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§ 110.01 DEFINITIONS.

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

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

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

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

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

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

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

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

SALE, SELL and SOLD. All forms of barter and all manner or means of furnishing merchandise to persons.
(Prior Code, § 6.01)

§ 110.02 APPLICATIONS.

All applications shall be made as follows.

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

(B) All initial applications shall be accompanied by the payment of a fee adopted by resolution of the Council to cover the cost of investigation as herein provided.

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

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

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

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

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

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

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

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

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

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

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

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

(F) Applications for renewal licenses may be made in an abbreviated form as the Council may, by resolution, adopt.

(Prior Code, § 6.02) Penalty, see § 110.99

§ 110.03 ACTION ON APPLICATION, TRANSFER, TERMINATION AND DUPLICATE LICENSE.

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

(B) *Issuing.* If an application is approved, the City Administrator shall forthwith issue a license

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pursuant thereto in the form prescribed by the Council, payment of the appropriate license fee and approval of the bond or insurance as to form and surety or carrier, if required. All licenses shall be on a fiscal year basis, July 1 to June 30, unless otherwise specified herein as to particular businesses. Unless otherwise herein specified, license fees shall be pro-rated on the basis of one-twelfth for each calendar month or part thereof remaining in the then current license year; provided that, for licenses where the fee is less than an amount as set by City Council by resolution a minimum license fee equal to one-half of the annual license fee shall be charged. Except as to licenses which are specifically city-wide, licenses shall be valid only at one location and on the premises therein described.

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

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

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

(F) *Duplicate license.*

(1) Duplicates of all original licenses may be issued by the City Administrator, without action by the Council, upon licensee’s affidavit that the original has been lost and upon payment of a fee adopted by resolution of the Council for issuance of the duplicate.

(2) All duplicate licenses shall be clearly marked “DUPLICATE”.

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(Prior Code, § 6.03) Penalty, see § 110.99

§ 110.04 FIXING LICENSE FEES.

(A) Except as otherwise herein provided, all fees for licenses under this business title shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced.

(B) The license fees may, from time to time, be amended by the Council by resolution.

(C) A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Administrator, and open to inspection during regular business hours.

(D) For the purpose of fixing the fees, the Council may subdivide and categorize licenses under a specific license requirement; provided that, any subdivision or categorization shall be included in the resolution authorized by this section.

(Prior Code, § 6.04)

§ 110.05 CARRYING OR POSTING.

(A) All solicitors shall, at all times when so engaged, carry their license on their persons.

(B) All other licensees shall post their licenses in their places of business near the licensed activity; provided, however, that, in the case of machine or other device licensing, the city may provide a sticker for the current license year which shall be affixed to each machine or device requiring the sticker.

(C) All licensees shall display their licenses upon demand by any officer or citizen.

(Prior Code, § 6.05) Penalty, see § 110.99

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§ 110.06 PENALTY FOR PROPERTY OWNER.

It is unlawful for any person to knowingly permit any real property owned or controlled by him or her to be used, without a license, for any business for which a license is required by this business title.

(Prior Code, § 6.06) Penalty, see § 110.99

§ 110.07 RESPONSIBILITY OF LICENSEE.

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

(Prior Code, § 6.07)

§ 110.08 CONDITIONAL LICENSES.

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

(Prior Code, § 6.08)

§ 110.09 RENEWAL OF LICENSES.

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

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(Prior Code, § 6.09)

§ 110.10 INSURANCE REQUIREMENTS.

(A) Whenever insurance is required by a section of this business title, after approval by the Council, but before the license shall issue, the applicant shall file with the City Administrator a policy or certificate of public liability insurance showing:

- (1) The limits are at least as high as required;
- (2) Coverage is effective for at least the license term approved; and
- (3) The insurance will not be canceled or terminated without 30 days' written notice served upon the City Administrator.

(B) Cancellation or termination of the coverage shall be grounds for license revocation.
(Prior Code, § 6.10)

§ 110.99 PENALTY.

Every person violates a section, division, paragraph or provision of this business title when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(Prior Code, § 6.99)

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CHAPTER 111: ALCOHOLIC BEVERAGES**

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§ 111.01 DEFINITIONS.

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

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

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

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

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

BREWER. A person who manufactures beer for sale.

COMMISSIONER. The Minnesota Commissioner of Public Safety.

EXCLUSIVE LIQUOR STORE. An establishment used exclusively for the sale of liquor, except for the incidental sale of ice, tobacco, beer, beverages for mixing with liquor, soft drinks, cork extraction devices and books and videos on the use of alcoholic beverages in the preparation of food, and the establishment may offer recorded or live entertainment.

HOTEL. An establishment where food and lodging are regularly furnished to transients and which has:

(1) A resident proprietor or manager;

(2) A dining room serving the general public at tables and having facilities for seating at least 25 guests at one time; and

(3) At least ten guest rooms.

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

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

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

LICENSED PREMISES. The premises described in the issued license.

LIQUOR. Ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2% of alcohol by weight. (This definition includes so-called “wine coolers” and “malt coolers” with the alcoholic content limits stated herein.)

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

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

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

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

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

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

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wholesaler.

RESTAURANT. An establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly served at tables to the general public, and having seating capacity for at least 25 guests.

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

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

WINE. A beverage made without rectification or fortification by the fermentation of sound ripe grapes, grape juice, other fruits or honey, and also carbonated wine, wine made from condensed grape must, wine made from other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry and sake, containing not less than 0.5%, nor more than 14% alcohol by volume. (This definition includes so-called "wine coolers" with the alcoholic content limits stated herein.)

(Prior Code, § 5.01)

§ 111.02 APPLICATIONS AND LICENSES; PROCEDURE AND ADMINISTRATION.

(A) *Application.* All applications shall be made at the office of the City Administrator upon forms prescribed by the city or, if by the Commissioner, then together with such additional information as the Council may desire. Information required may vary with the type of business organization making application. All questions asked or information required by the application forms shall be answered fully and completely by the applicant. Every application for the issuance or renewal of an alcoholic beverage license must include a copy of each summons received by the applicant during the preceding year under M.S. § 340A.802, as it may be amended from time to

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time.

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

(C) *Investigation.* The Council shall investigate all facts set out in the application. 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 discretion, grant or refuse the application. Any costs associated with the investigation of the applicant shall be paid by the applicant, but the costs shall only be limited by M.S. § 340A.412, subd. 2, as it may be amended from time to time.

(D) *Action.*

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

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(2) *Issuing.* If an application is approved, the City Administrator shall forthwith issue a license pursuant thereto in the form prescribed by the City or the Commissioner, as the case may be. All licenses shall be on a fiscal year basis, 12:00 a.m on July 1 to 11:59 p.m on June 30, unless otherwise specified herein. For licenses issued and which are to become effective other than on the first day of the licensed year, the fee to be paid with the application shall be a pro rata share of the annual license fee. Licenses shall be valid only at one location and on the premises therein described. Subject to the approval of the Council, any license fee in excess of an amount as set by City Council by resolution may be made in quarterly or semi-annual payments. A charge in an amount as set by City Council by resolution shall be added to each partial payment of a license.

(3) *Refundment.* A pro rata share of an annual license fee for a license to sell alcoholic beverages, either on-sale or off-sale, shall be refunded to the licensee, or to his or her estate, if:

- (a) The business ceases to operate because of destruction or damage; or
- (b) The licensee dies.

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

(5) *Revocation or suspension.* The Council shall revoke or suspend, for a period not to exceed 60 days, a license granted under the provisions of this chapter, or impose a civil fine not to exceed \$2,000, for each violation on a finding that the licensee has failed to comply with a statute, regulation or provision of the city code relating to alcoholic beverages. The Council shall revoke the license upon conviction of any licensee or agent or employee of a licensee for violating any law relating to the sale or possession of beer, wine or liquor upon premises of the licensee, or if the revocation is mandatory by statute. If it shall be made to appear at the hearing thereon that the violation was not willful, the Council may order suspension; provided that, revocation shall be ordered upon the third violation or offense. No suspension or revocation shall take effect until the

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licensee has been afforded an opportunity for a hearing before the Council, a committee of the Council or a hearing under the Administrative Procedures Act, as may be determined by the Council in action calling the hearing. The hearing shall be called by the Council upon written notice to the licensee served in person or by certified mail not less than 15, nor more than 30, days prior to the hearing date, stating the time, place and purpose thereof. As additional restrictions or regulations on licensees under this chapter, and in addition to grounds for revocation or suspension stated in the city code or statute, the following shall also be grounds for the action:

(a) The licensee suffered or permitted illegal acts upon licensed premises unrelated to the sale of beer, wine or liquor;

(b) The licensee had knowledge of the illegal acts upon licensed premises, but failed to report the same to police;

(c) The licensee failed or refused to cooperate fully with police in investigating the alleged illegal acts upon licensed premises; or

(d) The activities of the licensee created a serious danger to public health, safety or welfare.

(6) *Corporate applicants and licensees.* A corporate applicant, at the time of application, shall furnish the city with a list of all persons that have an interest in the corporation and the extent of the interest. The list shall name all shareholders and show the number of shares held by each, either individually or beneficially for others. It is the duty of each corporate licensee to notify the City Administrator in writing of any change in legal ownership, or beneficial interest in the corporation or in the shares. Any change in the ownership or beneficial interest in the shares entitled to be voted at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the shares therein, shall be deemed equivalent to a transfer of the license issued to the corporation, and any such license shall be revoked 30 days after any such change in ownership or beneficial interest of shares unless the Council has

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been notified of the change in writing and has approved it by appropriate action. The Council, or any officer of the city designated by it, may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify and identify the shareholders, and the Council or its designated officer may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of ownership of shares in a corporate licensee or any change of ownership of any interest in the business of any other licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no action shall be taken until after a hearing by the Council on notice to the licensee.

(E) *Duplicate licenses.* Duplicates of all original licenses under this chapter may be issued by the City Administrator without action by the Council, upon licensee's affidavit that the original has been lost and upon payment of a fee in an amount as set by City Council by resolution for issuance of the duplicate. All duplicate licenses shall be clearly marked "DUPLICATE".

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

(G) *Resident manager or agent.*

(1) Before a license is issued under this chapter to an individual who is a non-resident of the city, to more than one individual whether or not they are residents of the city, or to a corporation, partnership or association, the applicant or applicants shall appoint in writing a natural person who is a resident of the city as its manager or agent. The resident manager or agent shall, by the terms of his or her written consent:

- (a) Take full responsibility for the conduct of the licensed premises; and
- (b) Serve as agent for service of notices and other process relating to the license.

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(2) The manager or agent must be a person who, by reason of age, character, reputation and other attributes, could qualify individually as a licensee. If the manager or agent ceases to be a resident of the city or ceases to act in a capacity for the licensee without appointment of a successor, the license issued pursuant to the appointment shall be subject to revocation or suspension.

(H) *Persons disqualified.*

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

(a) A person not a citizen of the United States or a resident alien;

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

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

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

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

(2) No person holding a license from the Commissioner as a manufacturer, brewer or wholesaler may have any ownership, in whole or in part, in a business holding an alcoholic beverage license from the city.

