

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: GENERAL LICENSING PROVISIONS

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(A) All original applications for licenses, unless otherwise specifically provided, shall be made to the City Clerk or other authorized official in writing upon forms to be furnished by him or her and shall contain:

- (1) The applicant's full name, address, and telephone number, and the full name of each officer, partner or business associate, if applicable;
- (2) His or her present occupation and principal place of business;
- (3) His or her place of residence for the preceding five years;
- (4) The nature and location of the intended business or enterprise;
- (5) The period of time for which the license is desired;
- (6) A description of the merchandise, goods or services to be sold;
- (7) If a motor vehicle is to be used, a full description of the motor vehicle, including the make, model, year, color, license number, and vehicle registration (VIN) number of the vehicle.
- (8) Other information concerning the applicant and his or her business as may be reasonable and proper, having regard to the nature of the license desired.

(B) Any change in the information required by division (A) of this section must be reported to the City Clerk or other authorized official within 14 days of that change.

(C) Renewal of an annual license may be granted to a licensee in good standing on the basis of the original application, unless otherwise provided. However, if a request for renewal is not submitted to the City Clerk or other authorized official within 21 days after the date of expiration for the preceding license, the applicant must fill out an original application.

(D) With each original or renewal application, the applicant shall deposit the fee required for the license requested.

(E) It shall be unlawful to knowingly make any false statement or representation in the license application.
Penalty, see § 10.99

§ 110.03 ISSUANCE OF LICENSE.

Upon receipt of an application for a license, accompanied by the proper fee if approval by another officer or department is not required, the City Clerk shall deposit the fee in the general fund of the city and issue to the applicant a proper license certificate signed by the City Clerk.

§ 110.04 DATE AND DURATION OF LICENSE.

A license shall not be valid beyond the expiration date therein specified and, unless otherwise provided, shall not extend beyond December 31 of the year issued. However, at any time after December 1, licenses may be issued for the next calendar year. Unless otherwise specified, the full annual fee will be required of licensees irrespective of the date of issuance of the license.

§ 110.05 LICENSE NOT TRANSFERABLE.

Every license shall be issued to a real party in interest in the enterprise or business, and unless otherwise provided, no license shall be assigned or transferred.
Penalty, see § 10.99

§ 110.06 LICENSE CERTIFICATE TO BE DISPLAYED.

Every licensee carrying on business at a fixed location shall keep posted in a prominent place upon the premises the license certificate. Other licensees shall carry their licenses at all times, and whenever requested by any officer or citizen, shall exhibit the license.
Penalty, see § 10.99

§ 110.07 REVOCATION OR SUSPENSION.

(A) Any license may be suspended or revoked by the City Clerk or City Council at any time for the following reasons:

(1) For conditions or considerations that, had they existed at the time of issuance, would have been valid grounds for its denial;

(2) For any misrepresentation of a material fact in the application discovered after issuance of the license;

(3) For any misrepresentation or materially false statement made in the course of carrying on the trade, business or profession;

(4) For violation of any provision of this chapter or other federal, state or municipal law or ordinance relating to the operation of the business or enterprise for which the license has been issued; or

(5) Upon conviction of a licensee for any federal, state or municipal law or ordinance involving the creation of a nuisance, a breach of the peace, interference with the rights of property owners, or any other offense constituting a threat to the public health, safety, morals or general welfare of the public.

(B) The suspension or revocation shall become effective upon notice served upon the licensee. The notice shall contain a written summary of the reasons for the suspension or revocation and a statement concerning the right to appeal the decision. The notice shall be delivered by certified mail, return receipt requested, to the address given on the licensee's application.

§ 110.08 APPEAL AND REVIEW.

In case any applicant has been denied a license by the City Clerk, or if his or her license has been suspended or revoked by the City Clerk, the applicant or licensee shall within ten business days have the right to appeal to the City Council from the denial, suspension or revocation. Notice of appeal shall be filed in writing with the City Clerk or other authorized official. Unless a regular meeting of the City Council at which the appeal can be heard is scheduled within 21 days after receiving the notice of appeal, the Mayor shall schedule a special meeting of the City Council for the hearing within the 21-day period. Three members of the City Council shall constitute a quorum to hear the appeal. The appellant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of the City Council present at the meeting declare in favor of the applicant, the license shall be issued or fully reinstated as the case may be; otherwise the suspension or revocation shall become final.

CHAPTER 111: LIQUOR REGULATIONS

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GENERAL PROVISIONS

§ 111.01 ADOPTION OF STATE LAW BY REFERENCE.

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

§ 111.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

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

§ 111.03 DEFINITIONS.

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

LIQUOR. As used in this chapter, without modification by the words “intoxicating” or “3.2 percent malt,” includes both intoxicating liquor and 3.2 percent malt liquor.

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

§ 111.04 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.

(A) The City Council finds that it is in the best interests of the public health, safety, and

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

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

(C) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or the imposition of a civil penalty under the provisions of § 111.99(B).
Penalty, see § 111.99

§ 111.05 CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this chapter, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted.
Penalty, see § 111.99

§ 111.06 SPECIAL USE PERMIT FOR PUBLIC PARKS, FIELDS, CITY OWNED FACILITIES

Any individual, group, association, business or organization that desires to use parks, fields, or other City owned facilities for a purpose such as picnics, sporting activities, parties, or entertainment performances and wishing to serve alcohol at the event must first obtain a permit from the office of the city administrator for such purposes. To obtain the permit for an event wishing to serve intoxicating liquor or 3.2 percent malt liquor, the applicant may not have previously received a citation for a violation of this ordinance or any other ordinance or city regulation regarding park use.

The application shall state the following:

- a. The type of activity
- b. The name and address of the applicant;
- c. The name and address of the person sponsoring the activity if different from the applicant

- d. The day and hours for which the permit is desired;
- e. The park or portion thereof for which the permit is desired;
- f. An estimate of anticipated attendance;
- g. Any other information that the city shall find reasonably necessary to a fair determination as to whether a permit should be issued.

All cans and other litter shall be cleaned up and removed from the premises upon expiration of the time for which the permit is granted.

A deposit of \$500.00 shall be required prior to issuance of a permit. The deposit shall be reimbursed after city staff verify that the activity site has been left in the same condition it was found prior to event/activities taking place. In the case where cleanup is required, the difference between cleanup cost and the deposit amount shall be reimbursed. In cases where cleanup costs exceed deposit amounts, permit holder and or event sponsor/organizer, shall be responsible for payment of additional costs to the City of Appleton. Appeals may be submitted to the office of the city administrator for initial reviews and determination. Final appeals shall be submitted to the Appleton City Council.

