

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: GENERAL PROVISIONS

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§ 110.01 DEFINITIONS.

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

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

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

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

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

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

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

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

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

§ 110.02 APPLICATIONS.

All applications shall be made as follows.

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

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

- (1) Applicant's name and citizenship;
- (2) Applicant's present address and length of time he or she has lived at that address;
- (3) Applicant's occupation and length of time so engaged;
- (4) Applicant's addresses and occupations for the three years last preceding the date of application;
- (5) Names and addresses of applicant's employers, if any, for the three years last preceding the date of application;
- (6) Whether or not applicant has ever been convicted of a felony, gross misdemeanor or misdemeanor, including violation of a municipal ordinance, but excluding traffic violations; and, if so, the date and place of conviction and the nature of the offense;
- (7) Type of license and location of premises for which application is made;
- (8) At least four character references if applicant has not resided in the city for two years last preceding the date of application; and
- (9) Other information as the Council shall deem necessary considering the nature of the business for which license application is made.

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

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

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

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

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

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

(B) *Issuing.* If an application is approved, the City Administrator shall forthwith issue a license pursuant thereto in the form prescribed by the Council upon proof of ownership, payment of appropriate license fee and approval of the bond or insurance as to form and surety or carrier, if required. All licenses shall be on a calendar year basis unless otherwise specified herein as to particular businesses. Licenses shall be valid only at one location and on the premises therein described.

(C) *Transfer.* No license shall be transferable between persons or to a different location. It is unlawful to make any transfer in violation of this division (C).

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

(E) *Refusal and revocation.*

(1) The Council may, for any reasonable cause, refuse to grant any application or revoke any license. No license shall be granted to a person of questionable moral character or business reputation. Before revocation of any license, the Council shall give notice to the licensee and grant the licensee opportunity to be heard.

(2) Notice to be given and the exact time of hearing shall be stated in the resolution calling for the hearing.

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

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

§ 110.04 CARRYING OR POSTING LICENSE.

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

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

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

(Prior Code, § 6.04) Penalty, see § 110.99

§ 110.05 VIOLATION; LICENSE REQUIRED.

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

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

§ 110.06 RESPONSIBILITY OF LICENSEE.

The conduct of agents or employees of a person to whom a license or permit is issued shall be deemed the conduct of the licensee himself or herself.

(Prior Code, § 6.06)

§ 110.07 CONVICTION OF CRIME; DENIAL OF LICENSE.

A license may be denied to an applicant by the Council solely or in part due to a prior conviction of a crime by an applicant only upon a finding that the conviction directly relates to the occupation for which the license is sought, and then only after considering evidence of rehabilitation and other evidence as may be presented, all in accordance with state statutes; provided, however, that, an applicant must show his or her present fitness to perform the occupation for which the license is sought.

(Prior Code, § 6.07)

§ 110.08 CONDITIONAL LICENSES.

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

(Prior Code, § 6.08)

§ 110.09 INSURANCE REQUIREMENTS.

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

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

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

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

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

(Prior Code, § 6.09) (Ord. 13, 2nd Series, eff. 9-20-1984)

§ 110.10 FIXING LICENSE FEES.

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

(B) The license fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Administrator and open to inspection during regular business hours.

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

(Prior Code, § 6.11) (Ord. 87, 2nd Series, eff. 4-27-1995)

§ 110.99 PENALTY.

Every person violates a section, division, paragraph or provision of this title when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby

prohibited or declared unlawful and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(Prior Code, § 6.99)

CHAPTER 111: AMUSEMENTS AND RECREATION

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MECHANICAL AMUSEMENT DEVICES**§ 111.001 DEFINITIONS.**

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

COIN AMUSEMENT. Any machine which upon the insertion of a coin, token or slug, operates or may be operated by the public generally for entertainment or amusement, which machine emits music, noise or displays motion pictures, video tapes or other methods of reproduction.

GAME OF SKILL. Any device, excepting pool and billiard tables, bowling alleys and shooting lanes, but including miniatures thereof, played by manipulating special equipment and propelling balls or other projectiles across a board or field into respective positions whereby a score is established, the object of which is to secure a special number or numbers or a high or low total score or any other method used to indicate a winner which may be played by the public generally at a price paid either directly or indirectly for the privilege, whether a prize is offered for the game or not.