(Prior Code, § 5.02) Penalty, see § 111.99

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§ 111.03 RENEWAL OF LICENSES.

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

(Prior Code, § 5.03)

§ 111.04 DELINQUENT TAXES AND CHARGES.

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

(B) For the purpose of this section, *APPLICANT* includes persons and related persons:

(1) Owning at least a 50% beneficial interest in the proposed license or in the entity making the application; and

(2) At least an undivided one-half interest in the premises proposed to be licensed, or at least a 50% beneficial interest in the entity owning the premises.

(Prior Code, § 5.04)

§ 111.05 CONDITIONAL LICENSES.

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

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(Prior Code, § 5.05)

§ 111.06 PREMISES LICENSED.

Unless expressly stated therein, a license issued under the provisions of this chapter shall be valid only in the compact and contiguous building or structure situated on the premises described in the license, and all transactions relating to a sale under the license must take place within the building or structure.

(Prior Code, § 5.06)

§ 111.07 UNLAWFUL ACTS.

(A) *Consumption.* It is unlawful for any person to consume, or any licensee to permit consumption of, alcoholic beverages on licensed premises more than 20 minutes after the hour when a sale thereof can legally be made.

(B) *Removal of containers.* It is unlawful for any on-sale licensee to permit any glass, bottle or other container, containing alcoholic beverages in any quantity, to remain upon any table, bar, stool or other place where customers are served, more than 20 minutes after the hour when a sale thereof can legally be made.

(C) *Closing.* It is unlawful for any person, other than an on-sale licensee's bona fide employee actually engaged in the performance of his or her duties, to be on premises licensed under this chapter more than 30 minutes after the legal time for making licensed sales.

(Prior Code, § 5.07) Penalty, see § 111.99

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§ 111.08 CONDUCT ON LICENSED PREMISES.

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

(Prior Code, § 5.08)

§ 111.09 SALE BY EMPLOYEE.

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

(Prior Code, § 5.09)

§ 111.10 LICENSE CONDITION AND UNLAWFUL ACT.

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

(B) It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer from making the inspection.

(Prior Code, § 5.10) Penalty, see § 111.99

§ 111.11 FINANCIAL RESPONSIBILITY OF LICENSEES.

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

(1) A certificate that there is in effect an insurance policy or pool providing minimum coverage of:

(a) Fifty thousand dollars because of bodily injury to any one person in any one occurrence and, subject to the limit for one person, in the amount of \$100,000 because of bodily injury to two or more persons in any one occurrence and in the amount of \$10,000 because of injury to or destruction of property of others in any one occurrence; and

(b) Fifty thousand dollars for loss of means of support of any one person in any one occurrence and, subject to the limit for one person, \$100,000 for loss of means of support of two or more persons in any one occurrence.

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

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

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

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

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(Prior Code, § 5.11)

§ 111.12 INSURANCE CERTIFICATE REQUIREMENTS.

(A) Whenever an insurance certificate is required by this chapter the applicant shall file with the City Administrator a certificate of insurance showing:

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

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

(3) The insurance will not be canceled or terminated without 30 days' written notice served upon the City Administrator.

(B) Cancellation or termination of the coverage shall be grounds for license revocation.

(Prior Code, § 5.12)

§ 111.13 MINORS; UNLAWFUL ACTS.

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

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

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

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

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

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

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

(C) *Possession*.

(1) It is unlawful for a minor to possess any alcoholic beverage with the intent to consume it at a place other than the household of the minor's parent or guardian.

(2) Possession of an alcoholic beverage by a minor at a place other than the household of the parent or guardian is prima facie evidence of intent to consume it at a place other than the household of his or her parent or guardian.

(D) *Entering licensed premises*.

(1) It is unlawful for any minor, as defined in this chapter, to enter licensed premises for the purpose of purchasing or consuming any alcoholic beverage. It is not unlawful for any person who has attained the age of 18 years to enter licensed premises for the following purposes:

(a) To perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by statute;

(b) To consume meals; and

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(c) To attend social functions that are held in a portion of the establishment where liquor is not sold.

(2) It is unlawful for a licensee to permit a person under the age of 18 years to enter licensed premises unless attending a social event at which alcoholic beverages are not served, or in the company of a parent or guardian.

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

(F) *Proof of age.* Proof of age for purchasing or consuming alcoholic beverages may be established only by a valid driver’s license, a state-issued identification card or, in the case of a foreign national, by a valid passport.

(Prior Code, § 5.13) Penalty, see § 111.99

§ 111.14 CONSUMPTION AND POSSESSION.

(A) It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any city park, street, public property or private parking lot to which the public has access, except on the premises when and where permission has been specifically granted or licensed by the Council; provided that, this section shall not apply to the possession of an unsealed container in a motor vehicle when the container is kept in the trunk of the vehicle if it is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk.

(B) For the purpose of this section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers.

(Prior Code, § 5.14) Penalty, see § 111.99

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§ 111.15 ALCOHOLIC BEVERAGES IN CERTAIN BUILDINGS AND GROUNDS.

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

(Prior Code, § 5.15) Penalty, see § 111.99

§ 111.16 ALCOHOLIC BEVERAGES; CERTAIN UNLAWFUL ACTS.

It is unlawful for any:

(A) Person to knowingly induce another to make an illegal sale or purchase of an alcoholic beverage;

(B) Licensee to sell or serve an alcoholic beverage to any person who is obviously intoxicated;

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

(D) Licensee to sell an alcoholic beverage on any day, or during any hour, when the sales are not permitted by law;

(E) Licensee to allow consumption of an alcoholic beverage on licensed premises on any day, or during any hour, when the consumption is not permitted by law; and

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(F) Person to purchase an alcoholic beverage on any day, or during any hour, when the sales are not permitted by law.

(Prior Code, § 5.16) Penalty, see § 111.99

§ 111.17 NUDITY OR OBSCENITY PROHIBITED.

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

NUDITY.

(a) Uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola or the covered human male genitals in a discernibly turgid state.

(b) For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

OBSCENE PERFORMANCE. A play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sado-masochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

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

SADO-MASOCHISTIC ABUSE. Flagellation or torture by or upon a person who is nude or

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clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

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

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

(B) *Unlawful act.* It is unlawful for any person issued a license provided for in this chapter to permit upon licensed premises any nudity, obscene performance or continued use of obscenities by any agent, employee, patron or other person.
(Prior Code, § 5.90) Penalty, see § 111.99

BEER SALES

§ 111.30 BEER LICENSE REQUIRED.

It is unlawful for any person to sell, or keep or offer for sale, any beer without a license therefor from the city. This section shall not apply to sales by manufacturers to wholesalers or to sales by wholesalers to persons holding on-sale or off-sale beer licenses from the city.
(Prior Code, § 5.30) Penalty, see § 111.99

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§ 111.31 BEER LICENSE FEES.

(A) The annual on-sale beer license fee is an amount as set by City Council by resolution.

(B) The annual off-sale beer license fee is an amount as set by City Council by resolution.

(C) The temporary on-sale beer license fee is an amount as set by City Council by resolution.
(Prior Code, § 5.31)

§ 111.32 TEMPORARY BEER LICENSE.

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

(B) *Condition.* An application for a temporary license shall state the exact dates and place of proposed temporary sale.
(Prior Code, § 5.32)

§ 111.33 BEER LICENSE RESTRICTIONS AND REGULATIONS.

(A) No licensee shall, during the effective period of the license, be the owner or holder of a federal retail liquor dealer’s tax stamp for the sale of intoxicating liquor, unless the owner or holder also holds a liquor license from the city, and ownership or holding thereof shall be grounds for immediate revocation, without a hearing.

(B) No license shall be granted to a wholesaler or manufacturer of beer or to anyone holding a financial interest in the manufacture or wholesaling.

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(C) No person who has not attained the age of 18 years shall be employed to sell or serve beer in any on-sale establishment.

(D) On-sale licenses shall be granted only to clubs, exclusive liquor stores, drug stores, restaurants and hotels.

(E) Every license shall be granted subject to the provisions of this chapter and all other applicable provisions of the city code and other laws relating to the operation of the licensees. (Prior Code, § 5.33) Penalty, see § 111.99

§ 111.34 HOURS AND DAYS OF BEER SALES.

No sale of beer shall be made between the hours of 1:00 a.m. and 8:00 a.m. on the days of Sunday through Saturday.

(Prior Code, § 5.34) Penalty, see § 111.99

LIQUOR LICENSES

§ 111.45 LIQUOR LICENSE REQUIRED.

(A) It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of liquor, as part of a commercial transaction, without a license therefor from the city. This section shall not apply:

- (1) To such potable liquors as are intended for therapeutic purposes and not as a beverage;

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(2) To industrial alcohol and its compounds not prepared or used for beverage purposes;

(3) To wine in the possession of a person duly licensed under this chapter as an on-sale wine licensee;

(4) To sales by manufacturers to wholesalers duly licensed as such by the Commissioner; or

(5) To sales by wholesalers to persons holding liquor licenses from the city.

(B) The city may issue annual on-sale liquor licenses only to the following:

(1) Hotels;

(2) Restaurants;

(3) Bowling centers;

(4) Clubs or congressionally chartered veterans' organizations; provided that, liquor sales will be made only to members and bona fide guests; and

(5) Exclusive liquor stores.

(C) The city may issue annual off-sale liquor licenses to exclusive liquor stores and drug stores. (Prior Code, § 5.50) Penalty, see § 111.99

§ 111.46 TEMPORARY LIQUOR LICENSE.

(A) *License authorized.*

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(1) Notwithstanding any provision of the city code to the contrary, the Council may issue a license for the temporary on-sale of liquor in connection with a social event sponsored by the licensee.

(2) The license may provide that the licensee may contract with the holder of a full-year on-sale license, issued by the city, for liquor catering services.

(B) *Applicant.* The applicant for a license under this section must be a club or charitable, religious or other non-profit organization in existence for at least three years.

(C) *Terms and conditions of license.*

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

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

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

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

(Prior Code, § 5.51)

§ 111.47 SPORTS, CONVENTION OR CULTURAL FACILITIES LICENSE.

The Council may authorize any holder of an on-sale liquor license issued by the city or by an adjacent municipality to sell liquor at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports, convention or cultural facility owned by the city, or

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instrumentality thereof having independent policy-making and appropriating authority and located within the city. The licensee must be engaged to sell liquor at such an event by the person or organization permitted to use the premises, and may sell liquor only to persons attending the event. The licensee shall not sell liquor to any person attending or participating in any amateur athletic event. The sales may be limited to designated areas of the facility. All such sales shall be subject to all laws relating thereto. The licensee shall provide proof of the extension of financial responsibility coverage to the premises on which the sales are to be made.

(Prior Code, § 5.52)

§ 111.48 ON-SALE WINE LICENSE REQUIRED.

(A) It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of wine on-sale, as part of a commercial transaction, without a license therefor from the city.

(B) This section shall not apply:

(1) To sales by manufacturers to wholesalers duly licensed as such by the Commissioner;

(2) To sales by wholesalers to persons holding on-sale or off-sale liquor licenses from the city;

(3) To sales by wholesalers to persons holding on-sale wine licenses from the city; or

(4) To sales by on-sale liquor licensees on days and during hours when on-sale liquor sales are permitted.

