

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: GENERAL PROVISIONS

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§ 110.01 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 un-revoked 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.
(2003 Code, § 6.01)

§ 110.02 APPLICATIONS.

All applications shall be made as follows.

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

(B) Unless otherwise provided for in this chapter, all the applications must be subscribed, sworn to and include information as the Council shall deem necessary considering the nature of the business for which license application is made.

(C) 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.

(D) The City Clerk 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 may enlist the aid of the Chief of Police. The Council shall not consider an application before the investigation has been completed.

(E) Applications for renewal licenses may be made in the abbreviated form as the Council may by resolution adopt.
(2003 Code, § 6.02) Penalty, see § 10.99

§ 110.03 ACTION ON APPLICATION, TRANSFER, TERMINATION AND 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 shall forthwith issue a license pursuant thereto in the form prescribed by the Council, 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. 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.* Unless otherwise provided herein, no license shall be transferable between persons or to a different location. It is unlawful to make any transfer in violation of this division.

(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. Grounds for revocation may be, but are not limited to, any of the following: that the licensee suffered or permitted illegal acts upon licensed premises; that the licensee had knowledge of the illegal acts but failed to report the same to police; that the licensee failed or refused to cooperate fully with police in investigating such alleged illegal acts; or that the activities of the licensee created a serious danger to public health, safety or welfare.

(F) *Duplicate license.* Duplicates of all original licenses may be issued by the City Clerk, 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". (2003 Code, § 6.03)

§ 110.04 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. Such 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, 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 subdivision or categorization shall be included in the resolution authorized by this section.

(2003 Code, § 6.04)

§ 110.05 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.
(2003 Code, § 6.05)

§ 110.06 PENALTY FOR PROPERTY OWNER.

It is unlawful for any person to knowingly permit any real property owned or controlled by him or her to be used, without a license, for any business for which a license is required by this chapter.
(2003 Code, § 6.06) Penalty, see § 10.99

§ 110.07 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.
(2003 Code, § 6.07)

§ 110.08 CONDITIONAL LICENSES.

Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefor, place the conditions and restrictions upon a license as it, in its discretion, may deem reasonable and justified.
(2003 Code, § 6.08)

§ 110.09 RENEWAL OF LICENSES.

Applications for renewal of an existing license shall be made at least 30 days prior to the date of expiration of the license, and shall contain information as is required by the city. This time requirement may be waived by the Council for good and sufficient cause.
(2003 Code, § 6.09)

§ 110.10 INSURANCE REQUIREMENTS.

Whenever insurance is required by a section of this chapter, after approval by the Council, but before the license shall be issued, the applicant shall file with the City Clerk a policy or certificate of public liability insurance showing: that the limits are at least as high as required; that coverage is effective for at least the license term approved; and that the insurance will not be cancelled or terminated without 30-days' written notice served upon the City Clerk. Cancellation or termination of the coverage shall be grounds for license revocation.

(2003 Code, § 6.10)

§ 110.11 LICENSE DENIAL AND FIXING RATES; HEARING.

(A) *Right to deny.* The Council reserves to itself the right to deny any application for a license to operate any business licensed or regulated under this chapter where the business involves service to the public, rates charged for service, use of public streets or other public property by the applicant or the public, or the public health, safety and convenience. The Council may also consider the location of the business in making the determination; provided, however, that before making the determination, the Council shall hold a public hearing thereon pursuant to the notice to interested parties and the public as it may deem necessary or proper in action calling for the hearing.

(B) *Rates.* Where, under specific provisions of this chapter, the Council has reserved to itself the right to fix or approve fees, rates or charges of a licensed or regulated business, the rates shall be uniform for each category or class of service, and no licensee or proprietor of a regulated business shall claim or demand payment in excess thereof.

(C) *Hearing.* Any applicant or licensee under this chapter who challenges denial of a license or rates fixed or approved by the Council shall have a right to a hearing before the Council upon written request therefor. Notice of time, place and purpose of the hearing shall be given to the persons and by means as the Council may determine in calling the hearing.

(2003 Code, § 6.11)

§ 110.12 WITHHOLDING APPROVALS DUE TO DELINQUENCIES OR DEFAULTS.

(A) *Conditions to city approvals.* A license or other city approval or authorization of any kind may be granted only to an applicant who:

(1) Has complied with all applicable statutory and ordinance requirements;

(2) Has paid all fees, charges, taxes, special assessments and other debts or obligations that are due from the applicant and payable to the city regarding any matter; and

(3) Is in compliance with all ordinance requirements and attached conditions regarding other city approvals that have been granted to the applicant for any matter.

(B) *Waiver.* The requirements of the above may be waived in the following circumstances:

(1) The applicant or licensee has provided sufficient safeguards to assure payment of debts, fees or compliance with city requirements within a reasonable time after the city approval.

(2) Enforcement of the requirements would result in a significant hardship to the applicant through no fault of his or her own or would result in an otherwise unfair situation.
(Ord. 163, passed 7-1-2013)

§ 110.13 CRIMINAL HISTORY BACKGROUND; APPLICANTS TO CITY LICENSES.

(A) *Purpose.* The purpose and intent of this section is to establish regulations to allow law enforcement access to Minnesota's computerized criminal history information for a specified non-criminal purposes of licensing background checks.

(B) *Criminal history license background investigations.* The City Police Department is hereby required, as the exclusive entity within the city, to do a criminal history background investigation on the applicants for the following licenses within the city:

(1) Liquor licenses, tobacco licenses, peddler's licenses and any other licenses as may be designated by resolution by the city council from time to time.

(2) In conducting the criminal history background investigation in order to screen licensed applicants, the Police Department is authorized to access data maintained in the Minnesota Criminal Bureau of Criminal Apprehension Computerized Criminal History Information System in accordance with Bureau of Criminal Apprehension policy. Any data that is accessed and acquired shall be maintained at the Police Department under the care and custody of the chief law enforcement official or his or her designee. The summary of the results of the computerized criminal history data may be released by the Police Department to the licensing authority, including the city council, the City Manager, the City Clerk or other city staff involved in the license approval process.

(3) Before the investigation is undertaken, the applicant must authorize the Police Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of M.S. Chapter 13, at it may be amended from time to time, regarding the collection, maintenance and use of the information. Except for the positions set forth in M.S. § 364.09, as it may be amended from time to time, the city will not reject an applicant for a license on the basis of the

applicant's prior conviction, unless the crime is directly related to the license sought and the conviction is for a felony, gross misdemeanor or misdemeanor with a jail sentence. If the city rejects the applicant's request on this basis, the city shall notify the applicant in writing of the following:

- (a) The grounds and reasons for the denial.
 - (b) The applicant complaint and grievance procedure set forth in M.S. § 364.06, as it may be amended from time to time.
 - (c) The earliest date the applicant may reapply for the license.
 - (d) That all competent evidence of rehabilitation will be considered upon reapplication.
- (Ord. 165, passed 12-2-2013) Penalty, see 10.99

CHAPTER 111: MISCELLANEOUS REGULATIONS

Section

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§ 111.01 AMUSEMENT DEVICES.

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

AMUSEMENT DEVICE. Includes a game of skill, a coin amusement or a video game, as defined in this section, or any combination thereof.

ARCADE. A contiguous area in which more than six amusement devices are kept for use by the public generally.

COIN AMUSEMENT. Any machine which upon the insertion of a coin, token or slug, operates or may be operated and is available to the public generally for entertainment or amusement, which machine emits music, noise or displays motion pictures.

DISTRIBUTOR. The person who places amusement devices on premises not owned by him or her or under his or her control, which devices may be played by the public generally for a price paid either directly or indirectly.

GAME OF SKILL. Any device excepting pool and billiard tables, bowling alleys and shooting lanes, but including miniatures thereof, played by manipulating special equipment and propelling balls or other projectiles across a board or field into respective positions whereby a score is established, which is available to be played by the public generally at a price paid either directly or indirectly for the privilege.

VIDEO GAME. Any electrical device which displays objects on a screen and upon insertion of a coin, token or slug may be played by the public generally for entertainment or amusement.

(B) *License required.* It is unlawful for any person to have upon premises owned or controlled by him or her: any amusement device; or operate an arcade, without a license therefor from the city. It is unlawful for any person to be a distributor without a license therefor from the city.

(C) *Exception.* This section shall not apply to video games of chance under the control of the Charitable Gambling Control Board.

(D) *Unlawful use and devices.* It is unlawful for any person to: sell or maintain a machine or device which is for gambling or contains an automatic pay-off device; give any prize, award, merchandise, gift or thing of value to any person on account of operation of the device; sell or maintain, or permit to be operated in his or her place of business, any amusement device equipped with an automatic pay-off device; equip any amusement device with an automatic pay-off device; permit persons under the age of 18 years to play or operate any game of skill; permit the playing of coin amusement machines between the hours of 1:00 a.m. and 6:00 a.m. of any day; or permit the playing of coin amusement machines within 600 feet of any church, public or parochial school or playground.

(2003 Code, § 6.30) Penalty, see § 10.99

§ 111.02 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 include the cost 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 Chief of Police 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 security person shall be present at every public dance during the entire time the dance is being held. Before any person may be employed as a security person, the Chief of Police shall conduct a background check of that individual and shall approve the employment of that person as a security person. The security person shall be employed and compensated by the individual or organization applying for the dance permit.

(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 any day between the hours of 1:00 a.m. and 6:00 a.m.

(2003 Code, § 6.31) (Ord. 32, passed 5-19-1991) Penalty, see § 10.99

§ 111.03 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 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; or

(3) Any performance or event in, or sponsored by, bona fide local church and non-profit 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 sadomasochistic 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: exhibit an obscene performance; directly or indirectly sell an admission ticket or other means to gain entrance to an obscene performance, or 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.

(2003 Code, § 6.32) Penalty, see § 10.99

Cross-reference:

No sexually oriented business shall locate in any place which is also used to dispense or consume alcohol, see § 114.09

Sexually oriented businesses, generally, see Chapter 114

§ 111.04 BILLIARDS, POOL AND BOWLING.

(A) *License required.* It is unlawful for any person to keep or maintain any pool, billiard, snooker or other game table, or any bowling alley (bowling lane) available for public use without first having obtained a license from the city.

(B) *Practices prohibited.* It is unlawful for any:

(1) Pool, billiard, snooker or other game table licensee to be open between 1:00 a.m. and 8:00 a.m. of any weekday, or between 1:00 a.m. and 12:00 noon on any Sunday, and permit use of the licensed facilities;

(2) Licensee to permit any form of gambling thereon;

(3) Licensee to permit any person to become disorderly or to use profane, obscene or indecent language; see M.S. § 609.72, disorderly conduct, as it may be amended from time to time, regarding conduct that is illegal; or

(4) Licensee, not having an on-sale liquor license, to sell or possess, or knowingly allow any person on the licensed premises to sell or possess, intoxicating liquor.
(2003 Code, § 6.33) Penalty, see § 10.99

§ 111.05 TAXICABS.

