

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: LIQUOR REGULATIONS

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GENERAL PROVISIONS**§ 110.01 ADOPTION OF STATE LAW BY REFERENCE.**

The provisions of M.S. Ch. 340A, as it may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2% malt liquor are hereby adopted by reference and are made a part of this chapter as if set out in full. It is the intention of the City Council that all future amendments to M.S. Ch. 340A, as it may be amended from time to time, are hereby adopted by reference or referenced as if they had been in existence at the time this chapter is adopted.

(Ord. passed 7-25-2006)

§ 110.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of M.S. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Ch. 340A, as it may be amended from time to time.

(Ord. passed 7-25-2006)

§ 110.03 DEFINITIONS.

In addition to the definitions contained in M.S. § 340A.101, as it may be amended from time to time, the following terms are defined for purposes of this chapter.

LIQUOR. Without modification by the words “intoxicating” or “3.2% malt,” includes both intoxicating liquor and 3.2% malt liquor.

RESTAURANT. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a **RESTAURANT**, an establishment shall have a license from the state as required by M.S. § 157.16, as it may be amended from time to time, and meet the definition of either a “small establishment,” “medium establishment,” or “large establishment” as defined in M.S. § 157.16, Subd. 3d, as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served shall not be considered to be a **RESTAURANT** for purposes of this chapter unless it meets the definitions of “small establishment,” “medium establishment,” or “large establishment.”

(Ord. passed 7-25-2006)

§ 110.04 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.

(A) The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the city that nudity is prohibited as provided in this section on the premises of any establishment licensed under this chapter. This is to protect and assist the owners, operator, and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this chapter, as set forth in this section, reflects the prevailing community standards of the city.

(B) It is unlawful for any licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with nontransparent material. It is unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with nontransparent material.

(C) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any wine, intoxicating liquor, or 3.2% malt liquor license or the imposition of a civil penalty under the provisions of § 10.99.

(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.05 CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor or 3.2% malt liquor in a public park, on any public street, sidewalk, parking lot, or alley, or in any public place other than on the premises of an establishment licensed under this chapter, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted.

(Ord. passed 7-25-2006) Penalty, see § 10.99

LICENSING

§ 110.20 NUMBER OF LICENSES WHICH MAY BE ISSUED.

State law establishes the number of liquor licenses that a city may issue. However, the number of licenses which may be granted under this chapter is limited to the number of licenses which were issued as of the effective date of this chapter, even if a larger number of licenses are authorized by law or election. The Council in its sound discretion may provide by ordinance that a larger number of licenses may be issued up to the number of licenses authorized by M.S. Ch. 340A, as it may be amended from time to time. If a larger number of licenses in a particular category has been authorized by a referendum

held under the provisions of M.S. § 340A.413, Subd. 3, as it may be amended from time to time, but not all of them have been issued, the larger number of licenses is no longer in effect until the Council by ordinance determines that any or all of the licenses may be issued. The Council is not required to issue the full number of licenses that it has available.

(Ord. passed 7-25-2006)

§ 110.21 TERMS AND EXPIRATION OF LICENSES.

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on December 31, of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commission of Public Safety, and the accompanying city consent to the permit, shall expire on March 31 of each year.

(Ord. passed 7-25-2006)

§ 110.22 KINDS OF LIQUOR LICENSES.

(A) *Generally.* The Council of a city that does not have a municipal liquor store is authorized to issue the following licenses and permits, up to the number specified in § 110.20. The City Council which has a municipal liquor store is authorized to issue only those licenses specified in this chapter.

(B) *Specifically.*

(1) 3.2% malt liquor on-sale licenses, which may be issued only to golf courses, restaurants, hotels, clubs, bowling centers, and establishments used exclusively for the sale of 3.2% malt liquor with the incidental sale of tobacco and soft drinks;

(2) 3.2% malt liquor off-sale license;

(3) Temporary 3.2% malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization;

(4) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drugstores that have an off-sale license which was first issued on or before 5-1-1994. The fee for an off-sale intoxicating liquor license established by the Council under § 110.23 shall not exceed \$100 or a greater amount which may be permitted by M.S. § 340A.408, Subd. 3, as it may be amended from time to time;

(5) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M.S. § 340A.101, as it maybe amended from time to time, and this chapter: hotels, restaurants, bowling centers, theaters, clubs or congressionally-chartered veterans organizations, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of

Public Safety. The fee for club licenses established by the Council under § 110.23 shall not exceed the amounts provided for in M.S. § 340A.408, Subd. 2b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of M.S. § 340A.404, Subd. 4b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of M.S. § 340A.404, Subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises;

(6) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M.S. § 340A.504, Subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in § 110.03, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council under the provisions of § 112.23, shall not exceed \$200, or the maximum amount provided by M.S. § 340A.504, Subd. 3c, as it may be amended from time to time;

(7) Combination on-sale/off-sale intoxicating liquor licenses if the city has a population less than 10,000;

(8) Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year;

(9) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: theaters, restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S. § 340A.404, Subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in § 110.03; and to licensed bed and breakfast facilities which meet the criteria in M.S. § 340A.401, Subd. 1, as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of § 110.23 shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2% malt liquor license is authorized to sell malt liquor with a content over 3.2% (strong beer) without an additional license;

(10) One-day consumption and display permits with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization; and

(11) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of § 110.23 shall not exceed \$300, or the maximum amount permitted by M.S. § 340A.414, Subd.6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year. (Ord. passed 7-25-2006)

§ 110.23 LICENSE FEES; PRO RATA.

(A) No license or other fee established by the city shall exceed any limit established by M.S. Ch. 340A, as it may be amended from time to time, for a liquor license.

(B) The Council may establish from time to time in the ordinance establishing fees and charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this chapter. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

(C) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be pro rated on a quarterly basis.

(D) All license fees shall be paid in full at the time the application is filled with the city. If the application is denied, the license fee shall be returned to the applicant.

(E) A refund of a pro rata share of an annual license fee may occur only if authorized by M.S. § 340A.408, Subd. 5, as it may be amended from time to time. (Ord. passed 7-25-2006)

§ 110.24 COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.

The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this chapter. (Ord. passed 7-25-2006)

§ 110.25 APPLICATION FOR LICENSE.

(A) *Form.* Every application for a license issued under this chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, description of

the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.

(B) *Financial responsibility.* Prior to the issuance of any license under this chapter, the applicant shall demonstrate proof of financial responsibility as defined in M.S. § 340A.409, as it may be amended from time to time, with regard to liability under M.S. § 340A.801, as it may be amended from time to time. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to M.S. § 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this chapter without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.26 DESCRIPTION OF PREMISES.

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot or sidewalk.

(Ord. passed 7-25-2006)

§ 110.27 APPLICATIONS FOR RENEWAL.

At least 90 days before a license issued under this chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

(Ord. passed 7-25-2006)

§ 110.28 TRANSFER OF LICENSE.

No license issued under this chapter may be transferred without approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply.

(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.29 INVESTIGATION.

(A) *Preliminary background and financial investigation.* On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of \$500 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

(B) *Comprehensive background and financial investigation.* If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be \$500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

(Ord. passed 7-25-2006)

§ 110.30 HEARING AND ISSUANCE.

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

(Ord. passed 7-25-2006)

§ 110.31 RESTRICTIONS ON ISSUANCE.

(A) Each license shall be issued only to the applicant for the premises described in the application.

(B) Not more than one license shall be directly or indirectly issued within the city to any one person.

(C) No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid.

(D) No license shall be issued for any place or any business ineligible or a license under state law.

(E) No license shall be issued for any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing of the effective date of this chapter or to the renewal of an existing license.

(F) No license shall be granted within 500 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.