(Prior Code, § 5.53) Penalty, see § 111.99

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§ 111.49 LICENSE FEES.

(A) The annual on-sale liquor license fee is an amount as set by City Council by resolution.

(B) The annual off-sale liquor license fee is an amount as set by City Council by resolution.

(C) The temporary liquor license fee is an amount as set by City Council by resolution per occurrence.

(D) The annual on-sale wine license fee is an amount as set by City Council by resolution.
(Prior Code, § 5.54)

§ 111.50 HOURS AND DAYS OF LIQUOR SALES.

No on-sale shall be made between the hours of 1:00 a.m. and 8:00 a.m. Sunday through Saturday. No off-sale shall be made on New Year’s Day, January 1; Independence Day, July 4; Thanksgiving Day; or Christmas Day, December 25. No sale of liquor shall be made after 8:00 p.m. on December 24.

(Prior Code, § 5.55) Penalty, see § 111.99

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

No on-sale of wine shall be made between 1:00 a.m. and 8:00 a.m. on Sunday through Saturday, nor between the hours of 8:00 p.m. on December 24 and 8:00 a.m. on December 25.

(Prior Code, § 5.56) Penalty, see § 111.99

§ 111.52 LIQUOR AND ON-SALE WINE LICENSE RESTRICTIONS, REGULATIONS AND

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UNLAWFUL ACTS.

(A) *Limitations on issuance of licenses to one person or place.*

(1) No off-sale liquor license may be issued to any one person for more than one place in the city. Any person holding an interest in two or more such licenses in the city shall be deemed to hold more than one license.

(2) For the purpose of this division (A), the term ***INTEREST***:

(a) Includes any pecuniary interest in the ownership, operation, management or profits of a retail liquor establishment, and a person who receives money from time to time directly or indirectly from a licensee, in the absence of consideration and excluding gifts or donations, has a pecuniary interest in the retail business; and

(b) Does not include loans; rental agreements; open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures, supplies to the establishment; and interest in a corporation owning or operating a hotel, but having a least 150 or more rental units holding a liquor license in conjunction therewith; or 10% or less interest in any other corporation holding a license.

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(3) In determining whether an “interest” exists, the transaction must have been bona fide and the reasonable value of the goods and things received as consideration for a payment by the licensee and all other facts reasonably tending to prove or disprove the existence of a purposeful scheme or arrangement to evade the restrictions of this division (A) must be considered.

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

(C) *Combined licenses prohibited.* No combination of on-sale liquor license and off-sale liquor license shall be issued to a person or persons operating within the same premises.

(D) *Employment of minors.* No person under 18 years of age may sell or serve liquor or wine on licensed premises.

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

(F) *Number of licenses issued.*

(1) On-sale liquor and on-sale wine shall not exceed five combined.

(2) On-sale temporary licenses shall be unlimited.

(3) Off-sale licenses shall not exceed one.

(G) *Licenses subject to all laws.* Every license shall be granted subject to the provisions of this

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chapter and all other applicable provisions of the city code and other laws relating to the operation of the licensed business.

(Prior Code, § 5.57) Penalty, see § 111.99

§ 111.99 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provision hereof.

(Prior Code, § 5.99)

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CHAPTER 112: AMUSEMENTS AND RECREATION

Section

Dances

- 112.01 Definitions
- 112.02 License required
- 112.03 License fee
- 112.04 Application and license
- 112.05 Dance regulations

- 112.99 Penalty

DANCES

§ 112.01 DEFINITIONS.

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

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

PUBLIC DANCING PLACE. Any room, place or space open to public patronage in which

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dancing, wherein the public may participate, is carried on and to which admission may be had by the public by payment, directly or indirectly, of an admission fee or price for dancing.
(Prior Code, § 6.30)

§ 112.02 LICENSE REQUIRED.

It is unlawful for any person to operate a public dancing place, or hold a public dance, without a license therefor from the city.
(Prior Code, § 6.30) Penalty, see § 112.99

§ 112.03 LICENSE FEE.

The license fee shall be fixed and determined by the Council at the time the application is approved by it, which fee shall include the cost of any investigation and the fees and expenses of providing attendance of a police officer or officers.
(Prior Code, § 6.30)

§ 112.04 APPLICATION AND LICENSE.

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

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

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

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

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

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

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

(H) No license shall be issued to any applicant under the age of 18 years.
(Prior Code, § 6.30)

§ 112.05 DANCE REGULATIONS.

(A) *Obscenity and immorality prohibited.* It is unlawful for any person to dance, or for a licensee to permit or suffer any person to dance, at any public dance in an indecent or immodest

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manner. It is also unlawful for any person at a public dance to speak in a rude, boisterous, obscene or indecent manner or for any licensee to suffer or permit any person so to act or speak in any public dancing place.

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

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

(D) *Hours of dancing.* No public dance shall be held on Sunday between the hours of 1:00 a.m. and 12:00 noon. No public dance shall be held on any day between the hours of 1:00 a.m. and 6:00 a.m.

(Prior Code, § 6.30) Penalty, see § 112.99

§ 112.99 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(Prior Code, § 6.99)

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CHAPTER 113: TOBACCO**

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§ 113.01 PURPOSE.

Because the city finds that smoking causes premature death, disability and chronic disease, including cancer and heart disease and lung disease; smoking-related diseases result in excess medical care cost; and smoking initiation occurs primarily in adolescence, the city desires to prevent young people from starting to smoke, to encourage and assist smokers to quit and to promote clean

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(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999)

§ 113.02 DEFINITIONS AND INTERPRETATIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural, and the plural shall include the singular. The term “shall” means mandatory, and the term “may” means permissive. For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

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

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. **INDIVIDUALLY WRAPPED TOBACCO AND TOBACCO PRODUCTS** shall include, but are not limited to, single cigarette packs, single bags or cans of loose tobacco in any form and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other containers as described in this section shall not be considered **INDIVIDUALLY PACKAGED**.

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

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

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

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

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

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products or tobacco-related devices in any way where any person shall have access to the product without the assistance or intervention of an employee of the premises maintaining the self-service merchandising. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

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

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

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

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§ 113.03 LICENSES.

No person shall sell or offer to sell any tobacco, tobacco products or tobacco-related device without first having obtained a license to do so by the city.

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

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

(C) *Term.* All licenses issued under this chapter shall be valid for one calendar year and are due on February 15 of each year. Licenses issued during the year expire on February 15. Each subsequent renewal shall be for one calendar year.

(D) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in §§ 113.12 and 113.99 of this chapter.

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

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

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

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

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999) Penalty, see § 113.99

§ 113.04 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be set by the Council, by resolution, at the time other license fees are set.

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999)

§ 113.05 BASIS FOR DENIAL OF LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this chapter and, if a license is mistakenly issued or renewed to a person, it shall be revoked upon the

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discovery that the person was ineligible for the license under this section:

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

(B) The applicant has been convicted of any violation of a federal, state or local law, ordinance provision or other regulation relating to tobacco or tobacco products or tobacco-related devices;

(C) The applicant has had a license to sell tobacco, tobacco products or tobacco-related devices revoked;

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

(E) The applicant is prohibited by federal, state or other local law, ordinance or other regulation from holding such a license.

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999)

§ 113.06 PROHIBITED SALES.

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

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

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

(C) By means of loosies, as defined in § 113.02 of this chapter;

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(D) Containing opium, morphine, jimsonweed, belladonna, strychnos, cocaine, marijuana or other type of deleterious, hallucinogenic or toxic or controlled substance except nicotine and not naturally found in tobacco or tobacco products;

(E) By any other means, or to any other person, prohibited by federal, state or other local law, ordinance provision or other regulation; and

(F) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product or tobacco-related device and where there is not a physical exchange of the tobacco, tobacco product or tobacco-related device between the licensee or the licensee’s employee and the customer, other than for cartons or multi-pack units as allowed under § 113.08 of this chapter.

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999) Penalty, see § 113.99

§ 113.07 VENDING MACHINES.

(A) *Prohibition.* It shall be unlawful for any person licensed under this section to allow the sale of tobacco, tobacco products or tobacco-related devices by the means of a vending machine.

(B) *Exceptions.* The prohibition in division (A) above shall not apply to the following locations:

(1) Exclusive liquor establishments;

(2) Bowling centers, in the portion of the building where alcoholic beverages are sold and consumed and minors are not allowed; and

(3) Other businesses where minors are excluded as a matter of age.

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999) Penalty, see § 113.99

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§ 113.08 SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products or tobacco-related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee’s employee and whereby there is not a physical exchange of the tobacco, tobacco product or the tobacco-related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products or tobacco-related devices at the time this chapter is adopted shall comply with this section within 60 days following the effective date of this chapter. However, cartons and multi-pack units may be offered and sold through open displays accessible to the public until the effective date and implementation of 21 C.F.R. § 897.16(c), which are incorporated herein.

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999) Penalty, see § 113.99

§ 113.09 RESPONSIBILITY.

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

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999)

§ 113.10 COMPLIANCE CHECKS AND INSPECTIONS.

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All licensed premises shall be open to inspection by the County Sheriff’s Department or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging minors to enter the licensed premises to attempt to purchase tobacco, tobacco products or tobacco-related devices. Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco-related devices when the items are obtained as part of the compliance check. No minor used in compliance checks shall attempt to use a false identification or theatrical makeup misrepresenting the minor’s age. All minors lawfully engaged in a compliance check shall answer all questions about the minor’s age asked by the licensee and shall produce any identification for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research or training purposes, or required for the enforcement of a particular state or federal law.

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999)

§ 113.11 OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this section.

(A) *Illegal possession.* It shall be a violation of this section for any minor to have in his or her possession any tobacco, tobacco product or tobacco-related device. Further, minors of the age of 16 and 17 employed as a clerk on the licensed premises may transact a sale of tobacco, tobacco products or tobacco-related devices, not otherwise in violation hereof. This section shall not apply to minors lawfully involved in a compliance check on behalf of the city.

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

(C) *Illegal procurement.* It shall be a violation of this section for any minor to purchase or

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attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco-related device, and it shall be a violation of this section for any person to purchase or otherwise obtain such items on behalf of a minor. It shall also be a violation of this section for any person to sell or otherwise provide any tobacco, tobacco product or tobacco-related device to any minor, and it shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product or tobacco-related device. This section shall not apply to minors lawfully involved in a compliance check.

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

(E) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product or tobacco-related device to any minor.
(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999) Penalty, see § 113.99

§ 113.12 VIOLATIONS.

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

(A) If a person accused of violating this chapter so requests, in writing addressed to the City Administrator, a hearing shall be scheduled, the time and place of which shall be provided to the accused violator by U.S. mail.

(B) The City Council shall serve as the hearing officer.

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(C) If the hearing officer finds by clear and convincing evidence that a violation of this chapter did occur, that decision, along with the hearing officer’s reasons for finding a violation and the penalty imposed under this chapter shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, the findings shall be recorded and a copy provided to the acquitted accused violator.

(D) Appeals of any decision made by the hearing officer shall be filed in the District Court of the county.