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

DRIVER. The person driving and having physical control over a taxicab whether he or she be the licensee or in the employ of the licensed operator.

OPERATOR. A licensee owning or otherwise having control of one or more taxicabs.

TAXICAB. Any passenger conveyance being driven, on call or traversing a scheduled or unscheduled route for public use or hire upon payment of a fare or at regular fare rates, but not including such as are designed for mass transportation as buses, trains or streetcars.

(B) *License required.* It is unlawful for any person to drive or operate a taxicab without a license therefor from the city.

(C) *License issuance and display, and vehicle marking.* All licenses shall be issued for specific conveyances, except as otherwise herein provided. License tags, including number and year for which issued, shall be plainly visible from the front of the conveyance. Both sides of every licensed taxicab, when in use, shall be plainly and permanently marked as such with a painted sign or appurtenances showing the full or abbreviated name of the licensed operator.

(D) *Insurance required.*

(1) No license to operate a taxicab shall be issued until the applicant has filed with the city Clerk-Treasurer a policy or certificate of policy evidencing coverage, under an insurance policy issued by an insurance company authorized to do business in the state, approved by the Council, insuring the person against claims, demands or losses in the sum of at least \$200,000 combined single limit, for injury to or death of any number of persons or property damage in any one accident, resulting from the negligent operation, use or defective condition of the licensed motor vehicle.

(2) Such insurance policy shall also contain a clause obligating the insurer to give ten-days' written notice to the City Clerk-Treasurer and to the insured or assured, before any cancellation or termination of the policy which is earlier than its expiration date.

(3) No such policy shall include or contain any imitation, condition or clause providing, in effect, that the policy shall not cover automobiles mentioned, described or included herein when the automobiles are driven, used, operated or maintained while the driver or occupant thereof is intoxicated or engaged in the illicit transportation of liquor. No such policy shall contain any limitation, clause or provision whatever excepting and releasing any insurer on any such policy from liability hereunder by reason of any such taxicab being driven, used or operated when the driver or occupant thereof is intoxicated or engaged in the illicit transportation of liquor. Nothing contained in this division (D)(3) shall be construed to affect the defense of contributory negligence which may be pleaded by the licensee or his or her insurer.

(4) If, at any time, in the judgment of the City Clerk, any such policy is not sufficient for any reason, the City Clerk-Treasurer shall require the owner, lessee, licensee or operator of the vehicle to replace the policy with another approved by the Council. If, for any reason, any policy shall become void or be cancelled or become ineffectual for the purposes set forth in this section, it shall be unlawful for any person to operate any licensed motor vehicle until a policy approved by the Council has been obtained and deposited with the City Clerk. Any license issued under this section shall terminate whenever, during the term of the license, the licensee fails to keep in full force and effect the insurance as required in this section.

(E) *Rates.* Each applicant shall file with the City Clerk, before a taxicab license is issued or renewed, a schedule of proposed maximum rates to be charged by him or her during the licensed period for which the application is made. The schedule of maximum rates proposed August 30, 2013, or a compromise schedule thereof, shall be approved by the Council before granting the license. The schedule shall be posted in a conspicuous place in the taxicab in full view of passengers riding therein. Nothing

herein shall prevent a taxicab licensee from petitioning the Council for review of the rates during the licensed period, and the Council may likewise consider the petition and make new rates effective at any time. No taxicab licensee shall charge rates in excess of maximum rates approved by the Council.

(F) *Mechanical condition.* Before issuing a taxicab license, the applicant shall present to the Council a certificate signed by a competent and experienced mechanic showing that the taxicab conveyance is in good mechanical condition, that it is thoroughly safe for transportation of passengers, and that it is in neat and clean condition. A similar certificate may be required from time to time during the licensed period. In lieu of a certificate, the Council may accept the report of the Chief of Police relative thereto.

(G) *Additional conditions.* The Council may, at the time of issuance of any license or renewal of an existing license, attach the additional conditions, as prerequisites to the issuance or maintenance of the license, as are in the best interests of the public.

(H) *Expiration.* Each license shall expire one year from the date of its issuance.
(2003 Code, § 6.34) (Ord. 77, passed 5-22-1998) Penalty, see § 10.99

§ 111.06 GARBAGE AND REFUSE HAULERS.

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

GARBAGE. All putrescible wastes, including animal offal and carcasses of dead animals but excluding human excreta, sewage and other water-carried wastes.

OTHER REFUSE. Ashes, glass, crockery, cans, taper, boxes, rags and similar non-putrescible wastes but excluding sand, earth, brick, stone, concrete, trees, tree branches and wood.

(B) *License required.* It is unlawful for any person to haul garbage or other refuse for hire without a license therefor from the city, or to haul garbage or other refuse from his or her own residence or business property other than as herein excepted.

(C) *Exception.* Nothing in this section shall prevent persons from hauling garbage or other refuse from their own residences or business properties provided the following rules are observed: that all garbage is hauled in containers that are water-tight on all sides and the bottom and with tight-fitting covers on top; that all other refuse is hauled in vehicles with leak-proof bodies and completely covered or enclosed by canvas or other means or material so as to completely eliminate the possibility of loss of cargo; and that all garbage and other refuse shall be dumped or unloaded only at the designated sanitary landfill.

(D) *Hauler licensee requirements.*

(1) Hauler licenses shall be granted only upon the condition that the licensee have packer-type vehicles in good condition to prevent loss in transit of solid cargo, that the vehicle be kept clean and as free from offensive odors as possible and not allowed to stand in any street longer than reasonably necessary to collect garbage or refuse, and that the same be dumped or unloaded only at the designated sanitary landfill, and strictly in accordance with regulations relating thereto.

(2) The Council, in the interest of maintaining healthful and sanitary conditions in the city, hereby reserves the right to specify and assign certain areas to all licensees, and to limit the number of licenses issued.

(2003 Code, § 6.36) Penalty, see § 10.99

§ 111.07 CHARITABLE GAMBLING.

(A) Each organization which is licensed by the state to conduct lawful gambling, and which is required to file an annual financial report and annual tax returns or other reports with the Charitable Gambling Control Board, shall simultaneously file copies of the annual report(s) and tax return(s), together with all attached schedules and work sheets, and a summary explanation of the same, together with a list of donations and recipients, with the City Manager, who shall make copies available to the Council.

(B) The Council will not approve an application for license renewal to the Gambling Control Board of any organization that has failed to comply with the reporting requirements of this section.

(2003 Code, § 6.37) (Ord. 13, passed 1-19-1990)

§ 111.08 SEWER SERVICE CONNECTION INSTALLER.

(A) It is unlawful for any person to engage in the work or business of installing private sewer service lines and appurtenances for others without a license therefor from the city.

(B) Any person desiring to engage in the work shall make application to the city on forms to be supplied by the city together with a fee adopted by resolution of the Council. All licenses issued shall be for one year only and each renewal shall be made by application together with the annual license fee. A plumber licensed by the State Board of Health shall pay no fee to the city, but shall show evidence of the state license before the city issues a license.

(C) Each applicant for license shall sign an agreement on the form as may be delivered by the city agreeing to pay the city the actual cost of repair for any damage caused to the city sewer system by the applicant or any of his or her employees or agents. This agreement shall accompany the license application.

(D) Each applicant shall accompany his or her application with a certificate of insurance in a company acceptable to the city showing public liability insurance coverage with limits of at least \$250,000 per person; \$500,000 per occurrence and \$10,000 for property damage. The certificate shall specifically state that the insurance covers underground operations and shall contain a provision that the coverage afforded under the policies will not be cancelled or materially changed until at least 15 days prior written notice has been given to the city.
(2003 Code, § 6.38) (Ord. 7, passed 9-23-1988) Penalty, see § 10.99

§ 111.09 COMMUNICATIONS PERMIT.

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

CITY MANAGER. The City Manager or designated representative.

COMPANY. A natural or corporate person, business association, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks or is required to construct, install, operate, repair, maintain, remove or relocate facilities in the city.

FACILITIES. Telecommunications equipment of any kind, including, but not limited to, audio, video, paging, facsimile or similar service, not governed by M.S. Chapter 238, as it may be amended from time to time, including all trunks, lines, circuits, physical connections, switching equipment, wireless communication equipment of all kinds, and any necessary appurtenances owned, leased or operated by a company on, over, in, under, across or along public ground.

PUBLIC GROUND. Highways, roads, streets, alleys, public ways, utility easements and public grounds in the city.

(B) *Permit procedure.*

(1) *Permit required.* A company may not construct, install, repair, remove or relocate facilities, or any part thereof, in, on, over, under or along public ground without first obtaining a permit from the city.

(2) *Application.* Application for a permit shall be made to the City Manager.

(3) *Issuance of permit.* If the City Manager determines that the applicant has satisfied the requirements of this section, the City Manager may issue a permit to the company. An applicant may contest a permit denial, or the conditions of approval by written notice to the City Clerk requesting a Council review within 14 days of the City Manager's action. The Council shall hear any contest of the City Manager's actions under this section within 45 days of the City Clerk's receipt of the contest notice. Nothing in this section precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to the issuance of a permit set forth herein.

(4) *Permit fee.* The application must be accompanied by the permit fee set by the Council by resolution.

(5) *Security for completion of work.* Prior to commencement of work, the company must deposit with the city security in the form of certified check, letter of credit or construction bond, in a sufficient amount as determined by the City Manager for the completion of the work. The securities will be held until the work is completed, plus a period of six months hereafter to guarantee that restoration work has been satisfactorily completed. Upon application of the company, providing the information as the City Manager may require, if two or more work projects are to be constructed during a calendar year, the City Manager may accept, in lieu of separate security for each project, a single security for multiple projects in the form and amount as determined, in the discretion of the City Manager, to be sufficient to assure completion of all projects which may be in progress at any one time during that calendar year and to guarantee that restoration work will be satisfactorily completed. The security will then be returned to the company with interest if required by law and then interest at the applicable statutory rate.

(6) *Inspection of work.* When the work is completed, the company must request an inspection by the City Manager. The City Manager will determine if the work has been satisfactorily completed and provide the company with a written report of the inspection and approval.

(C) *Restoration and relocation.*

(1) *Restoration.* Upon completion of the work, the company must restore the general area of the work, including paving and its foundations, to the same condition that existed prior to commencement of the work and must exercise reasonable care to maintain the same condition for two years thereafter. The work must be completed as promptly as weather permits. If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the public ground to the same condition, the city may put it in the same condition at the expense of the company. The company must, upon demand, pay to the city the direct and indirect cost of the work done for or performed by the city, including, but not limited to, the city's administrative costs. To recover its costs, the city will first draw on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the city.