(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.32 CONDITIONS OF LICENSE.

(A) *Generally.* The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license until the condition is met.

(B) *Specifically.*

(1) Within 90 days after employment, every person selling or serving liquor in an establishment which has an “on-sale” license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.

(2) Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.

(3) Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.

(4) No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

(5) Compliance with financial responsibility requirement of state law and of this chapter is a continuing condition of any license.

(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.33 HOURS AND DAYS OF SALE.

(A) The hours of operations and days of sale shall be those set by M.S. § 340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows.

(B) No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2% malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

(C) No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2% malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.

(D) No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

(E) Any violation of any condition of this section may be grounds for revocation or suspension of the license.

(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.34 MINORS ON PREMISES.

(A) No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2% malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person or dishwashing services in places defined as a restraint, hotel, motel, or multipurpose building serving food in rooms in which intoxicating liquors or 3.2% malt liquor are sold at retail on sale.

(B) No person under the age of 21 years may enter a licensed establishment except to work or consume meals on premises that qualify as a restaurant, or attend social function that are held in a portion of the premises where liquor is not sold.

(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.35 RESTRICTIONS ON PURCHASE AND CONSUMPTION.

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. § 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.
(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.36 SUSPENSION AND REVOCATION.

(A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 through 14.69, as they may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

(B) The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or M.S. Ch. 340A, as it may be amended from time to time, or any rules promulgated under that chapter as they may be amended from time to time.

(1) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2% malt liquor, or violation of § 110.04, the license shall be revoked.

(2) The license shall be suspended by the Council after a finding under division (A) above that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows.

(a) For the first violation within any three-year period, at least one-day suspension in addition to any criminal or civil penalties which may be imposed.

(b) For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(c) For the third violation within any three-year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(d) For a fourth violation within any three-year period, the license shall be revoked.

(3) The Council shall select the day or days during which the license will be suspended.

(C) Lapse of required proof of financial responsibility shall effect an immediate suspension of any license pursuant to this chapter or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk-Treasurer, a hearing before the Council shall be granted within ten days. Any suspension under this division (C) shall continue until the Council determines that the financial responsibility requirements of state law and this chapter have again been met.

(D) The provisions of § 10.98 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.
(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.37 VIOLATIONS.

(A) Any person violating the provisions of this chapter or M.S. Ch. 340A as it may be amended from time to time, or any rules promulgated under that chapter as they may be amended from time to time is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(B) The Council shall impose a civil penalty of up to \$2,000 for each violation of M.S. Ch. 340A, as it may be amended from time to time, and of this chapter. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, M.S. §§ 14.57 through 14.69, as they may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Nonpayment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the licenses is revoked:

- (1) For the first violation within any three-year period: \$500;
- (2) For the second violation within any three-year period: \$1,000; and
- (3) For the third and subsequent violations within any three-year period: \$2,000.

(C) The term **VIOLATION**, as used in this section, includes any and all violations of the provision of this chapter, or of M.S. Ch. 340A, as it may be amended from time to time, or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the proceeding three-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.
(Ord. passed 7-25-2006) Penalty, see § 10.99

§ 110.38 FEES AND CHARGES.

The fees and charges for the permits, licenses, and services are listed on the fee schedule attached to the ordinance codified herein.

(Ord. passed 7-25-2006)

CHAPTER 111: TOBACCO REGULATIONS

Section

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§ 111.01 PURPOSE.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco-related devices, and the sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this chapter shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco-related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco-related devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time. (Ord. passed 7-14-1998)

§ 111.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco-related devices are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this chapter. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco-related devices for educational, research, and training purposes as authorized by state and federal laws. **COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to tobacco, tobacco products, and tobacco-related devices.

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered **INDIVIDUALLY PACKAGED**. **CARTONS** are defined as packaging containing ten or more packages of cigarettes.

LOOSIES. The common term used to refer to a single or individually packaged cigarette.

MINOR. Any natural person who has not yet reached the age of 18 years.

MOVEABLE PLACE OF BUSINESS. Any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, or tobacco-related devices are available for sale to the general public. **RETAIL ESTABLISHMENTS** shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

SALE. Transfer of goods for money, trade, barter, or other consideration.

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, lighters, or tobacco-related devices in any manner where any person shall have access to the tobacco, tobacco products, lighters, or tobacco-related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, lighter, or tobacco-related device between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

TOBACCO or TOBACCO PRODUCTS. Any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobacco; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in the manner as to be suitable for chewing, sniffing, or smoking.

TOBACCO-RELATED DEVICES. Any tobacco product as well as pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.

(Ord. passed 7-14-1998)

§ 111.03 LICENSE.

(A) *Generally.* No person shall sell or offer to sell any tobacco, tobacco products, or tobacco-related device without first having obtained a license to do so from the city.

(B) *Application.* An application for a license to sell tobacco, tobacco products, to tobacco-related devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk-Treasurer shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk-Treasurer shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The City Council may either approve or deny the license, or it may delay action for the reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk-Treasurer shall issue the license to the applicant. If the City Council denies the license, notice of denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

(D) *Term.* All licenses issued under this chapter expire on December 31 of the year for which they are issued.

(E) *Revocation or suspension.* Any licenses issued under this chapter may be revoked or suspended as provided in § 111.14.

(F) *Transfers*. All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

(G) *Movable place of business*. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this chapter.

(H) *Display*. All licenses shall be posted and displayed in plain view of the general public premise.

(I) *Renewals*. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license. The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

(Ord. passed 7-14-1998) Penalty, see § 10.99

§ 111.04 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be \$25.

(Ord. passed 7-14-1998) (Ord. passed 1-26-1999)

§ 111.05 BASIS FOR DENIAL OF LICENSE.

(A) *Generally*. The following shall be grounds for denying the issuance or renewal of a license under this chapter; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewal to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

(B) *Specifically*.

(1) The applicant is under the age of 18 years.

(2) The applicant has been convicted within the past five years of any violation of federal, state, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco-related devices.

(3) The applicant has had a license to sell tobacco, tobacco products, or tobacco-related devices revoked within the preceding 12 months of the date of application.

(4) The applicant fails to provide any information required on the application, or provides false or misleading information.

(5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from the holding such a license.
(Ord. passed 7-14-1998)

§ 111.06 PROHIBITED SALES.

It shall be violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, lighters, or tobacco-related device:

(A) To any person under the age of 18 years;

(B) By means of any type of vending machine, except as may otherwise be provided in this chapter;

(C) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, lighters, or tobacco-related device between the licensee or the licensee's employee, and the customer. Except for the sale of cartons of cigarettes;

(D) By means of loosies as defined in § 111.02; and/or

(E) By any other means, to any other person, on in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.
(Ord. passed 7-14-1998) Penalty, see § 10.99

§ 111.07 VENDING MACHINES.

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products, or tobacco-related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

(Ord. passed 7-14-1998) Penalty, see § 10.99

§ 111.08 SELF-SERVICE SALES.

(A) It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, lighters, or tobacco-related devices by any means where by the customer may have access to the items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, lighters, or the tobacco-related device

between the licensee or his or her clerk and the customer. All tobacco, tobacco products, lighters, or tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unity not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, lighters, or tobacco-related devices at the time this chapter is adopted shall comply with this section within 30 days.

(B) The following are exceptions to this section:

(1) In establishments where minors are, at all times, prohibited; and

(2) In establishments where 90% or more of their revenues are from the sale of tobacco, tobacco products, and tobacco-related devices.
(Ord. passed 7-14-1998) Penalty, see § 10.99

§ 111.09 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, lighters, or tobacco-related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the Clerk-Treasurer to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.
(Ord. passed 7-14-1998)

§ 111.10 TRAINING SESSIONS.

