

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: ALCOHOLIC BEVERAGES

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INTOXICATING LIQUOR REGULATIONS

§ 110.01 STATE PROVISIONS ADOPTED.

The provisions of M.S. Chapter 340A, as it may be amended from time to time, relating to the definitions of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquors are adopted and made a part of this subchapter as if set out in full. (Prior Code, § 4.01)

§ 110.02 LICENSE REQUIRED.

(A) *Generally.* No person, except a wholesaler or manufacturer to the extent authorized under state license, shall directly or indirectly deal in, sell, or keep for sale in the city any intoxicating liquor without a license to do so. Licenses shall be of four kinds: on-sale, wine, off-sale, and club licenses.

(B) *On-sale licenses.* On-sale licenses shall be issued only to hotels, clubs, restaurants, and exclusive liquor stores and shall permit on-sale of liquor only.

(C) *On-sale wine licenses.* On-sale wine licenses shall be issued only to restaurants meeting the qualifications of M.S. § 340A.101, subd. 25, as it may be amended from time to time, and shall permit only the sale of wine not exceeding 14% alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food.

(D) *Off-sale licenses.* Off-sale licenses shall be issued only to drug stores and exclusive liquor stores and shall permit off-sales of liquor only.

(E) *Special club licenses.* Special club licenses shall be issued only to incorporated clubs which have beer, in existence for 15 years or more, or to congressionally chartered veterans' organizations which have been in existence for ten years. (Prior Code, § 4.02)

§ 110.03 APPLICATION PROCEDURE; FEES.

(A) *Application.*

(1) *Form.* Every application for a license to sell liquor shall state the name of the applicant, his

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or her age, representations as to his or her character, with references as the Council may require, his or her citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location, whether the applicant is owner and operator of the business, how long he or she has been in that business at that place, and other information as the Council may require from time to time. In addition to containing the information, the application shall be in the form prescribed by the Commissioner of Public Safety and shall be verified and filed with the Administrator/ Clerk-Treasurer. No person shall make a false statement in an application.

(2) *Financial responsibility.* Prior to the issuance of a liquor license, the applicant shall demonstrate proof of financial responsibility, with reference to liability under M.S. § 340A.801, as it may be amended from time to time. The proof shall be filed with the Commissioner of Public Safety except that if a license is issued prior to March 1, 1983, the proof shall be filed with the Administrator/ Clerk-Treasurer. Any liability insurance policy filed as proof of financial responsibility under this subdivision shall conform to M.S. § 340A.409, as it may be amended from time to time.

(3) *Approval by security.* The security shall be approved by the City Council and in the case of applicants for on-sale wine licenses and off-sale licenses, by the Minnesota Commissioner of Public Safety. Liability insurance policies required by this chapter, but not by state law, and surety bonds shall be approved as to form by the City Attorney. Operation of a licensed business without having on file with the city at all times effective security as required in division (3) above is a cause for revocation of the license.
(Prior Code, § 4.03)

(B) (1) *Fees.* The annual fee for on-sale, off-sale, and temporary liquor licenses and 3.2% malt liquor on-sale and off-sale licenses shall be as established by Council resolution from time to time.

Increases in these fees shall be adopted only after 30 days mailed written notice of a public hearing on the proposed increases has been given to the current licensees and after the public hearing has been held.

(2) *Payment.* Each application for a license shall be accompanied by a receipt from the City Administrator/Clerk-Treasurer for payment in full of the license fee and the fixed investigation fee required under § 110.04(A), if any. All fees shall be paid into the general fund. If an application for a license is rejected, the Administrator/Clerk-Treasurer shall refund the amount paid as the license fee.

(3) *Term; pro rata fee.* Each license shall be issued for a period of one year, except that if the application is made during the license year, a license may be issued for the remainder of the year for a pro rata fee, with any unexpired fraction of a month being counted as one month. Every license shall expire on December 15.

(4) *Refunds.* No refund of any fee shall be made, except as authorized by statute.
(Prior Code, § 4.04)

§ 110.04 GRANTING OF LICENSES; INVESTIGATION AND ISSUANCE.

(A) *Preliminary investigation.*

(1) On an initial application for an on-sale license and on application for transfer of an existing on-sale license the city shall conduct a preliminary background and financial investigation of the applicant. The application in the case shall be made on a form prescribed by the Commissioner of Public Safety and with additional information as the Council may require. If the Council deems it in the public interest to have an investigation made on a particular application for renewal of an on-sale license, it shall so determine.

(2) In any case, if the Council determines that a comprehensive background and financial

investigation of the applicant is necessary, it may conduct the investigation itself or contract with the Bureau of Criminal Investigation for the investigation. No license shall be issued, transferred or renewed if the results show to the satisfaction of the Council that issuance would not be in the public interest.

(3) If an investigation outside the state is required, the applicant shall be charged the cost not to exceed \$10,000 which shall be paid by the applicant after deducting any initial investigation fee already paid. The fee shall be payable by the applicant whether or not the license is granted.

(B) *Hearing and issuance.* The City Council shall investigate all facts set out in the application and not investigated in the preliminary background and financial investigation conducted pursuant to division (A) above. 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. No on-sale wine license or off-sale license shall become effective until it, together with the security furnished by the applicant, has been approved by the Commissioner of Public Safety.

(C) *Person and premises licensed; transfer.* Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without City Council approval. Any transfer of stock of a corporate licensee is deemed a transfer of the license and a transfer of stock without prior Council approval is a ground for revocation of the license. (Prior Code, § 4.05)

§ 110.05 INELIGIBILITY; PERSONS AND LOCATIONS.

(A) No license shall be granted to any person made ineligible for a license by state law. No license shall be issued to an individual who is not a resident of the city. No more than one intoxicating liquor license shall be directly or indirectly issued within the city to any one person. (Prior Code, § 4.06)

(B) (1) No license shall be issued for any place or any business ineligible for such a license under state law.

(2) No license shall be issued to any business, except an exclusive liquor store, until it has been in operation continuously for one month.

(3) No license shall be granted for operation on any premises on which taxes, assessments, or other financial claims of the city are delinquent and unpaid. (Prior Code, § 4.07)

§ 110.06 CONDITIONS OF LICENSE.

(A) *Generally.* Every license is subject to the conditions in the following divisions, all other provisions of this chapter, any other applicable ordinance, or state law or regulation.

(B) *Insurance.* Compliance with financial responsibility requirements of state law and of this chapter is a continuing condition of any license granted pursuant to this chapter.

(C) *Licensee's responsibility.* Every licensee is responsible for the conduct of his or her place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises authorized to sell intoxicating liquor there is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.

(D) *Inspections.* Every licensee shall allow any peace officer, health officer, or properly designated officer or employee of the city to enter, inspect, and search the premises of the licensee during business hours without a warrant.

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

(F) *Federal stamps.* No licensee shall possess a federal wholesale liquor dealer's special tax stamp or a federal gambling stamp.