(2) *Company initiated relocation.* The company must give the city written notice prior to a company initiated relocation of facilities. A company initiated relocation must be at the company's expense and must be approved by the city, the approval not to be unreasonably withheld.

(3) *City required relocation.* The company must promptly, and at its own expense, with due regard for seasonal working conditions, permanently relocate its facilities whenever the city requires the relocation.

(4) *Relocation where public ground vacated.* The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the city. If the vacation proceedings are initiated by the company, the company must pay the relocation costs. If the vacation proceedings are initiated by the city or other persons, the company must pay the relocation costs unless otherwise agreed to by the city, company and other persons.

(D) *Company default.*

(1) *Notice.* If the company is in default in the performance of the work authorized by the permit, including, but not limited to, restoration requirements, for more than 30 days after receiving written notice from the city of the default, the city may terminate the rights of the company under the permit, the notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the company by personally delivering it to an officer thereof at its principal place of business in the state, or by certified mail to that address.

(2) *City action on default.* If the company is in default in the performance of the work authorized by the permit, the city may, after the above notice, to the company and failure of the company to cure the default, take action as may be reasonably necessary to abate the condition caused by the default. The company must reimburse the city for the city's reasonable costs, including costs of collection and attorney fees incurred as a result of the company default. The security posted under division (B) above will be applied by the city first toward payment for the reimbursement.

(E) *Indemnification.*

(1) *Scope.* The company will indemnify, keep and hold the city, its elected officials, officers, employees and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair, removal, relocation or operation of the facilities affecting public ground, unless the injury or damage is the result of the negligence of the city, its officials, employees, officers or agents. The city will notify the company of claims or actions and provide a reasonable opportunity for the company to accept and undertake the defense.

(2) *Claim defense.* If a claim or action is brought against the city under circumstances where indemnification applies, the company, at its sole expense, shall defend the city if written notice of the claim or action is given to the company within a period wherein the company is not prejudiced in the defense of the claim or action by lack of the notice. If the company undertakes the defense, the company shall have complete control of the claim or action, but it may not settle without the consent of the city, which shall not be unreasonably withheld. This division is not, as to third parties, a waiver of any defense or immunity otherwise available to the city. In defending any action on behalf of the city, the company is entitled to assert every defense or immunity that the city could assert in its own behalf.

(F) *Other conditions of use.*

(1) *Use of public ground.* Facilities must be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel and use of public ground. The facilities are subject to additional conditions of the permit as established by the director, including, but not limited to, the right of inspection by the city at reasonable times and places; the obligation to relocate the facilities pursuant to division (C) above; and compliance with all applicable regulations imposed by the State Public Utilities Commission and other state and federal law, including prompt compliance with the requirements of the Gopher State One Call program, M.S. Chapter 216D, as it may be amended from time to time.

(2) *Location.* The facilities must be placed in a location agreed to by the city. The company shall give the city 45 days' advanced written notice of the company's proposed location of facilities within the public ground. No later than 45 days after the city's receipt of the company's written notice the city will notify the company in writing of the city's acceptance or rejection of the proposed location. If the city rejects the company's proposed location, the city shall propose alternative location. The city does not waive or forfeit its right to reject the location of facilities by failure to respond within the 45 days.

(3) *Emergency work.* A company may open and disturb the surface of the public ground without a permit where an emergency exists requiring the immediate repair of its facilities, and in that event, the company must request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit. In no event may the company undertake such an activity which will result in the closing of a street or alley without prior notification to the city.

(4) *Street improvements, paving or resurfacing.* The city will give the company written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain: the nature and character of the improvements; the streets upon which the improvements are to be made; the extent of the improvements, the time when the city will start the work; and if more than one street is involved, the sequence in which the work is to proceed.

(5) *Company protection of facilities.* The company must take reasonable measures to prevent the facilities from causing damage to persons or property. The company must take reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property or the elements. The company must take specific protective measures when the city performs work near the facilities.

(6) *Prior service connections.* In cases where the city is undertaking the paving or resurfacing of streets and the facilities are located under the street, the company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five-year period following the paving or resurfacing.

(G) *Effective date and applicability to existing facilities.* Companies with facilities in, on, over, under or along public ground on the effective date of this section must take prompt action to comply with this section and the permits authorized by this section. A company, however, is not required to reapply for a permit obtained from the city prior to the effective date of this section. A company is not required to pay the difference between the permit fee of a previously obtained permit and the equivalent newly obtained permit under this section. All other provisions of this section apply to existing facilities, this section shall take effect immediately from and after its passage and publication according to law.

(H) *Acceptance of requirements.* By receiving a permit pursuant to this section, the company accepts and agrees to comply with all of the requirements of this section.

(I) *Public ground other than right-of-way.* Nothing in this section is intended to grant to the company authority beyond that given by M.S. § 222.37, as it may be amended from time to time, for use of the public rights-of-way for construction and operation of facilities. If the city allows the company to use its non-right-of-way public ground, the terms of this section apply to the extent they are consistent with the contract, statutory and common law rights the city owns in the property.

(J) *Regulations permit schedules.* The City Manager is authorized and directed to prepare suitable regulations and schedules for the administration of permits issued under this section.
(2003 Code, § 6.41) (Ord. 101, passed 3-8-2002) Penalty, see § 10.99

CHAPTER 112: TOBACCO REGULATIONS

Section

- 112.01 Purpose
- 112.02 Definitions
- 112.03 License
- 112.04 Fees
- 112.05 Basis for denial of license
- 112.06 Prohibited sales
- 112.07 Vending machines
- 112.08 Self-service sales
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- 112.10 Compliance checks and inspections
- 112.11 Violations
- 112.12 Nicotine delivery products
- 112.13 Exceptions and defenses
- 112.14 Tobacco; minors

§ 112.01 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 services, and the sales, possession and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts (i.e., CDC, Minnesota Department of Public Health/ASSIST) 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 section 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 official 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.

(2003 Code, § 6.35-1) (Ord. 80, passed 10-29-1998)

§ 112.02 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 section. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this section. **COMPLIANCE CHECKS** shall also mean the use of minors to 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. Include, but will 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**.

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

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

MOVABLE 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 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. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products 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 or tobacco related device between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

TOBACCO PRODUCTS. Any products containing, made or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, or any component, part or accessory of a tobacco product, including, but not limited to, cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine cut and other chewing tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, but does not include cigarettes as defined in this section. **TOBACCO PRODUCTS** excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

TOBACCO RELATED DEVICES. Any tobacco product as well as a 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, the presence of any type of locking device, whether electronic or otherwise, which must first be deactivated by the licensee or an employee of a licensee, shall not exclude a device from being considered a vending machine for the purposes of this section. (2003 Code, § 6.35-2) (Ord. 80, passed 10-29-1998; Ord. 157, passed 1-18-2011)

§ 112.03 LICENSE.

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.

(A) *Application.* An application for a license to sell tobacco, tobacco products and 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 or which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the Clerk 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.

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

(C) *Term.* All licenses issued under this section shall be valid on a calendar year basis from January 1 to December 31 of each year. In the event of an application made on the mid-year basis, the Council may direct that the fee provided therefor is hereinafter noted be pro rated with the initial license period to run from the date of approval to December 31 of the year in which approved. Any subsequent or renewal license shall thereafter be from January 1 through December 31.

(D) *Revocation or suspension.* Any license issued under this section may be revoked or suspended.

(E) *Transfers.* All licenses issued under this section shall be valid only on the premises for which the license as issued and only for that person to whom the license was issued. No transfer of any license to another location or person shall be valid only with prior approval of the Council.

(F) *Movable place of business.* No license shall be issued to a movable place of business. Only fixed location businesses shall be eligible to be licensed under this section.

(G) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed remises.

(H) *Renewals.*

(1) The renewal of a license issued under this section shall be handled in the same manner as the original application.

(2) 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.

(3) The issuance of a license issued under this section 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.

(4) Holders of existing licenses shall not be entitled to automatic renewal of the license, but shall be required to apply for a new license unless otherwise directed by the Council.
(2003 Code, § 6.35-3) (Ord. 80, passed 10-29-1998) Penalty, see § 10.99

§ 112.04 FEES.

No license shall be issued under this section until the appropriate license fee shall be paid in full (unless for a pro rated portion of the year). The fee for a license shall be that as required by resolution adopted by the Council from time to time with the resolution being kept on file with the City Clerk.
(2003 Code, § 6.35-4) (Ord. 80, passed 10-29-1998)

§ 112.05 BASIS FOR DENIAL OF LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this section; 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 renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section:

(A) The applicant is under the age of 18 years;

(B) The applicant has been convicted within the past five years of any violation of a federal, state or local law or city code provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices;

(C) 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;

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

(E) The applicant is prohibited by federal, state or local law, city code provision or other regulation from holding the license.

(2003 Code, § 6.35-5) (Ord. 80, passed 10-29-1998)

§ 112.06 PROHIBITED SALES.

(A) *General violation.* It is a violation of this section for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device:

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

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

(3) 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 premises in order to receive the tobacco, tobacco product or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product or tobacco related device between the licensee or the licensee's employee and the customer. No person shall offer for sale tobacco or tobacco related devices as defined in this chapter in open displays which are accessible to the public without the intervention of a store employee;

(4) By means of loosies as defined herein;

(5) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana or other deleterious, hallucinogenic, toxic or controlled substances, except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process; or

(6) By any other means, or to any other person, or in any other manner or form prohibited by federal, state or other local law, city code provision or other regulation.

(B) *Promotional distribution.* No person shall engage in the promotional distribution of smokeless tobacco products or cigarettes, cigars, pipe tobacco or other tobacco products as defined in this chapter, except that single serving samples of tobacco may be distributed promotionally in tobacco stores. (2003 Code, § 6.35-6) (Ord. 80, passed 10-29-1998; Ord. 157, passed 1-18-2011) Penalty, see § 10.99

§ 112.07 VENDING MACHINES.

It is unlawful for any person licensed under this section 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.

(2003 Code, § 6.35-7) (Ord. 80, passed 10-29-1998) Penalty, see § 10.99

§ 112.08 SELF-SERVICE SALES.

It is unlawful for a licensee under this section to allow the sale of tobacco, tobacco products or tobacco related devices by any means whereby the customer may have access to those 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 or the tobacco related device between the licensee or his or her Clerk and the customer unless minors are at all time prohibited from entering the licensed establishment and unless 90% or more of the revenues of the licensed establishment are generated by the sale of tobacco and tobacco related products.