All licensees and their employee shall attend training on the problem of underage smoking, when to require identification, how to recognize false identification, and general procedures for conducting sales and dealing with problems that may arise. Training sessions must be certified by the city in order to comply with this section.

(Ord. passed 7-14-1998) Penalty, see § 10.99

§ 111.11 SIGNAGE.

All licensed premises are required to post signs indicating it is illegal to sell tobacco, tobacco products, and tobacco-related devices to anyone under the age of 18 years, and that the possession and use of the items by minors is also illegal under both state law and local ordinance. Signs shall be at least eight and one-half inches by 11 inches in size and shall be conspicuously placed.

(Ord. passed 7-14-1998) Penalty, see § 10.99

§ 111.12 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco-related devices. Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco-related devices when the items are obtained as a part of the compliance check. No minor used in compliance shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all question about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

(Ord. passed 7-14-1998) Penalty, see § 10.99

§ 111.13 OTHER ILLEGAL ACTS.

(A) *Generally.* Unless otherwise provided, the following acts shall be a violation of this chapter.

(B) *Specifically.*

(1) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco products, or tobacco-related device to any minor.

(2) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, or tobacco-related device. This division (B)(2) shall not apply to minors lawfully involved in a compliance check.

(3) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco-related device.

(4) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco-related device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain the items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco-related device. This division (B)(4) shall not apply to minors lawfully involved in a compliance check.

(5) *Use of false identification.* It shall be a violation of this chapter for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

(Ord. passed 7-14-1998) Penalty, see § 10.99

§ 111.14 VIOLATIONS.

(A) *Notice.* Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

(B) *Hearings.* If a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(C) *Hearing officer.* The City Council shall serve as the hearing officer.

(D) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officers reasons for finding a violation and the penalty to be imposed under this section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty such findings shall be recorded and a copy provided to the acquired accused violator.

(E) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred.

(F) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter. If the city elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

(G) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(H) *Licensees and employees.* Any licensee, and any employee of a licensee, found to have violated this chapter shall be charged and administrative fine of \$100 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$300, plus a suspension of not more than seven days, for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days and penalties for additional offenses will increase up to and including revocation.

(I) *Other individuals.* Other individuals, other than minors regulated by division (J) below, found to be in violation of this chapter shall be charged an administrative fee of \$100.

(J) *Minors*. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco-related devices, shall be referred to the County Juvenile Court.

(K) *Misdemeanor*. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter.
(Ord. passed 7-14-1998) Penalty, see § 10.99

§ 111.15 EXCEPTIONS AND DEFENSES.

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, or tobacco-related device to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.
(Ord. passed 7-14-1998)

§ 111.16 EFFECTIVE DATE.

This chapter shall take effect the day following publication in the city's official newspaper.
(Ord. passed 7-14-1998)

CHAPTER 112: LODGING TAX

Section

- 112.01 Recitals
- 112.02 Definitions
- 112.03 Imposition of tax
- 112.04 Collections
- 112.05 Exemptions
- 112.06 Advertising no tax
- 112.07 Payment and returns
- 112.08 Examination of return; adjustments; notices and demands
- 112.09 Refunds
- 112.10 Failure to file a return
- 112.11 Violations
- 112.12 Administration of tax
- 112.13 Examine records
- 112.14 Use of proceeds
- 112.15 Appeals
- 112.16 Effective date

§ 112.01 RECITALS.

The State Legislature has authorized the imposition of a tax upon lodging at a hotel, motel, rooming house, tourist court, or other use of space by a transient. The City Council finds that the imposition of such a tax would provide funding for a convention and tourism bureau to promote the city as a tourist and convention center.

(Ord. passed 5-10-1994)

§ 112.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LODGER. The person obtaining lodging from an operator.

LODGING. The furnishing for a consideration of lodging by a hotel, motel, or rooming house except where the lodging shall be for a continuous period of 30 days or more to the same lodger(s). The furnishing of rooms by religious, educational, or nonprofit organizations shall not constitute **LODGING** for purposes of this chapter.

MUNICIPALITY. The City of Gilbert, Minnesota.

OPERATOR. A person who provides lodging to others or any officer, agent, or employee of the person.

PERSON. Any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate, or any other combination of individuals. Whenever the term **PERSON** is used in any provision in this chapter prescribing and imposing a penalty, the term as applied to a corporation, association, or partnership shall mean the officers or partners thereof as the case may be.

RENT. The total consideration valued in money charged for lodging whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

TAX ADMINISTRATOR. The person or entity selected by the city to perform the duty of Tax Collector.
(Ord. passed 5-10-1994)

§ 112.03 IMPOSITION OF TAX.

(A) There is hereby imposed a tax of 3% on the rent charged by an operator for providing lodging to any person after 5-15-1994. The tax shall be stated and charged separately and shall be collected by the operator from the lodger.

(B) The tax collected by the operator shall be a debt owed by the operator to the municipality and shall be extinguished only by payment to the municipality. In no case shall the tax be imposed by this section upon an operator exceed the amount of tax which the operator is authorized and required by this chapter to collect from a lodger.
(Ord. passed 5-10-1994)

§ 112.04 COLLECTIONS.

(A) Each operator shall collect the tax imposed by this chapter at the time the rent is paid. The tax collections shall be deemed to be held in trust by the operator for the municipality.

(B) The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a receipt of payment from the operator.
(Ord. passed 5-10-1994) Penalty, see § 10.99

§ 112.05 EXEMPTIONS.

An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the municipality to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected and such a claim shall be made in writing and under penalty of perjury on forms provided by the Tax Administrator. All the claims shall be forwarded to the Tax Administrator when the returns and collections are submitted as required by this chapter.
(Ord. passed 5-10-1994)

§ 112.06 ADVERTISING NO TAX.

It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than \$.01 shall be considered an additional cent.
(Ord. passed 5-10-1994) Penalty, see § 10.99

§ 112.07 PAYMENT AND RETURNS.

(A) The taxes imposed by this chapter shall be paid by the operator to the Tax Administrator monthly not later than 15 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon the forms and containing the information as the Tax Administrator may require. The return shall contain the following information:

- (1) The total amount of rent collected for lodging during the period covered by the return;
- (2) The amount of tax required to be collected and due for the period;
- (3) The signature of the person filing the return or that of his or her agent duly authorized in writing;
- (4) The period covered by the return; and
- (5) The amount of uncollectable rental charges subject to the lodging tax.

(B) The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this chapter previously paid as a result of any transaction the consideration for which became uncollectable during the reporting period, but only in proportion to the portion of the consideration which became uncollectable.

(Ord. passed 5-10-1994)

§ 112.08 EXAMINATION OF RETURN; ADJUSTMENTS; NOTICES AND DEMANDS.

The Tax Administrator shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of the examination shall be the tax to be paid. If the tax due is found to be greater than that paid, the excess shall be paid to the Tax Administrator ten days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the Tax Administrator ten days after determination of the refund.

(Ord. passed 5-10-1994)

§ 112.09 REFUNDS.

Any person may apply to the Tax Administrator for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one year after the tax was paid, or within one year from the filing of the return, whichever period is the longer. The Tax Administrator shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to the person at the address stated upon the return. If the claim is allowed in whole or in part, the Tax Administrator shall credit the amount of the allowance against any taxes due under this chapter from the claimant and the balance of the allowance, if any, shall be paid by the Tax Administrator to the claimant.

(Ord. passed 5-10-1994)

§ 112.10 FAILURE TO FILE A RETURN.