(G) *Sale to minors.* It shall be unlawful for any person under the age of 21 years to enter an establishment licensed for the sale of alcoholic beverages, except under the following conditions:

(1) To perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by M.S.A. § 340A.412(10), as it may be amended from time to time;

(2) To consume meals; or

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

(Prior Code, § 4.08) (Am. Ord. 3, Second Series, passed 11-2-87) Penalty, see § 10.99

§ 110.07 SUSPENSION AND REVOCATION.

(A) (1) The Council may either suspend for a period not to exceed 60 days or revoke any liquor license upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance relating to intoxicating liquor.

(2) Except in cases of failure of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing, pursuant to M.S. §§ 15.0418 to 15.0426, as they may be amended from time to time.

(3) Lapse of required dram shop insurance or bond or withdrawal of a required deposit of cash or securities shall effect an immediate suspension of any license issued pursuant to this chapter without further action of the City Council.

(4) Notice of cancellation or lapse or a current liquor liability policy or bond or withdrawal of deposited cash or securities shall also constitute notice

to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or bond or withdrawal of a required deposit or of suspension or revocation of a license may require a hearing thereon and if a request is made in writing to the Administrator/Clerk-Treasurer a hearing shall be granted within ten days or a longer period as may be requested.

(5) Any suspension under this section shall continue until the City Council determines that the financial responsibility requirements of this chapter have again been met.

(B) (1) A finding by the City Council of a violation shall result in the suspension of the license or permit for a period of two days for the first offense and the second violation by the licensee or permit holder shall result in a suspension for a period of five days.

(2) The third violation shall result in the revocation of the license or permit.

(Prior Code, § 4.11)

§ 110.08 TEMPORARY LICENSES.

(A) Pursuant to M.S.A. § 340.11(11)(C), as it may be amended from time to time, the City Council may issue to the holder of any on-sale intoxicating liquor license issued by the city, the authority to dispense intoxicating liquor at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports or convention facility owned by the city and located within the city.

(B) The authorization to temporarily dispense intoxicating liquor shall be subject to the following conditions:

(1) The authorization shall be issued for a special occasion.

(2) Sale and consumption of intoxicating liquor shall only be in a sports or convention facility

located within the city and owned by the city. The City Council of the city hereby reserves the right to limit the sale or consumption of intoxicating liquor to certain designated areas.

(3) The person, corporation, or organization authorized to dispense intoxicating liquor shall have a valid on-sale license issued by the City Council of the city.

(4) The licensee must be engaged to dispense intoxicating liquor at an event held by a person or organization permitted to use the premises and may dispense intoxicating liquors only to persons attending the event.

(5) The licensee shall not dispense intoxicating liquor to anyone attending or participating in any amateur athletic event held on the premises.

(6) The licensee authorized to dispense intoxicating liquor shall present evidence of liquor liability or dram shop insurance in amounts as required by law.

(C) Written application shall be presented to the Council for the authorization to dispense intoxicating liquor in conformance with provisions of division (B) above. The applications for temporary application shall contain the following:

(1) Name and address of the persons, corporation, or organization of the holder of an on-sale intoxicating liquor license;

(2) The occasion for which the temporary authorization to sell intoxicating liquor is desired;

(3) The location of the sports or convention facility where the convention, banquet, conference, meeting, or social affair will be conducted; and

(4) The dates and hours at which intoxicating liquor shall be sold.

(D) The fee for the authorization to dispense intoxicating liquor shall be set by the Council by resolution.

(E) The authorization to dispense intoxicating liquor shall be revoked by the Chief of Police or his or her authorized designee under the following causes or conditions:

(1) Violation of the state law or city ordinance pertaining to the sale of intoxicating liquors;

(2) The sale of intoxicating liquors outside of the designated location; and/or

(3) The sale of intoxicating liquor contrary to the terms and conditions of this chapter. (Prior Code, § 4.13)

§ 110.09 HOURS OF OPERATION.

(A) No sale of intoxicating liquor shall be made after 1:00 a.m., on Sunday, nor until 8:00 a.m., on Monday.

(B) No on-sale shall be made between the hours of 1:00 a.m. and 8:00 a.m., on any weekday, or after 8:00 p.m., on December 24. No off-sale shall be made on New Year's Day, January 1, Thanksgiving Day, or Christmas Day, December 25, except that no off-sale shall be made on December 24 after 8:00 p.m. (Prior Code, § 4.12) Penalty, see § 10.99

§ 110.10 CONSUMPTION AND PURCHASE REGULATIONS.

(A) *Liquor in unlicensed places.* No person shall mix or prepare liquor for consumption in any public place or place of business unless it has a license to sell liquor on-sale or a permit from the Commissioner of Public Safety under M.S. § 340.119, as it may be amended from time to time, and no person shall consume liquor in any such place. (Prior Code, § 4.09)

(B) *Consumption in public places.*

(1) No person shall consume liquor or beer on a public highway or street, public park or other public place, except the city park and other public property when permission has been specifically granted by the City Council.

(2) This shall not apply to possession of an unsealed container in a motor vehicle.

(3) Any person who violates this section shall be guilty of a petty misdemeanor. (Prior Code, § 4.10)

(C) *Late hour consumption.* It is unlawful for any on-sale licensee, including clubs, to permit any person other than an employee to be on the licensed premise more than 30 minutes after the legal time for making liquor sales. (Prior Code, § 4.14)
Penalty, see § 10.99

3.2 MALT LIQUOR REGULATIONS**§ 110.20 DEFINITIONS.**

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

3.2 MALT LIQUOR. Any malt beverage with an alcoholic content of more than 0.5% by volume and not more than 3.2% by weight.

3.2 MALT LIQUOR STORE. An establishment for the sale of beer, cigars, cigarettes, all forms of tobacco, beverages, and soft drinks at retail. (Prior Code, § 4.16)

§ 110.21 LICENSE REQUIRED.

(A) *Licenses.* No person, except wholesalers and manufacturers to the extent authorized by law,

shall deal in or dispose of by gift, sale or otherwise, or keep or offer for sale, any 3.2 malt liquor within the city without first having received a license as hereinafter provided. Licenses shall be of three kinds: regular on-sale, temporary on-sale, and off-sale.

(B) *Regular on-sale.* Regular on-sale licenses shall be granted only to bona fide clubs, 3.2 malt liquor stores, exclusive on-sale liquor stores, drug stores, restaurants and hotels where food is prepared and served for consumption on the premises. On-sale licenses shall permit the sale of 3.2 malt liquor for consumption on the premises only.

(C) *Off-sale.* Off-sale licenses shall permit the sale of 3.2 malt liquor at retail, in the original package for consumption off the premises only. (Prior Code, § 4.17)

§ 110.22 APPLICATION PROCEDURE.

(A) (1) Every application for a license to sell 3.2 malt liquor shall be made to the Administrator/Clerk-Treasurer on a form supplied by the city and containing the information as the Administrator/Clerk-Treasurer or the City Council may require. It shall be unlawful to make any false statement in an application. An application for a temporary on-sale 3.2 malt liquor license shall contain the following:

- (a) Name and address of the organization;
- (b) Purpose for which the organization is organized;
- (c) Purpose for which the temporary 3.2 malt liquor license is desired; and
- (d) The location, date, and hours when the 3.2 malt liquor is to be sold.

