Public dance" or "public ball" shall mean any dance or ball to which admission can be had by the public generally upon payment of a fee or by the purchase, possession or presentation of a ticket or token; or in which a charge is made for caring for clothing or other property; or any other dance to which the public generally without any restriction may gain admission with or without payment of a fee; or any dance operated for profit; or any dance or dancing conducted or permitted upon any premises licensed for the sale of fermented malt beverages or intoxicating liquor, whether or not any charge is made therefor.

(2) LICENSE REQUIRED. No person shall hold any public dance or public ball within the Village until the dance hall in which the same may be held shall first have been duly licensed for such purpose. The application for such license shall be filed with the Village Clerk and such application state:

- (A) Name, age, residence, occupation and citizenship of applicant.
- (B) Location at which such public dance hall is intended to be conducted.
- (C) Whether the applicant has within 2 years prior to the date of his application been licensed to conduct a public dance hall in this Village.
- (D) The location where applicant conducted such public dance hall under such license, if any.
- (E) Whether the applicant has been convicted of violating any law within the last 2 years; if so, what?
- (F) The name of person or company owning the premises for which license is asked.
- (G) Such other information as the Finance and Personnel Evaluation Committee may require.

All such applications shall be accompanied by the fee fixed by this section for such license. If such license is denied, such fee shall be returned.

(3) ISSUANCE OF LICENSE. Whenever any applicant for a license shall have complied with all the conditions and regulations herein contained relative to the filing of his application, the Village Clerk shall forward such application to the Village Board at the next regular or special meeting. Such application shall be referred to the Finance and Personnel Evaluation Committee who may inspect the premises for which such license is applied for and report back to the Board, and thereupon such license shall be granted or denied by the Board. Upon the granting of any license, the same shall thereupon be issued by the Village Clerk.

Each license granted hereunder shall expire on June 30th and the license shall be posted in a conspicuous place within the hall in which the dance is held. The licensee shall comply with this section and any rules or regulation of the State of Wisconsin.

(4) CLASSIFICATION OF LICENSES. Classification as to types of licenses: Nontransferable licenses for public dances shall be issued for the following 4 divisions or classifications, namely, Class "A" license, Class "B" or Class "C" and "Special Permit" license.

- (A) Class "A" License. A Class "A" license is required for the premises in which a public dance is held where a charge is made for admission or where admission is by means of the purchase, possession or presentation of a ticket or token or where the dance is advertised as such and where an orchestra, band, or other live musician(s) is employed to furnish the dance music.
- (B) Class "B" License. A Class "B" license is required when dancing is incidental to such other business conducted on the premises used for dancing and where no charge, either directly or indirectly, is made for admission, and such dancing is not advertised as such and no orchestra, band, or other live musicians are employed to furnish the music for such dancing.
- (C) Class "C" License. A Class "C" license is required when a non-profit, fraternal, church or school organization conducts a dance on any premises not holding a Class "A" or Class "B" license. A Class "C" license shall be subject to all other provisions of this section with the exception that no fee shall be required to obtain a Class "C" license.

(D) "Special Permit" License. A "Special Permit" license may be granted to hold not more than one public dance in any structure or premises not licensed under either "A" or "B"; such "Special Permit" license shall be subject to all other provisions of this section.

(5) LICENSE FEES. Fees for said permits shall be established from time to time by resolution of the Village Board.

(6) PREMISES TO COMPLY WITH REGULATIONS. No license for a public dance shall be issued until it shall be found that the hall complies with and conforms to all ordinances, health and fire regulations of the Village and of the State, is properly ventilated, supplied with sufficient toilet conveniences, and is a safe and proper place for the purpose for which it is used.

All public dance halls shall be kept in a clean and sanitary condition. All stairways and outer passages and all rooms connected with the hall shall be kept open and well lighted. The Finance Committee or any police officer or Village President may cause the dance hall to evict dancers:

(A) No person who is the proprietor of any dance hall or who conducts, manages or is in charge of any dance shall permit; the use of intoxicating liquor in violation of law, the presence of intoxicated persons, or the presence of any underage person unaccompanied by their parent or lawful guardian.

(B) No live music shall be furnished or played during the hours the premises are required to be closed. In the event of a conflict between the state law and Village ordinances applicable to closing hours, the state law shall apply.

(C) Idlers or loiterers shall not be permitted to remain either in a public dance hall or on the premises on which it is situated.

(7) PAYMENT OF FEES. All fees for licenses as provided in this section shall be paid to the Village Treasurer and retained by the Village for the administration, execution and enforcement of this section.

4.05 AMUSEMENT DEVICES AND ARCADES.

(1) DEFINITIONS.

(A) An "amusement device" shall mean:

1. Pool table.
2. Billiard tables.
3. Electronic games.
4. Any other coin, token or slug operated machine which is used by the public as a game, entertainment or amusement, whether or not registering a score but not including music machines. The maximum number of amusement devices at any one premise shall not exceed seventy-five (75).

(B) An "arcade" shall mean any premises in which are located fifteen (15) or more amusement devices as defined in this section.

(2) LICENSE REQUIRED.

(A) No person, firm or corporation shall operate an amusement device without receiving an amusement device license from the Village of Sussex upon payment of a license fee.

(B) No person, firm or corporation shall operate an arcade without receiving an arcade license from the Village of Sussex upon payment of a license fee. The establishment of an arcade shall also be subject to the conditional use of provisions of the Zoning Code of the Village of Sussex. An evaluation of each operation requesting a new arcade license or renewing an arcade license shall be done each year prior to approval or renewal.

(3) GRANTING OF LICENSES.

(A) Application for amusement device or arcade licenses shall be submitted to the Village Clerk. The Village Clerk shall submit the applications to the Finance and Personnel Evaluation Committee, which shall recommend either approval or disapproval of the application to the Village Board.