(2003 Code, § 6.35-8) (Ord. 80, passed 10-29-1998) Penalty, see § 10.99

§ 112.09 RESPONSIBILITY.

All licensees under this section shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products 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 to whatever penalties are appropriate under this section, state or federal law, or other applicable law or regulation.

(2003 Code, § 6.35-9) (Ord. 80, passed 10-29-1998)

§ 112.10 COMPLIANCE CHECKS AND INSPECTIONS.

(A) All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours.

(B) 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.

(C) Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco related devices shall be supervised by city designated law enforcement officers or other designated city personnel.

(D) Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products and tobacco related devices, when the items are obtained as part of the compliance check.

(E) No minor used in compliance checks shall attempt to use a false identification or theatrical makeup misrepresenting the minor's age and all minors lawfully engaged in a compliance check shall produce any identification, if any exists, for which he or she is asked.

(F) 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.

(2003 Code, § 6.35-10) (Ord. 80, passed 10-29-1998)

§ 112.11 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 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 Officer's 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

violation. Likewise, if the Hearing Officer finds that no violation occurred or finds grounds for not imposing any penalty, the findings shall be recorded and a copy provided to the acquitted 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 section.

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

(2003 Code, § 6.35-11) (Ord. 80, passed 10-29-1998)

§ 112.12 NICOTINE DELIVERY PRODUCTS.

It shall be illegal to sell nicotine or lobelia delivery devices to a minor unless the sale and delivery has been approved by the Food and Drug Administration for medical purposes.

(Ord. 157, passed 1-18-2011) Penalty, see § 10.99

§ 112.13 EXCEPTIONS AND DEFENSES.

Nothing in this section shall prevent the providing of tobacco, tobacco products and tobacco related devices 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 section for a person to have reasonably relied on proof of age as described by state law.

(2003 Code, § 6.35-13) (Ord. 80, passed 10-29-1998)

§ 112.14 TOBACCO; MINORS.

(A) *Minor defined*. **MINOR** is any natural person who has not yet reached the age of 18 years.

(B) *Possession by minor*. It is unlawful for any minor to have in his or her possession any tobacco, tobacco product or tobacco related device. This division (B) shall not apply to minors lawfully involved in a compliance check on behalf of the city.

(C) *Use by minor*. It is unlawful for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product or tobacco related device.

(D) *Procurement by or for minor.* It is unlawful:

(1) For any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco products or tobacco related device;

(2) For any person to purchase or otherwise obtain the items on behalf of a minor;

(3) For any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any minor;

(4) 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; and

(5) This division (D) shall not apply to minors lawfully involved in a compliance check on behalf of the city.

(E) *False identification.* It is unlawful 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 in which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

(F) *Exceptions and defenses.* Nothing in this section shall prevent the providing of tobacco, tobacco products or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It is an affirmative defense to the violation of this section for a person to have reasonably relied on proof of age as described by state law.

(2003 Code, § 8.03) (Ord. 80, passed 10-30-1998) Penalty, see § 10.99

CHAPTER 113: PEDDLERS AND SOLICITORS

Section

- 113.01 Definitions
- 113.02 Exceptions to definitions
- 113.03 Licensing; exemptions
- 113.04 License ineligibility
- 113.05 License suspension and revocation
- 113.06 License transferability
- 113.07 Registration
- 113.08 Prohibited activities
- 113.09 Exclusion by placard
- 113.10 Effectiveness

§ 113.01 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.

§ 113.02 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 § 113.07. The term **DOOR-TO-DOOR ADVOCACY** includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas.

§ 113.03 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. Chapter 329 as it may be amended from time to time, if the county issues a license for the activity.

(B) *City license required.* Pursuant to M.S. § 437.02, as it may be amended from time to time, 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 § 113.07.

(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. 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 a fee as will from time to time be established by the City Council.

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Clerk, 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 determines that the application is incomplete, the City Clerk must inform the applicant of the required necessary information that is missing. If the application is complete, the City Clerk 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 must issue the license, unless there exist grounds for denying the license under § 113.04, in which case the Clerk must deny the license. If the City Clerk 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 Minnesota 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

§ 113.04 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/or

(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.

§ 113.05 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 § 113.04; or
- (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 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

§ 113.06 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

§ 113.07 REGISTRATION.

All solicitors, and any person exempt from the licensing requirements of this chapter under § 113.03, 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. 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 shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferable.

Penalty, see § 10.99

§ 113.08 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; or

(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

§ 113.09 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

§ 113.10 EFFECTIVENESS.

The provisions of §§ 113.01, 113.02, 113.08 and 113.09 shall automatically apply upon adoption of this chapter. Sections 113.03, 113.04, 113.05, 113.06 and 113.07 shall not be effective until the adoption of a City Council resolution or ordinance authorizing the licensing of persons covered by those sections.

CHAPTER 114: SEXUALLY ORIENTED BUSINESSES

Section

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- 114.02 Definitions
- 114.03 License required
- 114.04 Applications
- 114.05 Renewal applications
- 114.06 License fees
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- 114.08 Persons ineligible for license
- 114.09 Places ineligible for license
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§ 114.01 PURPOSE.

The purpose of this chapter is to establish regulations governing the licensing of sexually oriented businesses classified as adult uses-principal in the city and to prevent the spread of sexually transmitted diseases.

(2003 Code, § 6.40-1) (Ord. 75, passed 12-12-1997)

§ 114.02 DEFINITIONS.

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

ADULT USE - BODY PAINTING STUDIO. An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent to the body of a patron when the body is wholly or partially nude in terms of specified anatomical areas.

ADULT USE - BOOKSTORE. A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape or motion picture film if the building or portion of a building is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age and if a substantial or significant portion of the items are distinguished and characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

ADULT USE - CABARET. A building or portion of a building used for providing dancing or other live entertainment, if the building or portion of a building excludes minors by virtue of age and if the dancing or other live entertainment is distinguished and characterized by an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas.

ADULT USE - COMPANIONSHIP ESTABLISHMENT. An establishment which excludes minors by reason of age, and which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if the service is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

ADULT USE - CONVERSATION/RAP PARLOR. A parlor which excludes minors by reason of age, and which provides the services of engaging in or listening to conversation, talk or discussion, if the service is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

ADULT USE - HEALTH/SPORT CLUB. A club which excludes minors by reason of age, and if the club is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

ADULT USE - HOTEL OR MOTEL. A hotel or motel from which minors are specifically excluded from patronage and there material is presented which is distinguished and characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ADULT USE - MASSAGE PARLOR, HEALTH CLUB. A parlor or club which restricts minors by reason of age, and which provides the services of massage, if the service is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

ADULT USE - MINI-MOTION PICTURE THEATER. A building or portion of a building with a capacity for less than 50 persons used for presenting material if the building or portion of a building, as a prevailing practice excludes minors by virtue of age, and if the material is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT USE - MODELING STUDIO. An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to the customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted by the customers.

ADULT USE - MOTION PICTURE ARCADE. Any place to which the public is permitted or invited wherein coin- or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished and characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

ADULT USE - MOTION PICTURE THEATER. A building or portion of a building with a capacity of 50 or more persons used for presenting material if the building or portion of building as a prevailing practice excludes minors by virtue of age, and if the material is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT USE - NOVELTY BUSINESS. A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.

ADULT USE - SAUNA. A sauna which excludes minors by reason of age, and which, provides a steam bath or heating bathing room used for the purpose of bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

ADULT USE - STEAM ROOM/BATHHOUSE FACILITY. A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the building or portion of a building restricts minors by reason of age, and if the service provided by the steam room/bathhouse, facility is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

CHURCH. A building or structure, or a group of buildings or structures which, by design and construction, are primarily intended for the conducting of organized religious services and associated accessory uses.

ESCORT BUREAU. Any person who offers to furnish an escort for financial consideration.

ESCORT. Any person who receives financial consideration for consorting with or escorting another person in any public or private place within the city.

SCHOOL. A public school as defined by M.S. § 120A.20, as it may be amended from time to time, or a non-public school, or a non-sectarian, non-public school as defined in M.S. § 123.932, as it may be amended from time to time.

SPECIFIED ANATOMICAL AREAS.

(1) Less than completely and opaquely covered human genitals, pubic region, buttock, anus or female breast(s) below a point immediately above the top of the areola; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES.

(1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;

(2) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence;

(3) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;

(4) Fondling or touching of nude human genitals, pubic region, buttocks or female breast;

(5) Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons;

(6) Erotic or lewd touching, fondling or other sexually oriented contact with an animal by a human being; or

(7) Human excretion, urination, menstruation, vaginal or anal irrigation.

YOUTH FACILITY. A public playground, dayground, public swimming pool, public library or licensed day care facility.

(2003 Code, § 6.40-2) (Ord. 75, passed 12-12-1997)

§ 114.03 LICENSE REQUIRED.

No person, firm or corporation shall operate a sexually oriented business classified as an adult use type activity or business as hereinbefore noted in § 114.02 without having first secured a license as hereinafter provided.

(2003 Code, § 6.40-3) (Ord. 75, passed 12-12-1997) Penalty, see § 10.99

§ 114.04 APPLICATIONS.

In addition to applicable information as the city may require, an application for the license required by this chapter shall include the following information:

(A) The name, residence, phone number and birth date of the applicant, if an individual; and if a corporation, the names, residences, phone numbers and birth dates of those owners holding more than 5% of the outstanding stock of the corporation;

(B) The name, address, phone number and birth date of the manager of the operation, if different from the owners;

(C) The premises wherein the adult use is to be located;

(D) A statement detailing each gross misdemeanor or felony relating to a sex offense and/or the operation of adult uses and related activities of which the applicant or, in the case of a corporation, the owners of more than 5% of the outstanding stock of the corporation, have been convicted, and whether or not the applicant has ever applied for or held a license to operate a similar type of business in other communities;

(E) The activities and types of business to be conducted;

(F) The hours of operation;

(G) The provisions made to restrict access by minors;

(H) A building plan of the premises detailing all internal operations and activities;

(I) The property owner's name and address and business owner's name and address; and

(J) A description of merchandise, services or entertainment for sale, in the premises.

(2003 Code, § 6.40-4)

§ 114.05 RENEWAL APPLICATIONS.

Applications for renewal licenses required by this chapter shall be completed and filed with the City Clerk no later than November 30 of the year preceding the year for which application is made. Any renewal application not completed and filed by that date shall be treated as a non-renewal application. (2003 Code, § 6.40-5) (Ord. 75, passed 12-12-1997)

§ 114.06 LICENSE FEES.