(2) On an initial application for a 3.2 malt liquor license and on application for transfer of an existing license, the city shall conduct a preliminary background and financial investigation of the

applicant. The application in the case shall be made on a form prescribed by the Commissioner of Public Safety and with the additional information as the Council may require. If the Council deems it in the public interest to have an investigation made on a particular application for renewal of the license it shall so determine.

(3) In any case, if the Council determines that a comprehensive background and financial investigation of the applicant is necessary, it may conduct the investigation itself or contract with the Commissioner of Public Safety for the Investigation. No license shall be issued, transferred, or renewed if the results show, to the satisfaction of the Council, that issuance would not be in the public interest.

(4) If an investigation outside the state is required, the applicant shall be charged the cost of the investigation. The fee for the investigation shall be payable by the applicant whether or not the license is granted.

(B) *Proof of financial responsibility.* Prior to the issuance of a 3.2 malt liquor license, the applicant shall demonstrate proof of financial responsibility, with reference to liability under M.S. § 340A.801, as it may be amended from time to time. The proof shall be filed with the Commissioner of Insurance.

(C) *Approval of security.* Liability insurance policies required by this subchapter, but not by state law shall be approved as to form by the City Attorney. Operation of a business licensed by this subchapter without having on file with the State Insurance Commissioner or the city at all times effective security as required by division (B) above is a cause for revocation or suspension of the license.

(D) *Exceptions.* In the event the holder of license to sell on-sale 3.2 malt liquor, off-sale 3.2 malt liquor or on-sale wine shall establish by affidavit that he or she has less than \$25,000 in sales of on-sale 3.2 malt liquor or off-sale sales of less than \$50,000 of 3.2 malt liquor or on-sale sales of less than \$25,000 in wine, the holder shall be exempted from the financial

responsibility requirement. The amount in the affidavit shall be based on sales in the preceding year. (Prior Code, § 4.18) (Am. Ord. 15, Second Series, passed 12-21-93)

§ 110.23 FEES; PAYMENT AND EXPIRATION.

(A) *Payment required.* Each application for a license shall be accompanied by a receipt from the City Administrator/Clerk-Treasurer for payment in full of the required fee for the license. All fees shall be paid into the general fund of the city. Upon rejection of any application for a license, the Administrator/Clerk-Treasurer shall refund the amount paid.

(B) *Expiration; pro rata fees.* Each license, except a temporary license, shall be issued for a period of one year and shall be non-refundable. A temporary license shall be issued for a specific period in which a special event to which the sale is incident is being held and the period shall be stated on the license. (Prior Code, § 4.19)

CHAPTER 111: PEDDLERS AND SOLICITORS

Section

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§ 111.01 DEFINITIONS.

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

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

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

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

SOLICITOR. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street or any other type of place-to-place, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term shall mean the same as the term “canvasser.”

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

§ 111.02 EXCEPTIONS TO DEFINITIONS.

(A) For the purpose of the requirements of this chapter, the terms peddler, solicitor, and transient merchant shall not apply to any person selling or attempting to sell at wholesale any goods, wares,

products, merchandise or other personal property to a retailer of the items being sold by the wholesaler. The terms also shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route.

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

§ 111.03 LICENSING; EXEMPTIONS.

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

(B) *City license required.* Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register, pursuant to § 111.07

(C) *Application.* Application for a city license to conduct business as a peddler or transient merchant shall be made at least 14 regular business days before the applicant desires to begin conducting business. Application for a license shall be made on a form

approved by the City Council and available from the office of the Administrator/Clerk-Treasurer. All applications shall be signed by the applicant. All applications shall include the following information:

- (1) Applicant's full legal name;
- (2) All other names under which the applicant conducts business or to which applicant officially answers;
- (3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features and the like);
- (4) Full address of applicant's permanent residence;
- (5) Telephone number of applicant's permanent residence;
- (6) Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent;
- (7) Full address of applicant's regular place of business (if any);
- (8) Any and all business-related telephone numbers of the applicant;
- (9) The type of business for which the applicant is applying for a license;
- (10) Whether the applicant is applying for an annual or daily license;
- (11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days);
- (12) Any and all addresses and telephone numbers where the applicant can be reached while

conducting business within the city, including the location where a transient merchant intends to set up business;

(13) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses;

(14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant;

(15) Proof of any requested county license;

(16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant;

(17) A general description of the items to be sold or services to be provided;

(18) All additional information deemed necessary by the City Council;

(19) The applicant's driver's license number or other acceptable form of identification; and

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

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established in the city's fee schedule as adopted from time to time by an ordinance passed by the City Council.

(E) *Procedure.*

(1) Upon receipt of the completed application and payment of the license fee, the City Administrator/Clerk-Treasurer shall forward the application to the City Council within two regular business days of receipt. An application shall be

determined to be complete only if all required information is provided. The Administrator/Clerk-Treasurer, within two regular business days of receipt, shall determine if the application is complete. If the Administrator/Clerk-Treasurer determines that the application is incomplete, the City Administrator/Clerk-Treasurer shall inform the applicant of the required necessary information which is missing.

(2) The City Council shall review the application and order any investigation, including background checks, necessary to verify the information provided with the application.

(3) Within ten regular business days of receiving the application from the Administrator/Clerk-Treasurer, the City Council shall vote whether or not to issue the license. If the City Council approves the application, the Administrator/Clerk-Treasurer shall be instructed to issue a license to the applicant.

(4) If the City Council rejects the application, the applicant shall be notified in writing of the City Council's decision, the reason for denial, and of his or her right to appeal the denial by requesting, within 20 days of receiving the City Council's notice of rejection, a public hearing to be heard within 20 days of the date of the request.

(5) The final decision of the City Council following the public hearing shall be appealable by petitioning the Minnesota Court of Appeals for a Writ of Certiorari.

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

(G) *License exemptions.*

(1) No license shall be required for any person to sell or attempt to sell, or to take or attempt

to take orders for, any product grown, produced, cultivated, or raised on any farm.

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

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

Penalty, see § 10.99

§ 111.04 LICENSE INELIGIBILITY.

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

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

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

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

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

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

§ 111.05 SUSPENSION AND REVOCATION.

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

(1) Fraud, misrepresentation, or incorrect statements on the application form;

(2) Fraud, misrepresentation, or false statements made during the course of the licensed activity;

(3) Conviction of any offense for which granting of a license could have been denied under § 111.04; and

(4) Violation of any provision of this chapter.

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

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

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

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

(F) *Appeals.* Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court.
Penalty, see § 10.99

§ 111.06 TRANSFERABILITY.

No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.
Penalty, see § 10.99

§ 111.07 REGISTRATION.