(B) Upon approval of the application by the Village Board, the Village Clerk, upon payment of the required fees, shall issue the license to the applicant. Licenses shall be for not longer than one year and all licenses shall expire on June 30th of each year.

(C) The fee required to be paid in order to obtain a license for an amusement device shall be as established from time to time by resolution by the Village Board. This fee shall not apply to devices located on Village owned or leased property.

(D) The fee required to be paid in order to obtain a license for an arcade shall be as established from time to time by resolution by the Village Board. This fee shall not apply to arcades located on Village owned or leased property.

(4) POSTING OF LICENSE. Any license issued hereunder shall be posted in close proximity to the location of the licensed device or arcade.

(5) PROHIBITIONS AND RESTRICTIONS.

(A) Operator shall comply with all applicable State, County and Village laws, ordinances, rules and regulations.

(B) Operator shall not allow any person under the influence of an intoxicant or a controlled substance as defined in the Wisconsin Statutes to remain in the establishment.

(C) The operator of an arcade shall not allow minors to frequent the premises between 8:00 A. M. and 3:30 P. M. on days when schools are in session.

(D) The operator of an establishment that also holds a Combination Class "B" Intoxicating Liquor and/or Fermented Malt Beverage License shall not have more than five (5) of the same type of amusement devices, i.e. 5 poker machines, 5 dart boards, 5 pool tables, etc., as determined by the Village Administrator. If there is any question as to whether the amusement devices are the same type or not or if an operator wishes to appeal a determination of the Village Administrator, the issue shall be referred to the Village Board whose determination shall be final.

(6) PENALTY. Any person who shall violate any provision of this section or who shall fail to obtain a license or permit when required by this section shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

4.06 DOG AND CAT LICENSING AND REGULATION.

(1) LICENSE REQUIRED. Every landowner, owner, tenant, keeper or harbinger of a dog more than five months of age shall annually on or before April 1st pay a dog license fee and obtain a license therefor as required by Ch. 174 of the Wisconsin Statutes. The license fee shall be established from time to time by resolution of the Village Board.

(2) GRANTING OF LICENSES. Upon payment of the required fee, and upon being furnished with evidence that each dog is currently immunized against rabies, and upon written proof that a dog has been spayed or neutered prior to the issuance of a license with the fee for a neutered dog, the Village Clerk may issue the requested dog license. The Village Clerk may keep a file of the written proof of spaying or neutering of each respective dog and not require new proof each year.

(3) DOGS AND CATS RUNNING AT LARGE. It shall be unlawful for the landowner, tenant, owner, keeper or harbinger in control of or having custody of any dog and/or cat to permit the same to run at large at any place within the Village unless accompanied by and under the immediate control of the owner or keeper of said dog and/or cat. This section does not prohibit the owner or keeper of a dog and/or cat from allowing the dog and/or cat to run at large upon premises owned or occupied by the owner or keeper of the dog and/or cat. No dog and/or cat shall be considered as under the immediate control of any person if such dog and/or cat is on private/public property other than the property of the owner, keeper or harbinger of the dog and/or cat.

(4) ANIMAL SHELTER.

(A) Confinement of Dogs and/or Cats. The Police Department or any other officer appointed by the Board shall apprehend any dog and/or cat running at large within the Village (except when the dog and/or cat is on the premises of its owner or keeper or is accompanied by and under the control of its owner or keeper) and confine the same in a suitable animal shelter.

(B) Enforcement. The board shall from time to time appoint a qualified officer to apprehend and confine dogs and/or cats in a shelter as herein provided and such officer shall have the power and authority to apprehend and confine dogs and/or cats as provided in this ordinance and shall have the power and authority to enforce this ordinance, including the right to commence actions for the collection of any forfeiture imposed by this section. Such action shall be brought in the name of the Village. Such officer shall be paid such compensation as the Board shall determine by resolution.

(C) Disposition of Unclaimed Dogs and/or Cats. The keeper of the shelter shall keep all dogs and/or cats apprehended as hereinbefore provided for a period of seven (7) days at the animal shelter (unless sooner claimed by the owner or keeper), and if any dog and/or cat is not claimed by the rightful owner within such time, the dog and/or cat may be sold for the amount incurred in the apprehending, keeping and care of the dog and/or cat, or it may be destroyed in a proper and humane manner.

(D) Owner or Keeper to Pay Costs. The owner, keeper or harbinger of any dog and/or cat so confined may reclaim such a dog and/or cat at any time before the same is disposed of as hereinbefore provided, and upon payment of all costs and charges incurred in the apprehension, keeping and care of the dog and/or cat. Such fees shall be established from time to time by resolution of the Village Board. As a further condition of release, said officer shall require that before release the owner shall, if said dog is not licensed, obtain a license therefor from the proper Village officer.

(5) VIOUS DOGS AND/OR CATS. It shall be unlawful to keep a vicious dog and/or cat within the Village. A showing that a dog and/or cat has bitten, attacked or injured any person shall constitute a prima facie showing that such dog and/or cat is vicious.

(6) NUMBER OF DOGS AND/OR CATS LIMITED.

(A) It shall be unlawful to keep more than two (2) dogs over the age of 5 months upon any premises within any district within the Village except in a dog shelter or a kennel duly authorized by the Village.

(B) It shall be unlawful to keep more than three (3) cats over the age of 5 months upon any premises within any district within the Village except in a cat shelter or a kennel duly authorized by the Village.

(C) The premises means all contiguous lands owned or occupied by the same owners or tenants.

(7) CARE OF ANIMALS.

(A) Cruelty.

1. No person may cause, allow or themselves cruelly beat, frighten, overburden, neglect or abuse any animal or bird, or use any device or chemical substance by which pain, suffering or death may result, whether the animals belong to the person or another, except that reasonable force may be used to drive off vicious or trespassing animals.
2. Food and Water. No person owning or having custody of any animal or bird may neglect or fail to provide it with necessary nourishing food at least once daily and provide a constant supply of clean water to sustain the animal or bird in good health.