MECHANICAL AMUSEMENT DEVICE. Includes both games of skill and coin amusement, as herein defined.

(Prior Code, § 6.20) (Ord. 30, 2nd Series, eff. 4-24-1986)

§ 111.002 LICENSE REQUIRED.

It is unlawful for any person to keep or maintain a mechanical amusement device for use by the public without first having obtained a license therefor from the city.

(Prior Code, § 6.20) (Ord. 30, 2nd Series, eff. 4-24-1986) Penalty, see § 110.99

§ 111.003 UNLAWFUL USE AND DEVICES.

It is unlawful for any person to:

(A) Sell or maintain a machine or device which is for gambling or contains an automatic pay-off device;

(B) Give any prize, award, merchandise, gift or thing of value to any person on account of operation of the device;

(C) Sell or maintain, or permit to be operated in his or her place of business, any mechanical amusement device equipped with an automatic pay-off device;

(D) Equip any mechanical amusement device with an automatic pay-off device;

(E) Permit persons under the age of 18 years to play or operate any game of skill; and/or

(F) Permit the playing of coin amusement machines between the hours of 3:00 a.m. and 6:00 a.m. of any day.

(Prior Code, § 6.20) (Ord. 30, 2nd Series, eff. 4-24-1986) Penalty, see § 110.99

§ 111.004 EXCEPTION.

This section shall not apply to video games of chance under the control of the Charitable Gambling Control Board.

(Prior Code, § 6.20) (Ord. 30, 2nd Series, eff. 4-24-1986)

SHOWS

§ 111.015 LICENSE REQUIRED.

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

(Prior Code, § 6.21) Penalty, see § 110.99

§ 111.016 EXCEPTIONS.

No license shall be required in the following instances:

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

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

(C) Any performance or event in, or sponsored by, bona fide local church and non-profit organizations; provided that, the organization shall be incorporated.
(Prior Code, § 6.21)

§ 111.017 OBSCENITY PROHIBITED.

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

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

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

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

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

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

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

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

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

(1) Exhibit an obscene performance;

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

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

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

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

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

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

(Prior Code, § 6.21) Penalty, see § 110.99

Cross-reference:

For similar sections, see Ch. 116, §§ 118.112 and 130.07

BILLIARDS, POOL AND BOWLING

§ 111.030 LICENSE REQUIRED.

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

(Prior Code, § 6.22) Penalty, see § 110.99

§ 111.031 PRACTICES PROHIBITED.

It is unlawful for any:

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

(B) Any person under the age of 19 years to play pool, billiards, snooker or other table game where beer or liquor is sold or consumed, unless accompanied by his or her parent or guardian;

(C) For any licensee to cause or permit any person under the age of 19 years to play pool, billiards, snooker or other similar table game where beer or liquor is sold or consumed unless the minor is accompanied by his or her parent or guardian; and/or

(D) For any licensee to permit any form of gambling thereon.
(Prior Code, § 6.22) Penalty, see § 110.99

DANCES

§ 111.045 DEFINITIONS.

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

ADULT DANCE. Any public dance for persons of legal adult age and over.

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

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

PUBLIC PROPERTY. Any property owned or managed by city, county, or state government agencies.

YOUTH DANCE. Any public dance for persons under the age of 19 and over the age of 12.
(Prior Code, § 6.23) (Ord. 142, 2nd Series, passed 8-20-2013)

§ 111.046 LICENSE REQUIRED FOR ADULT DANCES AND FOR DANCES HELD ON PUBLIC PROPERTY.

(A) It is unlawful for any person to operate a public dancing place for adults, or hold a public dance for adults, or hold a dance on public property, without first having obtained a license therefore from the city. All public dances held for adults or held on public property shall comply with §§ 111.046 through 111.052.

(B) No license shall be issued to any applicant under the age of 18 years.
(Prior Code, § 6.23) (Ord. 142, 2nd Series, passed 8-20-2013) Penalty, see § 110.99

§ 111.047 LICENSE FEE.

The license fee shall be fixed and determined by the Council at the time the application is approved by it, which fee shall include the cost of any investigation and the fees and expenses of providing attendance of two police officers.

(Prior Code, § 6.23)

§ 111.048 APPLICATION AND LICENSE.