All solicitors, and any person exempt from the licensing requirements of this chapter under § 111.03, shall be required to register with the city. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Administrator/Clerk-Treasurer shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferable.

Penalty, see § 10.99

§ 111.08 PROHIBITED ACTIVITIES.

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

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

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

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

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

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

(F) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant shall claim to have the endorsement of the city solely based on the city having

issued a license or certificate of registration to that person;

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

Penalty, see § 10.99

§ 111.09 EXCLUSION BY PLACARD.

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

Penalty, see § 10.99

CHAPTER 112: TOBACCO REGULATIONS

Section

- 112.01 Purpose
- 112.02 Definitions and interpretations
- 112.03 License
- 112.04 Fees
- 112.05 Denial of license
- 112.06 Prohibited sales
- 112.07 Vending machines
- 112.08 Self-service sales
- 112.09 Responsibility
- 112.10 Compliance checks and inspections
- 112.11 Other illegal acts
- 112.12 Violations
- 112.13 Exceptions and defenses

- 112.99 Penalty

and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products and tobacco-related devices, and to further the official public police of the State of Minnesota in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.
(Ord. 98-01, passed 3-17-98)

§ 112.02 DEFINITIONS AND INTERPRETATIONS.

(A) 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 masculine shall include the feminine and neuter and vice-versa. The term "shall" means mandatory and the term "may" means permissive.

(B) The following terms shall have the definitions given to them:

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

§ 112.01 PURPOSE.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco-related devices, and such sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this chapter shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco-related devices for the purpose of enforcing

local laws and regulations relating to tobacco, tobacco products, and tobacco-related devices.

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco-related product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to single cigarette packs, single bags or cans of tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this section shall not be considered individually packaged.

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

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

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

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

SALE. A *SALE* shall mean any transfer of goods for money, trade, barter, or other consideration.

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, or tobacco-related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco-related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or

tobacco-related device between the customer and the licensee or licensee's employee. Self-service merchandising shall not include vending machines.

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

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

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly to the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.
(Ord. 98-01, passed 3-17-98)

§ 112.03 LICENSE.

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

(B) *Application.*

(1) 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 application shall contain the full name of the applicant,

the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary.

(2) Upon receipt of a completed application, the City Administrator/Clerk-Treasurer shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the Administrator/Clerk-Treasurer shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.*

(1) The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the application it deems necessary.

(2) The Council shall approve the license, the Administrator/Clerk-Treasurer shall issue the license to the applicant.

(3) 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.

(D) *Term.* All licenses issued under this chapter shall expire December 31 of the licensing year.

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in §§ 112.12 and 112.99.

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

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

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

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

(Ord. 98-01, passed 3-17-98)

§ 112.04 FEES.

No application shall be processed under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be according to the fee resolution adopted by the City Council as amended from time to time.

(Ord. 98-01, passed 3-17-98)

§ 112.05 DENIAL OF LICENSE.

(A) The following shall be grounds for denying the issuance or renewal of a license under this chapter; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license:

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

(2) The applicant has been convicted within the past five years of any violation of a federal, state or local law, ordinance provision, or other regulation

relating to tobacco or tobacco products, or tobacco-related devices;

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

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

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

(B) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

(Ord. 98-01, passed 3-17-98)

§ 112.06 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 self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco product, or tobacco-related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco-related device between the licensee or the licensee's employee, and the customer;

(D) By means of loosies as defined in § 112.02 of this chapter;

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

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

(Ord. 98-01, passed 3-17-98)

§ 112.07 VENDING MACHINES.

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

(Ord. 98-01, passed 3-17-98)

§ 112.08 SELF-SERVICE SALES.

(A) It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, and 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 tobacco, tobacco products, and tobacco-related devices between the licensee or his or her clerk and the customer.

(B) 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.

(C) Any retailer selling tobacco, tobacco products, and 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.

(Ord. 98-01, passed 3-17-98)

§ 112.09 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, and 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 City Administrator/Clerk-Treasurer to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

(Ord. 98-01, passed 3-17-98)

§ 112.10 COMPLIANCE CHECKS AND INSPECTIONS.

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

(B) From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, and tobacco-related devices.

(1) Minors use for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel.

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

(3) No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked.

(C) Nothing in this section shall prohibit compliance checks authorized by state or federal laws for education, research, or training purposes, or required for the enforcement of a particular state or federal law.

(Ord. 98-01, passed 3-17-98)

§ 112.11 OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this chapter:

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

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

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco products, and tobacco-related devices.

(D) *Illegal procurement.*

(1) It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco products, and tobacco-related devices, and it shall be a violation of this chapter for any person to purchase or otherwise obtain such items on behalf of a minor.

(2) It shall further be violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco products, and tobacco-related devices.

(3) This division shall not apply to minors lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this chapter for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person. (Ord. 98-01, passed 3-17-98)

§ 112.12 VIOLATIONS.

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

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

(C) *Hearing officer.* The City Administrator/ Clerk-Treasurer shall serve as the hearing officer.

(D) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under § 112.99, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

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

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

(G) *Continued violation.* Each violation, and every day, in which a violation occurs or continues, shall constitute a separate offense. (Ord. 98-01, passed 3-17-98)

§ 112.13 EXCEPTIONS AND DEFENSES.

Nothing in this chapter 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 chapter for a person to have reasonably relied on proof of age as described by state law. (Ord. 98-01, passed 3-17-98)

§ 112.99 PENALTY.

(A) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for the second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

(B) *Other individuals.* Other individuals, other than minors regulated by § 112.99(C), found to have violated this chapter shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200

for the second offense within a 24-month period; and \$250 for a third or subsequent offense within a 24-month period.

(C) *Minors.* Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco-related devices, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for the second offense within a 24-month period; and \$250 for a third or subsequent offense within a 24-month period.

(D) *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter.
(Ord. 98-01, passed 3-17-98)

CHAPTER 113: SEXUALLY EXPLICIT BUSINESS

Section

- 113.01 Purpose
- 113.02 Findings and conclusions
- 113.03 Definitions
- 113.04 Zoning regulations; location prohibitions
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homes, and state-licensed child care centers, students attending school, and people using public parks and libraries.

(2) Sexually-oriented businesses can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of the businesses can, however, minimize this risk, provided the owners and operators of the facilities are regulated by licensing or other procedures.

§ 113.01 PURPOSE.

The purpose of this chapter is to prescribe licensing requirements for sexually-oriented businesses in order to protect the general health, safety, and welfare and to control certain land uses that may have a direct and detrimental effect on the character of the city's residential and commercial neighborhoods. (Ord. 99-02, passed 9-21-99)

(3) Sexually-oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the character and quality of the residential housing in the area in which the businesses are located, thereby exacerbating the shortage of affordable and habitable housing for city residents.

§ 113.02 FINDINGS AND CONCLUSIONS.

(A) The City Council makes the following findings regarding the need to license sexually-oriented businesses. The findings are based upon the experiences of other cities where the businesses have been located, as studied by a city staff committee.