(B) Shelter.

1. No person may fail to provide any animal or bird in his or her charge with shelter from inclement weather to insure the protection and comfort of the animal or bird.
2. When sunlight is likely to cause overheating or discomfort to any animal or bird, shade shall be provided by natural or artificial means to allow protection from the direct rays of the sun, but still allow air to pass to keep the animal cool.
3. Dogs and cats kept outdoors shall be provided with moisture proof and wind proof shelter of a size which allows the animal to turn around freely and to easily sit, stand and lie in a normal position and to keep the animal clean, dry and comfortable. Whenever the outdoor temperature is below 40 degrees F., clean, dry bedding material shall be provided in such shelters for insulation and to retain the body heat of the animal. Automobiles shall not be used as animal shelters.

(C) Area to be Kept Clean. Any area where an animal is housed, or allowed to remain shall be kept clean of feces, animal waste, and other substances in order to keep the animal healthy and comfortable.

(D) Leashes. Chains, ropes or leashes shall be placed or attached that they not be entangled with another animal or object and shall be of sufficient length in proportion to the size of the animal to allow the animal proper exercise and convenient access to food, water, and shelter. A leash shall be located so as not to allow the animal to trespass on public or private property nor in such a manner as to cause harm or danger to persons or other animals. A leash shall be located so as not to allow the animal to jump over an obstacle where the leash can become entangled and the animal choke.

(E) Enforcement. The Police Department or Humane Officer may enforce any provision of this section.

(F) Animal Removal. The Police Department or Humane Officer may confiscate and remove animals from a premise for violation of any part of this section. Animals removed because of such action may be stored or disposed of in a humane manner by the animal shelter or its designee. Probable cause that such a violation exists is sufficient reason to confiscate such animal. Conviction is not required.

(G) Exception. This section does not apply to extermination of rats, mice or other vermin.

(8) DOG EXCREMENT DISPOSITION. The owner, keeper or person having physical possession of a dog or dogs shall remove and properly dispose of any dog excrement deposited by said animal immediately after the animal has relieved itself whether that animal be on private or public property.

(9) BARKING OR HOWLING DOGS A NUISANCE. A dog that barks or howls to such an extent that said noise disturbs any neighbor residing nearby by reason of excessive sound or unusual hours is hereby declared a nuisance. The owner or keeper of a dog that barks or howls in violation hereof shall, upon complaint of any person, upon verification by the Humane Officer or appropriate Village officer, be personally served with a notice in writing by the authorized Village officer directing said owner or keeper to take whatever steps are necessary to stop said nuisance within three (3) days of the date of service of said notice. Should said nuisance thereafter continue, it shall constitute a separate violation of this ordinance.

(10) COMPLAINT BY CITIZEN. Should a violation of this ordinance be reported by a citizen, the Village shall not be required to pursue prosecution unless and until the said complaining citizen shall present his/her complaint in writing and notarized on forms supplied by the Village of Sussex. Said complaint is filed with the Court for prosecution, he/she will cooperate fully with the Village Attorney in said prosecution including, if necessary, testifying in a Court trial in support of said complaint. Any failure by a complaining citizen to cooperate with the Village shall result in immediate dismissal of the complaint.

4.07 ADULT ORIENTED ESTABLISHMENT LICENSING AND REGULATION.

(1) FINDINGS OF FACT. The Village Board finds that adult-Oriented Establishments operating in the Village require special licensing by the Village in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Village.

Based on a review of studies conducted in Phoenix AZ, Garden Grove CA, Los Angeles CA, Whittier CA, Indianapolis IN, Minneapolis MN, St. Paul MN, Cleveland OH, Oklahoma City OK, Amarillo TX, Austin TX, Beaumont TX, Houston TX, Seattle WA, and the findings incorporated in City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986) Coleman A. Young v American Mini-Theaters, Inc. 427 U.S. 50 (1976), the Village finds that Adult-Oriented Establishments are frequently used for sexual liaisons of a casual nature and unlawful sexual activities including prostitution.

It has been documents that entertainers in Adult-Oriented Establishments offer to perform sexual acts for patrons, and that sexual contact occurs between patrons and other employees of Adult-Oriented Establishments.

There is convincing documents evidence that booths, rooms or cubicles in Adult-Oriented Establishments have been used by patrons for the purpose of engaging in Specified Sexual Activities or in high-risk sexual behavior and configuration of the interior of the premises is an important factor in combating such activities.

The State of Wisconsin Division of Health has published reports that have been considered by the Village relating to the subject of sexually transmitted diseases and the concern over sexually-transmitted diseases is a legitimate concern of the Village in order to protect the health and well-being of its citizens. Researchers have found that contracting sexually transmitted diseases may increase a person's vulnerability to HIV, AIDS, and some types of Cancer.

The Village is concerned with the protection of its minors from exposure to age-inappropriate, sexually explicit materials and offenses. Licensing is a legitimate and reasonable means of accountability to ensure that the operators and employees of Adult-Oriented Establishments comply with reasonable regulations and to ensure that operators and employees do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

Information relating to pending charges and convictions of the applicants is desired to further the Village's interest in controlling the negative secondary effects of Adult-Oriented Establishments. There is convincing documented evidence that Adult-Oriented Establishments, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.

The Village Board in accepting the findings of these studies of the negative secondary effects of Adult-Oriented Establishments has concluded that if unregulated, they present an increased risk of prostitution, high-risk sexual behavior and crime, deleterious effects upon existing businesses and surrounding residential areas, and decreased property values.