Penalty, see § 111.99

LICENSING

§ 111.20 NUMBER OF LICENSES WHICH MAY BE ISSUED.

State law establishes the number of liquor licenses that a city may issue. However, the number of licenses that may be granted under this chapter is limited to the number of license that were issued as of the effective date of this chapter, even if a larger number of licenses are authorized by law or election. The Council in its sound discretion may provide by ordinance that a larger number of licenses may be issued up to the number of licenses authorized by M.S. Chapter 340A, as it may be amended from time to time. If a larger number of licenses in a particular category has been authorized by a referendum held under the provisions of M.S. § 340A.413, Subd. 3, as it may be amended from time to time, but not all of them have been issued, the larger number of licenses is no longer in effect until the Council by ordinance determines that any or all of the licenses may be issued. The Council is not required to issue the full number of licenses that it has available.

§ 111.21 TERM AND EXPIRATION OF LICENSES.

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

§ 111.22 KINDS OF LIQUOR LICENSES.

The Council of a city that does not have a municipal liquor store is authorized to issue the following licenses and permits, up to the number specified in § 111.20.

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

(B) 3.2 percent malt liquor off-sale license.

(C) Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization.

(D) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994. The fee for an off-sale intoxicating liquor license established by the Council under § 111.23 shall not exceed \$100 or a greater amount which may be permitted by M.S. § 340A.408, Subd. 3, as it may be amended from time to time.

(E) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M.S. § 340A.101, as it may be amended from time to time, and this chapter: hotels, restaurants, bowling centers, clubs or congressionally chartered veterans organizations, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under § 111.23 shall not exceed the amounts provided for in M.S. § 340A.408, Subd. 2b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the license premises at a community festival held within the city under the provisions of M.S. § 340A.404, Subd. 4b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of M.S. § 340A.404, Subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

(F) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M.S. § 340A.504, Subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in § 111.03, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council under the provisions of § 111.23, shall not exceed \$200, or the maximum amount provided by M.S. § 340A.504, Subd. 3c, as it may be amended from time to time.

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

(H) Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club,

charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.

(I) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S. § 340A.404, Subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in § 111.03; and to licensed bed and breakfast facilities which meet the criteria in M.S. § 340A.401, Subd. 1, as it may be amended from time to time.

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

(K) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of § 111.23 shall not exceed \$300, or the maximum amount permitted by M.S. § 340A.14, Subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.

§ 111.23 LICENSE FEES; PRO RATA.

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

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

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

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

§ 111.24 COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.

The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this chapter.

§ 111.25 APPLICATION FOR LICENSE.

(A) *Form.* Every application for a license issued under this chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.

(B) *Financial responsibility.* Prior to the issuance of any license under this chapter, the applicant shall demonstrate proof of financial responsibility as defined in M.S. § 340A.409, as it may be amended from time to time, with regard to liability under M.S. § 340A.801, as it may be amended from time to time. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to M.S. § 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this chapter without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license. Penalty, see § 111.99

§ 111.26 DESCRIPTION OF PREMISES.

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

§ 111.27 APPLICATIONS FOR RENEWAL.

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

§ 111.28 TRANSFER OF LICENSE.

No license issued under this chapter may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply. Penalty, see § 111.99

§ 111.29 INVESTIGATION.

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

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

§ 111.30 HEARING AND ISSUANCE.

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

§ 111.31 RESTRICTIONS ON ISSUANCE.

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

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

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

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

(E) No license shall be granted within 200 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.

Penalty, see § 111.99

§ 111.32 CONDITIONS OF LICENSE.

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

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

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

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

(D) Compliance with financial responsibility requirements of state law and of this chapter is a continuing condition of any license.
Penalty, see § 111.99

§ 111.33 HOURS AND DAYS OF SALE.

(A) The hours of operation and days of sale shall be those set by M.S. § 340A.504, as it may be amended from time to time.

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

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

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

(E) B, C and D shall apply unless the licensee has a license to sell intoxicating liquor, 3.2 percent malt liquor until 2:00 a.m. Section 111.34 (B) shall apply if the licensee has obtained Sales After 1:00 a.m. permit pursuant to M.S. 340 A.504 subd. 7. Any violation of any condition of this section may be grounds for revocation or suspension of the license.
Penalty, see § 111.99

§ 111.34 PERSONS PERMITTED ON PREMISES.

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

(B) No person shall be allowed on the premises of any establishment selling intoxicating liquors between the hours of 2:00 a.m. and 8:00 a.m., except the owners and employees of the establishment.

Penalty, see § 111.99

§ 111.35 RESTRICTIONS ON PURCHASE AND CONSUMPTION.

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. § 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place. Businesses and other entities seeking to provide for the consumption of mixed or prepared liquor in a public place, shall be in possession of the required licensures as defined herein, and shall submit to the special use permit for public parks, fields, and city owned facilities process provided for in § 111.06 of the City of Appleton Code of Ordinances.

Penalty, see § 111.99

§ 111.36 SUSPENSION AND REVOCATION.

(A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

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

(1) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of § 111.04, the license shall be revoked.

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

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

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

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

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

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

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

(D) The provisions of § 111.99 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.
Penalty, see § 111.99

MUNICIPAL LIQUOR STORES

§ 111.50 APPLICATION OF THIS SUBCHAPTER.

This subchapter, consisting of §§ 111.50 through 111.55, applies only to a city that has in existence on the effective date of this chapter a municipal liquor store.

§ 111.51 EXISTING MUNICIPAL STORES CONTINUED.

If the city has in existence on the effective date of this chapter a municipal liquor store for the sale of intoxicating liquor, the store is continued. Except as provided in § 111.55, no intoxicating liquor may be sold at retail elsewhere in the city.
Penalty, see § 111.99

§ 111.52 LOCATION.

The municipal liquor store shall be located at a suitable place in the city as the Council determines by motion. However, no premises upon which taxes, assessments, or other public

charges are delinquent shall be leased for municipal liquor store purposes. The Council shall have the right to establish additional off-sale and on-sale stores at other locations as it may, from time to time, by motion, determine.

§ 111.53 OPERATION.

(A) *Manager.* The municipal liquor store shall be in the immediate charge of a Liquor Store Manager selected by the Council and paid compensation as is fixed by the Council. The Manager shall not be a person who would be prohibited by law or any provision of this chapter from being eligible for an intoxicating liquor license. The Manager shall be furnished a surety bond by the city, and the bond premium shall be paid by the city. The Manager shall operate the municipal liquor store under the Council's direction and shall perform those duties in connection with the store as may be established by the Council. The Manager shall be responsible to the Council for the conduct of the store in full compliance with this chapter and with the laws relating to the sale of intoxicating liquor and 3.2percent malt liquor.