(A) Each application for a license shall be accompanied by a receipt from the city for payment in full of the required fee for the license. All fees shall be paid into the General Fund of the city. Upon rejection of any applications for license, the city may refund the license fee paid, minus the amount of costs necessary for application, investigation and review, including, but not limited to, costs relating to administration, planning, legal inspection and police investigation.

(B) All licenses shall expire on the last day of December in each year. Each license shall be issued for a period of one year, except that when the application is made, a license may be issued for the remainder of the year for a pro rata fee. In computing the fee, any unexpired fraction of a month shall be counted as one month. Application for renewal of licenses shall be required to be filed each year.

(C) The annual fee for an adult use-principal license shall be as set by resolution of the Council. The Council shall not set this fee arbitrarily but shall determine the amount in relation to its best estimate of actual costs of administration, planning, legal inspection and police investigations related to the application and ongoing operation of the business.

(D) No part of the fee paid by any licensee shall be refunded, except in the following instances upon application to the City Manager within 30 days for the happening of any of the following events. There shall be refunded a pro rata portion of the fee for the unexpired period of the license, computed on a monthly basis, when operation of the licensed business ceases not less than one month before expiration of the license because of:

- (1) Destruction or damage of the licensed premises by fire or other catastrophe;
- (2) The licensee's disabling illness; and/or
- (3) The licensee's death.

(2003 Code, § 6.40-6) (Ord. 75, passed 12-12-1997)

§ 114.07 GRANTING OF LICENSE.

(A) The City Manager or his or her designated representatives shall investigate all facts set out in the application. After the investigation, and within 30 days of the date of application, the Council shall grant or refuse the application. Criteria for evaluating a license shall include the following:

- (1) Application shall be completed in full;
- (2) A license shall not be issued to a person who is ineligible for a license under § 114.08;
- (3) A license shall not be issued to an applicant whose place of business is ineligible for a license under § 114.09;
- (4) A license shall not be issued to an applicant whose place of business does not comply with § 114.10;
- (5) A license shall not be issued to an applicant if applicant does not comply with §§ 114.11 and 114.12;
- (6) The adult use shall be in compliance with all applicable city code regulations; and
- (7) The place of business shall meet the city's Building and Fire Code regulations in effect as of the date of application.

(B) Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license shall be transferred to another place without the approval of the Council. Any applicant whose application has been denied shall have the right of prompt judicial review without the need to first appeal to the city. (2003 Code, § 6.40-7) (Ord. 75, passed 12-12-1997)

§ 114.08 PERSONS INELIGIBLE FOR LICENSE.

No license shall be granted to or held by any person:

- (A) Under 21 years of age;
- (B) Who has been convicted of a felony or of violating any law of this state or any city code provision relating to sex offenses and/or adult uses; or
- (C) Who is not the proprietor of the establishment for which the license is issued. (2003 Code, § 6.40-8) (Ord. 75, passed 12-12-1997)

§ 114.09 PLACES INELIGIBLE FOR LICENSE.

(A) No license shall be granted for adult uses on any premises where a licensee has been convicted of a violation or any crime that would constitute a violation of this chapter, or where there have been convictions for activities on the premises which would cause the building to constitute a public nuisance under M.S. §§ 617.80 through 617.87, as they may be amended from time to time, or where any license hereunder has been revoked for cause, until one year has lapsed after the conviction or revocation.

(B) Except for uses lawfully existing on the effective date of this chapter, no license shall be granted for any adult use which is not in compliance with the city's zoning regulations.

(C) No sexually oriented business shall locate in any place which is also used to dispense or consume alcohol.

(2003 Code, § 6.40-9) (Ord. 75, passed 12-12-1997)

§ 114.10 BUILDING STANDARDS.

(A) No commercial building, structure, premises or part thereof, or facilities therein used by a sexually oriented business classified as an adult use-principal shall be so constructed, used, designed or operated for the purpose of engaging in, or permitting persons to engage in sexual activities as defined in § 155.14.

(B) No person shall own, operate, manage, rent, lease or exercise control of any commercial building, structure, premises or portion or part thereof, which contains:

(1) Partitions between subdivisions of a room, portion or part of a building, structure or premises having an aperture which is designed or constructed to facilitate sexual activity between persons on either side of the partition; or

(2) Booths, stalls or partitioned portions of a room, or individual rooms, used for adult uses, having doors, curtains or portal partitions, unless the booths, stalls, partitioned portions of a room, or individual rooms so used shall have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. Those areas shall be lighted in a manner that the persons in the area used for adult uses are visible from the adjacent public rooms, but the lighting shall not be of such intensity as to prevent the viewing of motion pictures or other offered adult uses.

(C) All viewing areas or booths in movie arcades shall be accessible from a continuous main aisle.

(D) All viewing areas or booths shall be located together along a continuous, main aisle, to eliminate the possibility of secluded booths elsewhere on the premises.

(E) No more than one person shall be permitted to enter or remain in a viewing area or booth at any time.

(F) The viewing areas or booths shall be maintained at all times in a clean and sanitary manner.

(G) All entrances to the business, with the exception of emergency fire exits not usable to enter the business, shall be visible from a public right-of-way. In addition, all windows and doors shall be so blocked or covered to prohibit viewing of the interior of the premises from outside of the premises.

(H) All performances shall be on a raised stage. The stage must be raised from the surrounding floor by at least two feet and no patrons may be on the stage at any time during any performance.

(I) All patrons shall be at least ten feet from the stage.

(J) No dancer shall fondle or caress any patron and no patron shall fondle or caress any dancer.

(K) No patron shall directly pay or give any gratuity to any dancer and no dancer shall solicit any pay or gratuity from any patron.

(2003 Code, § 6.40-10) (Ord. 75, passed 12-12-1997) Penalty, see § 10.99

§ 114.11 CONDITIONS OF LICENSE.

(A) Every license shall be granted subject to all of the conditions of the city code, and of any other applicable county, state or federal law.

(B) All licensed premises shall have the license posted in a conspicuous place at all times.

(C) No minor shall be permitted on the licensed premises and the licensee shall not employ any minors.

(D) Any designated inspection officer of the city shall have the unqualified right to enter and inspect all public areas of the premises of a licensee during regular business hours and non-business hours to determine compliance with this chapter.

(E) Every licensee shall be responsible for the conduct of his or her place of business and shall maintain conditions of order.

(F) Obviously, intoxicated persons shall not be allowed on the premises. Minors shall be prohibited from entry or viewing into the portion of the premises where the sexually oriented business occurs.

(2003 Code, § 6.40-11) (Ord. 75, passed 12-12-1997)

§ 114.12 HOURS OF OPERATION.

Sexually oriented businesses adult use-principal operations shall be restricted from operating between the hours of 1:01 a.m. and 6:00 a.m. No patrons shall be permitted on the premises between 1:30 a.m. and 6:00 a.m.

(2003 Code, § 6.40-12) (Ord. 75, passed 12-12-1997) Penalty, see § 10.99

§ 114.13 EXISTING LICENSEE COMPLIANCE.

All existing businesses shall be required to conform with this chapter on or before January 1, 1998. Failure to comply will result in the license being revoked effective 12:00 midnight January 1, 1998.

(2003 Code, § 6.40-13) (Ord. 75, passed 12-12-1997)

CHAPTER 115: ALCOHOLIC BEVERAGES

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GENERAL PROVISIONS

§ 115.01 DEFINITIONS.

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

ALCOHOLIC BEVERAGE. Any beverage containing more than 0.5% alcohol by volume, including, but not limited to, beer, wine and liquor as defined in this section.

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.

BEER. Malt liquor containing not less than 0.5% alcohol by volume nor more than 3.2% alcohol by weight. This definition includes so-called "malt coolers" with the alcoholic content limits stated herein.

BREW ON PREMISES STORE. A facility that provides the ingredients and equipment for a customer to use to brew malt liquor at the store.

BREWER. A person who manufactures beer for sale.

CLUB. An incorporated organization organized under the laws of the state for civic, fraternal, social or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which: has more than 50 members; has owned or rented a building or space in a building for more than one year that is suitable and adequate for the

accommodation of its members; is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body. The club or congressionally chartered veterans' organization must have been in existence for at least three years.

COMMISSIONER. The Minnesota Commissioner of Public Safety.

HOTEL. An establishment where food and lodging are regularly furnished to transients and which has: a resident proprietor or manager; a dining room serving the general public at tables and having facilities for seating at least 30 guests at one time; and at least 20 guest rooms.

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

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

LICENSED PREMISES. The premises described in the issued license.

LICENSEE. An applicant who, pursuant to his or her approved application, holds a valid, current, unexpired license, which has neither been revoked nor is then under suspension, from the city for carrying on the business stated therein.

LIQUOR. Ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2% of alcohol by weight. This definition includes so-called **WINE COOLERS** and **MALT COOLERS** with the alcoholic content limits stated herein.

MALT LIQUOR. Any beer, ale or other beverage made from malt by fermentation and containing not less than 0.5% alcohol by volume.

MANUFACTURER. Every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending or by the combination of different materials, prepares or produces alcoholic beverages for sale.

MINOR. Any natural person who has not attained the age of 21 years.

OFF-SALE. The sale of alcoholic beverages in original packages for consumption off the licensed premises only.

ON-SALE. The sale of alcoholic beverages for consumption on the licensed premises only.

PACKAGE and ORIGINAL PACKAGE. Any container or receptacle holding alcoholic beverages, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.

RESTAURANT. An establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly served at tables to the general public, and having seating capacity for at least 20 guests.

SALE, SELL and SOLD. All barter and all manners or means of furnishing alcoholic beverages to persons, including the furnishing in violation or evasion of law.

WHOLESALE. Any person engaged in the business of selling alcoholic beverages to a licensee from a stock maintained in a warehouse.

WINE. The product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake. This definition includes wine coolers with the alcoholic content limits stated herein. For purposes of on-sale wine licenses, **WINE** may contain up to 14% alcohol by volume for consumption with the sale of food. For all other purposes, **WINE** is a product containing not less than 0.5% nor more than 24% alcohol by volume for nonindustrial use.
(2003 Code, § 5.01) (Ord. 63, passed 5-31-1996)

§ 115.02 APPLICATIONS AND LICENSES.

(A) *Application.* All applications shall be made at the office of the City Clerk upon forms prescribed by the city, or if by the Commissioner, then together with the additional information as the Council may desire. Information required may vary with the type of business organization making application. All questions asked or information required by the application forms shall be answered fully and completely by the applicant.

(B) *False statements.* 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 issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this chapter, or any part thereof.

(C) *Action.*

(1) *Granting.* The Council may approve any application for the period of the remainder of the then current license year or for the entire ensuing license year. All applications including proposed license periods must be consistent with this chapter. Prior to consideration of any application for a license, the applicant shall pay the license fee. Upon rejection of any application for a license, or upon withdrawal of an application before consideration by the Council, the license fee shall be refunded to the applicant. Failure to pay any portion of a fee when due shall be cause for revocation.