The Village Board finds that negative secondary effects associated with adult sexually oriented establishments have been confirmed by the United States Supreme Court in its decisions in, for example, *City of Renton v. Playtime Theaters, Inc.* (475 U.S. 41 (1986)) and by the United States Court of Appeals in its decisions in, for example, *Han On, Inc. v. City of Arlington* (65 F. 3d 1248 (5th Cir., 1995)), *Fantasy Ranch v. City of Arlington Texas* (459 F. 3d 546 (5th Circuit, 2006)), and *Andy's Restaurant and Lounge, Inc. v. City of Gary* (466 F.3d 550 (7th Cir., 2006)) and that such negative secondary effects include personal property crimes, prostitution, lewd behavior, assault, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation, The Village Board finds that the decisions issued by the appellate courts constitute reliable sources of information that may be reasonably relied upon by the Village Board. The Village Board finds that each of the foregoing negative secondary effects constitutes a harm that the Village has a substantial governmental interest in preventing and/or abating. The Village Board finds that continued regulation of adult-oriented establishments is necessary to limit the aforementioned negative secondary effects associated with adult sexually oriented establishments and thereby promote the health, safety, and welfare of the Village of Sussex; and

The Village Board desires to minimize and control these negative secondary effects and thereby protect the health, safety, and welfare of the citizenry, protect the citizens from increased crime, preserve the quality of life, preserve the property values and character of surrounding neighborhoods.

Restricted hours of operation of Adult-Oriented Establishments will allow law enforcement personnel to concentrate on crime prevention during high crime hours and/or low staffing hours by relieving them of enforcement duties relative to prostitution, loitering, and criminal activity associated with Adult-Oriented Establishments.

(2) **PURPOSE AND INTENT.** The purpose of this section is to promote the health, safety, and general welfare of the Village of Sussex through the establishment of regulations concerning the licensing and operations of adult oriented establishments. The Village Board intends that the enforcement of this section shall be used to combat and prevent the negative secondary effects associated with adult oriented establishments such as, for example, personal property crimes, prostitution, lewd behavior, assault, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restricting the content of any speech or communicative materials, including sexually oriented materials and the regulations set forth herein shall never be used for harassment or censorship purposes against materials or performances having serious artistic, literary, political, educational or scientific value. The Village Board further intends that this section shall be construed and enforced in a manner consistent with the First Amendment to the United State Constitution; Article 1, Section 3 of the Wisconsin Constitution, and the compelling State interest in the protection of the free flow of ideas

(3) **DEFINITIONS.** For the purpose of this ordinance, the following words and phrases shall mean:

(A) **Adult oriented establishment.** Shall include, but is not limited to, "adult bookstores," "adult motion picture theaters," "adult mini-motion picture establishments," or "adult cabaret," and further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common area of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect.

(B) **Adult bookstore.** An establishment, which has a significant or substantial portion of its stock in trade, or derives a significant or substantial portion of its revenue or derives a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the for sale, rent, lease, inspection or viewing books, films, video cassettes, recordings, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specific sexual activities" or "specified anatomical areas" as defined below, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined below, including adult oriented films, movies or live performances, for observation by patrons therein.

(C) **Adult motion picture theater.** An enclosed building with a capacity of fifty (50) or more persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to "specified sexual activities," or "specified anatomical areas," as defined below, for observation by patrons therein.

(D) **Adult mini-motion picture theater.** An enclosed building with a capacity of less than fifty (50) persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, or describing or relating to "specified sexual activities," or "specified anatomical areas," as defined below, for observation by patrons therein.

(E) **Adult cabaret.** A nightclub, bar, juice bar, restaurant, restaurant bottle club, or similar commercial establishment which features:

1. Live performances which are characterized or distinguished by the exposure of "Specified Anatomical Areas" or the removal of articles of clothing;
2. Persons who appear in a state of total or partial nudity; or

3. Films, motion pictures, video cassettes, compact or digital video discs, video recordings or imaging reproductions, slides, cable/satellite transmissions, subscriber programming, or other video broadcasting, displays, reproductions, any other physical medium or manner of imaging that allows an image to be displayed or transmitted, or any other visual representations which are distinguished or characterized by their emphasis on depicting or describing "Specified Anatomical Areas."

(F) Board. The Village Board for the Village of Sussex, Wisconsin.

(G) Adult entertainment. Any sale, rental, or exhibition for any form of consideration of any motion pictures, recordings, photographic reproductions, closed-circuit transmission, cable/satellite transmission, subscriber programming, or other physical medium that allows an image to be displayed or transmitted; and/or any live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated "specified sexual activities," or "specified anatomical areas," as defined below, or the removal of articles of clothing or appearing partially or totally nude.

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

(I) Specified sexual activities. Means simulated or actual:

1. Showing of human genitals in a state of sexual stimulation or arousal or simulate to be in a state of sexual arousal, even if completely and opaquely covered; or
2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio or cunnilingus;
3. Fondling or erotic touching of another's or one's own human genitals, pubic region, perineum, buttocks, anus, or female breasts, or
4. Excretory functions as part of, or in connection with, any of the activities set forth in sections (J)1.b. below.

(J) Specified anatomical areas. Means:

1. Any of the following, or any combination of the following when less than completely and opaquely covered;
 - a. Any human genitals, pubic region, or pubic hair;
 - b. Any human buttocks, or
 - c. Any portion of the female breast or breasts below the point immediately above the top of the areola;

(4) LICENSE.

(A) Except as provided in subsection (d) below, and from and after the effective date of this ordinance, no adult-oriented establishment shall be operated or maintained in the Village of Sussex without first obtaining a license to operate issued by the Village of Sussex.

(B) A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one adult-oriented establishment must have a license to each.

(C) No license or interest in a license may be transferred to any person, partnership or corporation.

(D) All adult-oriented establishments existing at the time of the passage of this ordinance must submit an application for a license within ninety (90) days of the passage of this ordinance. If an application is not received within said ninety (90) day period, then such existing adult-oriented establishment shall cease operations.

(5) APPLICATION FOR LICENSE.

(A) Any person, partnership, limited liability company, or corporation desiring to secure a license shall make application to the Village Clerk. The application shall be filed with and dated by the Village Clerk. A copy of the application shall be distributed promptly by the Village Clerk to the Waukesha County Sheriff's Department acting as the Sussex Police Department and to the applicant.