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

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

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

(D) Applications shall be referred to the Chief of Police for investigation prior to being acted upon by the Council.

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

(F) At least one officer of the law shall be designated by the Chief of Police to provide a presence at every public dance while the dance is being held. If needed, at his or her discretion the Chief of Police may require the presence of two officers. For purposes of this division (F), the term **OFFICER OF THE LAW** means any person who is a full-time peace officer, part-time peace officer or person deputized by the Chief of Police.

(G) (1) The dance license shall be posted in the public dancing place and shall state the name of the licensee, the amount paid therefor and the time and place licensed.

(2) The license shall also state that the licensee is responsible for the manner of conducting the dance.

(Prior Code, § 6.23) (Ord. 176, 2nd Series, passed 4-2-2019)

§ 111.049 OBSCENITY AND IMMORALITY PROHIBITED.

It is unlawful for any person to dance, or for a licensee to permit or suffer any person to dance at any public dance in an indecent or immodest manner. It is also unlawful for any person at a public dance to speak in a rude, boisterous, obscene or indecent manner that is calculated to or likely to lead to an imminent breach of peace or for any licensee to suffer or permit any person so to act or speak in any public dancing place.

(Prior Code, § 6.23) Penalty, see § 110.99

§ 111.050 ILLUMINATION.

Every public dancing place shall be illuminated in a manner allowing unimpaired viewing of the entire dance area, and dancing therein. Dimming the lighting is allowed so long as the licensee, officers of the law or supervisors can see across the dance floor.

(Prior Code, § 6.23) (Ord. 142, 2nd Series, passed 8-20-2013) Penalty, see § 110.99

§ 111.051 CERTAIN PERSONS PROHIBITED.

No licensee shall permit any unmarried person under the age of 18 years to an adult dance, unless the unmarried person is accompanied by his or her parent or guardian, to remain in a public dancing place. Nor shall any licensee permit any intoxicated person, or other person who persists in violating the law, to be or remain in a public dancing place.

(Prior Code, § 6.23) (Ord. 142, 2nd Series, passed 8-20-2013) Penalty, see § 110.99

§ 111.052 HOURS OF DANCING.

No public dance shall be held on Sunday between the hours of 1:00 a.m. and 12:00 noon. No public dance shall be held on any day between the hours of 1:00 a.m. and 6:00 a.m. with the exception of New Year's Day with approval of the Council.

(Prior Code, § 6.23) (Ord. 142, 2nd Series, passed 8-20-2013) Penalty, see § 110.99

§ 111.053 YOUTH DANCES.

(A) Notwithstanding any provision of this subchapter to the contrary, it is lawful for a citizen of the city, school, school club, church or a civic organization, having its principal office or carrying on its principal activity within the city, to sponsor, and obtain a permit for, a strictly supervised public dance

for persons under the age of 19 and over the age of 12. The dances shall be held between the hours of 12:00 noon and 12:00 midnight with the exception of New Year's Day and the prior approval of the Council. Possession or consumption of alcoholic beverages (as that term is defined in Ch. 118 of this code of ordinances) shall be forbidden on the premises on which the dance is held, and the Police Chief or Council as necessary, may impose additional terms of supervision or conditions on issuance of the permit.

(B) All public dances held for youth shall comply with §§ 111.053 through 111.058 and are not subject to the requirements of §§ 111.046 through 111.052. (Prior Code, § 6.23) (Ord. 38, 2nd Series, eff. 4-24-1986; Ord. 142, 2nd Series, passed 8-20-2013) Penalty, see § 110.99

§ 111.054 APPLICATION AND PERMIT FOR YOUTH DANCES.

(A) An application for a youth dance permit shall be filed with the Chief of Police of the city and shall specify the name and addresses of the person, persons, committee or organizations that is to hold the dance, time and place thereof, and area of the dance floor. The permit form shall be approved by the Council and may be changed to collect other information necessary for the approval of the youth dance permit as the Council or Chief of Police determines.

(B) All applications for a youth dance permit shall be made by an organization leader, citizen or club representative of good standing and reputation in the community in which he or she lives, and shall state that he or she has not been convicted of a felony, gross misdemeanor or violation of any public dance laws within the past five years. No permit shall be issued to any person who has been so convicted.

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

(D) Applications shall be approved by the Chief of Police or by the Council should the Chief of Police feel additional approval or investigation is necessary prior to being approved and issued.