(A) If any operator required by this chapter to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an incorrect, false, or fraudulent return, the operator shall, upon written notice and demand, file the return or corrected return within five days of receipt of the written notice and shall at the same time pay any tax due on the basis thereof. If the person shall fail to file the return or corrected return, for the person from knowledge and information as the Tax Administrator can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by the return) shall be paid upon within five

days of the receipt of written notice and demand for the payment. Any such return or assessment made by the Tax Administrator shall be prima facie correct and valid, and the person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

(B) If any portion of a tax imposed by this chapter, including penalties thereon, is not paid within 30 days after it is required to be paid, the prosecuting attorney for the municipality may institute any legal action as may be necessary to recover the amount due plus interest, penalties, and the costs and disbursements of any action.

(C) Upon a showing of good cause, the Tax Administrator may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by this chapter, provided that interest during the period of extension shall be added to the taxes due at the rate of 10% per annum.

(Ord. passed 5-10-1994)

§ 112.11 VIOLATIONS.

(A) If any tax imposed by this chapter is not paid within the time herein specified for the payment, or any extension thereof, there shall be added thereto a specific penalty equal to 10% of the amount remaining unpaid.

(B) In case of any failure to make and file a return within the time prescribed by this chapter, unless it is shown that the failure is not due to willful neglect, there shall be added to the tax in addition to the 10% specific penalty provided in division (A) above, 10% if the failure is for not more than 30 days with an additional 5% for each additional 30 days or fraction thereof during which failure continues, not exceeding 25% in the aggregate. If the penalty as computed does not exceed \$10, a minimum penalty of \$10 shall be assessed. The amount so added to any tax shall be collected at the same time and the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(C) If any person willfully fails to file any return or make any payment required by this chapter, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any such a tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50% of any tax (less any amounts paid on the basis of the false or fraudulent return) found due for the period to which the return related. The penalty imposed by this division (C) shall be collected as part of the tax, and shall be in addition to any other penalties provided by this chapter.

(D) All payments received shall be credited first to penalties, next to interest, then to the tax due.

(E) The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the maximum rate per annum as prescribed by M.S. § 270.75, as it may be amended from time to time, from the time the tax should have been paid until paid. Any interest and penalty shall be added to the tax and be collected as part thereof.

(F) Any person who shall willfully fail to make a return required by this chapter, or who shall fail to pay the tax after the written demand for payment, or who shall fail to remit the taxes collected or any penalty or interest imposed by this chapter after written demand for the payment or who shall refuse to permit the Tax Administrator or any duly authorized agents or employees to examine the books, records, and papers under his or her control, or who shall willfully make any incomplete, false, or fraudulent return, shall be guilty of a misdemeanor.

(Ord. passed 5-10-1994) Penalty, see § 10.99

§ 112.12 ADMINISTRATION OF TAX.

The Tax Administrator shall administer and enforce the assessment and collection of the taxes imposed by this chapter. The Tax Administrator shall cause to be prepared blank forms for the returns and other documents required by this chapter and shall distribute the same throughout the city and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation required of him or her under this chapter.

(Ord. passed 5-10-1994)

§ 112.13 EXAMINE RECORDS.

The Tax Administrator and those persons acting on behalf of the Tax Administrator authorized in writing by the Tax Administrator or the municipality may examine the books, papers, and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this chapter. Every operator is directed and required to give to the person authorized to examine the books, papers, and records, the means and facilities and opportunity for the examinations and investigations are hereby authorized.

(Ord. passed 5-10-1994)

§ 112.14 USE OF PROCEEDS.

Five percent of the proceeds obtained from the collection of taxes pursuant to this chapter shall be paid to the Tax Administrator for costs of collection. Ninety-five percent of the proceeds obtained from the collection of taxes pursuant to this chapter shall be used in accordance with M.S. § 469.190, as it may be amended from time to time, to provide funding to Iron Trail Convention and Visitors Bureau, or any other tourist or convention center as selected by City Council resolution, for the purpose of marketing and promoting the municipality as a tourist or convention center.

(Ord. passed 5-10-1994)

§ 112.15 APPEALS.

(A) Any operator aggrieved by any notice, order, or determination made by the Tax Administrator under this chapter may file a petition for review of the notice, order, or determination detailing the operator's reason for contesting the notice, order, or determination. The petition shall contain the name of the petitioner, the petitioner's address, and the location of the lodging' subject to the order, notice, or determination.

(B) The petition shall be filed with the Tax Administrator within ten days after the notice, order, or determination for which review is sought has been mailed or served upon the person requesting review.

(C) Upon receipt of the petition, the Tax Administrator shall set a date and time for a meeting with the petitioner and shall give the petitioner at least five-days prior written notice of the date, time, and place of the meeting.

(D) At the meeting, the petitioner shall be given opportunity to show cause why the notice, order, or determination should be modified or withdrawn. If the meeting does not result in the matter being resolved to the satisfaction of the petitioner, the petitioner may appeal to the City Council.

(E) A petitioner seeking to appeal a decision to the City Council must file a written notice of appeal with the City Council, in care of the City Clerk-Treasurer, within ten days after the Tax Administrator's decision following the division (D) meeting has been mailed to the petitioner. The matter will thereupon be placed on the Council agenda as soon as it is practical. At least five days prior to the hearing before the City Council, the tax Administrator shall prepare and serve on the petitioner a memorandum of proposed findings of fact and conclusions of law. A copy of the memorandum shall be presented to the City Council at the time of the appeal hearing. The Council shall then review the proposed findings of fact and conclusions to determine whether they are correct. Upon a determination by the Council that findings and conclusions are incorrect, the Council may modify, reverse, or affirm the decision of the Tax Administrator based upon an application of the sections of this chapter and the evidence presented. (Ord. passed 5-10-1994)

§ 112.16 EFFECTIVE DATE.

This chapter shall take effect and be enforced from and after its passage, adoption, and publication, but no earlier than 5-15-1994. (Ord. passed 5-10-1994)

CHAPTER 113: BUSINESS LICENSING

Section

- 113.01 Definitions
- 113.02 Applications
- 113.03 Action on application; transfer; termination; duplicate license
- 113.04 Fixing license fees
- 113.05 Carrying or posting
- 113.06 Responsibility of licensee

§ 113.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. Any person making an application for a license under this chapter.

APPLICATION. A form with blanks or spaces thereon, to be filled in and completed by the applicant as his or her request for a license, furnished by the city and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

BOND. A corporate surety document in the form and with the provisions acceptable and specifically approved by the City Attorney.

BUSINESS. Any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both licensed and regulated, by the terms and conditions of this chapter.

LICENSE. A document issued by the city to an applicant permitting him or her to carry on and transact a business.

LICENSE FEE. The money paid to the city pursuant to an application and prior to issuance of a license to transact and carry on a business.

LICENSEE. An applicant who, pursuant to his or her application, holds a valid, current, unexpired, and unrevoked license from the city for carrying on a business.

SALE, SELL, and SOLD. All forms of barter and all manner or means of furnishing merchandise to persons.

(1985 Code, § 6.01)

§ 113.02 APPLICATIONS.

(A) *Generally.* All applications shall be made as follows.

(B) *Specifically.*

(1) All applications shall be made at the office of the City Clerk-Treasurer upon forms that have been furnished by the city for the purposes.

(2) All initial applications shall be accompanied by a payment of a single \$5 fee to cover the cost of investigation as herein provided.

(3) All the applications must be subscribed, sworn to, and include, but not be limited to, the following:

(a) Applicant's name, age, and citizenship;

(b) Applicant's present address and length of time he or she has lived at that address;

(c) Applicant's occupation and length of time so engaged;

(d) Applicant's addresses and occupations for the three years last preceding the date of application;

(e) Names and addresses of applicant's employers, if any, for the three years last preceding the date of application;

(f) Whether or not applicant has ever been convicted of a felony, gross misdemeanor, or misdemeanor, including violation of a municipal ordinance but excluding traffic violations, and if so, the date and place of conviction and the nature of the offense;

(g) Type of license and location of premises for which application is made;

(h) At least four character references if applicant has not resided in the city for two years last preceding the date of application; and

(i) Any other information as the Council shall deem necessary considering the nature of the business for which license application is made.