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999) Penalty, see § 113.99

§ 113.13 EXCEPTIONS AND DEFENSES.

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

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999)

§ 113.14 EFFECTIVE DATE.

This section took effect on 4-26-1999.

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999)

§ 113.99 PENALTY.

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

(B) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense. The first offense will result in a fine of \$200 and a ten-day license suspension. The second offense at the same location in a 24-month period will result in a \$500 fine and a 90-day suspension. A third offense at the same location in a 24-month period will result in permanent tobacco license revocation.

(C) *Minors in violation.* Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco product or tobacco-related devices, shall be in violation of this chapter with a fine of at least \$50. Upon violation, the appropriate school officials may be notified of the violation. Additionally, the minor may be referred to the local authority for prosecution as a juvenile offender under applicable state law, and shall have the consequences from that referral in addition to these penalties.

(Prior Code, § 6.31) (Ord. 26, effective 4-26-1999)

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CHAPTER 114: JUNK DEALERS**

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§ 114.01 DEFINITIONS.

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

BUSINESS PREMISES or ***PREMISES***. The area of a junkyard as described in a junk dealer's license or application for license, as provided for in this chapter.

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ITINERANT JUNK DEALER. A junk dealer without fixed business premises within the city.

JUNK. Old iron, steel, brass, copper, tin, lead or other base metals; old cordage, ropes, rags; fibers or fabrics; old rubber, old bottles or other glass; bones; wastepaper and other waste or discarded material which might be prepared to be used again in some form; and any or all the foregoing; and motor vehicles, no longer used as such, to be used for scrap metal or stripping of parts; but **JUNK** shall not include materials or objects accumulated by a person as by-products, waste or scraps from the operation of his or her own business or material or objects held and used by a manufacturer as an integral part of his or her own manufacturing processes.

JUNK DEALER. A person who operates a junkyard.

JUNKYARD. A yard, lot or place, covered or uncovered, outdoors or in an enclosed building, containing junk as defined above, upon which occurs one or more acts of buying, keeping, dismantling, processing, selling or offering for sale any junk, in whole units or by parts, for a business or commercial purpose, whether or not the proceeds from the act or acts are to be used for charity.

(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

§ 114.02 LICENSE REQUIRED.

(A) It is unlawful for any person to act as a junk dealer or operate a junkyard, whether personally, by agents or employees, singly, or along with some other business or enterprise, without a license therefor from the city. A junk dealer who operates more than one junkyard within the city shall be required to have in effect a separate license for each location.

(B) It is unlawful for any individual to act as an itinerant junk dealer without first having obtained a license therefor from the city.

(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980) Penalty, see § 114.99

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§ 114.03 ENFORCEMENT.

(A) The Council, the Health Officer, Fire Chief and Building Inspector constitute a Board of Inspectors. Except where otherwise provided, a majority of the members of the Board shall constitute a quorum. The Board shall appoint a Secretary for itself from among the employees of the city, and adopt its own procedural rules, and keep a record of its proceedings and transactions.

(B) It is the duty of the Board to enforce, or aid in the enforcement of all provisions of this chapter, and for this purpose any of the above members of the Board, or their duly authorized representatives shall have the right and are hereby empowered to enter upon any premises or vehicle on which any business subject to the provisions of this chapter is located, or about to be located, and inspect the same at any reasonable time. The Board is further empowered to issue orders granting, renewing and revoking any license provided for in accordance with the provisions of this chapter. Any applicant or licensee grants the right of entry without a warrant as a condition of his or her application or license.

(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

§ 114.04 APPLICATION.

(A) An applicant for license under this chapter shall file with the Board a written application signed by himself or herself, if an individual, by all partners, if a partnership, and by the president or chief officer of a corporation or other organization, upon forms provided by the Board, together with two copies of the application.

(B) The application shall be sworn to by each of its signers before a notary public or other officer authorized by law to administer oaths and shall include the following information or material:

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(1) Name, residence address and telephone number of each individual owner, partner or, if a corporation or other organization, each officer and director;

(2) Trade names used during the previous five years by the applicant and each person signing the application, along with the locations of prior establishments;

(3) Names and addresses of employers of each person signing the application during the previous five years;

(4) The trade name and address of the business on behalf of which application is made and its telephone number, if assigned;

(5) The name, residence address and telephone number of each person employed or intended to be employed in the business as of the time the application is filed;

(6) Exact address or location of the place where the business is or is proposed to be carried on, plus a sketch of the actual premises to be used in connection with the business, giving distances in feet and showing adjoining roads, property lines, buildings and uses;

(7) A description of the materials with which any buildings to be used in connection with the licensed business are, or are to be made; a sketch giving distances, showing the location of the buildings on the business premises; and a diagram or plan giving distances and heights, showing floors, exits, entrances, windows, ventilators and walls; and

(8) Other information as the Board shall find reasonably necessary to effectuate the purposes of this chapter and to arrive at a fair determination of whether the terms of this chapter have been complied with.

(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

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§ 114.05 INVESTIGATION; APPROVAL AND ISSUANCE OF LICENSE.

(A) Upon receipt of an application for a junk dealer's license as provided for herein, the Secretary shall furnish copies of same to the members of the Board. The Building Inspector shall cause an investigation to be made of the applicant's business responsibility and moral character. The proposed or existing premises and equipment with which the junkyard is being or is to be operated shall be examined by the other members of the Board or their duly appointed representatives. No junk dealer's license shall be issued unless the application is approved by all members of the Board.

(B) The Board of Investigation shall approve the application only if it finds that the applicant's business responsibility and moral character are satisfactory and that all agents or officers of applicant, if any, who will take part in the operation of the business are of good character and reputation and capable of operating the business in a manner consistent with the public health, safety and good morals.

(C) The Building Inspector shall approve the application only if he or she finds that any proposed or existing buildings or equipment with which the junkyard is being or is to be operated conforms to the requirements of the Building Code and the requirements of this chapter.

(D) The Fire Chief shall approve the application only if he or she finds the proposed or existing premises and equipment conform to the requirements of this chapter and all applicable fire-preventive laws.

(E) The Health Officer shall approve the application only if he or she finds that the proposed or existing premises and equipment conform to the requirements of this chapter and all applicable health laws.

(F) If any of the findings provided for in this section are unfavorable to the applicant, the Secretary shall, within 30 days after the filing of the application, notify the applicant that his or her application is disapproved and that no license will be issued. Upon request, he or she shall furnish

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the applicant with a brief written statement of the ground upon which the application was disapproved. If the findings in this section are favorable to the applicant the Secretary shall, within 30 days after the filing of the application, issue a junk dealer’s license to the applicant if he or she finds:

(1) The applicant has obtained from the official charged with administration under the zoning regulations a certificate to the effect that the junkyard will not be a violation of existing city zoning regulations; and

(2) The applicant has paid the fees prescribed by this chapter.

(G) The license as issued shall bear the following language on its face:

IMPORTANT

THIS LICENSE APPLIES ONLY TO THE PREMISES INDICATED HEREIN AND AUTHORIZES THE LICENSEE TO OPERATE A JUNKYARD IN A LAWFUL PLACE AND MANNER ONLY; IT IS NOT A SUBSTITUTE FOR ANY CERTIFICATE OF OCCUPANCY, BUILDING PERMIT, OR OTHER CERTIFICATE OR PERMIT THAT MIGHT BE REQUIRED BY LAW OF THE LICENSEE, AND IT DOES NOT RELIEVE THE LICENSEE OF THE RESPONSIBILITY TO HAVE ALL SUCH REQUIRED PERMITS OR CERTIFICATES AT ALL TIMES AND COMPLY WITH ALL LAWS AFFECTING THE ABOVE DESCRIBED BUSINESS.

(H) The Secretary shall keep a permanent record of all applications filed and all licenses issued in accordance with this section.

(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

§ 114.06 RENEWAL PROCEDURE.

An applicant for a renewal license shall file with the Secretary of the Board a written application upon forms provided by the Board, signed and sworn to in the same manner required in the case of

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an original application. The application shall contain information about the applicant's demeanor and the conduct and operation of the licensed business during the preceding license period as is reasonably necessary to enable the Board to determine the applicant's eligibility for a renewal license.

(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

§ 114.07 LICENSE NOT TRANSFERABLE.

No license issued under this chapter shall be transferred or assigned or used by any person other than the one to whom it was issued, and no junk dealer's license shall be used at any location other than the one described in the application upon which it was issued.

(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

§ 114.08 OPERATING REQUIREMENTS.

The following general operating requirements shall apply to all junk dealers licensed in accordance with the provisions of this chapter.

(A) The license issued pursuant to this chapter shall be plainly displayed on the business premises.

(B) The junkyard, together with things kept therein, shall at all times be maintained in a sanitary condition.

(C) No space not covered by the licensee shall be used in the licensed business.

(D) No water shall be allowed to stand in any place on the premises in a manner as to afford a breeding place for mosquitoes.

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(E) Weeds and vegetation on the premises, other than trees, shall be kept at a height of not more than four inches.

(F) No garbage or other waste liable to give off a foul odor or attract vermin shall be kept on the premises; nor shall any refuse of any kind be kept on the premises, unless the refuse is junk, as defined herein, and is in use in the licensed business.

(G) No junk shall be allowed to rest upon or protrude over any public street, walkway or curb or become scattered or blown off the business premises.

(H) Junk shall be stored in piles and shall be arranged so as to permit easy access to all such junk for firefighting purposes.

(I) No combustible material of any kind not necessary or beneficial to the licensed business shall be kept on the premises; nor shall the premises be allowed to become a fire hazard.

(J) Gasoline and oil shall be removed from any scrapped engines or vehicles on the premises.

(K) No junk or other material shall be burned on the premises in any incinerator not meeting the requirements of the Building Code; and no junk or other material shall be burned on the premises in the open, except in accordance with Minnesota PCA Regulation APC-8.

(L) No noisy processing of junk or other noisy activity shall be carried on in connection with the licensed business on Sunday, Christmas, Thanksgiving or at any time between the hours of 6:00 p.m. and 7:00 a.m.

(M) The area on the premises where junk is kept (other than indoors) shall be enclosed, except for entrances and exits, with a solid vertical wall or fence that shall be of such a height so as to not permit any view from a public road of piles of stored junk as provided in division (H) above.

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Entrances and exits shall not be wider or more numerous than reasonably necessary for the conduct of the licensed business.

(N) The licensee shall permit inspection of the business premises by any member or representative of a member of the Board at any reasonable time.

(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980) Penalty, see § 114.99

§ 114.09 INSPECTIONS.

The Board, or its duly authorized representatives, shall inspect the junkyard of all junk dealers licensed under this chapter at least once a year to determine whether the yards are being operated in accordance with the provisions of this chapter and other applicable provisions of law.

(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

§ 114.10 REVOCATION AND SUSPENSION.