(E) Should Council approval be sought by the Chief of Police, the Council shall act upon all youth dance permit applications at a regular meeting thereof, whether or not it is included in the call or agenda of the meeting.

(F) Each youth dance must be strictly supervised by adults in good standing in the community. At least two adults shall be designated as responsible for supervision upon the application for the youth dance permit. In no way does the requirement for two responsible adult supervisors limit the amount of adult supervision available at the youth dance.

(G) (1) The youth dance permit shall be posted in the public dancing place and shall state the name of the applicant, the two designated adults, and the amount paid therefore and the time and place licensed.

(2) The license shall also state that the applicant is responsible for the manner of conducting the dance.

(Ord. 142, 2nd Series, passed 8-20-2013)

§ 111.055 OBSCENITY AND IMMORALITY PROHIBITED AT YOUTH DANCES.

It is unlawful for any person to dance, or for a licensee to permit or suffer any person to dance at any public dance in an indecent or immodest manner. It is also unlawful for any person at a public dance to speak in a rude, boisterous, obscene or indecent manner that is calculated to or likely to lead to an imminent breach of peace or for any applicant or responsible party to suffer or permit any person so to act or speak in any public dancing place.

(Ord. 142, 2nd Series, passed 8-20-2013) Penalty, see § 110.99

§ 111.056 ILLUMINATION AT YOUTH DANCES.

Every public dancing place shall be illuminated in a manner allowing unimpaired viewing of the entire dance area, and dancing therein. Dimming the lighting is allowed so long as the licensee, officers of the law or supervisors can see across the dance floor.

(Ord. 142, 2nd Series, passed 8-20-2013) Penalty, see § 110.99

§ 111.057 HOURS OF DANCING AT YOUTH DANCES.

No public dance shall be held on Sunday between the hours of 1:00 a.m. and 12:00 noon. No public dance shall be held on any day between the hours of 1:00 a.m. and 6:00 a.m. with the exception of New Year's Day with approval of the Council.

(Ord. 142, 2nd Series, passed 8-20-2013) Penalty, see § 110.99

§ 111.058 NON-PUBLIC DANCES.

Any dance wherein the public may participate without payment and that is not held on public property shall be exempt from the license or permit requirements for a public dance. Further, dances conducted and sponsored by public or private schools and churches for the students or members thereof, even through an admission fee is charged, and dances conducted in private homes or facilities on a private basis, shall not be deemed to be public dances, and shall be exempt from the license or permit requirements for a public dance. However, the responsible parties must comply with all laws regarding excessive noise or sound amplification. See §§ 90.20 through 90.23.

(Ord. 142, 2nd Series, passed 8-20-2013)

GAMBLING

§ 111.065 APPLICATION REGULATIONS.

Only licensed, charitable non-profit organizations that have been in existence for the most recent three years preceding the license application as a registered state non-profit corporation or as an organization designated as exempt from the payment of income taxes by the Internal Revenue Code may be allowed to sell pull-tabs on any premises within the city limits.

(Prior Code, § 6.24) (Ord. 99, 2nd Series, eff. 3-14-1997) Penalty, see § 110.99

§ 111.066 PREMISES LICENSED.

(A) A licensed organization may not conduct lawful gambling, including the sale of pull-tabs, at any site unless it has first obtained a premises permit for that site.

(B) Only one charitable non-profit organization shall be permitted to sell pull-tabs on the licensed premises. For the purpose of this section, the term **LICENSED PREMISES** means the place or building, or the room in a building, designated in the license as the place where the licensed business is to be carried on and all the land adjacent thereto and used in connection with and in the operation of the licensed business, and all adjacent and contiguous rooms or buildings operated or used in connection with the buildings where the licensed business is carried on. When the charitable non-profit organization applying for the premises permit does not own the premises to be licensed, the term **LICENSED PREMISES** shall include the entire building or place in which the licensed business is carried on under the license.

(Prior Code, § 6.24) (Ord. 99, 2nd Series, eff. 3-14-1997)

§ 111.067 LEASED PREMISES.

(A) When the applicant charitable non-profit organization leases the licensed premises from the owner of the premises, the licensed premises shall be by means of a written lease agreement between the licensee and the charitable organization.