(4) It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in the application, or any willful omission to state any information called for on the application form, shall, upon discovery of the falsehood work an automatic refusal of license, or if already issued, shall render any license or permit issued pursuant thereto, void, and of no effect to protect the applicant from prosecution for violation of this chapter, or any part hereof.

(5) The City Clerk-Treasurer shall, upon receipt of each application completed in accordance herewith, forthwith investigate the truth of statements made therein and the moral character and business reputation of each applicant for license to the extent as he or she deems necessary. For the investigation, the City Clerk-Treasurer may enlist the aid of the Police Chief. The Council shall not consider an application before the investigation has been completed.

(6) Applications for renewal licenses may be made in the abbreviated form as the Council may by resolution adopt.
(1985 Code, § 6.02) Penalty, see § 10.99

§ 113.03 ACTION ON APPLICATION; TRANSFER; TERMINATION; DUPLICATE LICENSE.

(A) *Granting.* The Council may grant any application for the period of the remainder of the then current calendar year or for the entire ensuing license year. All applications, including proposed license periods, must be consistent with this chapter.

(B) *Issuing.* If an application is approved, the City Clerk-Treasurer shall forthwith issue a license pursuant thereto in the form prescribed by the Council upon proof of ownership, payment of the appropriate license fee, and approval of the bond or insurance as to form and surety or carrier, if required. All licenses shall be on a calendar year basis unless otherwise specified herein as to particular businesses. Unless otherwise herein specified, license fees shall be pro rated on the basis of one-twelfth for each calendar month or part thereof remaining in the then current license year; provided, that for licenses where the fee is less than \$100, a minimum license fee equal to one-half of the annual license fee shall be charged. Except as to licenses which are specifically city-wide, licenses shall be valid only at one location and on the premises therein described.

(C) *Transfer.* A license shall be transferable between persons upon consent of the Council and payment of the investigation fee. No license shall be transferable to a different location without prior consent of the Council and upon payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this division (C).

(D) *Termination.* Licenses shall terminate only by expiration or revocation.

(E) *Refusal and revocation.* The Council may, for any reasonable cause, refuse to grant any application, or revoke any license. No license shall be granted to a person of questionable moral character or business reputation. Before revocation of any license, the Council shall give notice to the licensee and grant the licensee opportunity to be heard. Notice to be given and the exact time of hearing shall be stated in the resolution calling for the hearing.

(F) *Duplicate license.* Duplicates of all original licenses may be issued by the City Clerk-Treasurer, without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of a fee of \$2 for issuance of the duplicate. All duplicate licenses shall be clearly marked "duplicate." (1985 Code, § 6.03)

§ 113.04 FIXING LICENSE FEES.

Except as otherwise herein provided, all fees for licenses under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. The license fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Clerk-Treasurer, and open to inspection during regular business hours. For the purpose of fixing the fees, the Council may subdivide and categorize licenses under a specific license requirement; provided, that any such subdivision or categorization shall be included in the resolution authorized by this section. (1985 Code, § 6.04)

§ 113.05 CARRYING OR POSTING.

All solicitors shall at all times when so engaged, carry their license on their person. All other licensees shall post their licenses in their place of business near the licensed activity; provided, however, that in the case of machine or other device licensing, the city may provide a sticker for the current license year which shall be affixed to each machine or device requiring the sticker. All licensees shall display their licenses upon demand by any officer or citizen. (1985 Code, § 6.05)

§ 113.06 RESPONSIBILITY OF LICENSEE.

The conduct of agents or employees of a licensee, while engaged in performance of their duties for their principal or employer under the license, shall be deemed the conduct of the licensee. (1985 Code, § 6.06)

CHAPTER 114: AMUSEMENTS

Section

- 114.01 Dances
- 114.02 Shows
- 114.03 Bingo
- 114.04 Gambling

§ 114.01 DANCES.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PUBLIC DANCE. Any dance wherein the public may participate by payment, directly or indirectly, of an admission fee or price for dancing, which fee may be in the form of a club membership, or payment of money, directly or indirectly.

PUBLIC DANCING PLACE. Any room, place, or space open to public patronage in which dancing, wherein the public may participate, is carried on and to which admission may be had by the public by payment, directly or indirectly, of an admission fee or price for dancing.

(B) *License required.* It is unlawful for any person to operate a public dancing place, or hold a public dance, without a license therefor from the city.

(C) *License fee.* The license fee shall be fixed and determined by the Council at the time the application is approved by it, which fee shall include the cost of any investigation and the fees and expenses of providing attendance of a police officer, or officers.

(D) *Application and license.*

(1) A verified application for a dance license shall be filed with the city and shall specify the names and addresses of the person, persons, committee, or organization that is to hold the dance, time and place thereof, and the area of the dance floor.

(2) All applications shall be accompanied by affidavits of two residents showing that the applicant is of good character and reputation in the community in which he or she lives, that he or she has not been convicted of a felony, gross misdemeanor, or violation of any public dance laws within the past five years. No license shall be issued to any person who has been so convicted.

(3) No license shall be granted by the Council for any place having so-called "private apartments" or "private rooms" furnished or used for any purposes other than a legitimate business purpose which adjoins the dancing place, or which may be reached by stairs, elevators, or passageway leading from the dancing place. Nor shall a license be granted for any place which is not properly ventilated and equipped with necessary toilets, washrooms or lighting facilities.

(4) Applications may be referred by the Council to the Police Chief for investigation and report prior to being acted upon by the Council.

(5) The Council shall act upon all dance license applications at a regular or special meeting thereof, whether or not it is included in the call or agenda of the meeting.

(6) At least one officer of the law shall be designated by the Police Chief and employed by the city to be present at every public dance during the entire time the dance is being held. For purposes of this division (D)(6), the term **OFFICER OF THE LAW** means any person who is a full-time peace officer, part-time peace officer, or person deputized by the Police Chief. In the discretion of the Council or Police Chief, more than one police officer may be required.

(7) The dance license shall be posted in the public dancing place and shall state the name of the licensee, the amount paid therefor, and the time and place licensed. The license shall also state that the licensee is responsible for the manner of conducting the dance.

(8) No license shall be issued to any applicant under the age of 18 years.

(E) *Dance regulations.*

(1) *Obscenity and immorality prohibited.* It is unlawful for any person to dance, or for a licensee to permit or suffer any person to dance at any public dance in an indecent or immodest manner. It is also unlawful for any person at a public dance to speak in a rude, boisterous, obscene, or indecent manner or for any licensee to suffer or permit any person so to act or speak in any public dancing place.

(2) *Illumination.* Every public dancing place shall be brightly illuminated while in public use, and dancing therein while the lights are extinguished, dimmed, or turned low so as to give imperfect illumination is prohibited.

(3) *Certain persons prohibited.* No licensee shall permit any unmarried person under the age of 16 years, unless the unmarried person is accompanied by his or her parent or guardian, to remain in a public dancing place. Nor shall any licensee permit any intoxicated person, or other person who persists in violating the law, to be or remain in a public dancing place.

(4) *Hours of dancing.* No public dance shall be held on Sunday between the hours of 1:00 a.m. and 12:00 p.m. No public dance shall be held on any day between the hours of 1:00 a.m. and 6:00 a.m. (1985 Code, § 6.30) Penalty, see § 10.99

§ 114.02 SHOWS.