(B) The application for a license shall be upon a form provided by the Village Clerk. An applicant for a license shall furnish the following information under oath:

1. Name and address.
2. Written proof that the individual is at least eighteen (18) years of age.
3. The address of the adult-oriented establishment to be operated by the applicant.
4. If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agents and the name and address of all shareholders owning more than five percent (5%) of the stock in said corporation and all officers and directors of the corporation.
5. If the applicant is a Limited Liability Company, the application shall specify the name of the company, and the name and residence address of each of the members, and be verified by each member. If one or more of the members is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partner.
6. All convictions in any state or Federal court within the five (5) years immediately preceding the date of application including municipal ordinance violations, exclusive of traffic violations, with a brief statement of the nature of the convictions and the jurisdiction in which the convictions occurred.
7. All pending criminal charges in any State or Federal Court, with a brief statement of the nature of the pending charges and the jurisdiction in which the charges are pending.
8. All pending actions or proceedings wherein a violation of an administrative regulation or municipal ordinance is asserted, the nature of the alleged violation, and the jurisdiction in which the proceedings are pending.

(C) Within forty (40) days of receiving an application for a license the Village Clerk shall notify the applicant whether the application is granted or denied, the consideration shall be by the Village Board.

(D) Whenever an application is denied, the Village Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held within ten (10) days thereafter before the Board as hereinafter provided.

(E) Failure or refusal of the applicant to give any information relevant to the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath

regarding said application or his or her refusal to submit to or cooperate with regard to any information required by this ordinance shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Village Clerk.

(6) STANDARDS FOR ISSUANCE OF LICENSE.

(A) To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

1. If the applicant is an individual:
 - a. The applicant shall be at least eighteen (18) years of age.
 - b. The applicant shall not have been found to have previously violated this ordinance or an analogous ordinance of another municipality within five (5) years immediately preceding the date of the application.

2. If the applicant is a corporation:
 - a. All officers, directors and stockholders required to be named under Section 3(b) shall be at least eighteen (18) years of age.
 - b. No officer, director, or stockholder required to be named under Section 3(b) shall have been found to have previously violated this ordinance or an analogous ordinance of another municipality within five (5) years immediately preceding the date of the application.

3. If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:
 - a. All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age.
 - b. No person having a financial interest in the partnership, joint venture or other type or organization shall have been found to have violated any provision of this ordinance or an analogous ordinance of another municipality within five (5) years immediately preceding the date of the application.

(B) The applicant, if an individual; any stockholders holding 5% or more of the stock or beneficial ownership of the corporation, and any officers, agents, or directors, if the applicant is a corporation; any of the members of the company, and any officers, agents, or managers if the company is a limited liability company; or any of the partners, including limited partners, if the applicant is a partnership, does not, at the time of application, have pending any criminal charge for or within 5 years prior to the date of application, has not been convicted of any offense involving dishonesty, fraud, deceit, robbery, the use or threatened use of force, or violence upon the person of another, or sexual immorality under Chs. 944 or 948, Wis. Stats., as amended, or the laws of another state similar in nature to said Chs. 944 or 948 Wis. Stats., or other offense, subject to 111.335 Wis. Stats., as amended.

(C) The applicant, if a corporation or a limited liability company, is licensed to do business and is in good standing in the State.

(D) The applicant provides no false information, and has not failed to provide the required information, on the application

(7) FEES. A license fee of TWO HUNDRED FIFTY AND 00/100 (250.00) DOLLARS shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned.

(8) DISPLAY OF LICENSE OR PERMIT AND RESPONSIBILITY TO MAINTAIN RECORDS.

(A) The license shall be displayed in conspicuous public place in the adult-oriented establishment.

(B) Any Corporation or Limited Liability Company holding an adult-oriented establishment license under this section shall report to the Clerk, in writing, within thirty (30) days of the event described herein, any of the following:

1. Any change of officers of the corporation or any change in the manager(s) or officers of the limited liability company.
2. Any change in the membership of the Board of Directors of the corporation or any change in the membership of the limited liability company.

(9) RENEWAL OF LICENSE OR PERMIT.

(A) Every license issued pursuant to this Ordinance will terminate at the expiration of one (1) year from date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the Village Clerk. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed with and dated by the Village Clerk. A copy of the application for renewal shall be distributed promptly by the Village Clerk to the operator. The application for renewal shall be upon a form provided by the Village Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

(B) A license renewal fee of TWO HUNDRED FIFTY AND 00/100 (\$250.00) DOLLARS shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of ONE HUNDRED AND 00/100 (\$100.00) DOLLARS shall be assessed against the applicant who filed for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned.

(C) If the Waukesha County Sheriff's Department acting as the Sussex Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Village Clerk.

(10) REVOCATION OF LICENSE.

(A) The Board shall revoke a license or permit for any of the following reasons:

1. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.
2. The operator or any employee of the operator, violates any provision of this Ordinance or any rule or regulation adopted by the Board pursuant to this Ordinance; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the Board shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.
3. The operator becomes ineligible to obtain a license or permit.
4. Any cost or fee required to be paid by this Ordinance is not paid.

5. Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult-oriented establishment.

(B) The Board, before revoking or suspending any license or permit, shall give the operator at least ten (10) days written notice of the charges against the operator, and the opportunity for a public hearing before the Board, as hereinafter provided.

(C) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

(D) Any operator whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for six (6) months from the date of revocation of the license.

(11) **PHYSICAL LAYOUT OF ADULT-ORIENTED ESTABLISHMENT.** Any adult-oriented establishment having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

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

(B) **Construction.** Each booth, room or cubicle shall meet the following construction requirements:

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

(C) **Occupants.** Only one individual shall occupy a booth, room or cubicle at any time. No occupancy of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

(D) A two-inch wide glow-in-the-dark line shall be prominently and continuously displayed on the floor marking a distance of six feet (6') from each unenclosed stage on which an employee in a state of partial or total nudity may appear.