(B) *Other employees.* The Council may also appoint additional employees as may be required and shall fix their compensation. All employees, including the Manager, shall hold their positions at the pleasure of the Council. No person under the age of 18 shall be employed in the store. The Council may require the employees to furnish surety bonds conditioned for the faithful discharge of their duties in a sum as specified by the Council. The premium on the bond may be paid by the city or the employees, as the Council determines.

(C) *Municipal liquor store fund.* All of the revenues received from the operation of a municipal liquor store shall be deposited in a municipal liquor store fund from which all ordinary operating expenses, including compensation of the Manager and employees, shall be paid. Surpluses accumulating in the fund may be transferred to the general fund of the city or to any other appropriate fund of the city by resolution of the Council, and may be expended for any municipal purpose. The handling of municipal liquor store receipts and disbursements shall comply with the procedure prescribed by law and charter for the receipts and disbursements of city funds generally.

(D) *Financial statement.* The Council shall provide within one year following the end of the calendar year for publication a balance sheet using generally accepted accounting procedures and a statement of operations of the municipal liquor store for that year. The balance sheet and statement shall be published in accordance with the provisions of M.S. § 471.6985, as it may be amended from time to time.

(E) *Hours of operation.* The hours during which the sale of intoxicating liquor may be sold shall be as provided in § 111.33. No person, other than the Manager or a store employee, may remain in the municipal liquor store longer than one-half hour after the time when the sale of intoxicating liquor must cease.
Penalty, see § 111.99

§ 111.54 PROOF OF FINANCIAL RESPONSIBILITY.

The city shall demonstrate proof of financial responsibility required by licensees of retail intoxicating liquor establishments under the provisions of M.S. § 340A.409, as it may be amended from time to time.

111.55 ISSUANCE OF OTHER LICENSES.

(A) *On-sale licenses for the sale of intoxicating liquor.* The Council may issue in its sound discretion on-sale licenses to a club under M.S. § 340A.404, Subd. 1(4), as it may be amended from time to time. If the voters have authorized their issuance at a special election called for that purpose, the Council may issue on its sound discretion on-sale liquor licenses to hotels and restaurants. The number of on-sale licenses issued under this section is governed by M.S. § 340A.413, as it may be amended from time to time, as limited by the provisions of this chapter. The issuance of these licenses is governed by the provisions of this chapter.

(B) *Off-sale licenses for the sale of intoxicating liquor.* State law does not authorize the issuance of off-sale licenses for the sale of intoxicating liquor by cities that operate a municipal liquor dispensary.

(C) *On- and off-sale 3.2 percent malt liquor licenses.* The Council may issue 3.2 percent malt liquor licenses in its sound discretion as provided in this chapter.

§111.99 PENALTIES.

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

(B) The Council shall impose a civil penalty of up to \$2,000 for each violation of M.S. Chapter 340A, as it may be amended from time to time, and of this chapter. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, M.S. §§ 14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the licenses is revoked:

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

(C) The term “violation” as used in this section includes any and all violations of the provisions of this chapter, or of M.S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.

CHAPTER 111B: TETRAHYDROCANNABINOL REGULATIONS

Section

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§111B.01 PURPOSE, FINDINGS AND INTENT

The purpose of this Section is to regulate the sale of legalized adult-use of any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minn. Stat. § 151.72 (“THC Products”) for the following reasons:

- (a) The City recognizes that, based on the most reliable and up-to-date scientific evidence, the rapid introduction of newly legalized adult-use THC products, presents a significant potential threat to the public health, safety, and welfare of the residents of Appleton, and particularly to youth.
- (b) The City has the opportunity to be proactive and make decisions that will mitigate this threat and reduce exposure of young people to the products or to the marketing of these products and improve compliance among THC product retailers with laws prohibiting the sale or marketing of THC products to minors.
- (c) A local regulatory system for THC product retailers is appropriate to ensure that retailers comply with THC product laws and business standards of the City of Appleton to protect the health, safety, and welfare of our youth and most vulnerable residents.
- (d) State law requires THC product retailers to check the identification of purchasers to verify that they are at least 21 years of age (Minn. Stat. § 151.72, subd. 3(c)), comply with certain packaging and labeling requirements to protect children and youth (*Id.*, subd. 5), and meet certain potency and serving size requirements (*Id.*, subd. 5a).
- (e) State law authorizes the Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC products and ensure the safety and compliance of commercially available THC products in the state of Minnesota.
- (f) State law does not preempt the authority of a local jurisdiction to adopt and enforce local

ordinances to regulate THC product businesses including, but not limited to, local zoning and land use requirements and business license requirements.

- (g) A requirement for a THC product retailer license will not unduly burden legitimate business activities of retailers who sell or distribute THC products to adults but will allow the City of Appleton to regulate the operation of lawful businesses to discourage violations of state and local THC Product-related laws.
- (h) In making these findings and enacting this ordinance, it is the intent of the Appleton City Council to ensure responsible THC product retailing, allowing legal sale and access without promoting increases in use, and to discourage violations of THC Product-related laws, especially those which prohibit or discourage the marketing, sale or distribution of THC products to youth under 21 years of age.

§111B.02 DEFINITIONS

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Compliance Checks. The system the City uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this article. Compliance checks may also be conducted by the City or other units of government for educational, research, and training purposes, or for investigating or enforcing Federal, State, or local laws and regulations relating to licensed products. Compliance Checks shall be performed by the Appleton Police Department.

Exclusive Liquor Store. An establishment that meets the definition of exclusive liquor store in Minnesota Statutes, section 340A.101, subdivision 10.

Licensed Product or THC Product. Any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minnesota Statutes, section 151.72.

Moveable Place of Business. Any form of business operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions.

Retail Establishment. Any place of business where licensed products are available for sale to the general public, including, but not be limited to, grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

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

Self-Service Merchandising. Open displays of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed products between the licensee or the licensee's clerk and the customer. Assistance or intervention means the actual physical exchange of the licensed product between the customer and the licensee or employee.

Vending Machine. Any mechanical, electric, or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment directly

into the machine by the person seeking to purchase the licensed product.

§111B.03 STATE LAW ADOPTED

Except as further restricted or regulated by this chapter, the provisions of Minn. Stat. § 151.72 relating to the definition of terms, licensing, and all other matters pertaining to the retail sale, distribution and consumption of cannabinoid products are adopted and made a part of this chapter as if set out in full. Whenever there is an inconsistency between the provisions of Minn. Stat. § 151.72, as amended, and the provisions of this section, the more restrictive provision shall govern.