(1) Sexually-oriented businesses can exert a dehumanizing influence on persons attending places of worship, children attending state-licensed family day-care homes, state-licensed group family day-care

(4) (a) The concentration of sexually-oriented businesses in one area can have a substantially detrimental effect on the area in which the businesses are concentrated and on the overall quality of life in the community. A cycle of decay can result from the influx and concentration of sexually-oriented businesses. The presence of the businesses is often perceived by others as an indication that the community or area is deteriorating and the result can be devastating to other businesses that may be required to move out of the vicinity and which could influence residents to relocate from the area.

(b) It has been noted that the presence of the businesses can have the overall effect of causing declining real estate values, which result can be exacerbated by the concentration of the businesses,

which can erode the city's tax base and contribute to overall community blight.

(5) Sexually-oriented businesses can increase the risk of exposure to communicable diseases including but not limited to Acquired Immune Deficiency Syndrome (AIDS) for which currently there is no cure. Experiences of other cities indicate that the businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of the establishments but also the general public.

(6) Sexually-oriented businesses can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises.

(B) In direct furtherance of the substantial goals of public health, safety, and welfare, the City Council adopts the following provisions, recognizing that it has a great interest in the present and future character of the city's residential and commercial neighborhoods. (Ord. 99-02, passed 9-21-99)

§ 113.03 DEFINITIONS.

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

ADULT BODY PAINTING STUDIO. An establishment or business which provides the service of applying paint or other substances, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of specified anatomical area, as defined herein.

ADULT BOOK STORE. An establishment that has 40% or greater of its current store stock in merchandise, videos, books, magazines and/or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or

relating to specified sexual activities or specified anatomical areas, as herein defined.

ADULT ORIENTED CABARET. A building or space wherein a portion of the business is used for providing dancing, modeling, or other live entertainment, if the dancing or modeling or live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, as defined herein, for observation or participation by patrons.

ADULT CAR WASH. A wash facility for any type of motor vehicle that allows employees, agents, independent contractors, or persons to appear in a state of partial or total nudity in terms of specified anatomical areas as defined herein.

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

ADULT ENTERTAINMENT FACILITY. A building or space wherein an admission is charged for entrance, or food or alcoholic and nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment, including nude dancing, nude modeling or nudity, or which include other activities distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined herein.

ADULT MODELING STUDIO. An establishment whose major business is the provision to customers of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to the customers and who engage in

specified sexual activities, as defined herein, or display specified anatomical areas, as defined herein, while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by the customers.

ADULT MOTION PICTURE THEATER. A building or space with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas, as herein defined, for observation by patrons therein. The phrase “used for” in the definition shall mean a regular and substantial course of conduct and not a one-time presentation of the material.

ADULT MINI-MOTION PICTURE THEATER. A building or space with a capacity for fewer than 50 persons used for presenting material distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, as herein defined, for observation by patrons therein. The phrase “used for” in this definition shall mean a regular and substantial course of conduct and not a one-time presentation of the material.

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

CITY. City of Buhl, Minnesota.

DWELLING UNIT. One or more rooms arranged for residential use containing cooking, living, sanitary, and sleeping facilities and physically separated from any other rooms or dwelling units which may be in the same structure.

ISSUING AUTHORITY. The City Council of the City of Buhl.

MINOR. Any natural person under the age of 18 years.

NUDITY. The showing of the human male or female genitals or pubic area with less than fully opaque covering; the showing of the female breast with less than a fully opaque covering below a point immediately above the top of the areola; or the depiction or showing of the covered male genitals in a discernibly turgid state.

PERSON. One or more natural persons, a partnership, including a limited partnership, a corporation, including a foreign, domestic, or nonprofit corporation, a trust, a political subdivision of the state, or any other business organization.

PUBLIC LIBRARY. Any library that provides fee access to all residents of a city or county without discrimination, received at least half of its financial support from public funds, and is organized under the provisions of M.S. Chapter 134, as it may be amended from time to time.

PUBLIC PARK. A park, reservation, open space, playground, beach, or recreation center in the city owned, leased or used, wholly or in part, by a city, county, state, school district, or federal government for recreation purposes.

PLACE OF WORSHIP. A building or space that is principally used as a place where people of the same faith or religion regularly assemble for worship or religious educational purposes.

SADOMASOCHISTIC ABUSE. Flagellation or torture by or upon a person unclad or partially clad in undergarments, a mask, or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one.

SCHOOL. A building or space that is principally used as a place where persons receive a full course of educational instruction. Any post-secondary or post-high school educational building, including any college or any vocational-technical college, shall not be deemed a **SCHOOL** for purposes of this chapter.

SIGN. A name, identification, description, display, or illustration which is affixed to, painted or represented directly or indirectly upon a building or other outdoor surface or piece of land which directs attention to an object, project, place, activity, person, institution, organization or business. However, a **SIGN** shall not include any display or official court or government office notices nor shall it include the flag, emblem, or insignia of a nation, political unit, school or religious group. A **SIGN** shall not include a sign located completely within an enclosed building unless the context shall so indicate. Each display surface of a sign shall be considered a **SIGN**.

SINGLE-FAMILY DWELLING. A residential building containing one dwelling unit, as herein defined, including detached, semi-detached and attached dwellings, which is intended to be used as a residence.

STATE-LICENSED FAMILY DAY-CARE HOME, STATE-LICENSED GROUP FAMILY DAY-CARE HOME, STATE-LICENSED CHILD CARE CENTER. A facility holding a license from the state, pursuant to M.S. Chapter 245A, and/or Minnesota Rules, Chapters 9502 or 9503, as they may be amended from time to time.

SEXUALLY-ORIENTED BUSINESS. An adult book store, adult body painting studio, adult companionship establishment, adult motion picture theater, adult entertainment facility, adult modeling studio, adult mini-motion picture theater, adult car wash, adult-oriented cabaret, or adult sauna, as herein defined.

SPECIFIED SEXUAL ACTIVITIES. For the purposes of this chapter, sexual activities include the following:

- (1) Human genitals in a discernible state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, sadomasochistic behavior, or sodomy;

- (3) Fondling of or other erotic touching of human genitals, the pubic region or pubic hair, buttock, or female breast or breasts; or

- (4) Any combination of the foregoing.

SPECIFIED ANATOMICAL AREAS. For purposes of this chapter, this means less than completely or opaquely covered:

- (1) Human genitals, pubic region, or pubic hair;

- (2) Buttock;

- (3) Female breast or breasts below a point immediately above the top of the areola; or

- (4) Any combination of the foregoing; and/or

- (5) Human male genitals in a discernibly turgid state, even if completely or opaquely covered. (Ord. 99-02, passed 9-21-99)

§ 113.04 ZONING REGULATIONS; LOCATION PROHIBITIONS.

(A) Sexually-oriented businesses shall be prohibited in all of the city's zoning districts, except the C-2, general commercial district, as defined and regulated in the zoning code, where businesses shall be permitted, provided the conditions specified in the zoning ordinance and in this chapter are met.