(12) **RESPONSIBILITIES OF THE OPERATOR.**

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

(B) Any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(C) No employee of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or allow any minor to view adult entertainment.

(D) The operator shall maintain the premises in a clean and sanitary manner at all times.

(E) The operator shall maintain at least ten (10) foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor.

(F) The operator shall insure compliance of the establishment and its patrons with the provisions of this Ordinance.

(G) No operator or employee shall knowingly allow another to appear in a state of nudity, unless the person is an employee of the operator's establishment who, while in a state of partial or total nudity, in on a stage (on which no customer or patron is present) at least (18) inches above the floor, and such employee is either:

1. At least six (6) feet from any customer or patron; or
2. Physically separated from patrons by a wall or partition composed of solid glass or light-transmitting plastic or substantially equivalent material extending from the floor of the performance stage to at least five (5) feet above the level of the performance stage, but such that there are no openings in the wall or partition that would permit physical contact between customers or patrons and such employee.

(H) No employee of an adult oriented establishment while on the premises shall, while in the state of partial or complete nudity, touch a customer or patron or the clothing of the customer or patron or allow the customer or patron to touch the employee.

(I) Employees shall maintain a minimum distance of five feet from areas on the adult oriented establishment's premises being occupied by customers for a minimum of one hour after such employee appears in a state of partial or complete nudity on the establishment's premises. This regulation is not intended to prohibit ingress or egress from the premises or the employee's use of a common restroom. It is however, intended to control illicit sexual contact and reduce the incidents of prostitution occurring, which is not allowed in any form or manner, in any adult oriented establishment. Regulating a reasonable delay between the times entertainers appear in a state of undress and their commingling with customers/patrons is a narrowly tailored furtherance of this interest.

(J) No adult-oriented establishment shall be open between the hours of 2:00 am and 8:00 am.

(13) ADMINISTRATIVE REVIEW PROCEDURE. Chapter 24 of the Sussex Municipal Code shall govern the administrative procedure and review regarding the granting, denial, renewal, non-renewal, revocation or suspension of a license.

(14) **EXCLUSIONS.** All private schools, and public schools, as defined in Chapter 115, Wisconsin Statutes, located within the Village of Sussex are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum. Nor shall the licensing apply to the following:

(A) A business operated by a licensed physician, licensed chiropractor, licensed Psychologist, licensed physical therapist, licensed masseuse, licensed vocational nurse, registered nurse, licensed athletic trainer, licensed cosmetologist or licenses barber provided such business and the licensed individual are solely engage in performing the normal and customary functions authorized under the license held.

(B) A retail establishment whose principal business is the offering of wearing apparel for sale to customers and that does not exhibit merchandise on live model(s), or

(C) An activity sponsored by:

1. A school licensed by the State of Wisconsin, or a college, junior college, technical college, or University supported at least partially by taxation, or
2. A private college or university that maintains or operates education programs in which credits are transferable to a school under (1) above.

Any activity conducted or sponsored by an entity identified in this subsection must meet all of the following requirements.

- a. The activity must be situated in a structure that has no sign or other advertising visible from the exterior of the structure indicating a nude person is available for viewing; and
- b. In order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
- c. No more than one (1) nude model is on the premises at any one time.

(15) **PENALTIES AND PROSECUTION.** Any person who shall violate any provisions of this ordinance or who shall fail to obtain a license or permit as required hereunder shall be subject to penalty as provided in SS 25.04 of the Sussex Municipal Code.

4.08 WEIGHTS & MEASURES REGULATIONS

(1) **APPLICATION OF STATE CODES.** The provisions of Ch. 98, Wis. Stats., and Wis. Adm. Code Ch. ATDCP 92 are hereby adopted and incorporated herein by reference as the regulations of the Village pertaining to weights and measures. All performance required thereunder shall be required in the Village and all acts thereunder prohibited shall be prohibited in the Village. In addition, should either the Statute or Administrative Code chapter be amended, revised, modified or replaced, any such amendments, revisions, modifications and replacement provisions shall be enforced under this Ordinance without the necessity of a specific amendment hereto. This Ordinance is adopted under the authority of §98.04(1), Wis. Stats.

(2) **APPOINTMENT OF INSPECTORS.** Pursuant to §98.04(2), Wis. Stats., enforcement of this Ordinance shall be performed in the Village by the Department of Agriculture, Trade and Consumer Protection in accord with a contract entered for that purpose in the Village.

(3) **DEFINITIONS.**

(A) **Commercial Weighing or Measuring Devices.** Devices used by employees in establishing the size, quantity, extent, area or measurement of quantities, things, product or articles for sale, hire or award, or in computing any basic charge or payment for services rendered on the basis of weight

or measure.

(B) Weights and Measures Program. This program that includes administration and enforcement of this section, Chapter 98, Wis. Stats., and applicable Wis. Adm. Code provisions, and any related actions.

(4) WEIGHTS AND MEASURES LICENSE REQUIRED.

(A) License Requirements. Except as provided in Sub. (B), no person shall operate or maintain any commercial weighing or measuring devices or any other weights and measures or systems and accessories related thereto which are used commercially within the Village of Sussex for determining the weight or measure of count unless each device is licensed by an annual weights and measures license issued pursuant to the provisions of this section.

(B) Exemptions. Sales which are otherwise exempted by law from operation of this Ordinance and the Statute and Administrative Code provisions incorporated by reference, including those taking place at farmers markets and under Direct Sellers, Transient Merchants and Solicitors regulations are exempted from the licensing requirements under this Ordinance.

(5) APPLICATION FOR LICENSE. An application for a weights and measures license shall be made in writing on a form provided for such purpose by the Village Clerk and shall be signed by the owner of the commercial business, or by its authorized agent. Such application shall state the type and number of weighing and measuring devices to be licensed, location of the devices, the applicant's full name and address, and whether such applicant is an individual, partnership, limited liability company, corporation or other entity. If the applicant is a partnership, the application shall state the names and addresses of each partner. If the applicant is a corporation or limited liability company, the application shall state the name and address of all officers and agents of the applicant, including the registered agent thereof.