(2) *Issuing.* If an application is approved, the City Clerk shall forthwith issue a license pursuant thereto in the form prescribed by the city or the Commissioner, as the case may be, and upon payment of the license fee. All licenses shall be on a calendar year basis unless otherwise specified herein. For licenses issued and which are to become effective other than on the first day of the licensed year, the fee to be paid with the application shall be a pro rata share of the annual license fee. Licenses shall be valid only at one location and on the premises therein described.

(3) *Transfer.* No license shall be transferable between persons or to a different location. Any change in individual ownership, incorporation or substitution of partners is a transfer. It is unlawful to make any transfer in violation of this division (C).

(4) *Refusal and termination.* The Council may, in its sole discretion and for any reasonable cause, refuse to grant any application. No license shall be granted to a person of questionable moral character or business reputation. Licenses shall terminate only by expiration or revocation.

(5) *Public interest.* No license under this chapter may be issued, transferred or renewed if the results of any investigation show, to the satisfaction of the Council, that the issuance, transfer or renewal would not be in the public interest.

(6) *Revocation or suspension.* For any license granted under the provisions of this chapter, the Council may revoke, suspend for a period not to exceed 60 days, impose a civil fine not to exceed \$2,000, or any combination of these sanctions, for each violation on a finding that the licensee has failed to comply with a statute, regulation or provision of the city code relating to alcoholic beverages. The Council shall revoke the license upon conviction of any licensee or agent or employee of a licensee for violating any law relating to the sale or possession of beer, wine or liquor upon premises of the licensee, or if the revocation is mandatory by statute. If it shall be made to appear at the hearing thereon that the violation was not willful, the Council may order suspension; provided that revocation shall be ordered upon the third such violation or offense. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing before the Council, a committee of the Council, or a hearing under the Administrative Procedures Act, being M.S. §§ 14.001 to 14.69, as may be amended from time to time, as may be determined by the Council in action calling the hearing. The hearing shall be called by the Council upon written notice to the licensee served in person or by certified mail not less than 15 nor more than 30 days prior to the hearing date, stating the time, place and purpose thereof. As additional restrictions or regulations on licensees under this chapter, and in addition to grounds for revocation or suspension stated in the city code or statute, the following shall also be grounds for the action: that the licensee suffered or permitted illegal acts upon licensed premises unrelated to the sale of beer, wine or liquor; that the licensee had knowledge of the illegal acts upon licensed premises, but failed to report the same to police; that the licensee failed or refused to cooperate fully with police in investigating the alleged illegal acts upon licensed premises; or that the activities of the licensee created a serious danger to public health, safety or welfare.

(7) *Corporate applicants and licensees.* A corporate applicant, at the time of application, shall furnish the city with a list of all persons that have an interest in the corporation and the extent of the interest. The list shall name all shareholders and show the number of shares held by each, either

individually or beneficially for others. It is the duty of each corporate licensee to notify the City Clerk in writing of any change in legal ownership, or beneficial interest in the corporation or in the shares. Any change in the ownership or beneficial interest in the shares entitled to be voted at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the shares therein, shall be deemed equivalent to a transfer of the license issued to the corporation, and any such license shall be revoked 30 days after any such change in ownership or beneficial interest of shares unless the Council has been notified of the change in writing and has approved it by appropriate action. The Council, or any officer of the city designated by it, may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify and identify the shareholders, and the Council or its designated officer may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of ownership of shares in a corporate licensee or any change of ownership of any interest in the business of any other licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

(D) *Duplicate licenses.* Duplicates of all original licenses under this chapter may be issued by the City Clerk 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".

(E) *Posting.* All licensees shall conspicuously post their licenses in their places of business.

(F) *Resident manager or agent.* Before a license is issued under this chapter to an individual who is a nonresident of the city, to more than one individual whether or not they are residents of the city, or to a corporation, partnership or association, the applicant or applicants shall appoint in writing a natural person who is a resident of the city as its manager or agent. The resident manager or agent shall, by the terms of his or her written consent: take full responsibility for the conduct of the licensed premises; and serve as agent for service of notices and other process relating to the license. The manager or agent must be a person who, by reason of age, character, reputation and other attributes, could qualify individually as a licensee. If the manager or agent ceases to be a resident of the city or ceases to act in the capacity for the licensee without appointment of a successor, the license issued pursuant to the appointment shall be subject to revocation or suspension.

(G) *Persons disqualified.*

(1) No license under this chapter may be issued, or renewed, to:

(a) A person who within five years of the license application has been convicted of any felony or a willful violation of a federal or state law, or local ordinance governing the manufacture, sale, distribution or possession for sale or distribution, of alcoholic beverages;

(b) A person who has had an alcoholic beverage license revoked within five years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than 5% of the capital stock of a corporate licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business or firm in which any such person is in any manner interested;

(c) A person under the age of 21 years; or

(d) A person not of good moral character and repute.

(2) No person holding a license from the Commissioner as a manufacturer, brewer (except as provided by statute), wholesaler or importer, may have a direct or indirect interest, in whole or in part, in a business holding an alcoholic beverage license from the city.

(2003 Code, § 5.02) (Ord. 63, passed 5-31-1996) Penalty, see § 10.99

§ 115.03 RENEWAL LICENSE APPLICATIONS.

Applications for renewal of all licenses under this chapter shall be made at least 60 days prior to the date of expiration of the license, and shall contain information as is required by the city. This time requirement may be waived by the Council for good and sufficient cause.

(2003 Code, § 5.03)

§ 115.04 DELINQUENT TAXES AND CHARGES.

No license under this chapter shall be granted for operation on any premises upon which taxes, assessments or installments thereof, or other financial claims of the city, are owed and are delinquent and unpaid.

(2003 Code, § 5.04)

§ 115.05 CONDITIONAL LICENSES.

Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefor, place the special conditions and restrictions, in addition to those stated in this chapter, upon any license as it, in its discretion, may deem reasonable and justified.

(2003 Code, § 5.05)

§ 115.06 PREMISES LICENSED.

A license issued under the provisions of this chapter shall be valid only for the premises described in the license, and all transactions relating to a sale under the license must take place within the space or structure.

(2003 Code, § 5.06) (Ord. 63, passed 5-31-1996)

§ 115.07 UNLAWFUL ACTS.

(A) *Consumption.* It is unlawful for any person to consume, or any licensee to permit consumption of, beer, wine or liquor on licensed premises after the hour when a sale thereof can legally be made.

(B) *Closing.* It is unlawful for any person, other than a licensee or his or her bona fide employee actually engaged in the performance of his or her duties, to be on premises licensed under this chapter after the legal time for making licensed sales, unless the licensed establishment is open to the public for serving food.

(2003 Code, § 5.07) Penalty, see § 10.99

§ 115.08 CONDUCT ON LICENSED PREMISES.

Except as herein provided, every licensee under this chapter shall be responsible for the conduct of his or her place of business and shall maintain conditions of sobriety and order therein.

(2003 Code, § 5.08)

§ 115.09 SALE BY EMPLOYEE.

Any sale of an alcoholic beverage in or from any premises licensed under this chapter by any employee authorized to make the sale in or from the place is the act of the employer as well as of the person actually making the sale; and every such employer is liable to all of the penalties, except criminal penalties, provided by law for the sale, equally with the person actually making the sale.

(2003 Code, § 5.09) (Ord. 28, passed 4-26-1991)

§ 115.10 LICENSE CONDITION AND UNLAWFUL ACT.

(A) All premises licensed under this chapter shall at all times be open to inspection by any police officer to determine whether or not this chapter and all other laws are being observed. All persons, as a condition to being issued the license, consent to the inspection by the officers and without a warrant for searches or seizures.

(B) It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer from making the inspection.
(2003 Code, § 5.10) Penalty, see § 10.99

§ 115.11 LICENSE FEES; FIXING AND REFUNDMENT.

(A) *Fixing fees.* Except as otherwise specifically provided, all fees provided for in this chapter, including, but not by way of limitation, license fees, shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. The fees may, from time-to-time, be amended by the Council by resolution. A copy of the resolution shall be kept on file in the office of the City Clerk and open to inspection during regular business hours. For the purpose of fixing the fees, the Council may categorize and classify, provided, that the categorization and classification shall be included in the resolution authorized by this section.

(B) *Refundment.* A pro-rata share of an annual license fee for a license to sell liquor or beer, either on-sale or off-sale, shall be refunded to the licensee, or to his or her estate, if: the business ceases to operate because of destruction or damage; the licensee dies; or the business ceases to be lawful for a reason other than a license revocation or suspension.
(2003 Code, § 5.11)

§ 115.12 FINANCIAL RESPONSIBILITY OF LICENSEES.

(A) *Proof.* No alcoholic beverage license shall be issued or renewed unless and until the applicant has provided proof of financial responsibility, imposed by statute, by filing with the city:

(1) A certificate that there is in effect an insurance policy or pool providing minimum coverages of: \$50,000 because of bodily injury to any one person in any one occurrence, and, subject to the limit for one person, in the amount of \$100,000 because of bodily injury to two or more persons in any one occurrence, and in the amount of \$10,000 because of injury to or destruction of property of others in any one occurrence; and \$50,000 for loss of means of support of any one person in any one occurrence, and subject to the limit for one person, \$100,000 for loss of means of support of two or more persons in any one occurrence; or

(2) A bond of a surety company with minimum coverages as provided in division (A)(1) above;
or

(3) A certificate of the State Treasurer that the licensee has deposited with him or her \$100,000 in cash or securities which may legally be purchased by savings banks or for trust funds having a market value of \$100,000.

(B) *Exception.* This section does not apply to on-sale beer licensees with sales of beer of less than \$10,000 for the preceding year, nor to off-sale beer licensees with sales of beer of less than \$20,000 for the preceding year, nor does it apply to holders of on-sale wine licenses with sales of wine of less than \$10,000 for the preceding year. An affidavit of the licensee shall be required to establish the exemption under this division (B).

(C) *Documents submitted to Commissioner.* All proofs of financial responsibility and exemption affidavits filed with the city under this section shall be submitted by the city to the State Commissioner of Public Safety.

(2003 Code, § 5.12) (Ord. 22, passed 3-22-1991)

§ 115.13 INSURANCE CERTIFICATE REQUIREMENTS.

Whenever an insurance certificate is required by this chapter the applicant shall file with the City Clerk a certificate of insurance showing:

(A) The limits are at least as high as required;

(B) Coverage is effective for at least the license term approved; and

(C) The insurance will not be cancelled or terminated without 30 days' written notice served upon the City Clerk. Cancellation or termination of the coverage shall be grounds for license revocation.
(2003 Code, § 5.13)

§ 115.14 MINORS AS DEFINED HEREIN; UNLAWFUL ACTS.