When the Board determines that the public interest so requires, it shall revoke or suspend the license of any junk dealer when it finds, after due investigation, that:

(A) The junk dealer or any agent or officer of the dealer who takes part in the operation of the licensed business, or the itinerant junk dealer is not of good character or reputation or is not capable or operating the licensed business or carrying on the licensed activity in a manner consistent with public health, safety and good morals;

(B) The junk dealer has failed to comply with the provisions of this chapter or any provision of law applicable to the premises, equipment or operation of the licensed business or the itinerant junk dealer has failed to comply with this chapter or any provision of law applicable to his or her equipment or licensed operations;

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(C) The licensee has obtained his or her license through any fraud or misstatement;

(D) The licensed business or activity is being conducted in a manner detrimental to the health, safety or general welfare of the public, or is a nuisance or is being operated or carried on in any unlawful manner; or

(E) The licensed business or activity is no longer being operated or carried on.
(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

§ 114.11 HEARING ON GRANTING, DENYING, RENEWING OR REVOKING LICENSE.

Any person aggrieved by an order of the Board granting, denying, renewing or revoking a license for a proposed or existing business or activity subject to the provisions of this chapter, may file a written request for a hearing before the Board within ten days after issuance of the order. The Board shall give notice of a public hearing upon its request to be held on the person requesting the hearing. The Board shall also give notice of the hearing to other persons directly interested in the order in question. At the hearing, the Board shall determine whether the granting, denial, renewal or revocation of the license was in accordance with the provisions of this chapter and shall issue a written finding of fact, conclusions law and an order to carry out its findings and conclusions. These findings of fact, conclusions of law and order shall be filed with the Secretary of the Board and served by the Board upon all parties appearing or represented at the hearing. The City Attorney shall furnish assistance and advice to the Board, as the Board shall request.
(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

§ 114.12 COMPLIANCE.

Any person acting as a junk dealer within the city on the effective date of this chapter shall have

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a period of 90 days after the effective date to comply with the provisions of this chapter.
(Prior Code, § 6.32) (Ord. 156, effective 3-1-1980)

§ 114.99 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.
(Prior Code, § 6.99)

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CHAPTER 115: EXCAVATORS**

Section

- 115.01 Definitions
- 115.02 Purpose and intent
- 115.03 License required
- 115.04 Licensee and owner restrictions and regulations

- 115.99 Penalty

§ 115.01 DEFINITIONS.

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

CITY SPECIFICATIONS. The certain document adopted by the Council by resolution setting forth the manner in which excavations shall be made and repaired in public rights-of-way.

EXCAVATION. The scraping or movement of the surface or subsurface of any street right-of-way.

EXCAVATOR. Any person, not acting within the course and scope of a contract with the city, who makes an excavation.

OWNER. The person hiring or engaging the excavator or benefitting from the excavation. (Prior Code, § 6.33)

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§ 115.02 PURPOSE AND INTENT.

In order to ensure proper restoration of excavations within the street right-of-way, public alleys and easements, a license is required by any person excavating in the public land. The license holder shall comply with all city regulations, requirements and specifications in the performance of any excavations and the restorations of the excavated area.

(Prior Code, § 6.33)

§ 115.03 LICENSE REQUIRED.

(A) It is unlawful for any excavator to make an excavation without a license therefor from the city.

(B) There shall be two types of licenses available to the excavator.

(1) *Thirty-day license.* A 30-day license shall be for any number of excavations to be completed within 30 days from the date of issuance. The license shall show the licensee's name, address and telephone number.

(2) *Annual license.* An annual license shall be for any number of excavations during a calendar year which shall give the excavator's name, address and telephone number. This license shall be valid for the calendar year in which it is obtained.

(C) Fees for the 30-day license and the annual license shall be set by Council.
(Prior Code, § 6.33) Penalty, see § 115.99

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§ 115.04 LICENSEE AND OWNER RESTRICTIONS AND REGULATIONS.

(A) *Notice.* Except in emergency situations, notice must be given to the office of the City Administrator not less than 24 hours before commencing any work and immediately upon the completion of any excavations. The license holder shall submit a form, provided by the city, that explains the excavation in detail to the Administrator’s office within 48 hours after the excavation has been completed. Upon proper notice, it will become the responsibility of the City Administrator to notify all emergency personnel of the excavation procedure.

(B) *Inspection.* It shall be the responsibility of the excavator to arrange for any and all required inspections. No excavation will be considered completed until all mandatory inspections are completed.

(C) *Public liability insurance.* The licensee shall provide public liability insurance with minimum limits of \$1,000,000 for injury to one person, \$1,000,000 for injury to more than one person and \$1,000,000 for property damage.

(D) *Worker’s compensation insurance.* The excavator must provide a certificate to the city prior to the issuance of a license, showing worker’s compensation insurance as required by state law.

(E) *Performance and maintenance bond.* The excavator shall provide an insurance certificate to the city showing coverage of performance and maintenance bond insurance for the period of the license or a new certificate upon expiration of the policy.

(F) *Responsibility.* The owner and the excavator shall be responsible for compliance with the conditions of this chapter and subject to the penalties provided for violation of this chapter.

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(G) *City specifications compliance.* The owner and excavator shall be responsible for compliance, in detail, with city specifications.

(Prior Code, § 6.33)

§ 115.99 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(Prior Code, § 6.99)

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CHAPTER 116: COMMERCIAL SOLID WASTE HAULERS

Section

- 116.01 Definitions
- 116.02 Purpose and intent
- 116.03 License required
- 116.04 Application
- 116.05 Fee
- 116.06 Violation

- 116.99 Penalty

§ 116.01 DEFINITIONS.

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

COMMERCIAL SOLID WASTE HAULER. An individual, firm or corporation that engages in the hauling of solid waste for hire.

COMPOSTABLE GARBAGE.

(1) The portion of solid waste that does not include recyclables, rejected material, demolition (construction) debris, hazardous waste, trees, rock, earth fill and rubble.

(2) **COMPOSTABLE GARBAGE** shall comply with current requirements of the county’s

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Source Separation Ordinance.

DEMOLITION (CONSTRUCTION) DEBRIS. Material that consists of rock, rubble, building materials and the like, resulting from construction, remodeling, repair or demolition operations.

FILLMORE COUNTY RESOURCE RECOVERY CENTER. The place and facilities designated by the Fillmore County Commissioners to be the Fillmore County Resource Recovery Center.

HAZARDOUS WASTE. Waste designated as hazardous by the U.S. Environmental Protection Agency or the state's Pollution Control Agency.

RECYCLABLE SOLID WASTE. Those items designated as recyclable materials in the county's Source Separation Ordinance. Such items shall generally consist of aluminum, tin cans, glass, plastic, newspapers, computer paper and bond paper.

REJECT MATERIAL. Solid waste that is not compostable or recyclable and is appropriate to be disposed of in a certified landfill.

SOLID WASTE. Garbage, refuse and other discarded solid materials, including solid waste materials resulting from industrial, commercial, agricultural operations, residential uses and community activities, but does not include earthen fill, boulders, rock and other materials normally handled in construction operations, animal waste used as fertilizer, any permitted material disposed of as solid waste used as fertilizer, any permitted material disposed of as soil amendment, solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, wastewater effluent, dissolved materials, suspended solids in irrigation return flows or other water pollutants.

YARD WASTE. Organic plant materials collected from yards or gardens, including trees, limbs, leaves, grass and the like.

(Prior Code, § 6.34) (Ord. 3, effective 6-12-1989; Ord. 27, effective 10-25-1999)

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§ 116.02 PURPOSE AND INTENT.

The purpose of this chapter is to license commercial haulers of certain solid waste from within the limits of the city and for those haulers to deliver the waste to appropriate disposal sites, including, but not limited to, the county's Resource Recovery Center. (Prior Code, § 6.34) (Ord. 3, effective 6-12-1989; Ord. 27, effective 10-25-1999)

§ 116.03 LICENSE REQUIRED.

(A) All commercial solid waste haulers collecting and/or transporting the following types of solid waste from within the limits of the city shall be licensed by the city:

- (1) Compostable garbage;
- (2) Recyclable solid waste; and
- (3) Reject material.

(B) The collecting and/or transporting of the following types of solid waste does not require a license from the city:

- (1) Demolition (construction) debris;

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(2) Hazardous waste; and

(3) Yard waste.

(C) All licenses shall terminate as of December 31 of each year and shall not be issued for more than one year and are non-transferable. Licenses and requirements from other governmental agencies may be required in addition to the city license and it is the responsibility of the hauler to obtain the licenses and comply with their requirements.

(Prior Code, § 6.34) (Ord. 3, effective 6-12-1989; Ord. 27, effective 10-25-1999) Penalty, see § 116.99

§ 116.04 APPLICATION.

The applicant shall file an application provided by the city with the City Administrator to be placed on the next regular Council meeting agenda for Council consideration. Renewal applications shall be applied for on the same form and filed with the City Administrator prior to December 1 of each year to provide sufficient time for the Council to consider the application.

(Prior Code, § 6.34) (Ord. 3, effective 6-12-1989; Ord. 27, effective 10-25-1999)

§ 116.05 FEE.

The annual fee for a license shall be an amount as set by City Council by resolution and shall automatically terminate at midnight on December 31 of each year unless the license is renewed by application to the Council and the fee paid.

(Prior Code, § 6.34) (Ord. 3, effective 6-12-1989; Ord. 27, effective 10-25-1999)

§ 116.06 VIOLATION.

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Haulers found to be in violation or non-compliance with this chapter may be subject to the penalty stated in § 116.99 of this chapter and/or revocation or suspension of their licenses by the Council upon written notice to the license holder at the address shown on the application.
(Prior Code, § 6.34) (Ord. 3, effective 6-12-1989; Ord. 27, effective 10-25-1999)

§ 116.99 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.
(Prior Code, § 6.99)

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CHAPTER 117: RENTAL PROPERTIES**

Section

- 117.01 Purpose
- 117.02 City not an arbitrator
- 117.03 Applicability
- 117.04 Requirements
- 117.05 Multi-unit dwellings
- 117.06 Licensing of rental units
- 117.07 Enforcement and inspection authority
- 117.08 Inspection access
- 117.09 Unfit for human habitation
- 117.10 Compliance order
- 117.11 Right of appeal
- 117.12 Board of Appeals; decision
- 117.13 Restriction on transfer of ownership
- 117.14 Reinspections
- 117.15 Compliance orders
- 117.16 Exception

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§ 117.01 PURPOSE.

(A) The purpose of this chapter is to protect the public health, safety and the general welfare of the people of the city.

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(B) These general objectives include, among others, the following:

(1) To protect the character and stability of residential areas within the city;

(2) To correct and prevent housing conditions that adversely affect or are likely to adversely affect the life, safety, general welfare and health, including the physical, mental and social well-being of person occupying dwellings within the city;

(3) To provide minimum standards for cooking, heating and sanitary equipment necessary to the health and safety of occupants of buildings;

(4) To provide minimum standards for the maintenance of existing residential buildings and to thus prevent slums and blight; and

(5) To preserve the value of land and buildings throughout the city.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.02 CITY NOT AN ARBITRATOR.

(A) With respect to rental disputes, and except as otherwise specifically provided by the terms of this chapter, it is not the intention of the city to intrude upon the fair and accepted contractual relationship between tenant and landlord. The city does not intent to intervene as an advocate of either party, nor to act as an arbiter, nor to be receptive to complaints from tenant or landlord which are not specifically and clearly relevant to the provisions of this chapter. In the absence of the relevancy with regard to rental disputes, it is intended that the contracting parties exercise such legal sanctions as are available to them without the intervention of city government.