(A) *License required.* It is unlawful for any person to present any public show, movie, caravan, circus, carnival, theatrical or other performance, or exhibition without first having obtained a license therefor from the city.

(B) *Exceptions.* No license fee shall be required in the following instances:

(1) Performances presented in the local schools and colleges, under the sponsorship of the schools and colleges, and primarily for the students thereof only;

(2) Performances of athletic, musical, or theatrical events sponsored by local schools or colleges using student talent only; and/or

(3) Any performance or event in, or sponsored by, bona fide local church and nonprofit organizations, provided that the organization shall be incorporated.

(C) *Obscenity prohibited.*

(1) For the purpose of this division (C), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NUDITY. Uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a **FEMALE BREAST** is considered uncovered if the nipple only or the nipple and the areola only are covered.

OBSCENE PERFORMANCE. A performance which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

OBSCENITIES. Those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

PERFORMANCE. Any play, motion picture film, dance, or other exhibition pictured, animated, or live, performed before an audience.

SADO-MASOCHISTIC ABUSE. Flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

SEXUAL CONDUCT. Human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

SEXUAL EXCITEMENT. The condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

(2) It is unlawful for any licensee, for a monetary consideration or other valuable commodity or service, to knowingly or recklessly:

(a) Exhibit an obscene performance;

(b) Directly or indirectly sell an admission ticket or other means to gain entrance to an obscene performance; or

(c) Directly or indirectly permit admission of a person to premises whereon there is exhibited an obscene performance.

(3) Any prosecution under this division (C) shall include the following elements:

(a) The average person, applying contemporary community standards, would find the performance, taken as a whole, appealing to the prurient interest of the audience;

(b) The performance describes or depicts, in a patently offensive way, sexual conduct included in the definition of obscene performance; and

(c) The performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1985 Code, § 6.31) Penalty, see § 10.99

§ 114.03 BINGO.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACTIVE MEMBER. A member who has paid all his or her dues to the eligible organization, and has been a member of it for at least six months.

BINGO. A game where each player has a card or board for which a consideration has been paid, containing five horizontal rows of spaces, with each row except the central one containing five figures. The central row has four figures with the word “Free” marked in the center space thereof. A player wins a game of bingo by completing any pre-announced combination of spaces or, in the absence of a pre-announcement of a combination of spaces, any combination of five spaces in a row, either vertical, horizontal, or diagonal.

BINGO OCCASION. A single gathering or session at which a series of one or more successive bingo games is played.

ELIGIBLE ORGANIZATION. Any fraternal, religious, veterans, or other nonprofit organization which has been in existence for at least three years and has at least 15 active members.

(B) *License required.* It is unlawful to conduct a bingo occasion without a license therefor from the city.

(C) *Application.* Only eligible organizations shall be qualified applicants for a bingo license. Each application for a bingo license shall be approved by the Building Inspector, Police Chief, and Fire Chief before being acted upon by the Council. The Council shall act on each application within 180 days from the date of application, but the license shall not issue until at least 30 days after the date.

(D) *Exception.* The Council may by resolution waive the requirement of a bingo license if it is conducted at a civic celebration for not more than 12 consecutive days, or by an eligible organization that conducts less than five bingo occasions in any calendar year; provided, however, that these exceptions apply only to the licensing provisions of this section. All other provisions apply equally to licensees and excepted non-licensees.

(E) *Conduct of bingo.*

(1) Each licensee shall appoint a Bingo Manager to supervise its bingo occasions. He or she shall give a fidelity bond in the sum of \$10,000 in favor of the licensee conditioned on his or her faithful performance; provided, that the Council, by unanimous vote, may waive the bond requirement upon a showing by the proposed Bingo Manager and the licensee that bond is not required to protect the organization.

(2) One or more checkers shall be engaged for each bingo occasion, who shall be active members of the licensee or spouse of the active members. Checkers shall record the number of cards purchased and played in each game prior to the completion thereof and record the prizes awarded to the recorded cards, and certify all the figures recorded as accurate and correct to the best of his or her knowledge.

(3) Additional persons may be engaged for other duties in connection with bingo occasions, but no person shall assist in conducting a bingo occasion who is not an active member of the licensee, or spouse of the member.

(4) No person shall receive more than \$20 as compensation for duties in connection with a bingo occasion.

(5) No licensee shall conduct more than 104 bingo occasions each year or two bingo occasions each week without special permission of the Council.

(6) A bingo occasion shall not continue for more than four consecutive hours.

(F) *Bingo on leased premises.*

(1) Any person or eligible organization which leases premises that it owns to two or more licensees for purposes including the conduct of bingo occasions, shall allow no more than four bingo occasions thereon each week.

(2) Any eligible organization, which leases any premises to one or more other eligible organizations for purposes including the conduct of bingo occasions shall use the proceeds of the rental, less reasonable sums for maintenance, furnishings, and other necessary expenses, only for the uses for which bingo profits may be used as set forth herein. Not less than once each year, the lessor shall report to the city the disposition of all receipts which it has received during the reporting period from the rental of its facilities to other eligible organizations for purposes including the conduct of bingo occasions.

(3) No licensee shall conduct bingo on any leased premises without a written lease for a term of at least equal to the remainder of the term of the bingo license of the lessee. Lease payments shall be at a fixed monthly rate, or rate per bingo occasion, not subject to change during the term of the lease. No lease shall provide that rental payments be based on a percentage of receipts or profits from bingo occasions.

(G) *Prizes.*

(1) Prizes for a single bingo game shall not exceed \$100, except prizes for a game of the type commonly known as a "cover-all" game. "Cover-all" prizes may exceed \$100, provided that the aggregate value of the prizes for a bingo occasion shall not exceed \$500. The aggregate value of prizes for a bingo occasion shall not exceed \$2,500, except that in the case of a bingo occasion during which a "cover-all" game is played for a maximum prize of more than \$100 but less than \$500, the aggregate value of prizes for the bingo occasion shall not exceed \$3,000. Merchandise prizes shall be valued at fair market retail value.

(2) Each bingo winner shall be determined and every prize shall be awarded and delivered the same day on which the bingo occasion is conducted.

(H) *Records.*

(1) Each licensee shall keep records of its gross receipts and profits for each bingo occasion. All deductions from gross receipts for a bingo occasion shall be documented with receipts or other records. The distribution of profits shall be itemized as to payee, amount, and date of payment. Records required by this division (H) shall be preserved for three years.

(2) Gross receipts shall be compared with the checkers' records for the bingo occasion by a person who did not sell cards for the bingo occasion. If a discrepancy exceeding \$20 is found between the amount of gross receipts for a bingo occasion as determined by the checkers' records, and the amount of gross receipts as determined by totaling the cash receipts, the discrepancy shall be reported to and investigated by the city.

(3) Bingo gross receipts shall be segregated from other revenues of the licensee and placed in a separate account. Each organization shall maintain separate records of its bingo operations. The person who accounts for bingo gross receipts and profits shall not be the same person who accounts for other revenues of the licensee.

(I) *Reports.*

(1) Each licensee shall report monthly to its membership as to its gross receipts from bingo, its profits from bingo, and the distribution of those profits itemized as required herein.

(2) Prior to issuance of its initial license, and annually prior to issuance of renewal licenses thereafter, each licensee shall file with the city copies of the following:

(a) The most recently filed Department of the Treasury, Internal Revenue Service, "Return of Organization Exempt From Income Tax," Form 990, or a comparable form if the organization is required to file the form with the Department of the Treasury;

(b) The most recently filed Department of the Treasury, Internal Revenue Service, "Exempt Organization Business Income Tax," Form 990-T, or a comparable form if the organization is required to file the form with the Department of the Treasury;

(c) The most recently filed State Department of Commerce, "Statement of Bingo Operations." All information contained in this statement shall be true, correct, and complete to the best of the knowledge of the person or persons signing the statement; and

(d) Any lease agreements required by this section.