(A) *Consumption.* It is unlawful for any:

(1) Licensee to permit any minor to consume alcoholic beverages on licensed premises; or

(2) Minor to consume alcoholic beverages except in the household of the minor's parent or guardian, and then only with the consent of the parent or guardian.

(B) *Purchasing.* It is unlawful for any:

(1) Person to sell, barter, furnish or give alcoholic beverages to a minor unless the person is the parent or guardian of the minor, and then only for consumption in the household of the parent or guardian;

(2) Minor to purchase or attempt to purchase any alcoholic beverage; or

(3) Person to induce a minor to purchase or procure any alcoholic beverage.

(C) *Possession.* It is unlawful for a minor to possess any alcoholic beverage with the intent to consume it at a place other than the household of the minor's parent or guardian. Possession of an alcoholic beverage by a minor at a place other than the household of the parent or guardian is prima facie evidence of intent to consume it at a place other than the household of his or her parent or guardian.

(D) *Entering licensed premises.* It is unlawful for any minor, as defined in this chapter, to enter licensed premises, or the municipal liquor store, for the purpose of purchasing or consuming any alcoholic beverage. It is not unlawful for any person who has attained the age of 18 years to enter licensed premises for the following purposes: to perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by statute; to consume meals; and to attend social functions that are held in a portion of the establishment where liquor is not sold. It is unlawful for a licensee to permit a person under the age of 18 years to enter licensed premises unless attending a social event at which alcoholic beverages are not served, or in the company of a parent or guardian.

(E) *Misrepresentation of age.* It is unlawful for a minor to misrepresent his or her age for the purpose of purchasing an alcoholic beverage.

(F) *Proof of age.* Proof of age for purchasing or consuming alcoholic beverages may be established only by a valid driver's license or identification card issued by the state, another state, or a province of Canada, and including the photograph and date of birth of the licensed person; or by a valid military identification card issued by the United States Department of Defense; or, in the case of a foreign national, from a nation other than Canada, by a valid passport.

(2003 Code, § 5.14) (Ord. 63, passed 5-31-1996) Penalty, see § 10.99

GENERAL REGULATIONS

§ 115.25 GAMBLING PROHIBITED.

It is unlawful for any licensee to keep, possess or operate, or permit the keeping, possession or operation on licensed premises of dice or any other gambling device, or permit raffles to be conducted, except as are licensed by the Charitable Gambling Control Board.

(2003 Code, § 5.15) Penalty, see § 10.99

§ 115.26 CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON STREETS, PUBLIC PROPERTY AND PRIVATE PARKING LOTS TO WHICH THE PUBLIC HAS ACCESS.

It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any city park, street, public property or private parking lot to which the public has access, except on the premises when and where permission has been specifically granted or licensed by the

Council; provided, that this section shall not apply to the possession of an unsealed container in a motor vehicle when the container is kept in the trunk of the vehicle if it is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. For the purpose of this section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers.

(2003 Code, § 5.16) Penalty, see § 10.99

§ 115.27 ALCOHOLIC BEVERAGES IN CERTAIN BUILDINGS AND GROUNDS.

It is unlawful for any person to introduce upon, or have in his or her possession upon, or in, any school ground, or any schoolhouse or school building, any alcoholic beverage, except for experiments in laboratories and except for those organizations who have been issued temporary licenses to sell beer, and for any person to possess beer as a result of a purchase from those organizations holding temporary licenses.

(2003 Code, § 5.17) Penalty, see § 10.99

§ 115.28 LICENSE FEE INCREASE, NOTICE AND HEARING.

No license fee for on-sale or off-sale beer, on-sale or off-sale liquor (including clubs), or on-sale wine, shall be increased except after notice and hearing thereon. Notice of the proposed increase shall be mailed at least 30 days before the hearing date to all then-current licensees and persons, if any, whose applications for the licenses are then pending before the Council.

(2003 Code, § 5.18) (Ord. 28, passed 4-26-1991)

§ 115.29 CONFECTIONS CONTAINING ALCOHOL.

It is unlawful for any person to sell a confection containing alcohol to any person under the age of 21 years. For purposes of this section, **CONFECTION CONTAINING ALCOHOL** means a confection containing or bearing not more than 5% alcohol by volume where the alcohol is in a non-liquid form by reason of being mixed with other substances in the manufacture of the confection, does not include "liqueur-filled candy" as herein defined, and may be sold only by an exclusive liquor store licensed under this chapter or a business establishment that derives more than 50% of its gross sales from the sale of confections.

(2003 Code, § 5.19) Penalty, see § 10.99

§ 115.30 LIQUEUR-FILLED CANDY.

It is unlawful for any person to sell liqueur-filled candy to any person under the age of 21 years. For purposes of this section, **LIQUEUR-FILLED CANDY** means any confectionery containing more than 0.5 % alcohol by volume in liquid form that is intended for or capable of beverage use, and may be sold only by an eligible licensee under this chapter and by the municipal dispensary.
(2003 Code, § 5.20) Penalty, see § 10.99

§ 115.31 BREW-ON-PREMISES STORE; UNLAWFUL ACTS.

It is unlawful:

(A) To sell or otherwise provide alcoholic beverages to customers of a brew-on-premises store unless the owner of the brew-on-premises store holds an appropriate liquor license;

(B) For a customer to re-sell malt liquor brewed in a brew-on-premises store or use it for any purpose other than personal use; or

(C) For a minor to be a customer of a brew-on-premises store.
(2003 Code, § 5.21) (Ord. 63, passed 5-31-1996) Penalty, see § 10.99

§ 115.32 BEER LICENSE REQUIRED.

It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of beer, as part of a commercial transaction, without a license therefor from the city. This section shall not apply to sales by manufacturers to wholesalers or to sales by wholesalers to persons holding beer licenses from the city. Annual on-sale beer licenses may be issued only to restaurants, hotels, clubs and establishments used exclusively for the sale of beer with the incidental sale of tobacco and soft drinks.
(2003 Code, § 5.30) Penalty, see § 10.99

§ 115.33 TEMPORARY BEER LICENSE.

(A) *Applicant.* A club or charitable, religious or non-profit organization shall qualify for a temporary on-sale beer license.

(B) *Conditions.*

(1) An application for a temporary license shall state the exact dates and place of proposed temporary sale.

(2) No applicant shall qualify for a temporary license for more than a total of seven days in any calendar year.

(3) The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary beer license on premises owned or controlled by the city. Any such license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the city, the applicant shall file with the city, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of \$50,000 for injury to any one person and \$100,000 for injury to more than one person, and \$10,000 for property damage, naming the city as an insured during the license period. The license shall be issued only on the condition that the applicant will not sell in excess of \$10,000 (retail value) worth of beer in any calendar year, and thereupon shall be exempt from proof of financial responsibility as provided for herein.
(2003 Code, § 5.31) Penalty, see § 10.99

§ 115.34 HOURS AND DAYS OF BEER SALES.

No sale of beer shall be made between the hours of 1:00 a.m. and 8:00 a.m. on any weekday, Monday through Saturday, inclusive. Neither shall any beer sale be made on any Sunday between the hours of 1:00 a.m. and 12:00 noon, nor at any time after 1:00 a.m. on Christmas Day.
(2003 Code, § 5.32) Penalty, see § 10.99

§ 115.35 BEER LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS.

(A) No on-sale license shall be granted within 600 feet of any school, nor within 300 feet of any church.

(B) The number of licensees on Prentice Street shall not exceed four.

(C) It is unlawful for any:

(1) Person who has not attained the age of 18 years to be employed to sell or serve beer in any on-sale establishment;

(2) Person to knowingly induce another to make an illegal sale or purchase of beer;

(3) Licensee to sell or serve beer to any person who is obviously intoxicated;

(4) Licensee to fail, where doubt could exist, to require adequate proof of age of a person upon licensed premises;

(5) Licensee to sell beer on any day, or during any hour, when the sales are not permitted by law;

(6) Licensee to allow consumption of beer on licensed premises on any day when sales of beer are not permitted by law; or

(7) Person to purchase beer on any day, or during any hour, when sales of beer are not permitted by law.

(2003 Code, § 5.33) Penalty, see § 10.99

§ 115.36 LIQUOR LICENSE REQUIRED.

It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of liquor, as part of a commercial transaction, without a license therefor from the city. This section shall not apply: to the potable liquors as are intended for therapeutic purposes and not as a beverage; to industrial alcohol and its compounds not prepared or used for beverage purposes; to wine in the possession of a person duly licensed under this chapter as an on-sale wine licensee; to sales by manufacturers to wholesalers duly licensed as such by the Commissioner; to sales by wholesalers to persons holding liquor licenses from the city; or to the municipal liquor store. The voters of the city having authorized such issuance at a special election called for that purpose, the city may issue on-sale liquor licenses to: hotels; restaurants; and clubs or congressionally chartered veterans' organizations, provided that liquor sales will be made only to members and bona fide guests. (2003 Code, § 5.50)

§ 115.37 SPORTS, CONVENTION OR CULTURAL FACILITIES LICENSE.

The Council may authorize any holder of an on-sale liquor license issued by the city or by an adjacent municipality to sell liquor at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports, convention or cultural facility owned by the city, or instrumentality thereof having independent policy-making and appropriating authority and located within the city. The licensee must be engaged to sell liquor at such an event by the person or organization permitted to use the premises, and may sell liquor only to persons attending the event. The licensee shall not sell liquor to any person attending or participating in any amateur athletic event. The sales may be limited to designated areas of the facility. All the sales shall be subject to all laws relating thereto. The licensee shall provide proof of the extension of financial responsibility coverage to the premises on which the sales are to be made.

(2003 Code, § 5.51)

§ 115.38 TEMPORARY LIQUOR LICENSE.

(A) *License authorized.* Notwithstanding any provision of the city code to the contrary, the Council may issue a license for the temporary on-sale of liquor in connection with a social event sponsored by the licensee. The license may provide that the licensee may contract with the holder of a full-year on-sale license, issued by the city.

(B) *Applicant.* The applicant for a license under this section must be a club or charitable, religious or other non-profit organization in existence for at least three years, or a political committee registered under M.S. § 10A.14, as it may be amended from time to time.

(C) *Terms and conditions of license.*

(1) No license is valid until approved by the Commissioner.

(2) No license shall be issued for more than four consecutive days.

(3) No temporary license shall be issued until the city is furnished with written proof that the licensee has dram shop coverage in the amount provided for in this chapter, and that the coverage is in force on the premises where liquor is to be served.