(B) In enacting this chapter, neither is it the intention of the city to interfere or permit interference with legal rights to personal privacy.

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(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.03 APPLICABILITY.

(A) Every building and its premises used in whole or in part as a home or residence, or as an accessory structure thereof, for a single family or person, and every building used in whole or in part as a home or residence of two or more persons or families living in separate units shall conform to the requirements of this chapter, irrespective of when the building may have been constructed, altered or repaired.

(B) This chapter establishes minimum standards for erected dwelling units, accessory structures and related premises.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.04 REQUIREMENTS.

For rental property to qualify for a rental license, these conditions must be met.

(A) *General.*

(1) The lawn of the rental facility must be graded and drained in a way that it stays free of standing water. The lawn shall have a yard cover consistent with prevailing community standards. Lawn grass shall be kept at a length of six inches or less.

(2) All fencing on the premises shall be kept in good repair and comply with zoning regulations.

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(3) All accessory buildings must be structurally safe and in good repair. All accessory buildings must be rodent-free and rodent-resistant.

(4) The roof of the structure shall be in good shape and water-tight. The foundation and exterior walls of the structure shall be in good shape, water-proof and rodent-resistant.

(5) All chimneys shall be in good-working order.

(6) Porches and/or balconies shall be safe and in good repair. Railings are needed on porches and balconies greater than 18 inches from ground level.

(7) All exterior doors shall have safe, functioning locks.

(B) *Rental property interior.*

(1) At least one bathroom with a functioning flush-type toilet, lavatory sink and bathtub or shower must be provided.

(2) Kitchen facilities must be provided, including a working sink and water supply. Space for a stove and refrigerator must be available.

(C) *Interior in general.*

(1) The dwelling must have safe and functioning heating facilities in all habitable rooms.

(2) The dwelling must have an adequate heated water system. All stairways must be structurally safe. A safe and adequate smoke detector(s) must be provided at each building level.

(3) No rental unit may be over-occupied by more persons than reasonable conventions in health and safety may allow, where more than two adult persons would have to occupy any bedroom,

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that room must allow for an extra 40 square feet of space per adult occupant in excess of the two initial occupants. No room(s) other than a conventional bedroom may be designated by the owner or tenants as a “bedroom”. The minimum size of a bedroom shall be 70 square feet. Studio apartments will be exempt; however, no more than two adults are allowed to occupy studio apartments.

(4) No dwelling shall foster a situation where rodent or pest infestation is a problem or a potential problem. Examples of this may include, but are not limited to: actual evidence of pests; storage of material that might provide a habitat for pests; unsafe storage of items that might become food for pests. The dwelling must be designated “fit for human habitation”.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014) Penalty, see § 117.99

§ 117.05 MULTI-UNIT DWELLINGS.

If a building contains two or more dwelling units, it falls under this section.

(A) All shared or public areas of the dwellings must be kept in a clean and sanitary condition.

(B) The owner must provide for the removal of ice and snow. This may be part of the rental contract with the renter.

(C) The owner must provide and maintain parking areas and driveways in good condition.

(D) The owner must maintain the yard(s) of the dwelling in good condition.

(E) The owner must provide adequate garbage containers and is responsible to arrange weekly garbage removal.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014) Penalty, see § 117.99

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§ 117.06 LICENSING OF RENTAL UNITS.

(A) *Registration.* No person shall operate rental property in the city without first having properly made and filed a registration statement with the City Administrator, and without first securing a valid rental license from the city. Any person filing such a registration statement thereby consents to be bound by all of the provisions of this chapter and the other ordinances of the city, as they may relate to rental property. The registration statement shall be made and filed on forms furnished by the city for such purposes and shall set forth the following information:

(1) Name and residence of the owner and, if a corporation, the name of officers and registered office thereof. All owners must be listed;

(2) Name and address of the rental property and the number of units to which the registration applies;

(3) Name and address of the caretaker or manager responsible for the maintenance and care of the rental units;

(4) The name and address of the owner’s agent for the receipt of notices of violations of the provisions of this chapter and other applicable ordinances of the city; and

(5) Such other information as the city may require.

(B) *Execution of registration statement.* The registration shall be made by the owner if the owner is a natural person; if the owner is a corporation, by an officer thereof; if the owner is a partnership, by one of the partners; and if the owner is an unincorporated association, by the manager or managing officer thereof. Renewal of registrations as required annually by this chapter may be made by filling out the required renewal form provided by the city’s designee to the owner of rental property and mailing the form together with the required registration fee to the City Administrator.

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(C) *Annual registration.* The registration of all rental dwellings registered for the previous year shall be renewed not later than the first business day of February of each year.

(D) *Transfers.* Every new owner of a rental property, (whether as fee owner, contract purchaser, lessee of the entire dwelling or otherwise) shall register before taking possession.

(E) *Registration license fee.*

(1) The registration license fee(s) shall be due on the first business day of February of each year in amounts set by City Council resolution.

(2) A delinquency penalty of \$25 for each day of operation without a valid license shall be charged to operators of rental dwellings. Once issued, a license is non-transferable and the license shall not be entitled to a refund on any license fee upon revocation and suspension. In the case of new unlicensed dwellings, license fees shall be due upon the issuance of the certificate of occupancy.

(F) *Inspection condition.* No operating license shall be issued or renewed unless the owner of rental units agrees in his or her application to permit inspections pursuant to this chapter. Inspections will be conducted annually. Properties that have passed the annual inspections without violations will be inspected every three years unless a complaint is received. Receipt of a signed complaint will result in an inspection being completed. If the complaint is found not to be valid, the person making the complaint will be charged for the cost of the inspection.

(G) *License not transferable.* No operating license shall be transferable to another person or to another rental dwelling.

(H) *Suspension or revocation.*

(1) Every operating license issued under the provisions of this chapter is subject to

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suspension or revocation by the City Council or its designee should the licensed owner or his or her duly authorized resident agent fail to operate or maintain the licensed rental dwelling and units therein in compliance with the provisions of the ordinances of the city and the laws of the state. In the event that an operating license is suspended or revoked by the City Council or its designee for just cause, it shall be unlawful for the owner or the duly authorized agent to thereafter permit any new occupancies of vacant or thereafter vacated rental units until such time as an operating license may be restored by the City Council or its designee.

(2) When a rental license is revoked or suspended, the property shall be vacated as of the effective date of the revocation or suspension and remain vacated until restoration of the license. In the case of a suspension, restoration shall occur automatically at the end of the suspension period. In the case of revocation, restoration of the license shall occur only after the owner of the premises has made application for a new license and paid a new application fee. The new license may then be issued upon completion of the revocation period.

(3) No suspension or revocation of a rental license shall occur until the licensed owner has been afforded an opportunity for a hearing to be conducted pursuant to M.S. §§ 14.50 to 14.69, as they may be amended from time to time. This hearing shall be evidentiary in nature and conducted before the City Council or designee which shall determine whether an ordinance or statutory violation did occur warranting revocation or suspension of the rental license. The determination of the City Council or designee shall be final and subject only to any rights of review or appeal to the state court as is provided by statute. The licensed owner must affirmatively request an evidentiary hearing by writing to be received by the City Administrator no later than seven days prior to the date on which the Council or designee is to consider the matter. If request is not made, the right to an evidentiary hearing is deemed waived and the City Council or designee may presume the truth and accuracy of the matters alleged and proceed to disposition at the time of the hearing.

(4) Where the City Council or designee determines that an ordinance or statutory violation has occurred warranting suspension or revocation, the rental license shall be suspended or revoked for a period of not less than two months nor more than 12 months. Execution of the suspension or

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revocation may be stayed by the Council or designee on such reasonable conditions as established by the Council or designee including, but not limited to, the payment of a civil penalty not to exceed \$1,000. Upon the completion of one-half of the period of revocation or suspension imposed by the City Council or designee, the licensed owner may petition the City Council or designee for early restoration of the rental license. Upon receipt of the petition, the licensed owner's request shall be heard by the City Council or designee at the next regular scheduled meeting, (but at least seven days from receipt of the request). At that time, the City Council or designee may order a restoration of the rental license if the licensed owner establishes by clear and convincing evidence that one of the following two circumstances then exist:

(a) The property has been sold since the occurrence of the original violation to a party unrelated to the original owner. The sale must be for a fair consideration, negotiated at arm's length, and by deed duly filed for record at the office of the County Recorder. A sham or paper transfer of title of the property to a related party or another party acting in cooperation with the owner for the purpose of circumventing the license revocation shall not constitute a transfer for purposes of this chapter; and/or

(b) The licensed owner demonstrates to the City Council or designee that he or she has properly responded to the revocation or suspension, that measures have been taken to successfully correct the violation which originally resulted in suspension or revocation, and that additional steps have been taken to assure that similar violations not occur in the future. Factors to be considered by the Council or designee, may include: improvements and repairs to the premises; modification of the relevant lease provisions; selection of future tenants; response to citizens complaints; provision for future supervision of the premises by the licensed owner; the licensed owner's compliance with the revocation/suspension; and such other criteria as the Council or designee considers relevant to each individual case.

(5) Where the licensed owner is able to establish by clear and convincing evidence grounds for restoration, the Council or designee may stay the execution of the remainder of the suspension or revocation period for a period of up to one year and place reasonable terms and conditions upon the

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licensed owner as may be relevant to further ensure compliance with the ordinance of the city and laws of the state.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014) Penalty, see § 117.99

§ 117.07 ENFORCEMENT AND INSPECTION AUTHORITY.

The Building Inspector and its designated agent(s), along with the City Administrator, shall be the compliance official(s) who shall administer and enforce the provisions of this chapter and who is hereby authorized to cause inspections on a scheduled basis for rental units, or otherwise when reason exists to believe that a violation of this chapter has been or is being committed. Inspections shall be conducted during reasonable daylight hours unless otherwise arranged.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.08 INSPECTION ACCESS.

Any owner, occupant or other person in charge of a dwelling or dwelling unit may refuse to permit free access and entry to the structure or premises under his or her control for inspection pursuant to this chapter, whereupon the compliance official(s) may seek a court order authorizing the inspection.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.09 UNFIT FOR HUMAN HABITATION.

(A) *Vacation of buildings.* Any dwelling, dwelling unit or rooming unit which is damaged, decayed, dilapidated, unsanitary, unsafe, vermin or rodent infested, or which lacks provision for basic illumination, ventilation or sanitary facilities to the extent that the defects create a hazard to the health, safety or welfare of the occupants or of the public may be declared unfit for human

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habitation, the compliance official(s) shall order same vacated within a reasonable time and shall post a placard on same indicating that it is unfit for human habitation, and any operating license previously issued for such dwelling shall be revoked.

(B) *Reoccupation.* It shall be unlawful for the dwelling, dwelling unit or rooming unit to be used for human habitation until the defective conditions have been corrected and written approval has been issued by the compliance official(s). It shall be unlawful for any person to deface or remove the declaration placard from any such dwelling, dwelling unit or rooming unit.