(3) All bingo records and supporting documents shall be open to inspection by the city upon 24-hours' notice.

(J) *Use of bingo receipts.* No expense shall be incurred or amounts paid in connection with the conduct of bingo, except those reasonably expended for bingo supplies and equipment, prizes, rent, or utilities used during the bingo occasions, bingo license fees, and compensation to persons lawfully hired to conduct or assist in conducting a bingo occasion.

(K) *Use of bingo profits.* Profits from any bingo occasion shall be expended only as authorized from a resolution recorded in the official minutes of a regular meeting of the licensee and only for one or more of the following purposes:

(1) Benefitting persons by enhancing their opportunity for religious or educational advancement, by relieving or protecting them from disease, suffering, or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded;

(2) Initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures;

(3) Lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people; and/or

(4) The improving, expanding, maintaining, or repairing of real property owned or leased by the licensee, provided, that this does not include the erection or acquisition of real property, unless the city specifically authorizes the expenditures after finding that the property will be used exclusively for one or more of the purposes specified in this provision.

(1985 Code, § 6.32) Penalty, see § 10.99

§ 114.04 GAMBLING.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACTIVE MEMBER. A member who has paid all his or her dues to the organization and has been a member of the organization for at least six months.

ELIGIBLE APPLICANT. A fraternal, religious, veterans, or other nonprofit organization which has been in existence for at least three years, has at least 15 active members, and is either a corporation, fund, foundation, trust, or association organized for exclusively scientific, literary, religious, charitable, educational, or artistic purposes, or for the purpose of making contributions to or for the use of the United States of America, the state, or any of its political subdivisions for exclusively public purposes, or for any combination of the above enumerated purposes, if no part of the net income of any such corporation, fund, foundation, trust, or association inures to the benefit of any private member, stockholder, or individual.

GAMBLING DEVICES. Those gambling devices known as “paddlewheels” or “tipboards,” “pull-tabs” or “ticket jars,” or apparatus used in conducting raffles.

PADDLEWHEEL. A wheel marked off into sections containing one or more numbers, and which, after being turned or spun, uses a pointer or marker to indicate winning chances.

PROFIT. The gross receipts from the operation of gambling devices and the conduct of raffles, less reasonable sums expended for prizes, local licensing fees, taxes, and maintenance costs for the devices.

PULL-TABS or **TICKET JARS.** A single folded or banded ticket or a card, the face of which is initially covered, or otherwise hidden from view, to conceal a number or set of numbers or a symbol or set of symbols. A few of the numbers or symbols out of every set of **PULL-TABS** (or **TICKET JARS**) will have been designated in advance and at random as prizewinners. A participant pays a consideration to an operator for the opportunity to obtain a folded or banded ticket or a card, view the numbers or symbols on it and possibly obtain a prizewinning **PULL-TAB** (or **TICKET JAR**).

RAFFLE. A game in which a participant buys a ticket for a chance at a prize with the winner being determined by a random drawing to take place at a location and date printed upon the ticket.

TIPBOARD. A board, placard, or other device measuring at least 12 inches square, marked off in a grid or columns, in which each section contains a hidden number or numbers, or other symbol, which determines the winning chances.

(B) *License required.* It is unlawful for any person to operate a gambling device or conduct a raffle without a license therefor from the city.

(C) *Applications.*

(1) Applications for a gambling license must be considered and approved by the Council at a regular meeting.

(2) Only applications made by eligible organizations will be considered for approval by the Council.

(3) No application shall be considered until 30 days have elapsed after filing the same with the city.

(4) All applications shall be considered within 180 days after filing the same with the city.

(5) With the application, the applicant shall file a certificate that it owns the premises upon which gambling devices shall be operated and raffles conducted, or in the alternative, a copy of the executed written lease for at least the term of the license for which application is made. The city may

authorize raffles to be conducted by a licensee on premises not owned or leased by the licensee. No lease shall provide for a monetary relationship between receipts or profits from the operation of gambling devices or raffles and the rent to be paid.

(D) *License regulations and restrictions.*

(1) Profits shall be used only for lawful purposes authorized at a regular meeting of the licensee.

(a) For the purpose of this division (D), **LAWFUL PURPOSE** means one or more of the following:

1. Benefitting persons by enhancing their opportunity for religious or educational advancement, by relieving or protecting them from disease, suffering or distress, by contributing to their physical well-being by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded;

2. Initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures;

3. Lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people; or

4. The improving, expanding, maintaining or repairing real property owned or leased by the licensee.

(b) **LAWFUL PURPOSE** does not include the erection or acquisition of any real property, unless the Council specifically authorizes the expenditure after finding that the property will be used exclusively for one or more of the purposes specified in this division (D).

(2) All gambling devices and the conduct of raffles shall be under the supervision of a single Gambling Manager designated from and by the active membership of the licensee, provided that the Gambling Manager shall not act as such, or as Bingo Manager, for any other licensee.

(3) The Gambling Manager shall give a fidelity bond in the sum of \$10,000 in favor of the licensee conditioned on the faithful performance of his or her duties. Terms of the bond shall provide that notice shall be given in writing to the city not less than 30 days prior to its cancellation. By unanimous vote, the Council may waive the bond requirement by including the waiver provision in the gambling license issued to the licensee.

(4) A licensee shall continue to qualify within the definition of "eligible applicant" during the entire term of the license. Failure on the part of the licensee to so qualify shall be grounds for revocation.

(5) No compensation in excess of \$25 a week shall be paid in connection with the operation of a gambling device or the conduct of a raffle by the licensee, except that a licensee may elect to pay a percent of raffle ticket sales to nonprofit organizations selling for the licensee.

(6) No person who is not an active member of the licensee, or its auxiliary, or the spouse or surviving spouse of an active member may participate in the licensee's operation of a gambling device or conduct of a raffle, except that the licensee may utilize non-member nonprofit organizations in raffle ticket sales.

(7) Nothing in this section shall be construed to authorize any use, possession, or operation of:

(a) Any gambling device which is activated by the insertion of a coin or token; or

(b) Any gambling game or device in which the winning numbers, tickets, or chances are in any way determined by the outcome of any athletic contest or sporting event.

(8) The Gambling Manager shall account for all gross receipts, expenses, and profits from gambling devices and raffles, be responsible for the operation thereof, and filing all reports required by this section.

(9) Each licensee shall keep records of its gross receipts, quantity of free plays, if any, expenses and profits for each single gathering or occasion at which gambling devices are operated or a raffle is conducted. All deductions from gross receipts for each single gathering or occasion shall be documented with receipts or other records indicating the amount, a description of the purchased item or service or other reason for the deduction, and the recipient. The distribution of profits shall be itemized as to payee, purpose, amount, and date of payment.

(10) Gross receipts from the operation of gambling devices and the conduct of raffles shall be segregated from other revenues of the licensee including bingo receipts, and placed in a separate account. Each licensee shall have separate records of its gambling operations. The Gambling Manager may be the Bingo Manager for the licensee.

(11) Each licensee shall report monthly to its membership and to the Council its gross receipts, expenses, and profits from gambling devices or raffles, and the distribution of profits itemized as required by this division (D).

(12) Records required by this division (D) shall be preserved for three years and the licensee shall make available the records relating to operation of gambling devices and the conduct of raffles for public inspection at reasonable times and places.

(13) Except as otherwise here in provided, gambling devices shall be operated and raffles conducted by a licensee only upon premises which it owns or leases except that tickets for raffles conducted in accordance with this section may be sold off the premises.