§111B.04 LICENSE

- (a) **License Required.** No person shall sell or offer to sell, directly or indirectly, on any pretense or by any device, any licensed product as part of a retail commercial transaction within the corporate limits of the city without first having obtained a license to do so from the City.
- (b) **Application.** An application for a license to sell licensed products 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, telephone numbers, and email addresses, the name of the business for which the license is sought, and any additional information the City deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the office of the City Administrator for procedural review. If the office of the City Administrator determines that an application is incomplete, they shall return the application to the applicant with notice of the information necessary to make the application complete. Upon receiving a satisfactorily completed application, the office of the City Administrator shall submit the application to the City Council for action at its next regularly scheduled City Council meeting.
- (c) **Business Information.** A business applicant, at the time of application, shall furnish the City with a list of all persons that have an interest of five percent or more in the business. The list shall name all owners and show the interest held by each, either individually or beneficially for others. It is the duty of each business licensee to notify the City Clerk in writing of any change in ownership in the business. Any change in the ownership or control of the business shall be deemed equivalent to a transfer of the license, and any such license shall be revoked 30 days after any such change in ownership or control unless the licensee has notified the Council of the change in ownership by submitting a new license application for the new owners who may apply for a new license pursuant to subsection (b) above. The City may at any reasonable time examine the transfer records and minute books of any business licensee to verify and identify the owners, and the City 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.
- (d) **Action.** The City Council may either approve or deny the application for a 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 City Council approves the license, the City Clerk shall issue the license to the applicant. If the City 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 City Council's decision. If a license

application is denied, the earliest an applicant may reapply is 12 months from the date the license is denied.

- (e) **Term.** All licenses issued under this article shall be valid until December 31 of the year of issue.
- (f) **Revocation or Suspension.** Any license issued under this article may be revoked or suspended as provided in section 110.07 Title.
- (g) **Transfers.** All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the person or business to whom the license was issued. The transfer of any license to another location, business, or person is prohibited.
- (h) **Display.** All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- (i) **Renewals.** The renewal of a license issued under this article shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.
- (j) **Issuance as Privilege and Not a Right.** The issuance of a license issued under this article is a privilege and does not entitle the license holder to automatic renewal of the license.

§111B.05 CONDITIONS

All licenses issued under this article shall be issued subject to the conditions set forth in this chapter and subject to all city ordinances and sections of this Code applicable thereto and the laws of the state. All other regulations contained in state law and city code, including but not limited to Title XI of this city code as applicable to a respective otherwise licensed business enterprise regarding operational requirements and restrictions and prohibited acts and sales, shall not be limited by virtue of issuance of a license under this article and shall be complied with as applicable to the otherwise licensed business enterprise selling or offering for sale THC products to the same extent as if THC products were not sold or offered for sale by the otherwise licensed business enterprise. All such regulations applicable to an otherwise licensed business shall remain applicable to the operations of the otherwise licensed business enterprise during the term of a license issued under this article.

§111B.06 FEES

No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license under this article shall be established by the City Council and adopted by resolution in the City fee schedule in an amount not to exceed any maximum allowed by state law, and may be amended from time to time. The license fee shall not be prorated for licenses issued for less than a full year. The license fee shall be in addition any fee required by any applicable state agency and shall not exceed any statutory maximum. No part of any license or investigation fee shall be refunded unless an application is withdrawn before any action is taken thereon. Any time an additional investigation is required because of a change in ownership or control of a business or for any other reason, the licensee shall pay an additional investigation fee to be determined by the City by resolution.

§111B.07 INELIGIBILITY AND BASIS FOR DENIAL OF LICENSE

(a) *Ineligibility*

- (1) ***Moveable Place of Business.*** No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this article.
- (2) ***Exclusive Liquor Store.*** No license shall be issued to an exclusive liquor store as defined in Minnesota Statutes, section 340A.101, subdivision 10.

(b) ***Grounds for Denial.*** Grounds for denying the issuance or renewal of a license under this article include, but are not limited to, the following:

- (1) The applicant is under the age of 21 years.
- (2) The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation from holding a license.
- (3) The applicant has been convicted within the past five years for any violation of or has otherwise been adjudicated to have violated a Federal, State, or local law, other ordinance, provision, or other regulation relating to the licensed products, but not including possession or sale of licensed products.
- (4) The applicant has been convicted of a violation or otherwise adjudicated to have violated this article within the past five years.
- (5) The applicant has had a license to sell licensed products suspended or revoked during the 12 months preceding the date of application, or the applicant has or had an interest in another premises authorized to sell licensed products, whether in the City or in another jurisdiction, that has had a license to sell licensed products suspended or revoked during the same time period, provided the applicant had an interest in the premises at the time of the revocation or suspension, or at the time of the violation that led to the revocation or suspension.
- (6) The applicant is a business that does not have an operating officer or manager who is eligible pursuant to the provisions of this article.
- (7) The applicant is the spouse of a person ineligible for a license pursuant to the provision of Subsections (b)(2) and (3) of this section or who, in the judgement of the Council, is not the real party in interest or beneficial owner of the business to be operated, under the license.
- (8) The applicant fails to provide any information required on the application, or provides false or misleading information. Any false statement on an application, or any willful omission of any information called for on such application form, shall cause 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) The City shall conduct a background investigation on all new applications and applications to transfer a license. The City may conduct a background and financial check on an application for a renewal of a license if it is in the public interest to do so. If a license is mistakenly issued

or renewed to a person, or if a licensee shall subsequent to the issuance of the license become ineligible to hold such license under the criteria contained in this section, such license shall be revoked upon the discovery that the person was or became ineligible for the license under this article and the City shall provide the person with a notice of revocation, along with information on the right to appeal.

- (d) No license shall be granted or renewed for operation on any premises on which real estate taxes, assessments, or other financial claims of the City or of the State are due, delinquent, or unpaid. If an action has been commenced pursuant to the provisions of Minn. Stats. Ch. 278, questioning the amount or validity of taxes, the Council may, on application by the licensee, waive strict compliance with this provision; no waiver may be granted, however, for taxes, or any portion thereof, which remain unpaid for a period exceeding one year after becoming due unless such one-year period is extended through no fault of the licensee.