(C) *Secure units and vacated dwellings.* The owner of any dwelling, dwelling unit or rooming unit which has been declared unfit for human habitation, or which is otherwise vacant for a period of 60 days or more, shall make same safe and secure so that it is not hazardous to the health, safety and welfare of the public and does not constitute a public nuisance. Any vacant dwelling open at doors or windows, if unguarded, shall be deemed to be a hazard to the health, safety and welfare of the public and a public nuisance within the meaning of this chapter.

(D) *Hazardous building declaration.* In the event that a dwelling has been declared unfit for human habitation and the owner has not remedied the defects within a prescribed reasonable time, the dwelling may be declared a hazardous building and treated consistent with the provisions of state statutes.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014) Penalty, see § 117.99

§ 117.10 COMPLIANCE ORDER.

(A) Whenever the compliance official(s) determines that any dwelling, dwelling unit or rooming unit, or the premises surrounding any of these, fails to meet the provisions of this chapter, he or she may issue a compliance order setting forth the violations of this chapter and ordering the owner, occupant, operator or agent to correct the violation.

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(B) This compliance order shall be in writing:

(1) Describe the location and nature of the violations of this chapter;

(2) Establish a reasonable time for the correction of the violation and notify of appeal recourse; and

(3) Be served upon the owner or his or her agent or the occupant, as the case may require. The notice shall be deemed to be properly served upon the owner or agent or upon any such occupant, if a copy thereof is:

(a) Served upon him or her personally;

(b) Sent by registered mail to his or her last known address; or

(c) Upon failure to affect notice through divisions (B)(3)(a) and (B)(3)(b) above, posted at a conspicuous place in or about the dwelling which is affected by the notice. (Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.11 RIGHT OF APPEAL.

When it is alleged by any person to whom a compliance order is directed that the compliance order is based upon erroneous interpretation of this chapter, the person may appeal the compliance order to the Planning and Zoning Board. The appeals must be in writing, must specify the grounds for the appeal, must be accompanied by a filing fee in an amount as may be established by resolution of the City Council, paid in cash or cashier's check and must be filed with the City Administrator within five business days after service of the compliance order. The filing of an appeal shall stay all proceedings in furtherance of the action appealed from, unless such a stay would cause imminent peril to life, health or property.

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(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.12 BOARD OF APPEALS; DECISION.

Upon at least five business days notice to the appellant of the time and place for hearing the appeal, and within 45 days after the appeal is filed, the City Council shall hold a hearing thereon, taking into consideration any advice and recommendation from the compliance official(s). The City Council may reverse, modify or affirm, in whole or in part, the compliance order and may order return of all or part of the filing fee if the appeal is upheld.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.13 RESTRICTION ON TRANSFER OF OWNERSHIP.

It shall be unlawful for the owner of any dwelling, dwelling unit or rooming unit upon whom a pending compliance order has been served to sell, transfer, mortgage, lease or otherwise dispose thereof to another person until the provisions of the tag or compliance order have been complied with, unless the owner shall furnish to the grantee, lessee or mortgagee a true copy of any notice of violation or compliance order and shall obtain and possess a receipt of acknowledgment. Anyone securing an interest in the dwelling, dwelling unit or rooming unit who has received notice of the existence of a violation tag or compliance order shall be bound by same without further service of notice upon him or her and shall be liable to all penalties and procedure provided by this chapter.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014) Penalty, see § 117.99

§ 117.14 REINSPECTIONS.

(A) The Building Inspector or compliance officer(s) shall re-inspect the property to determine if the owner has complied with the compliance order.

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(B) If compliance has not been completed upon re-inspection, the owner shall be assessed a re-inspection fee for an amount to be set by the City Council for that re-inspection and each subsequent re-inspection for compliance.

(C) Failure to pay the re-inspection fee shall constitute a failure to comply with the compliance order.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.15 COMPLIANCE ORDERS.

Upon failure to comply with a compliance order within the time set therein and no appeal having been taken, or upon failure to comply with a modified compliance order within the time set therein, the criminal penalty established hereunder notwithstanding, the City Council may, by resolution, cause the cited deficiency to be remedied as set forth in the compliance order. The cost of the remedy shall be a lien against the subject real estate and may be provided by M.S. Ch. 429, as it may be amended from time to time, but the assessment shall be payable in a single installment.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

§ 117.16 EXCEPTION.

This chapter shall not apply to any nursing home or other facilities that are inspected by the Federal or State Government on an annual basis. This chapter shall not apply to property where the owner’s child, stepchild, parent or stepparent are residing.

(Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

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§ 117.99 PENALTY.

(A) Any person who fails to comply with a compliance order after right of appeal has expired, and any person who fails to comply with a modified compliance order within the time set therein shall be guilty of a misdemeanor. Each day of the failure to comply shall constitute a separate punishable offense.

(B) Notwithstanding the availability of the foregoing compliance procedures and the penalties, whenever the compliance official(s) determines that any dwelling, dwelling unit or rooming unit or the premises surrounding any of these fails to meet the requirements set forth in this chapter, the Police Policy Coordinator may issue a violation tag summoning the responsible person into court or request the issuance of a criminal complaint and arrest warrant.

(C) Any person violating any of the provisions of this chapter by doing any act or omitting to do any act which constitutes a breach of any section of this chapter shall, upon conviction thereof by lawful authority, be guilty of a misdemeanor, punishable as herein defined. Each day that a violation continues shall be deemed a separate punishable offense. No provision of this chapter designating the duties of any official or employee of the city shall be so construed as to make the official or employee liable for the penalty provided in this section because of failure to perform the duty. (Prior Code, § 10.16) (Ord. 38, effective 4-28-2014)

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CHAPTER 118: ADULT ESTABLISHMENTS**

Section

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§ 118.01 PURPOSE AND INTENT.

(A) It is the purpose of this chapter to regulate adult-oriented businesses to promote the health, safety, morals and general welfare of the citizens of the city and to establish reasonable and uniform regulations to:

- (1) Prevent additional criminal activity within the city;

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(2) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;

(3) Locate adult-oriented businesses away from residential areas, schools, churches, parks and playgrounds and day-care facilities; and

(4) Prevent concentration of adult-oriented businesses within certain areas of the city.

(B) The provisions of this chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials. Similarly, it is not the intent, nor effect, of this chapter to restrict or deny access by adults to adult-oriented materials protected by the First Amendment or to deny access by distributors and exhibitors of adult-oriented entertainment to their intended market.

(Prior Code, § 13.01) (Ord. 21, effective 9-23-1996)

§ 118.02 DEFINITIONS.

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

ADULT BOOKSTORE AND/OR MEDIA STORE. An establishment which excludes minors and which has a substantial portion of its stock-in-trade or stock on display books, magazines, films, videotapes or other media which are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ADULT CABARET. An establishment which provides dancing or other live entertainment, if the establishment excludes minors by virtue of age from all or part of the establishment and if the dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, depiction or description of specified sexual activities or specified anatomical areas.

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ADULT ESTABLISHMENT. Any business which offers its patrons services, entertainment or the sale of merchandise characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas. Specifically included in the term, but without limitation, are adult bookstores and media stores, adult cabarets, adult hotels or motels, adult mini motion-picture theaters, adult modeling studios, adult motion picture arcades, adult motion-picture theaters, adult novelty businesses and other adult establishments.

ADULT HOTEL OR MOTEL. A 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.

ADULT MINI MOTION-PICTURE THEATER. The following:

(1) A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity for fewer than 50 persons, used for presenting motion pictures, including, but not limited to, film and videotape, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; and

(2) Any business which presents motion pictures, from which minors are excluded from all or part of the establishment, including films and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for viewing on the premises, including, but not limited to, private booths, viewing by means of coin-operated or other mechanical devices and the viewing of excerpts of motion pictures offered for sale or rent.

ADULT MODELING STUDIO. An establishment, which excludes minors from all or part of

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

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

ADULT MOTION-PICTURE THEATER. A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity of 50 or more persons used regularly and routinely for presenting live entertainment or motion pictures, including, but not limited to, film and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT NOVELTY BUSINESS. A business, from which minors are excluded from all or part of the establishment, which sells, offers to sell or displays devices which simulate human genitals or devices which are designed for sexual stimulation.

ADULT USE. Any of the activities and businesses described below that are subject to the regulation of this chapter.

SPECIFIED ANATOMICAL AREA. Any of the following conditions:

- (1) Less than completely and opaquely covered:

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- (a) Human genitals, pubic region or pubic hair;
 - (b) Buttock; and
 - (c) Female breast below a point immediately above the top of the areola.
- (2) Human male genitals in a discernable turgid state, even if opaquely covered.

SPECIFIED SEXUAL ACTIVITIES. Any of the following conditions:

(1) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital or oral-genital intercourse, whether between human beings or between a human being and an animal;

(2) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound or otherwise physically restricted on the part of one so clothed;

(3) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ, clothed or unclothed; and/or

(4) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of a female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(Prior Code, § 13.02) (Ord. 21, effective 9-23-1996)

§ 118.03 APPLICATION.

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(A) Except as specifically provided in this chapter, no structure shall be erected, converted, enlarged, reconstructed or altered and no structure or land shall be used for any purpose, nor in any matter, which is not in conformity with this chapter.

(B) No adult-oriented business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the city, the laws of the state or the United States of America. Nothing in this chapter shall be construed as authorizing or permitting conduct which is prohibited or regulated by other statutes or ordinances, including, but not limited to, statutes or ordinances prohibiting the exhibition, sale or distribution of obscene material generally or the exhibition, sale or distribution of specified materials to minors.

(Prior Code, § 13.03) (Ord. 21, effective 9-23-1996) Penalty, see § 10.99

§ 118.04 LOCATION.

(A) During the term of this chapter, no adult-oriented business shall be located less than 500 feet from any residential zoning district boundary or site used for residential purposes, and less than 500 feet from any church site, from any school site, from any licensed day-care facility or from any park which is adjacent to property zoned residential.

(B) In addition, no adult-oriented business may be located within 500 feet of another adult-oriented business.

(C) For purposes of this chapter, this distance shall be a horizontal measurement from the nearest existing residential district boundary or site used for residential purposes, church site, school site, licensed day-care site, park site or another adult-oriented business site to the nearest boundary of the proposed adult-oriented business site.

(Prior Code, § 13.04) (Ord. 21, effective 9-23-1996) Penalty, see § 10.99

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§ 118.05 HOURS OF OPERATION.

No adult-oriented business site shall be open to the public from the hours of 11:00 p.m. to 9:00 a.m.

(Prior Code, § 13.05) (Ord. 21, effective 9-23-1996) Penalty, see § 10.99

§ 118.06 OPERATION.

(A) *Off-site viewing.* An establishment operating as an adult-oriented business shall prevent off-site viewing of its merchandise which, if viewed by a minor, would be in violation of M.S. Ch. 617, as it may be amended from time to time, or other applicable federal or state statutes or local ordinances.

(B) *Entrances.* All entrances to the business, with the exception of emergency fire exits which are not usable by patrons to enter the business, shall be visible from a public right-of-way.