(B) The lease shall be for a term of at least one year.

(C) A copy of the lease shall be filed with the application.

(D) Further, the lease shall contain a provision permitting the licensee to terminate the lease if the charitable organization is found guilty of any violation of the state or local gambling statutes, rules or regulations, or city code provisions.

(Prior Code, § 6.24) (Ord. 99, 2nd Series, eff. 3-14-1997)

§ 111.068 REIMBURSEMENTS DISALLOWED.

The licensee of the licensed premises shall not be reimbursed by the charitable non-profit organization for any license or permit fee and the only compensation which the licensee may obtain from the charitable non-profit organization is the rent fixed by the lease agreement.
(Prior Code, § 6.24) (Ord. 99, 2nd Series, eff. 3-14-1997)

§ 111.069 LIMITATIONS ON PREMISES.

Each individual licensed charitable non-profit organization shall be limited within the city limits to sell pull-tabs on several licensed premises, but not to exceed two licensed premises within the city.
(Prior Code, § 6.24) (Ord. 99, 2nd Series, eff. 3-14-1997)

§ 111.070 SUSPENSION AND REVOCATION.

The licensee shall be responsible for the charitable non-profit organization's conduct of selling pull-tabs. The Council may suspend for a period of up to 60 days or revoke the licensee's permission to allow gambling on the premises for any violation of state or local gambling laws or regulations that occur on the premises by anyone, including the licensee or the charitable non-profit organization. Any violation may also be considered by the Council as grounds for suspension or revocation of any on-sale liquor license.
(Prior Code, § 6.24) (Ord. 99, 2nd Series, eff. 3-14-1997)

ROLLER SKATING RINKS**§ 111.085 LICENSE REQUIRED.**

It is unlawful for any person to operate a roller skating rink without first having obtained a license therefor from the city.
(Prior Code, § 6.34) Penalty, see § 110.99

CHAPTER 112: TAXICABS

Section

- 112.01 Definitions
- 112.02 License required
- 112.03 License restriction
- 112.04 License issuance and display; vehicle marking
- 112.05 Insurance required
- 112.06 Rates
- 112.07 Mechanical condition

§ 112.01 DEFINITIONS.

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

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

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

TAXICAB. Any passenger conveyance being driven, on call or traversing a scheduled or unscheduled route for public use or hire upon payment of a fare or at regular fare rates, but not including such as are designed for mass transportation as buses, trains or streetcars.
(Prior Code, § 6.31)

§ 112.02 LICENSE REQUIRED.

It is unlawful for any person to drive or operate a taxicab without a license therefor from the city.
(Prior Code, § 6.31) Penalty, see § 110.99

§ 112.03 LICENSE RESTRICTION.

(A) The Council may issue licenses to any one license holder for not to exceed four vehicles.

(B) The number of license holders shall be limited to one for each 2,500 population.
(Prior Code, § 6.31)

§ 112.04 LICENSE ISSUANCE AND DISPLAY; VEHICLE MARKING.

All licenses shall be issued for specific conveyances, except as otherwise herein provided. License tags, including number and year for which issued, shall be plainly visible from the front of the conveyance.

(Prior Code, § 6.31) Penalty, see § 110.99

§ 112.05 INSURANCE REQUIRED.

Before a taxicab license is issued by the Council, and at all times effective during the licensed period, the licensee shall have and maintain public liability insurance in the amount of \$300,000 for any single occurrence. The insurance shall cover all passengers carried by the insured licensee and shall be for public taxicab purposes.

(Prior Code, § 6.31) (Ord. 13, 2nd Series, eff. 9-20-1984)

§ 112.06 RATES.

Each applicant shall file with the City Administrator, before a taxicab license is issued or renewed, a schedule of proposed maximum rates to be charged by him or her during the licensed period for which the application is made. The schedule of proposed maximum rates, or a compromise schedule thereof, shall be approved by the Council before granting the license. The schedule shall be posted in a conspicuous place in the taxicab in full view of passengers riding therein. Nothing herein shall prevent a taxicab licensee from petitioning the Council for review of the rates during the licensed period, and the Council may likewise consider the petition and make new rates effective at any time. No taxicab licensee shall charge rates in excess of maximum rates approved by the Council.

(Prior Code, § 6.31)

§ 112.07 MECHANICAL CONDITION.