§111B.08 PROHIBITED ACTS

- (a) ***In general.*** No person shall sell or offer to sell any licensed product:
- (1) By means of any type of vending machine.
 - (2) By means of self-service merchandising.
 - (3) By any other means, to any other person, on in any other manner or form prohibited by this article or state or other local law, ordinance provision, or other regulation.
- (b) ***Legal Age; Verification.*** No person shall sell any licensed product to any person under the age of 21. Licensees shall verify by means of government issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
- (c) ***Legal Age; Sale.*** No person under the age of **21** shall be allowed to sell any licensed product.
- (d) ***Signage.*** Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the City, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (e) ***Samples Prohibited.*** No person shall distribute samples of any licensed product free of charge or at a nominal cost.
- (f) ***Possession.*** No person under the age of 21 shall be in possession of any THC Product. Any person under the age of 21 in possession of a THC Product may be subject to a petty misdemeanor. Any person under the age of 21 in possession of any THC Product may have it confiscated by a law enforcement officer.
- (g) ***Hours and Days of Sale.*** No sale of THC products may be made between 10:00 p.m. and 8:00 a.m. Monday through Sunday

§111B.09 ADDITIONAL REQUIREMENTS

- (a) **Storage.** All licensed products shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public.
- (b) **Minimum Clerk Age.** Individuals employed by a licensed retail establishment under this article must be at least 18 years of age to sell edible cannabinoid products.

§111B.10 RESPONSIBILITY

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to any civil penalties that the City deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

§111B.11 COMPLIANCE CHECKS AND INSPECTIONS

All premises licensed under this subdivision shall be open to inspection by the City during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks. No person used in compliance checks shall attempt to use a false identification misrepresenting their age. All persons lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or their employee, and produce any identification, if any exists, for which they are asked. Persons used for the purpose of compliance checks shall be supervised by law enforcement or other designated personnel. Nothing in this article 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.

Additionally, from time to time, the City will conduct inspections to determine compliance with any or all other aspects of this ordinance.

§111B.12 VIOLATIONS AND PENALTY

- (a) **Administrative Civil Penalties-Individuals.** If a person who is not a licensee is found to have violated this article, the person shall be charged an administrative penalty as follows:
 - (1) **First Violation.** The Council shall impose a civil fine not to exceed \$50.00.
 - (2) **Second Violation Within 12 months.** The Council shall impose a civil fine not to exceed \$100.00.
 - (3) **Third Violation Within 12 months.** The Council shall impose a civil fine not to exceed \$150.00.

- (b) **Same-Licensee.** If a licensee or an employee of a licensee is found to have violated this

article, the licensee shall be charged an administrative penalty as follows:

- (1) **First Violation.** The Council shall impose a civil fine of \$1,000.00 and suspend the license for not less than three days.
 - (2) **Second Violation Within 36 Months.** The Council shall impose a civil fine of \$2,000.00 and suspend the license for not less than ten consecutive days.
 - (3) **Third Violation Within 36 Months.** The Council shall impose a civil fine of \$5,000.00 and shall revoke the license for at least one year.
- (c) **Misdemeanor Prosecution.** Any person who sells or offers to sell any licensed product in violation of this article shall be guilty of a misdemeanor. Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this article.

§111B.13 EXCEPTIONS AND DEFENSES

Nothing in this article shall prevent the providing of licensed products to a person under the age of 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by state law in Minn. Stat. § 340A.503, subd. 6.

§111B.14 SEVERABILITY

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

CHAPTER 112: PEDDLERS AND SOLICITORS

Section

- 112.01 Definitions
- 112.02 Exceptions to definitions
- 112.03 Licensing; exemptions
- 112.04 License ineligibility
- 112.05 License suspension and revocation
- 112.06 License transferability
- 112.07 Registration
- 112.08 Prohibited activities
- 112.09 Exclusion by placard

§ 112.01 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.

§ 112.02 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.

§ 112.03 LICENSING; EXEMPTIONS.

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

(B) *City license required.* Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to § 112.07.

(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.

(20) The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established in the Ordinance Establishing Fees and Charges, adopted pursuant to § 30.11, as it may be amended from time to time.

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Clerk, 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 § 112.04, 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 fundraisers 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

§ 112.04 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.

(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.

§ 112.05 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 § 112.04.
- (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) of this section, 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 timeframe, 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) of this section.

(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

§ 112.06 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

§ 112.07 REGISTRATION.

All solicitors, and any person exempt from the licensing requirements of this chapter under § 112.03, shall be required to register with the city. 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

§ 112.08 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.

(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

§ 112.09 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

CHAPTER 113: TATTOO AND BODY PIERCING SERVICES

Section

- 113.01 Definitions
- 113.02 Prohibitions
- 113.03 Application for license; fees; issuance
- 113.04 Inspection of facilities
- 113.05 Suspension or revocation of license
- 113.06 Consent for performing procedures on persons under 18
- 113.07 Prohibitions relating to persons under 18
- 113.08 Defenses to violations
- 113.09 Training standards; records; safety and sanitation; equipment

§ 113.01 DEFINITIONS.

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

BOARD OF HEALTH. A Board of Health established under the provisions of M.S. § 145A.03, as it may be amended from time to time. If the city does not have a Board of Health, then this term means the authority having the duties of a Board of Health in the city, including but not limited to the County Board of Health.

BODY PIERCING. Includes ear piercing except when the ear piercing procedure is performed with an ear-piercing gun.

BUSINESS. Any entity that provides services for compensation.

EAR PIERCING GUN. A mechanical device that pierces the ear by forcing a disposable single-use stud or solid needle through the ear.

TATTOO. Has the same meaning given in M.S. § 609.2246, Subd. 2, as it may be amended from time to time.

§ 113.02 PROHIBITIONS.

No person shall do any of the following:

(A) Operate a business that offers tattooing or body piercing services unless the City Council issues it a license to do so;

(B) Perform a tattooing or body piercing procedure in a manner that does not meet the safety and sanitation standards established by this chapter and any federal, state or local laws, rules or

regulations;

(C) Perform a tattooing procedure, body piercing procedure, or ear piercing procedure with an ear piercing gun in a manner that does not meet the standards for appropriate disinfection and sterilization of invasive equipment or parts of equipment used in performing the procedures established by this chapter and any federal, state or local laws, rules or regulations.

Penalty, see § 10.99

§ 113.03 APPLICATION FOR LICENSE; FEES; ISSUANCE.

(A) A person seeking approval to operate a business that offers tattooing or body piercing services shall apply to the city on forms the city or the Board of Health shall prescribe and provide. The applicant shall submit all information the city and the Board of Health determines if it is necessary to process the application. The applicant shall include the fee established under the city's Ordinance Establishing Fees and Charges authorized by § 30.11 as it may be amended from time to time, or as established by the Board of Health.