(B) In the C-2 district, in which sexually-oriented businesses are permitted uses, the following conditions shall be met prior to a sexually-oriented business being allowed:

- (1) No sexually-oriented business shall be located closer than 500 feet from any other sexually-oriented business. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point of the actual

business premises of the sexually-oriented business to the nearest point of the actual business premises of any other sexually-oriented business.

(2) No sexually-oriented business shall be located closer than 500 feet from any place of worship, school, public park, state-licensed family day-care home, state-licensed group family day-care home, public library, or state-licensed child care center. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point of the actual premises used as a place of worship, school, park or state-licensed family day-care home, state-licensed group family day-care home or state-licensed child care center.

(3) No sexually-oriented business shall be located closer than 500 feet from any of the following residential use districts. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point of the actual business premises of the sexually-oriented business to the nearest boundary of the residential use district:

- (a) R-1, single-family residence;
- (b) R-2, one- and two-family residence; and
- (c) R-3, multiple-family residence.

(4) A sexually-oriented business must also comply with existing licensing requirements of the City of Buhl.

(5) The operation or maintenance of more than one of the following uses in the same building or structure shall be prohibited:

- (a) Adult body painting studio;
- (b) Adult book store;
- (c) Adult car wash;

- (d) Adult companionship establishment;
 - (e) Adult entertainment facility;
 - (f) Adult modeling studio;
 - (g) Adult-oriented cabaret;
 - (h) Adult sauna;
 - (i) Adult motion picture theater; or
 - (j) Adult mini-motion picture theater.
- (Ord. 99-02, passed 9-21-99) Penalty, see § 10.99

§ 113.05 SIGN RESTRICTIONS.

In order to protect children from exposure to lurid signs and materials and in order to preserve the value of property surrounding sexually-oriented businesses, the following sign regulations shall apply to all sexually-oriented businesses in the city in lieu of the provisions of § 151.034 of the Buhl zoning code:

(A) All signs shall be flat wall signs. No signs shall be freestanding, located on the roof or contain any flashing lights, moving elements, or electronically or mechanically changing messages. No sign shall contain any message or image which identifies specified sexual activities or specified anatomical areas, as defined herein.

(B) No merchandise, photos, or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or public right-of-way adjoining the building or structure in which the sexually-oriented business is located.

(C) No signs shall be placed in any window. A one square foot sign may be placed on the door to state hours of operation and admittance to adults only. (Ord. 99-02, passed 9-21-99) Penalty, see § 10.99

113.06 LICENSE REQUIRED; APPLICATION AND FEES.

(A) No person shall own or operate a sexually-oriented business within the city unless the person is currently licensed under this chapter.

(B) The application for a license under this chapter shall be made on a form supplied by the issuing authority and shall require the following information:

(1) *All applicants, whether the applicant is a natural person, corporation, partnership, or other form of organization.*

(a) The legal description of the premises to be licensed, along with a floor plan of the premises. The floor plan of the premises shall detail all internal operations and activities, including a statement of the total floor space occupied by the business. The floor plan need not be professionally prepared but must be drawn to a designated scale or with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches; and

(b) The name and street address of the business. If the business is to be conducted under a designation, name, or style other than the name of the applicant, a certified copy of the certificate required by M.S. § 333.01, as it may be amended from time to time, shall be submitted.

(2) *Applicants who are natural persons.* If the applicant is a natural person:

(a) The name, place, and date of birth, street and city address, and phone number of the applicant;

(b) Whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places used;

(c) Street and city addresses at which the applicant has lived during the preceding two years;

(d) The type, name and location of every business or occupation in which the applicant has been engaged during the preceding two years and the name(s) and address(es) of the employer(s) and partner(s), if any, for the preceding two years; and

(e) Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a petty misdemeanor traffic ordinance. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.

(3) *Applicants that are partnerships.* If the applicant is a partnership:

(a) The name(s) and address(es) of all general partners and all of the information concerning each general partner that is required of applicants in division (2) above;

(b) The name(s) of the managing partner(s) and the interest of each partner in the business; and

(c) A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to M.S. § 333.01, as it may be amended from time to time, a certified copy of the certificate shall be attached to the application.

(4) *Corporate or other applicants.* If the applicant is a corporation or other organization:

(a) The name of the corporation or business form, and if incorporated, the state of incorporation;

(b) A true copy of the certificate of incorporation, articles of incorporation or association agreement, and by-laws shall be attached to the application. If the applicant is a foreign corporation, a certificate of authority as required by M.S. § 303.06, as it may be amended from time to time, shall be attached; and

(c) The name of the manager(s), proprietor(s) or other agent(s) in charge of the business and all of the information concerning each manager, proprietor or agent that is required of the applicants in division (2) above.

(C) If the application is that of a natural person, the application shall be signed and sworn to by that person; if of a corporation, by an officer thereof; if of a partnership, by one of the general partners; if of an unincorporated association, by the manager or managing officer thereof.

(D) Applications for licenses under this chapter shall be submitted to the City Council, hereinafter referred to as the "Issuing Authority." Within 20 calendar days of receipt of a complete application and payment of all license application fees, agents and/or employees of the issuing authority shall verify any and all of the information requested of the applicant in the application, including the ordering of criminal background checks, and conduct any necessary investigation to assure compliance with this chapter.

(E) No later than ten calendar days after the completion of the license application verification and investigation by the issuing authority or its agents and employees, as prescribed in division (D) above, the issuing authority shall accept or deny the license application in accordance with this chapter. If the application is denied, the issuing authority shall notify the applicant of the determination in writing. The notice shall be mailed by certified and regular mail to the applicant at the address provided on the application form and it shall inform the applicant of the applicant's right within 20 calendar days of receipt of the notice by the applicant, to request an appeal of the determination for reconsideration by the City Council or to immediately challenge the determination in a court of law. If an appeal to the City Council is timely received, the hearing before the City Council shall take place within 20 calendar days of the receipt of the appeal. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has

been issued for the licensed premises by the City Planning Department. During the application consideration process prescribed herein an applicant operating a business not previously subject to the license provisions of this chapter may remain operating pending the outcome of the application consideration by the issuing authority.

(F) (1) *Application fee.*

(a) The license application fee shall be \$500.

(b) The application license fee shall be paid in full before the application for a license is considered. All fees shall be paid to the issuing authority for deposit into the general fund of the city. Upon rejection of any application for a license or upon withdrawal of application before approval of the issuing authority the license fee shall be refunded to the applicant.

(c) When the license is for premises where the building is not ready for occupancy, the time fixed for computation of the license fee for the initial license period shall be 90 days after approval of the license by the issuing authority or upon the date an occupancy permit is issued for the building.

(2) *Investigation fee.*

(a) An applicant for any license under this section shall deposit with the issuing authority, at the time an original application is submitted, \$500 to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this division. The investigation fee shall be non-refundable.

(Ord. 99-02, passed 9-21-99) Penalty, see § 10.99

§ 113.07 INELIGIBILITY; PERSONS AND LOCATIONS.