(4) All licenses and licensees are subject to all provisions of statutes and the city code relating to liquor sale and licensing. The licensee shall provide proof of financial responsibility coverage and, in the case of catering by a full-year on-sale licensee, the caterer shall provide proof of the extension of the coverage to the licensed premises.

(5) Licenses may authorize sales on premises other than those owned or permanently occupied by the licensee.

(6) No more than three temporary licenses for the sale of alcoholic beverages may be issued to any one organization, or for any one location in a 12-month period.

(D) *Insurance required.* The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary liquor license on premises owned or controlled by the city. Any such license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the city, the applicant shall file with the city, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of \$100,000 for injury to any one person, \$300,000 for injury to more than one person, and \$10,000 for property damage, naming the city as an insured during the license period.

(2003 Code, § 5.52) (Ord. 63, passed 5-31-1996)

§ 115.39 HOURS AND DAYS OF LIQUOR SALES.

No sale of liquor shall be made after 1:00 a.m. on Sunday, nor until 8:00 a.m. on Monday, nor after 8:00 p.m. on December 24. No on-sale shall be made between the hours of 1:00 a.m. and 8:00 a.m. on any weekday, nor on Christmas Day.

(2003 Code, § 5.53)

§ 115.40 ON-SALE WINE LICENSE REQUIRED.

(A) It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of wine on-sale, as part of a commercial transaction, without a license therefor from the city. On-sale wine licenses shall be issued 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 meeting the criteria of M.S. § 340A.404(5), as it may be amended from time to time, and which meet the definition of restaurant in § 115.01; to licensed bed and breakfast facilities which meet the criteria of M.S. § 340A.401(1), as it may be amended from time to time, and as otherwise provided in this city code; and to theaters, if not otherwise precluded herein, that meet the criteria of M.S. § 340A.404(B) as it may be amended from time to time.

(B) The fee for an on-sale wine license shall be established by the Council from time to time, but shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license.

(C) 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.

(D) This section shall not apply to: sales by manufacturers to wholesalers duly licensed as such by the Commissioner; sales by wholesalers to persons holding on-sale or off-sale liquor licenses from the city; sales by wholesalers to persons holding on-sale wine licenses from the city; or sales by on-sale liquor licensees on days and during hours when on-sale liquor sales are permitted.
(2003 Code, § 5.60) (Ord. 156, passed 1-3-2011) Penalty, see § 10.99

§ 115.41 HOURS AND DAYS OF SALES BY ON-SALE WINE LICENSEES.

No on-sale of wine shall be made between 1:00 a.m. and 12:00 noon on Sunday, nor between 12:00 midnight and until 8:00 a.m. on Monday, nor between the hours of 1:00 a.m. and 8:00 a.m. on any weekday, nor between the hours of 8:00 p.m. on December 24 and 8:00 a.m. on December 26.
(2003 Code, § 5.61) Penalty, see § 10.99

§ 115.42 LIQUOR AND ON-SALE WINE LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS.

(A) *Licenses in connection with premises of another.* A license may not be issued to a person in connection with the premises of another to whom a license could not be issued under the provisions of this chapter. This division (A) does not prevent the granting of a license to a proper lessee because the person has leased the premises of a minor, a non-citizen who is not a resident alien, or a person who has been convicted of a crime other than a violation of this chapter.

(B) *Employment of minors.* No person under 18 years of age may be employed in a place where liquor is sold for consumption on the premises, except persons under 18 years of age may be employed as musicians or in bussing or washing dishes in a restaurant or hotel that is licensed to sell liquor and may be employed as waiters or waitresses at a restaurant or hotel where only wine is sold, provided that the person under the age of 18 may not serve or sell any wine.

(C) *On-sale wine licenses.* On-sale wine licenses shall be granted only to restaurants as defined in this chapter; provided, however, for purposes of this section, the restaurant shall have appropriate facilities for seating not less than 25 guests at one time.

(D) *Unlawful acts.* It is unlawful for any:

- (1) Licensee to sell, offer for sale or keep for sale, liquor in any original package which has been refilled or partly refilled;
- (2) Licensee to display liquor to the public during hours when the sale of liquor is prohibited;
- (3) Person to hold more than one license. For the purpose of this division (D), any person owning a beneficial interest of 5%, or more, of any licensed establishment shall be considered a licensee;
- (4) Person to knowingly induce another to make an illegal sale or purchase of liquor or wine;
- (5) Licensee to sell liquor or wine on any day, or during any hour, when sales of liquor or wine are not permitted by law;
- (6) Person to purchase liquor or wine on any day, or during any hour, when sales of liquor or wine are not permitted by law; or
- (7) Licensee to sell or serve liquor or wine to any person who is obviously intoxicated.

(E) *Schools and churches.* No license shall be granted for any building within 600 feet of any public elementary or secondary school structure or within 300 feet of any church structure.
(2003 Code, § 5.70) (Ord. 23, passed 3-22-1991) Penalty, see § 10.99

§ 115.43 CLUB LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS.

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

GUEST. A person not a member of the club but present on the club licensed premises in the company of a host member.

HOST MEMBER. A member who is entertaining a guest who is in the member's company at all times the guest is on the licensed premises.

MEMBER. Any person in good standing according to rules and regulations of the licensed club, wherever located, having evidence of current membership upon his or her person.

(B) *Number of licenses.* No more than three club licenses shall be issued.

(C) *Daily register.* In addition to all other general provisions, restrictions and regulations set forth in this chapter, relating to beer or liquor licensees, as the case may be, all club licensees shall keep a daily register showing the names of guests present and the name of the host member. The register shall be open to inspection by police officers at all times.

(D) *Unlawful acts.* The following are in addition to all other unlawful acts set forth in this chapter relating to sales and purchases of beer or liquor, as the case may be.

(1) It is unlawful for a club licensee to sell liquor or beer to any person not a member of the licensed club.

(2) It is unlawful for any club licensee to serve beer or liquor to any non-member of the licensed club unless the non-member is a guest.

(3) It is unlawful for any person who is not a member of the licensed club to purchase liquor or beer from the club.

(4) It is unlawful for any club licensee to hinder or prevent a police officer from determining compliance with this section and chapter, and all other laws.

(5) It is unlawful for any person to refuse, upon request of a licensee or police officer, to provide information as to whether he or she is a member, guest or host member, or to give false, fraudulent or misleading information in response to the request.

(2003 Code, § 5.75) Penalty, see § 10.99

§ 115.44 MUNICIPAL DISPENSARY.

(A) *Establishment.* A municipal dispensary is hereby established to be operated within the city for the sale of alcoholic beverages. The dispensary shall be at such place or places as the Council shall determine and may be either leased or owned by the city. It shall be in the charge of a person known as the Manager who shall have such assistants as may be necessary. All employees, including the Manager, shall hold their positions at the pleasure of the City Manager.

(B) *Dispensary Fund.* A Liquor Dispensary Fund is hereby created into which all revenues received from the operation of the dispensary shall be paid, and from which all operating expenses shall be paid. Any surplus accumulating in this Fund may, from time to time, be transferred to the General Fund by resolution of the Council, and expended for any municipal purpose.
(2003 Code, § 5.80)

§ 115.45 CONSUMPTION AND DISPLAY.

(A) *Consumption and display license required.* It is unlawful for any business establishment or club, not holding an on-sale liquor license to directly or indirectly, or on any pretense or by any device, sell, barter, keep for sale or otherwise dispose of any liquid for the purpose of mixing the same with liquor, or permit its members to bring and keep a personal supply of liquor in lockers assigned to the members, without a license therefor from the city.

(B) *Consumption and display restrictions and regulations.*

(1) *Eligible licensees.* If the applicant is otherwise eligible, licenses may be issued only to: persons who have not, within five years prior to application, been convicted of a felony or of violating provisions of this chapter or other law relating to the sale or furnishing of alcoholic beverages; a restaurant; a hotel; a beer licensee; a resort as defined by statute; or a club or an unincorporated club otherwise meeting the definition of a club, provided, that no license may be issued to a club holding an on-sale liquor license.

(2) *Unlawful act.* It is unlawful to sell liquor on licensed premises.

(3) *License expiration.* In order to coordinate the expiration of a consumption and display license with a state permit, all licenses shall expire on March 31 of each year.

(4) *State permit required.* Licenses shall be issued only to holders of a consumption and display permit from the Commissioner.

(5) *Lockers.* A club to which a license is issued under this section may allow members to bring and keep a personal supply of liquor in lockers on the club's premises. All bottles kept on the premises must have attached labels signed by the member. No minor may keep a supply of liquor on club premises.

(6) *Hours and days.* No licensee may permit a person to consume or display liquor, and no person may consume or display liquor, between 1:00 a.m. and 12:00 noon on Sundays, and between 1:00 a.m. and 8:00 a.m. on Monday through Saturday.

(2003 Code, § 5.90) (Ord. 63, passed 5-31-1996) Penalty, see § 10.99

§ 115.46 CONSUMPTION AND DISPLAY; ONE DAY LICENSE.

(A) *License required.* Any non-profit organization desiring to serve liquids for the purpose of mixing with liquor and permitting the consumption and display of liquor in conjunction with a social activity sponsored by it, shall first obtain a license therefor from the city. It is unlawful for any such organization to fail to obtain the license.

(B) *Term.* The term of the license shall be one day only.

(C) *Limitation on number.* The city shall issue no more than ten licenses in any calendar year.

(D) *License fee.* The fee for the one-day license is \$25.

(E) *Approval.* In addition to Council approval, the license must be approved by the Commissioner of Public Safety.

(2003 Code, § 5.91) Penalty, see § 10.99

§ 115.47 COMMUNITY FESTIVALS.

(A) The Council, without obligation, may grant permission to a holder of a retail on-sale liquor license to dispense liquor at a community festival held within the city limits.

(B) The authorization shall specify the area in which the liquor shall be dispensed and consumed and shall require that the license holder provide the city with proof of liability insurance as prescribed by M.S. § 340.404(4)(b), as it may be amended from time to time, to cover the event and to comply with other requirements as the Council may specify, including, but not limited to, those as may be recommended by any organization board of directors, or management, which organization is the sponsor, license holder or primary organizer and operator of the festival for which a retail on-sale license is requested hereunder.

(2003 Code, § 5.92) (Ord. 110, passed 1-10-2003)

§ 115.48 NUDITY OR OBSCENITY PROHIBITED.

(A) *Definitions.* For the purpose of this section, 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 play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and 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.

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.

(B) *Unlawful act.* It is unlawful for any person issued a license provided for in this chapter to permit upon licensed premises any nudity, obscene performance or continued use of obscenities by any agent, employee, patron or other person.

(2003 Code, § 5.95) Penalty, see § 10.99