(B) To receive approval to offer tattooing or body piercing services, a business must demonstrate to the Board of Health the ability to meet the requirements established by this chapter and any federal, state or local laws, rules or regulations for safe performance of the tattooing or body piercing procedures, training of the individuals who perform the procedures, and maintenance of records.

(C) If the Board of Health determines, following an inspection conducted under § 113.04, that a business meets the requirements for approval, it shall so advise the city. The City 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 City Council shall approve the license, the City Clerk shall issue the license to the applicant. If the City 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 City Council's decision. Approval remains valid for one year unless earlier suspended or revoked under § 113.05. A business's approval may be renewed. Approval is not transferable.

Penalty, see § 10.99

§ 113.04 INSPECTION OF FACILITIES.

The Board of Health, or a person or another body designed by the city, shall conduct at least one inspection of a business prior to approving the business under § 113.03 to offer tattooing or body piercing services. The Board may conduct additional inspections as necessary for the approval process. The Board of Health may inspect an approved business at any time the Board considers necessary. In an inspection, the Board of Health shall be given access to the business's premises and to all records relevant to the inspection.

Penalty, see § 10.99

§ 113.05 SUSPENSION OR REVOCATION OF LICENSE.

The City Council may suspend or revoke the approval of a business to offer tattooing or body

piercing services at any time it determines that the business is being operated in violation of this chapter or any federal, state or local laws, rules or regulations. Proceedings for suspensions and revocations shall be conducted in accordance with rules adopted in Chapter 110 for the suspension or revocation of business licenses.

§ 113.06 CONSENT FOR PERFORMING PROCEDURES ON PERSONS UNDER 18.

(A) No person shall perform a tattooing procedure, body piercing procedure, or ear piercing procedure with an ear piercing gun on an individual who is under 18 years of age unless consent has been given by the individual's parent, guardian, or custodian in accordance with division (B) of this section. The consent must include both the custodial and non-custodial parents, where applicable.

(B) A parent, guardian or custodian of an individual under age 18 who desires to give consent to a business to perform on the individual under age 18 a tattooing procedure, body piercing procedure, or ear piercing procedure performed with an ear piercing gun shall do both of the following:

(1) Appear in person at the business at the time the procedure is performed;

(2) Sign a document provided by the business that explains the manner in which the procedure will be performed and methods for proper care of the affected body area following performance of the procedure.

Penalty, see § 10.99

§ 113.07 PROHIBITIONS RELATING TO PERSONS UNDER 18.

(A) (1) unless consent has been given in accordance with § 113.06, no individual who is under age 18 shall obtain or attempt to obtain a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

(2) No individual who is under age 18 shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of obtaining a tattooing service, body piercing service, or ear-piercing service performed with an ear piercing gun.

(B) (1) No individual shall knowingly show or give any false information as to the name, age, or other identification of an individual who is under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

(2) No individual shall impersonate the parent, guardian or custodian of an individual who is under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body-piercing service, or ear piercing service performed with an ear piercing gun.

Penalty, see § 10.99

§ 113.08 DEFENSES TO VIOLATIONS.

(A) An operator or employee of a business that performs tattooing services, body piercing

services, or ear piercing services performed with an ear piercing gun may not be found guilty of a violation of § 113.06(A) or any federal, state or local laws, rules or regulations in which age is an element of the provisions if:

(1) The individual obtaining a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun, at the time of so doing, exhibited to the operator or employee of the tattooing, body piercing, or ear piercing business a driver's or commercial driver's license or an identification card issued under state law showing that the individual was then at least age 18;

(2) The operator or employee made a bona fide effort to ascertain the true age of the individual obtaining a tattooing, body piercing, or ear piercing service by checking the identification presented, at the time of the service, to ascertain that the description on the identification compared with the appearance of the individual and that the identification had not been altered in any way; and

(3) The operator or employee had reason to believe that the individual obtaining a tattooing, body piercing, or ear piercing service was at least age 18.

(B) In any action or proceeding before a court of record in which a defense is raised under this section, the Registrar of Motor Vehicles or the Registrar's Deputy who issued a driver's or commercial driver's license or an identification card shall be permitted to submit certified copies of the records, in the Registrar's or Deputy's possession, of the issuance in lieu of the testimony of the personnel of the Bureau of Motor Vehicles at the hearing, action or proceeding.

§ 113.09 TRAINING STANDARDS; RECORDS; SAFETY AND SANITATION; EQUIPMENT.

(A) Each operator of a business that offers tattooing or body-piercing services shall do all of the following:

(1) Maintain procedures for ensuring that the individuals who perform tattooing or body piercing procedures are adequately trained to perform the procedures properly;

(2) With respect to tattooing services, maintain written records that include the color, manufacturer and lot number of each pigment used for each tattoo performed;

(3) Comply with the safety and sanitation requirements for preventing transmission of infectious diseases, as established in any federal, state or local laws, rules or regulations;

(4) Require the individuals who perform tattooing and body piercing procedures to disinfect and sterilize all invasive equipment or parts of equipment used in performing the procedures by using methods that meet the disinfection and sterilization requirements established in any federal, state or local laws, rules or regulations;

(5) Ensure that weekly tests of the business's heat sterilization devices are performed to determine whether the devices are functioning properly. In having the devices tested, the operator of the business shall use a biological monitoring system that indicates whether the devices are killing microorganisms. If a test indicates that a device is not functioning properly, the operator

shall take immediate remedial action to ensure that heat sterilization is being accomplished. The operator shall maintain documentation that the weekly tests are being performed. To comply with the documentation requirement, the documents must consist of a log that indicates the date on which each test is performed and the name of the person who performed the test or, if a test was conducted by an independent testing entity, a copy of the entity's testing report. The operator shall maintain records of each test performed for at least two years.

(B) Each operator of a business that offers ear piercing services performed with an ear piercing gun shall require the individuals who perform the ear piercing services to disinfect and sterilize the ear piercing gun by using chemical solutions that meet the disinfection and sterilization requirements established in any federal, state or local laws, rules or regulations.

Penalty, see § 10.99

CHAPTER 114: LODGING TAX

Section

- 114.01 Collections
- 114.02 Payment
- 114.03 Processing returns
- 114.04 Failure to file a return
- 114.05 Penalties
- 114.06 Interest
- 114.07 Application of Payments
- 114.08 Enforcement
- 114.09 Administration of tax
- 114.10 Examination of records
- 114.11 Use of proceeds
- 114.12 Appeals

§ 114.01 COLLECTIONS

Every operator of a facility on which a lodging tax is due shall collect the tax at the time the consideration for such lodging is paid. The tax collection shall be deemed to be held in trust by every such operator for the City. The amount of tax shall be separately stated from the consideration charged for the lodging and those persons paying the tax shall receive a receipt of payment from the operator.