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

(Prior Code, § 6.31)

CHAPTER 113: JUNK YARDS

Section

- 113.01 License required
- 113.02 License restrictions

§ 113.01 LICENSE REQUIRED.

It is unlawful for any person to operate a junk yard, general wrecking yard or automobile wrecking yard or business without first having obtained a license therefor from the city.
(Prior Code, § 6.33) Penalty, see § 110.99

§ 113.02 LICENSE RESTRICTIONS.

(A) All junk yard licensees shall comply with zoning and other provisions of the city code.

(B) All junk yard licensees shall keep the premises in a neat and orderly condition. The premises shall be enclosed by a tight board fence at least eight feet high which shall be kept in a neatly painted condition.
(Prior Code, § 6.33) Penalty, see § 110.99

CHAPTER 114: SOLICITORS

Section

- 114.01 Purpose
- 114.02 Definitions
- 114.03 Prohibited practices
- 114.04 Application
- 114.05 Investigation, approval or disapproval
- 114.06 Duration of contribution solicitation registration
- 114.07 Exclusions

§ 114.01 PURPOSE.

(A) This chapter is not intended to in any way hinder, delay or interfere with legitimate business or organizational activities. The Council finds, however, that solicitors have used public streets and their direct contact with residents of the city for the illegitimate solicitation practices of harassment, nuisance, theft, deceit or menacing, troublesome or unlawful activities. This chapter is intended to ferret out and control:

- (1) Businesses and organizations using solicitation as a means of concealing unlawful activities;
- (2) Businesses and organizations which, though their activities be lawful or even commendable, use illegitimate practices in solicitation; and/or
- (3) Individual natural persons who, though they represent lawful businesses and organizations, use illegitimate solicitation practices.

(B) The Council further finds that a large number of residents of the city are employed as their livelihood and means of support by manufacturing plants and other businesses on shifts rotating between night and day, and to disturb them during their sleeping hours for the purpose of solicitation is a source of nuisance or even harassment and should be subject to control.

(Prior Code, § 6.40)

§ 114.02 DEFINITIONS.

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

BUSINESS SOLICITATION. An attempt by a solicitor, engaging in transactions of the same kind, to sell or distribute for a consideration any goods or services primarily for personal, family or household purposes, when either the solicitor or person acting for him or her contacts the solicitee by telephone or in person, other than at the established place of business of solicitor, except:

(1) An attempted solicitation in which the solicitee personally knows the identity of the solicitor, the name of the business, firm or organization he or she represents and the identity or kinds of goods, services or things of value offered;

(2) An attempted solicitation in which the solicitee has first initiated the contact with the solicitor;

(3) An attempted solicitation of a newspaper subscription in which the solicitor is a minor child engaged in both the delivery and sale of the newspaper; or

(4) An attempted solicitation for the sale of products of a farm or garden occupied or cultivated by the solicitor, when facts of the occupancy or cultivation are proven by the solicitor.

CONTRIBUTION SOLICITATION. An attempt by a solicitor to obtain money from a solicitee for any cause or purpose, when either the solicitor or person acting for him or her contacts the solicitee by telephone or in person other than at the established place of meeting, business, service or activity of the organization represented by the solicitor, except:

(1) An attempted solicitation in which the solicitee personally knows the identity of the solicitor, the name of the organization he or she represents and the identity of the services performed or offered by the organization; or

(2) An attempted solicitation in which the solicitee has first initiated the contact with the solicitor or the organization represented by him or her.

ESTABLISHED PLACE. Real estate in the city owned, leased on a month-to-month or term-certain longer than 30 days. The term includes a booth, compartment or area leased or assigned during and for the length of an event or occasion.

GOODS.

(1) Any tangible thing of value, but not including money, things in action or intangible personal property other than merchandise certificates or coupons as herein described.

(2) The term includes such chattels as are furnished or used at the time of sale or subsequently in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof, whether or not severable therefrom.

(3) The term also includes merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by the seller.

SERVICES. Work, labor or services of any kind.

SOLICITEE. The person solicited.

SOLICITOR. Any person making the solicitation, including such common terms as **PEDDLER**, **TRANSIENT MERCHANT** and **CANVASSER**.
(Prior Code, § 6.40)

§ 114.03 PROHIBITED PRACTICES.