(6) ISSUANCE OF LICENSE AND FEES. Upon compliance with this section, the Village Clerk shall issue a license to the applicant upon payment of an annual license fee on the schedule of fees adopted from time to time by resolution of the Village Board. Each separate store or business location shall require a separate license. The license fee shall not be prorated for a partial year.

(7) LICENSE TERM. A license issued under this section shall expire on June 30th of each year.

(8) ENFORCEMENT OF VIOLATIONS. In the event that the Village Clerk is informed of violations of this Ordinance and/or Statutes and Administrative Code provisions incorporated herein by reference, the Village Clerk shall refer the alleged violation to the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection for enforcement.

(9) FAILURE TO PROCURE OR RENEW LICENSE. Any person failing to obtain or renew a license as required under this Ordinance shall be subject to injunctive relief as well as to assessment of a forfeiture as provided in Section 25.04 of this Municipal Code.

(10) FEE ASSESSMENT.

(A) Annual Assessment. On an annual basis, the Village Board shall assess the costs of enforcement against those licensees whose activities required such enforcement activity during the preceding year. Each licensee shall be responsible for all of the charges levied against the Village by the State of Wisconsin for enforcement activities pertaining to regulated weighing and measuring activities under this Ordinance. The total costs of enforcement for the preceding year shall be

distributed based on a 3 tier system of high end users, medium users and low end users. For purposes of this Ordinance, each year shall run from July 1 to June 30.

(B) Clerk to Prepare Assessment Schedule. Annually, the Village Clerk shall prepare a proposed schedule of assessments consistent with Section (10)(a) of this Ordinance and then submit the same to the Village Board, The Village Board shall consider the Clerk's proposed schedule of assessments and determine the schedule of assessments on a reasonable basis. The Village Clerk shall mail to each licensee as determined by the Village Board and each licensee shall pay the fee assessed within 30 days after the date the invoice is mailed.

(C) Failure to Pay Assessment. If the assessed fee is not paid within 30 days of the date of mailing of the invoice, an additional administrative collection charge of 10% of the fee shall be added to the amount due, plus interest shall accrue thereon at the rate of 1% per month or fraction of a month until paid. If the licensee is the owner of the real estate premises where the licensed weights and measures devices are located, any delinquent assessment shall be extended upon the current or the next tax roll as a charge against the real estate premises for current services, as provided in §66.0627, Wis. Stats. No licenses shall be issued or renewed under this section if the licensee is delinquent in the payment of a fee assessed under this section.

(D) Mailing of Notices. Schedules, notices and invoices shall be considered delivered to a licensee when mailed by first class mail, postage prepaid, to the licensee at the licensee's address as shown on the application form.

(E) Change of Ownership. If the ownership of a commercial business licensed under this section is transferred during a license year, the owner of the business as of July 1 of the license year shall be liable and responsible for the payment of the fees assessed under this section.

(11) PENALTY. Any person violating any provision of this chapter or any rule or regulation made hereunder, in addition to other provisions set forth herein, may be subject to penalties as provided in Section 25.04 of this Municipal Code.

4.09 OUTDOOR DINING AND SEATING AND MERCHANDISE DISPLAYS AND SALES

(1) DEFINITIONS. The following words, terms and phrases, when used in this section shall have the meanings ascribed to them here, except where the context clearly indicates a different meaning:

(A) Outdoor dining and seating. Outdoor dining and seating shall mean the area where the serving and/or consumption of food and/or drink is provided in a commercially-zoned district and in an area not fully enclosed within the principle building by walls and a roof, but is located adjacent to the business that sells or distributes food and drink.

(B) Outdoor merchandise displays and sales. Outdoor merchandise displays and sales shall mean the area where the display and/or sale of merchandise is provided in a commercially- zoned district and in an area not fully enclosed within the principle building by walls and roof, but is located immediately adjacent to the business that sells or distributes the merchandise.

(C) Outdoor establishment. Outdoor establishment shall mean any business who has received approval from the Village Board to operate an outdoor dining and seating and/or outdoor merchandise display and sales areas on private property.

(2) OUTDOOR ESTABLISHMENT PLAN--STANDARDS OF REVIEW. The Village Board shall approve an outdoor establishment plan and application if it makes all the following findings:

(A) The proposed plan is consistent with applicable Village plans adopted for the area, if any.

(B) The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area.

(C) The nature, configuration, location, density, and manner of operation of any outdoor use proposed by the plan will not significantly and adversely interfere with the use and enjoyment of other properties in the vicinity of the subject property.

(D) The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.

(E) The proposed plan will not create any significantly adverse parking impacts as a result of employee or patron parking demands.

(F) The proposed plan will not create any significantly adverse impacts on neighboring properties as a result of:

1. The accumulation of garbage, trash or other waste.
2. Noise created by operation of the outdoor use or by employees or visitors entering or exiting the building or area.
3. Light and glare.
4. Odors and noxious fumes.

(G) The proposed plan will not be detrimental to the public health, safety, or general welfare.

(H) The proposed plan will not obstruct pedestrian traffic or impede building ingress/egress.

(I) In approving an outdoor establishment plan, the Village Board may impose such conditions, as it deems appropriate to protect the public health, safety and general welfare.

(3) **OUTDOOR ESTABLISHMENT PERMIT REQUIRED.** It shall be unlawful for any person to operate an outdoor establishment without having first obtained a permit therefore from the village. An application for permit shall be made on form(s) prescribed by the Village Clerk, and shall be accompanied by the required outdoor establishment plan and nonrefundable permit application fee. Outdoor establishment plans and applications shall be reviewed and approved by the Village Board. The permit shall be valid from April 1 through November 30 unless the Village Board approves alternative dates.