§ 114.02 PAYMENT.

Every person who collects a lodging tax shall pay the tax collected to the City monthly on or before the 20th day of the month following the month in which the tax is collected. At the time of payment, such person shall submit a return upon such forms and containing such information as the City Clerk may require. At a minimum, the return shall contain:

- (A) The total amount of consideration collected for lodging during the period covered by the return.
- (B) The amount of tax required to be collected and due for the period.
- (C) The signature of the person filing the return.
- (D) The period covered by the return.
- (E) The amount of uncollectible consideration charged subject to the lodging tax.

The operator may offset against the taxes payable with respect to any reporting period, the amount of tax imposed by this section and previously paid, and which became uncollectible during such reporting period, but only in proportion to the portion of such consideration that became

uncollectible.

§ 114.03 PROCESSING RETURNS.

The City Clerk shall, after a return is filed, examine the same make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax due. If the tax due is found to be greater than paid, such excess shall be paid to the City within ten (10) days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be given credit for toward the next period return after determination of such refund.

§ 114.04 FAILURE TO FILE A RETURN.

The City Clerk shall notify any operator of a facility subject to the provision of this section who fails to file a return or who files an incorrect, false or fraudulent return of such fact. Such operator shall file such return or corrected return within five (5) days of the receipt of such written notice and pay and tax due thereon. If such persons shall fail to file such return or corrected return, the City Clerk shall make a return or corrected return for such person from such knowledge and information as the City Clerk can obtain, and assess a tax on the basis thereof, which tax shall be paid within five (5) days of the receipt of written notice and demand for such payment. Any such return or assessment made by the City Clerk shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any such action or proceeding in respect thereto.

§ 114.05 PENALTIES.

The following penalties shall apply in the given situations:

(A) Failure to file a return or pay a tax imposed by this section to the City within thirty (30) days of the due date: a penalty of ten percent (10%) of the unpaid tax.

(B) Failure to file a return or pay a tax imposed by this section to the City by more than thirty (30) days but less than sixty (60) days of the due date: a penalty of fifteen percent (15%) of the unpaid tax.

(C) Failure TO FILE A Return or pay a tax imposed by this section to the City by more than sixty (60) but less than ninety (90) days of the due date: a penalty of twenty percent (20%) of the unpaid tax.

(D) Failure to file a return or pay a tax imposed by this section to the City by more than ninety (90) days of the due date: a penalty of twenty-five percent (25%) of the unpaid tax.

(E) Failure to file a return or pay a tax imposed by this section to the City wherein the City Clerk is required to make a return or corrected return for such a person: a penalty of Ten Dollars (\$10.00) for each unfilled return.

(F) If the penalty as computed does not exceed Ten Dollars (\$10.00), a minimum penalty of Ten Dollars (\$10.00) shall be assessed. The penalty shall be collected in the same manner as the tax.

§ 114.06 INTEREST.

The amount of tax not timely paid, together with any penalty, shall bear interest at the rate of eight percent (8%) per annum from the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and be collected as a part thereof.

§ 114.07 APPLICATION OF PAYMENTS.

All payments shall be credited first to penalties, next to interest and then to the tax due.

§ 114.08 ENFORCEMENT.

If any portion of the tax imposed by this section including penalties thereon, is not paid within thirty (30) days after it is required to be paid, the City Attorney or City Clerk may institute such legal action as may be necessary to recover the amount due plus interest, penalties, the costs and disbursement of any action.

§ 114.09 ADMINISTRATION OF TAX.

The City Clerk shall administer and enforce the assessment and collection of the taxes imposed by this section. The City Clerk shall prepare blank forms for the returns and other documents required by this section and shall make them available to members of the public.

§ 114.10 EXAMINATION OF RECORDS.

The City Clerk may examine the books, papers and records of any operator of a facility subject to tax imposed by this section in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this section. Every such operator is directed and required to give to the City Clerk the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

§ 114.11 USE OF PROCEEDS.

The proceeds obtained from the collection of taxes pursuant to this section shall be used in accordance with Minnesota Statutes Section 469.190, as the same may be amended from time to time to fund a local convention or tourism bureau for the purpose of marketing and promoting the City as a tourist or convention center. The City may enter into an agreement with the Chamber of Commerce or other organization for such purposes.

§ 114.12 APPEALS.

Any operator aggrieved by any notice, order or determination made by the City Clerk under this section may file with the City Clerk a petition for review of such notice, order or determination by the City Council. The petitions shall contain the name of the petitioner, the petitioner's address, the location of the lodging, the order, notice or determination subject to the review and the basis for the request for review. Upon receipt of the petition, the City Clerk will place the matter on the City Council agenda for a hearing as soon as practical. The City Clerk shall give the petitioner as least five (5) days prior written notice of the date, time and place of such hearing. At the hearing, the Petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. The City Council shall make written findings of fact and conclusions based upon this section and the evidence presented. The City Council may modify, reverse or affirm the notice, order or determination that is subject to the review. All requests for review must be made within one (1) year of the date of the notice, order or determination.

CHAPTER 115: ADULT ENTERTAINMENT

Section

115.01	Definitions
115.02	Purpose
115.03	General Provisions
115.04	Adult Use Principal
115.05	Adult Use, Accessory
115.06	Nonconformina Adult Use – Principal or Accessory
115.07	Enforcement

§ 115.01 DEFINITIONS.

(A) **Adult Uses.** Adult uses include bookstores, adult motion pictures theaters, adult motion picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of “specified sexual activities” or “specified anatomical areas” which are capable of being seen by members of the public.

(1) **Specified Anatomical Areas:**

(a) 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.

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

(2) **Specific Sexual Activities:**

(a) 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, and any of the following sexual-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty; or

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

(c) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation.

(d) Fondling or touching of nude human genitals, public region, buttocks, or female breasts.

(e) 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.

(f) Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being.

(g) Human erection, urination, menstruation, vaginal or anal irrigation.

(B) **Adult Uses -Accessory.** A use, business, or establishment having ten percent (10%) or less of its stock in trade or floor area allocated to, or twenty percent (20%) or less of its gross receipts derived from movie rentals or magazine sales.

(C) **Adult Uses Principal.** A use, business, or establishment having more than 10% of its stock in trade or floor area allocated to, or more than twenty percent (20%) of its gross receipts derived from, any adult use.

(D) **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 or on the body of a patron when such body is wholly or partially nude in terms of “specified anatomical areas.”