(14) Total prizes from the operation of paddlewheels, tipboards, and pull-tabs (or ticket jars) awarded in any single day in which they are operated shall not exceed \$1,000. Total prizes resulting from any single spin of a paddlewheel, or any single seal of a tipboard, each tipboard limited to a single seal, or from a single pull-tab (or ticket jar) shall not exceed \$150. Total prizes awarded in any calendar year by any licensee from the operation of paddlewheels, tipboards, and pull-tabs (or ticket jars) and the conduct of raffles shall not exceed \$35,000. Merchandise prizes shall be valued at fair market retail value.

(1985 Code, § 6.34) Penalty, see § 10.99

CHAPTER 115: PEDDLERS AND SOLICITORS

Section

- 115.01 Definitions
- 115.02 Exceptions to definitions
- 115.03 Licensing; exemptions
- 115.04 License ineligibility
- 115.05 License suspension and revocation
- 115.06 License transferability
- 115.07 Registration
- 115.08 Prohibited activities
- 115.09 Exclusion by placard

§ 115.01 DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PEDDLER. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personal property that the person is carrying or otherwise transporting. The term **PEDDLER** shall mean the same as the term **HAWKER**.

PERSON. Any natural individual, group, organization, corporation, partnership, or association. As applied to groups, organizations, corporations, partnerships, and associations, the term shall include each member, officer, partner, associate, agent, or employee.

REGULAR BUSINESS DAY. Any day during which the city hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be counted as **REGULAR BUSINESS DAYS**.

SOLICITOR. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property or services of which he or she

may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term shall mean the same as the term **CANVASSER**.

TRANSIENT MERCHANT. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise or other personal property and who does not remain or intend to remain in any one location for more than 14 consecutive days.

§ 115.02 EXCEPTIONS TO DEFINITIONS.

(A) For the purpose of the requirements of this chapter, the terms **PEDDLER**, **SOLICITOR**, and **TRANSIENT MERCHANT** shall not apply to any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retailer of the items being sold by the wholesaler. The terms also shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route.

(B) In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, as well as those persons participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of **PEDDLERS**, **SOLICITORS**, and **TRANSIENT MERCHANTS**, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

(C) Nothing in this chapter shall be interpreted to prohibit or restrict door-to-door advocacy. Persons engaging in door-to-door advocacy shall not be required to register as solicitors under § 115.07. The term **DOOR-TO-DOOR ADVOCACY** includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political, and other ideas.

§ 115.03 LICENSING; EXEMPTIONS.

(A) *County license required.* No person shall conduct business as a peddler, solicitor, or transient merchant within the city limits without first having obtained the appropriate license from the county as required by M.S. Ch. 329, as it may be amended from time to time, if the county issues a license for the activity.

(B) *City license required.* Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to § 115.07.

(C) *Application.* Application for a city license to conduct business as a peddler or transient merchant shall be made at least 14 regular business days before the applicant desires to begin conducting business. Application for a license shall be made on a form approved by the City Council and available from the office of the City Clerk-Treasurer. All applications shall be signed by the applicant. All applications shall include the following information:

- (1) Applicant's full legal name;
- (2) All other names under which the applicant conducts business or to which applicant officially answers;
- (3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks, and features, and the like);
- (4) Full address of applicant's permanent residence;
- (5) Telephone number of applicant's permanent residence;
- (6) Full legal name of any and all business operations owned, managed, or operated by applicant, or for which the applicant is an employee or agent;
- (7) Full address of applicant's regular place of business (if any);
- (8) Any and all business related telephone numbers of the applicant;
- (9) The type of business for which the applicant is applying for a license;
- (10) Whether the applicant is applying for an annual or daily license;
- (11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days);
- (12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business;
- (13) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses;

- (14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant;
- (15) Proof of any requested county license;
- (16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant;
- (17) A general description of the items to be sold or services to be provided;
- (18) All additional information deemed necessary by the City Council;
- (19) The applicant's driver's license number or other acceptable form of identification; and
- (20) The license plate number, registration information, and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established in the ordinance establishing fees and charges, adopted pursuant to this code, as it may be amended from time to time.

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Clerk-Treasurer, within two regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the City Clerk-Treasurer determines that the application is incomplete, the City Clerk-Treasurer must inform the applicant of the required necessary information that is missing. If the application is complete, the City Clerk-Treasurer must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving a complete application the City Clerk-Treasurer must issue the license unless there exist grounds for denying the license under § 115.04, in which case the Clerk-Treasurer must deny the license. If the City Clerk-Treasurer denies the license, the applicant must be notified in writing of the decision, the reason for denial, and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request. The decision of the City Council following the public hearing can be appealed by petitioning the State Court of Appeals for a writ of certiorari.

(F) *Duration.* An annual license granted under this chapter shall be valid for one calendar year from the date of issue. All other licenses granted under this chapter shall be valid only during the time period indicated on the license.

(G) *License exemptions.*

(1) No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated, or raised on any farm.

(2) No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when the activity is for the purpose of exercising that person's state or federal constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of constitutional rights is merely incidental to a commercial activity.

(3) Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.
Penalty, see § 10.99

§ 115.04 LICENSE INELIGIBILITY.

The following shall be grounds for denying a license under this chapter:

(A) The failure of the applicant to obtain and show proof of having obtained any required county license;

(B) The failure of the applicant to truthfully provide any of the information requested by the city as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application;

(C) The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner. Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person;

(D) The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant; and

(E) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's office, or other similar business or consumer rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years.

§ 115.05 LICENSE SUSPENSION AND REVOCATION.

(A) *Generally.* Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:

- (1) Fraud, misrepresentation, or incorrect statements on the application form;
- (2) Fraud, misrepresentation, or false statements made during the course of the licensed activity;
- (3) Conviction of any offense for which granting of a license could have been denied under § 115.04; and
- (4) Violation of any provision of this chapter.

(B) *Multiple persons under one license.* The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee shall serve as a suspension or revocation of each authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

(C) *Notice.* Prior to revoking or suspending any license issued under this chapter, the city shall provide the license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

(D) *Public hearing.* Upon receiving the notice provided in division (C) above, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Clerk-Treasurer within ten regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request. Within three regular business days of the hearing, the City Council shall notify the licensee of its decision.

(E) *Emergency.* If, in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this chapter, the City Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in division (C) above.

(F) *Appeals.* Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court.

Penalty, see § 10.99

§ 115.06 LICENSE TRANSFERABILITY.

No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

Penalty, see § 10.99

§ 115.07 REGISTRATION.

(A) All solicitors, and any person exempt from the licensing requirements of this chapter under § 115.03, shall be required to register with the city. Persons engaging in door-to-door advocacy shall not be required to register. The term *DOOR-TO-DOOR ADVOCACY* includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political, and other ideas.

(B) Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Clerk-Treasurer shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be nontransferable.

Penalty, see § 10.99

§ 115.08 PROHIBITED ACTIVITIES.

No peddler, solicitor, or transient merchant shall conduct business in any of the following manners:

(A) Calling attention to his or her business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure;

(B) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right-of-way;

(C) Conducting business in a way as to create a threat to the health, safety, and welfare of any individual or the general public;

(D) Conducting business before 7:00 a.m. or after 9:00 p.m.;

(E) Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person;

(F) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person; and

(G) Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating, or abusive.

Penalty, see § 10.99

§ 115.09 EXCLUSION BY PLACARD.

No peddler, solicitor, or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor, or transient merchant when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating “No Peddlers, Solicitors, or Transient Merchants,” or “Peddlers, Solicitors, and Transient Merchants Prohibited,” or other comparable statement. No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

Penalty, see § 10.99