The issuing authority shall issue a license under this section to an applicant unless one or more of the following conditions exists:

(A) The applicant is not 18 years of age or older on the date the application is submitted to the issuing authority;

(B) The applicant failed to supply all of the information requested on the license application;

(C) The applicant gave false, fraudulent, or untruthful information on the license application;

(D) The applicant has had a sexually-oriented license revoked from the city or any other jurisdiction within a one-year period immediately preceding the date the application was submitted;

(E) The applicant has had a conviction of a felony or gross misdemeanor or misdemeanor relating to sex offenses, obscenity offenses, or adult uses in the past five years;

(F) The sexually-oriented business does not meet the zoning requirements prescribed in this chapter;

(G) The premises to be licensed as a sexually-oriented business is currently licensed by the city as a tanning facility, tattoo establishment, pawnshop, therapeutic massage enterprise, or an establishment licensed to sell alcoholic beverages; or

(H) The applicant has not paid the license and investigation fees required in § 113.06(F).

§ 113.08 LICENSE CONDITIONS.

(A) (1) *Posting of license.* A license issued under this chapter must be posted in a conspicuous place in the premises for which it is used.

(2) *Effect of license.* A license issued under this chapter is only effective for the compact and contiguous space specified in the approved license application.

(3) *Maintenance of order.* A licensee under this chapter shall be responsible for the conduct of the business being operated and shall not allow any illegal activity to take place on or near the licensed premises including but not limited to prostitution, public indecency, indecent exposure, disorderly conduct, or the sale or use of illegal drugs. Every act or omission by an employee or independent contractor of the licensee constituting a violation of this chapter shall be deemed the act or omission of the licensee if the act or omission occurs either with the authorization, knowledge, or approval of the licensee, or as a result of the licensee's negligent failure to supervise the employee's or independent contractor's conduct.

(4) *Distance requirement for live adult entertainment.* All performers, dancers, and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed facility where the entertainment can be seen by patrons of the licensed facility shall remain at all times a minimum distance of ten feet from all patrons, customers, or spectators and shall dance or provide the entertainment on a platform intended for that purpose, which shall be raised at least two feet from the level of the floor on which patrons or spectators are located.

(5) *Interaction with patrons.* No dancer, performer, or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed facility where the entertainment can be seen by patrons of the licensed facility shall fondle or caress any spectator or patron.

(6) *Gratuity prohibition.* No customers, spectators, or patrons of a licensed facility shall directly pay or give any gratuity to any dancer or performer, and no dancer or performer shall solicit any pay or gratuity from any patron or spectator.

(7) *Adult car wash requirements.* Sexually-oriented businesses that are adult car washes shall meet all of the requirements of this chapter.

(B) (1) The license granted under this chapter is for the person and the premises named on the approved license application. No transfer of a license shall be permitted from place to place or from person to person without complying with the requirements of an original application.

(2) When a sexually-oriented business licensed under this chapter is sold or transferred, the existing licensee shall immediately notify the issuing authority of the sale or transfer. If the new owner or operator is to continue operating the sexually-oriented business, the new owner or operator must immediately apply for a license under this chapter.

(C) A licensee shall not be open for business to the public during the following hours on the following days:

(1) Adult body painting studio, adult book stores, adult companionship establishment, adult modeling studio, adult motion picture theaters, adult mini-motion picture theaters, adult sauna, adult car wash: Monday through Sunday, not open before 6:00 a.m., nor after 11:00 p.m.

(2) Adult entertainment facilities, including adult-oriented cabarets: Monday through Sunday, not open before 6:00 a.m., nor after 1:00 a.m.

(D) No licensee shall allow minors to enter the licensed premises. The licensee shall request proof of age of all persons the licensee believes to be under the age of 18 years. Proof of age may be established only by a valid driver's license or identification card issued by Minnesota, another state; or a province of Canada,

and including the photograph and date of birth of the licensed person; a valid military identification card issued by the United States Department of Defense; or in the case of a foreign national from a nation other than Canada, a valid passport.
(Ord. 99-02, passed 9-21-99) Penalty, see § 10.99

§ 113.09 RENEWAL APPLICATION.

(A) *Annual licenses; deadline for renewal applications.* All licenses issued under this division shall be effective for only one year commencing with the date of approval by the issuing authority or City Council. An application for the renewal of an existing license shall be submitted to the issuing authority at least 30 calendar days prior to the expiration date of the license.

(B) *Verification, investigation, and consideration of renewal application.*

(1) Within 20 calendar days of receipt by the issuing authority of a fully completed renewal application, the issuing authority shall verify any and all of the information requested of the applicant in the renewal application, including the ordering of criminal background checks, and shall conduct any necessary investigation to assure compliance with this chapter.

(2) No later than ten calendar days after the completion of the renewal application verification and investigation by the issuing authority, as prescribed herein, the issuing authority shall issue a renewal license unless one or more of the following conditions exist:

(a) The applicant is a minor at the time the application is submitted;

(b) The applicant failed to supply all of the information requested on the renewal application;

(c) The applicant gave false, fraudulent, or untruthful information on the renewal application;

(d) The sexually-oriented business was found in the immediately preceding license year to have violated the license restrictions prescribed in this chapter;

(e) The sexually-oriented business does not meet the zoning requirements prescribed in the chapter;

(f) The premises licensed as a sexually-oriented business is currently licensed by the city as a tanning facility, tattoo establishment, pawnshop, therapeutic massage enterprise, or an establishment licensed to sell alcoholic beverages;

(g) The applicant has had a conviction of any crime listed in this section; or

(h) The applicant has had a sexually-oriented license revoked within a one-year period immediately preceding the date the application was submitted.

(C) *Notice of denial.* If the issuing authority denies a renewal application, the issuing authority shall notify the applicant in accordance with this chapter and the notice shall, in addition, state the grounds for the denial.

(D) *Appeal to City Council or court of law.* After the denial of a renewal application by the issuing authority, the applicant may appeal the determination to the City Council for reconsideration or by immediately challenging the determination in a court of law. If the city denies renewal of a license under this section, the applicant shall not be issued a license under this division for one year from the date of the denial. If, subsequent to the denial, the City Council finds that the basis for the 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 the denial became final.

(Ord. 99-02, passed 9-21-99)

§ 113.10 SANCTIONS FOR LICENSE VIOLATIONS.

(A) *Suspension.* The City Council may suspend a license issued pursuant to this chapter for a violation of:

(1) Fraud, misrepresentation, or false statement contained in a license application or a renewal application;

(2) Fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business;

(3) Any violation of this chapter or related state law;

(4) A licensee's criminal conviction that is directly related to the occupation or business licensed, as defined by M.S. § 368.03(2), as it may be amended from time to time, provided that the licensee cannot show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the licensed occupation or business, as defined by M.S. § 364.03(3), as it may be amended from time to time; or

(5) Conducting the licensed business or occupation in an unlawful manner or in a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the community.