(4) **RENEWAL OF OUTDOOR ESTABLISHMENT PERMIT.** An outdoor establishment permit may be renewed administratively when the following conditions exist:

(A) The applicant has operated an outdoor establishment in accordance with an approved plan and this Ordinance during the previous year.

(B) The previously approved outdoor establishment plan will remain valid and unchanged for the term of the renewed permit.

(C) The permittee has submitted the renewal application and permit fee prior to April 1.

- (D) The Village may deny the administrative renewal if it finds that the circumstances have changed in the area such that it is no longer appropriate for the outdoor establishment to continue in the form as previously approved.
- (5) FEES. The original application fee and renewal fee for a permit under this section shall be as set forth by resolution by the Village Board.
- (6) TERMS (prorating fee). Each permit under this section shall terminate on November 30 following the date of issuance. Application and permit fees shall not be prorated.
- (7) TRANSFER AND PERMIT DISPLAY. No permit under this section shall be transferable. A permit, when granted shall be displayed in view of the outdoor establishment for the duration of the permit.
- (8) OUTDOOR DINING AND SEATING. All outdoor establishment permit holders for dining and seating uses shall follow the operating requirements below:
- (A) Unless otherwise stipulated in the outdoor establishment plan, outdoor activities shall not commence before April 1 of any given year and shall be removed by November 30 of the same year.
 - (B) All table umbrellas must be anchored to a moveable base.
 - (C) All businesses with outdoor dining furniture are responsible for securing the items after closing.
 - (D) All debris created from the seating must be removed from the sidewalk and placed inside the establishment at the end of the day.
 - (E) At no time shall the tables and chairs block or impair pedestrian movement. Location of the established outside eating area should provide a safe access for customers and there shall be an adequate buffer between parking lots and drive aisles.
 - (F) The owners and operators of the establishment shall hold the Village of Sussex harmless against any and all claims for injury arising out of the outdoor seating on a form approved by the Village Attorney.
 - (G) No additional signage shall be displayed beyond the signage that is approved for the indoor portion of the establishment with the exception to allow advertisement/logos on outdoor umbrellas. Any advertisement/logo on umbrellas shall not violate Village Code Section 9.14 "Obscene Materials or Performances."
 - (H) No outdoor establishment shall be located on any area designated for parking of motor vehicles.
 - (I) An outdoor establishment shall only be allowed to sell alcoholic beverages in the outdoor dining and seating area under the following conditions:
 - 1. The licensee requests and the Village Board approve the expansion of the site of the alcoholic beverage license to include the outdoor dining and seating area.
 - 2. The outdoor establishment has a valid class B alcoholic beverage license and said license is followed in all regards.

3. The area for the dining and seating is separated from the public area by a fence or similar structure to create a clear distinction between where alcohol may be present and where it may not be.
4. Any alcoholic beverages must be brought out to the outdoor dining and seating area and served directly to the customer by the outdoor establishment's employees. The serving requirement may be waived by the Village Board if the following is met:
 - a. The designated area is deemed appropriate in scale and size to prevent access to alcoholic beverages by minors.
 - b. The establishment requesting a waiver has no prior incidents or concerns from the public.
 - c. The "no employee service" requirement may be revoked at any time if any problems shall arise.
5. The Village Board may establish other conditions to ensure that public safety and welfare is maintained.

(9) **OUTDOOR MERCHANDISE DISPLAY AND SALES.** All outdoor establishment permit holders for Outdoor merchandise display and sales shall follow the operating requirements below:

- (A) Unless otherwise stipulated in the outdoor establishment plan, outdoor activities shall not commence before April 1 of any given year and shall be removed by November 30 the same year.
- (B) No merchandise shall be stored on areas other than those depicted on the plan.
- (C) Merchandise shall not be stored immediately adjacent to any street, parking lot, or other area traveled by motor vehicles unless separated by a fence, wall, and four-foot pedestrian walkway.
- (D) At no time shall display areas or merchandise block or impair pedestrian movement on sidewalks. A pedestrian walkway, a minimum of four feet in width, shall be provided between any merchandise or display and any street, parking lot, or other areas traveled by motor vehicles.
- (E) No outdoor establishment shall be located on any area designated for parking of motor vehicles.
- (F) The owners and operators of the establishment shall hold the Village of Sussex harmless against any and all claims for injury arising out of the outdoor sales in a form approved by the Village Attorney.
- (G) No additional signage shall be displayed beyond the signage that is approved for the indoor portion of the establishment.
- (H) No alcoholic beverages may be displayed or sold in conjunction with the outdoor display and sales use of the outdoor establishment permit.

(10) **PENALTY.** Any person who shall violate any provision of this section or who shall fail to obtain a license or permit when required by this section shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

(11) **SUSPENSION AND REVOCATION OF OUTDOOR ESTABLISHMENT PERMIT.** If the zoning administrator determines that there has been a violation of any condition imposed pursuant to an outdoor establishment plan or approved permit and the applicant has failed to maintain the outdoor establishment in accordance with the approved plan and permit, the zoning administrator may schedule a hearing before the village board, who shall determine that there has been a violation of a condition imposed pursuant to an outdoor establishment plan and permit, then the village board may invoke a reasonable fine or suspension up to and including permit revocation.

4.10 CABLE TELEVISION FRANCHISING

(1) **STATE STATUTES ADOPTED.** The State of Wisconsin has determined that Cable TV Franchising shall be administered at the State Level. Village requirements with respect to locating in Village right-of-way shall be followed, pursuant to Wisconsin Statutes Section 66.0425 and other applicable laws and ordinances. All processes and annual notifications as required by State Law shall be made to the Village. All fees, payments, PEG channels, and/or licensing costs, which benefit the Village and are required by Section 66.0420, Wisconsin Statutes or other applicable laws and ordinances, now, or in the future shall continue to be paid and provided to the Village.