(C) *Layout.* The layout of the display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the store can observe all patrons while they have access to any merchandise offered for sale or viewing, including, but not limited to, books, magazines, photographs, video tapes or any other material.

(D) *Illumination.* Illumination of the premises' exterior shall be adequate to observe the location and activities of all persons on the exterior premises.

(E) *Signs.* Signs for adult-oriented businesses shall comply with §§ 154.255 through 154.266 of this code of ordinances and, in addition, signs for adult-oriented businesses shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the

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operation.

(Prior Code, § 13.06) (Ord. 21, effective 9-23-1996) Penalty, see § 10.99

§ 118.07 LICENSES.

(A) *Licenses required.* All establishments, including any business operating at the time this chapter becomes effective, operating or intending to operate an adult-oriented business shall apply for and obtain a license from the city. A person is in violation of the city code if he or she operates an adult-oriented business without a valid license issued by the city.

(B) *Application.* An application for a license must be made on a form provided by the city.

(1) The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy plus or minus six inches.

(2) The applicant must be qualified according to the provisions of this section, and the premises must be inspected and found to be in compliance with the appropriate state, county and local law and codes by the Health Official, Fire Marshal and Building Official.

(3) Application for license shall contain the address and legal description of the property to be used; the names, addresses, telephone numbers and dates of birth of the owner, lessee, if any, the operator or manager and all employees; the name, address and telephone number of two persons, who shall be residents of the state, and who may be called upon to attest to the applicant's, manager's or operator's character; whether the applicant, manager or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete and accurate information pertaining to the disposition thereof; and the names and addresses of all the creditors of the applicant, owner, lessee or manager insofar as regarding credit which has been extended for the

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purposes of constructing, equipping, maintaining, operating or furnishing or acquiring the premises, personal effects, equipment or anything incidental to the establishment, maintenance and operation of the business.

(4) If the application is made on behalf of a corporation, joint business venture, partnership or any legally constituted business association, it shall submit, along with its application, accurate and complete business records showing the names, addresses and dates of birth of all individuals having an interest in the business, including partners, officers, owners and creditors furnishing credit for the establishment, acquisition, maintenance, operation or furnishing of the establishment, including the purchase or acquisition of any items of personal property for use in the operation.

(5) All applicants shall furnish to the city, along with their applications, complete and accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon which the building is proposed to be located or the furnishings thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise.

(C) *Disqualification.* A potential licensee will be disqualified from obtaining a license to operate an adult-oriented business due to any of the following situations:

(1) The license fee required by this chapter has not been paid;

(2) An applicant has been convicted of a crime involving any of the following offenses:

(a) Any sex crimes as defined by M.S. §§ 609.293 through 609.352, inclusive, as they may be amended from time to time, or as defined by any ordinance or statute in conformity therewith; and

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(b) Any obscenity crime as defined by M.S. §§ 617.23 through 617.299, inclusive, as they may be amended from time to time, or as defined by any ordinance or statute in conformity therewith; for which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or

3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(3) The fact that a conviction is being appealed shall have no effect on disqualification of the applicant or applicant's spouse.

(D) *Requalification.* An applicant who has been convicted of an offense listed in division (C)(2) above may qualify for an adult-oriented business license only when the time period required by division (C)(2)(b) above has elapsed.

(E) *Posting.* The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the adult-oriented business. The license shall be posted in a conspicuous place at or near the entrance to the adult-oriented business so that it may be easily read at any time.

(F) *Council action.* The City Council shall act to approve or disapprove the license application

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within 60 days from the date the application was submitted, provided that the application contains all of the information required by this chapter. If the application is deficient, the Council shall act on the application within 60 days from the date that the deficiency has been corrected.

(G) *Appeals.* Within 90 days after the decision by the Council, the applicant may appeal to county's District Court by serving a notice upon the Mayor or City Administrator. (Prior Code, § 13.07) (Ord. 21, effective 9-23-1996)

§ 118.08 FEES.

Fees shall be set by resolution by the City Council. (Prior Code, § 13.08) (Ord. 21, effective 9-23-1996)

§ 118.09 INSPECTION.

(A) *Access.* An applicant or licensee shall permit health officials, representatives of the Sheriff's Department, Fire Department and the city's Building Inspector to inspect the premises of an adult-oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

(B) *Refusal to permit inspections.* A person who operates an adult-oriented business or his or her agent or employee commits an offense if she or he refuses to permit a lawful inspection of the premises by health officials, representatives of the Sheriff's Department, Fire Department and the city's Building Inspector at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license as provided in § 118.11 of this chapter.

(C) *Exceptions.* The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

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(Prior Code, § 13.09) (Ord. 21, effective 9-23-1996)

§ 118.10 EXPIRATION AND RENEWAL.

(A) *Expiration.* Each license shall expire at the end of the calendar year and may be renewed only by making application as provided for in § 118.07(B) of this chapter. Application for renewal must be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.

(B) *Denial of renewal.* When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(Prior Code, § 13.10) (Ord. 21, effective 9-23-1996)

§ 118.11 SUSPENSION.

(A) *Causes of suspension.* The city may suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any provision of this chapter;

(2) Engaged in the use of alcoholic beverages while on the adult-oriented business premises other than at an adult hotel or motel;

(3) Refused to allow an inspection of the adult-oriented business premises authorized in this chapter;

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(4) Knowingly permitted gambling by any person on the adult-oriented business premises;
and

(5) Demonstrated inability to operate or manage an adult-oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(B) *Notice.* A suspension by the city shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally or by leaving the same at the licensed business premises with the person in charge thereof. (Prior Code, § 13.11) (Ord. 21, effective 9-23-1996)

§ 118.12 REVOCATION.

(A) *Suspended licenses.* The city may revoke a license if a cause of suspension in § 118.11 of this chapter occurs and the license has been suspended within the preceding 12 months.

(B) *Causes of revocation.* The city shall revoke a license if it determines that:

(1) A licensee gave false or misleading information in the material submitted to the city during the application process;

(2) A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;

(3) A licensee or an employee has knowingly allowed prostitution on the premises;

(4) A licensee or an employee knowingly operated the adult-oriented business during a period of time when the licensee's license was suspended;

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(5) A licensee has been convicted of an offense listed in § 118.07(C)(2) of this chapter, for which the time period required in § 118.07(C)(2) of this chapter, has not elapsed;

(6) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in § 118.07(C)(2) of this chapter, for which a conviction has been obtained, and the person or persons were employees of the adult-oriented business at the time the offenses were committed; and/or

(7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

(C) *Appeals.* The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(D) *Exceptions.* Division (B)(7) above does not apply to adult motels as a ground for revoking the license unless the licensee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in a public place or within public view.

(E) *Granting a license after revocation.* When the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult-oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under division (B)(5) above, an applicant may not be granted another license until the appropriate number of years required under § 118.07(C)(2) of this chapter has elapsed.

(F) *Notice.* A revocation by the city shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee

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personally or by leaving the same at the licensed premises with the person in charge thereof.
(Prior Code, § 13.12) (Ord. 21, effective 9-23-1996)

§ 118.13 TRANSFER OF LICENSE.

A licensee shall not transfer this license to another, nor shall a licensee operate an adult-oriented business under the authority of a license at any place other than the address designated in the application.

(Prior Code, § 13.13) (Ord. 21, effective 9-23-1996)

§ 118.14 EFFECTIVE DATE.

This chapter became effective upon its passage and publication as provided by law.
(Prior Code, § 13.15) (Ord. 21, effective 9-23-1996)

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CHAPTER 119: TRANSIENT MERCHANTS**

Section

Peddlers and Solicitors

- 119.01 Definitions
- 119.02 Exceptions to definitions
- 119.03 Nuisance

- 119.99 Penalty

PEDDLERS AND SOLICITORS

§ 119.01 DEFINITIONS.

For the purpose of this chapter, the following definitions 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, 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.

SOLICITOR. A person who goes from house-to-house, door-to-door, business-to-business,

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street-to-street, 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 no 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.

(Ord. passed 10-9-2017)

§ 119.02 EXCEPTIONS TO DEFINITIONS.

The terms 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 nor shall they apply to any person making delivery of perishable food and dairy products to the customers on his or her established regular delivery. The terms shall also not apply to non-profit organizations such as Girl Scouts of America or Boy Scouts of America.

(Ord. passed 10-9-2017)

§ 119.03 NUISANCE.

The practice of going in and upon private residences or residents' properties in the city by peddlers and solicitors not been requested or invited to do so by the owner or owners, occupant or occupants of such private residents', for the purpose of soliciting orders for the sale of goods, wares and merchandise, or for the purpose of disposing of disposing of or peddling the same, is hereby declared to be a nuisance.

(Ord. passed 10-9-2017)

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§ 119.99 PENALTY.

Any person who violations any provision of this chapter shall be guilty of a misdemeanor.
(Ord. passed 10-9-2017)

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CHAPTER 120: LAWFUL GAMBLING

Section

120.01 Adopting State Law

120.02 Licenses

120.03 Premises

120.04 Contributions

120.99 Penalty

§ 120.01 ADOPTING OF STATE LAW

Lawful gambling shall be permitted with in the city limits of Spring Valley pursuant to Minn. Stat.

§ 349.22, conditions of this ordinance and all other ordinances are limited to lawful purposes conducted or located within the City of Spring Valley. The City hereby reserves all rights to regulate lawful gambling as provided in § 349.22.

(Ord. 33, passed 3-27-2006)

§ 120.02 LICENSES.

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The Gambling Control Board in the State of Minnesota must issue all licenses for organizations conducting lawful gambling in Spring Valley Minnesota, Minn. Stat. § 349.16, unless such organization is exempt from state licensing as stated in Minn. Stat. §349.166.

(Ord. 33, passed 3-27-2006)

§ 120.03 PREMISES.

A licensed organization may not conduct lawful gambling at any site unless it has first obtained a premises permit for the site from the City of Spring Valley. The leases must be on a form prescribed by the Gambling Control Board.

(Ord. 33, passed 3-27-2006)

§ 120.04 CONTRIBUTIONS.

(A). Organizations licensed to conduct lawful gambling within the City of Spring Valley shall donate ten percent (10%) of its net profits from the conduct of such lawful gambling to the City of Spring Valley. Minn. Stat. § 349.213 subd. 1 (a-b). Such donations shall be made to the Spring Valley Clerk by the twentieth of the month following the end of each quarter. For the purpose of this section a calendar quarter shall be deemed to be ending on the last day of March, June, September and December. A complete copy of the Internal Revenue *Schedule C - Profit or Loss From Business* shall be included with the payment of the ten percent (10%) of the organizations net profits.

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(B) No organization shall receive a reimbursement from the City of Spring Valley for any contributions made pursuant to this section.

(C) No organization may contribute funds to the City for the purpose of the City giving the funds to a third party recipient designated by the organization. Such designations are unlawful and shall be disregarded.

(Ord. 33, passed 3-27-2006)

§ 120.99 PENALTY

Failure by an organization to comply with this chapter is grounds for the City Council to revoke or disapprove the organization lawful gambling license at the time of renewal.

(Ord. 33, passed 3-27-2006)

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