(B) *Revocation.* The City Council may revoke a license if the City Council determines that:

(1) The licensee's license was suspended in the preceding 14 months and an additional cause for suspension as detailed in division (A) above is found by the City Council to have occurred within the 14-month period;

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

(3) The licensee or an employee or independent contractor of the licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) A licensee or an employee or independent contractor has knowingly allowed prostitution on the premises;

(5) A licensee violated any of the provisions of M.S. §§ 617.241 through 617.299, as they may be amended from time to time, relating to the illegal distribution, possession or sale of obscene materials;

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

(7) A licensee has been convicted of an offense prescribed in §§ 113.07 and 113.08(A) for which the time period required has not elapsed;

(8) On two or more occasions within a 12-month period, a person or persons has/have committed an offense prescribed in §§ 113.07 and 113.08(A), in or on the license premises, for which a conviction has been obtained, and the person or persons were employees or independent contractors of the licensee at the time the offenses were committed;

(9) A licensee or an employee or independent contractor of the licensee has knowingly allowed specified sexual activities to occur in or on the licensed premises; or

(10) A licensee is delinquent in payment to the city, county, state, or federal governments for hotel occupancy taxes, ad valorem taxes, sales taxes, or other financial obligations.

(C) *Notice of hearing.* A revocation or suspension shall be preceded by written notice to the licensee and a public hearing. The notice shall give a least eight days notice of the time and place of the public hearing and shall state the nature of the charges

against the licensee. The notice shall be mailed to the licensee by regular and certified mail at the most recent address listed on the application.

(Ord. 99-02, passed 9-21-99)

CHAPTER 114: SYNTHETIC DRUG ESTABLISHMENTS

Section

- 114.01 Findings of fact and statement of purpose
- 114.02 Definitions
- 114.03 License required
- 114.04 Application for license
- 114.05 Issuance
- 114.06 Prohibited acts
- 114.07 Suspension and revocation of license

Cross-reference:

Drug paraphernalia, see § 92.80

§ 114.01 FINDINGS OF FACT AND STATEMENT OF PURPOSE.

The City Council finds the following facts to exist:

(A) Synthetic drugs are commonly marketed as a safe and legal alternative to marijuana or other controlled substances;

(B) Ingestion of synthetic drugs has been shown to produce dangerous side effects including death;

(C) Due to the manner in which these substances are marketed, the manufacture and sale of synthetic drugs is, purportedly, not currently regulated by the Federal Drug Administration;

(D) Due to the ease of making slight molecular alterations to chemical compounds, law enforcement agencies have found it difficult to bring criminal charges against manufacturers and sellers of synthetic drug products;

(E) The purpose of this chapter is not to condone illegal activity nor is it to legitimize activity that may now or in the future be considered illegal activity under state or federal laws.
(Ord. 13-05, passed 10-5-13)

§ 114.02 DEFINITIONS.

For the purpose of this chapter, the following words and phrases shall have the meaning hereinafter ascribed to them:

SYNTHETIC DRUG. The term means one or more of the following:

(1) A substance that a reasonable person would believe is a synthetic drug;

(2) A substance that a reasonable person would believe is being purchased or sold as a synthetic drug; or

(3) A substance that a person knows or should have known was intended to be consumed by injection, inhalation, ingestion or any other immediate means, and consumption was intended to cause or simulate a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance that is listed in M.S. § 152.02. ***SYNTHETIC DRUG*** does not mean food and drug ingredients, alcohol, legend drugs, tobacco, or dietary supplements;

SYNTHETIC DRUG ESTABLISHMENT. Any business establishment where any person engages in the sale of synthetic drugs.

(Ord. 13-05, passed 10-5-13)

§ 114.03 LICENSE REQUIRED.

No person shall engage in the business of operating a synthetic drug establishment either exclusively or in connection with any other business enterprise without first obtaining a license for each synthetic drug establishment.

(Ord. 13-05, passed 10-5-13)

§ 114.04 APPLICATION FOR LICENSE.

(A) Application for a synthetic drug establishment license shall be made to the City Clerk on forms supplied by the city containing the following information:

- (1) A description of the business;
- (2) A description of the location of the premises to be licensed;
- (3) The full name and addresses of the property owner, business owner, lessee and manager, operator and the date of birth of each;
- (4) If applicant is a partnership, the name and residence addresses of each of the partners including limited partners, and the address of the partnership itself, if different from the address of the synthetic drug establishment; and

(5) Whether any of the aforementioned individuals have ever been convicted of any crime or offense other than a traffic offense, and if so, a description of the offense as to time, place, date and disposition.

(B) A separate license shall be obtained for each place of business. The licensee shall display the license in a prominent place on the licensed premises at all times. A license, unless revoked, shall be effective January 1 through December 31 annually.

(Ord. 13-05, passed 10-5-13)

§ 114.05 ISSUANCE.

(A) No license under this chapter shall be issued unless it is approved by the City Clerk upon advice from the St. Louis County Sheriff's Department and unless the establishment has passed fire and health inspections. The City Clerk shall not approve any license if he or she has reasonable grounds to believe;

(1) That the granting of said license would result in violations of the law;

(2) That the license application contains false and misleading statements; or

(3) That other good causes exists for denying the license.

(B) If the St. Louis County Sheriff's Department or the City Clerk finds that they do not have adequate information to evaluate the license application, they may direct the applicant, manager or agent to appear at any reasonable time and place to give under oath information concerning the application. No license shall be granted to any applicant who refuses to appear and cooperate with the investigation.

(Ord. 13-05, passed 10-5-13)

§ 114.06 PROHIBITED ACTS.

No synthetic drug establishment shall:

(A) Remain open between 8:00 p.m. and 8:00 a.m. on any day;

(B) Sell synthetic drug products that do not include the name, phone number and address of the manufacturer, packer and distributor of the product;

(C) Sell synthetic drug products that do not identify all commodities with the package, including organic and non-organic, chemically synthesized substances and compounds;

(D) Sell synthetic drug products to any individual under the age of 21;

(E) Sell synthetic drug products that do not comply with all state and federal laws and regulations, including those related to packaging, labeling and weights and measures; and

(F) Be located within 500 feet of any park, school, day care facility or areas zoned residential.
(Ord. 13-05, passed 10-5-13)

(E) The establishment is operated in such a way as to constitute a public nuisance as defined by M.S. § 609.74 or successor statute.
(Ord. 13-05, passed 10-5-13)

§ 114.07 SUSPENSION AND REVOCATION OF LICENSE.

The City Clerk may revoke or suspend any license issued pursuant to this chapter if, after giving the licensee an opportunity to be heard on the matter, such officer finds:

(A) The licensee has violated a provision of this chapter or any other law relating to the conduct of its operation including, but not limited to state, federal or local laws; or

(B) The licensee secured the license through misrepresentation or fraud or misstated any material fact in the application; or

(C) Failure of the licensee to cooperate with the police, fire or health officers in any investigation relating to their operations or failure to admit police officers into the establishment at any time when people are present in the establishment; or

(D) The establishment is operated in such a way as to endanger public health or safety; or