(E) **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 such building or portion of a building is not open to the public generally but only to one or more classes of the public extending any minor by reason of age or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of “specified sexual activities” or “ specified anatomical areas.”

(F) **Adult Use-Cabaret.** A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of “specified sexual activities” or “specified anatomical areas.”

(G) **Adult Use-Companionship Establishment.** A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

(H) **Adult Use-Conversation/Rap Parlor.** A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

(I) **Adult Use-Health/Sport Club.** A health/sport club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

(J) **Adult Use-Hotel or Motel.** Adult hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas.”

(K) **Adult Use Massage Parlor, Health Club.** A massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

(L) **Adult Use-Mini-Motion Picture Theater.** A building or portion of a building with a capacity for less than fifty (50) persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

(M) **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 such customers and who engage in “specified sexual activities” or “specified anatomical areas” while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

(N) **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 motor picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing “specified sexual activities” or “specified anatomical areas.”

(O) **Adult Use-Motion Picture Theater.** A building or portion of a building with a of fifty (50) or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

(P) **Adult Use –Novelty Business.** A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designated for sexual stimulation.

(Q) **Adult Use Sauna.** A sauna which excludes minors by reason of age, or which provides 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 service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

(R) **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 pleasure, bathing, relaxation, or

reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

§ 115.02 PURPOSE.

The nature of adult uses is such that they are recognized as having adverse secondary characteristics, particularly when they are accessible to minors and located near residential property or related residential uses such as schools, day care centers, libraries or parks. Furthermore, the concentration of adult uses has an adverse effect upon the use and enjoyment of adjacent areas. The nature of adult uses requires that they not be allowed within certain zoning districts, or within minimum distances from each other or residential uses. Special regulation of adult uses is necessary to ensure that the adverse secondary effects would not contribute or enhance criminal activity in the area of such uses nor will it contribute to the blighting or downgrading of the surrounding property and lessening of its value.

§ 115.03 GENERAL PROVISIONS.

Adult uses as defined in this Chapter shall be subject to the following general provisions:

(A) Activities classified as obscene are not permitted and are prohibited. In no instance shall the application or interpretation of this ordinance be constructed to allow an activity otherwise prohibited by law.

(B) Adult uses, either principal or accessory, shall be prohibited from locating in any building which is also utilized for residential purposes.

(C) An adult use which does not qualify as an accessory use pursuant to Section 115.05, shall be classified as an adult use-principal.

§ 115.04 ADULT USE, PRINCIPAL.

(A) Adult use-principal shall be a permitted use in the Industrial Park District, subject to the location criteria outlined in 115.03 (B) and 115.04.

(B) Adult use-principal shall be located at least three hundred (300) radial feet, as measured in a straight line from the closest point of the property line of the building upon which the adult use-principal is located to the property line of:

(1) A zoning district in which residential uses are specifically listed as a permitted or conditional use.

(2) A licensed day care center.

(3) A public or private educational facility classified as an elementary, junior high or senior high.

- (4) A public library.
- (5) A public park.
- (6) Another adult use-principal.
- (7) Any church or church related organization.

(C) No adult use-principal shall be located in the same building or upon the same property as another adult use-principal. This limitation does not apply to any business or establishment that contains more than one adult use-principal as of October 27, 1997.

(D) Adult use-principal shall adhere to the following signing regulations in addition to the sign regulations of section 151.11(G).

(1) Sign messages shall be generic in nature and shall only identify the name of the business.

(2) Signs shall comply with the requirements of size and number for the district in which they are located.

(E) Adult use-principal shall be limited to 7:00 a.m. to 12:30 p.m. for its hours of operation. Differing time schedule may be approved by the City Council, if it can be satisfactorily demonstrated by the operator to the City Council that all the following apply:

- (1) Not adversely impact or affect uses or activities within three hundred fifty (350) feet.
- (2) Will not result in increased policing and related service calls.
- (3) Is critical to the operation of the business.

§ 115.05 ADULT USE, ACCESSORY.

Adult Uses, Accessory, shall be permitted in all commercial districts, provided the accessory use conforms with the provisions of this Subd.

(A) Adult use-accessory shall:

(1) Comprise no more than ten percent (10%) of the floor area of the establishment in which it is located.

(2) Comprise no more than twenty percent (20%) of the gross receipts of the entire business operation.

(3) Not involve or include any activity except the sale or rental of merchandise.

(B) Adult use-accessory shall be restricted from and prohibit access to minors by the physical separation of such items from areas of general public access:

(1) **Movie Rental.** Display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view and under the control of the persons responsible for the operation.

(2) **Magazines.** Publications classified or qualifying as adult uses shall not be physically accessible to minors and shall be covered with a wrapper or other means to prevent display of any material other than the publication title.

(3) **Other Use.** Adult uses-accessory not specifically cited shall comply with the intent of this Section subject to the approval of the Zoning Administrator.

(C) Adult use-accessory shall be prohibited from both internal and external advertising and signing of adult materials and products.

§ 115.06 NONCONFORMING ADULT USE-PRINCIPAL OR ACCESSORY.

Adult uses which are in existence prior to October 27, 1997, shall be classified as legal nonconforming uses and may continue in accordance with the provisions of this Chapter. If an adult use becomes nonconforming because of rezoning or the establishment of use listed in Subd. 3, the adult use shall be considered legal nonconforming and may continue in accordance with the provisions of this Chapter. In no instance, shall a legal nonconforming adult use be allowed to structurally expand the use on the lot on which it is located when the use became legally nonconforming, or expand the adult use to include another lot on which the adult use was not located when it became legally nonconforming. If the building in which a legal nonconforming adult use is located is destroyed by any means to an extent of greater than fifty percent (50%) of its market value, or if the building in which the legally nonconforming adult use is vacant for more than twelve (12) months, an adult use shall not be re-established unless it is in conformance with this Section.

§ 115.07 Enforcement.

(A) Any person violating any provision of this Section is guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by State Law.

(B) Any violation of this Section shall be a basis for the suspension or revocation of the certificate of occupancy for the property or building in or on which the adult use is located. In the event the City Council proposes to revoke or suspend a certificate of occupancy, the property owner shall be notified in writing of the basis for such proposed suspension or revocation. The City Council shall hold a hearing for the purpose of determining whether to revoke or suspend the certificate of occupancy, which hearing shall be within thirty (30) days of the date of the notice.

(C) The City Council shall determine whether to revoke or suspend a certificate of occupancy within thirty (30) days after the close of the hearing or within sixty (60) days of the dates of the notice, whichever is sooner, and shall notify the property owner of its decision within that period.