(A) It is unlawful for any solicitor to engage in solicitation for any unlawful business or organizational purpose or activity.

(B) It is unlawful for any solicitor to practice harassment, nuisance, theft, deceit or menacing, troublesome or otherwise unlawful activities during the course of solicitation.

(C) It is unlawful for any solicitor to enter, or attempt to gain entrance, to residential premises displaying at the entrance a sign at least three and three-fourths inches long and three and three-fourths inches wide with the words "Peddlers and Solicitors Prohibited" or "Solicitors Prohibited" in type not smaller than 48 point.

(D) It is unlawful for any solicitor to refuse to leave business premises when requested by the owner, lessee or person in charge thereof.

(E) It is unlawful for any person to engage in contribution solicitation without completion of licensing or registration as herein provided.

(F) It is unlawful for any person to engage in business solicitation without a license, as herein provided.
(Prior Code, § 6.40) Penalty, see § 110.99

§ 114.04 APPLICATION.

(A) Applications for licensing or registration shall contain the name and address of the solicitor, the name and address of the business or organization for which solicitations are sought and other information as may reasonably be required by the Council as a condition to registration or licensing or to permit investigation into the applicant's background and past solicitation practices.

(B) The initial application shall be accompanied by an investigation fee of \$10.
(Prior Code, § 6.40)

§ 114.05 INVESTIGATION, APPROVAL OR DISAPPROVAL.

(A) All applications for licensing or registration shall be immediately referred to the Chief of Police, and, by him or her or other person acting in his or her stead, investigated as to the truth thereof. The Chief of Police shall have five business days within which to investigate and make a recommendation thereon.

(B) If he or she finds no past history of the applicant indicating violations similar to those declared unlawful in this chapter, he or she shall recommend issuing a license or approving registration, as the case may be, and the City Administrator shall forthwith advise the applicant. The City Administrator shall issue a license after approval by the Council, upon payment of the fee therefor, to the approved applicant for business solicitation, and shall approve the completion of registration by the applicant for a contribution solicitor.

(C) If the Chief of Police finds a past history of the applicant indicating violations similar to those declared unlawful in this chapter, he or she shall recommend denial of the license or registration. In all matters of recommended denial the applicant shall be forthwith advised thereof, and the application shall be referred to the Council and considered by it at its next regular or special meeting occurring more than ten days thereafter. The applicant shall be afforded an opportunity to be heard at the meeting.
(Prior Code, § 6.40)

§ 114.06 DURATION OF CONTRIBUTION SOLICITATION REGISTRATION.

Registration of contribution solicitation shall expire 60 days after registration is approved.
(Prior Code, § 6.40)

§ 114.07 EXCLUSIONS.

The Council may, by resolution, exclude certain classes of solicitor events from compliance with licensing or registration provisions of this chapter; provided, however, that, the exclusion shall not extend to the prohibited solicitation practices set forth in § 114.03(A) through (D).
(Prior Code, § 6.40) (Ord. 38, 2nd Series, eff. 4-24-1986)

CHAPTER 115: LODGING TAX

Section

- 115.01 Definitions
- 115.02 Imposition of tax
- 115.03 Collections
- 115.04 Exceptions and exemptions
- 115.05 Advertising no tax
- 115.06 Payment and returns
- 115.07 Examination of return, adjustments, notices and demands
- 115.08 Refunds
- 115.09 Failure to file a return
- 115.10 Penalties
- 115.11 Administration of tax
- 115.12 Examine records
- 115.13 Violations
- 115.14 Use of proceeds
- 115.15 Appeals
- 115.16 Effective date

§ 115.01 DEFINITIONS.

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

LODGER. The person obtaining lodging from an operator.

LODGING. The furnishing, for a consideration, of lodging by a hotel, motel or rooming house, except where the lodging shall be for a continuous period of 30 days or more to the same lodgers. The furnishing of rooms owned or provided by religious, educational or non-profit organizations shall not constitute **LODGING** for purposes of this chapter.

OPERATOR. The person who is the proprietor of the lodging facility, whether in the capacity of owner, lessee, sublessee, licensee or any other capacity.

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

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

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.02 IMPOSITION OF TAX.

There is hereby imposed a tax of 3% of the rent charged by an operator for providing lodging to any persons. In computing the tax to be collected, amounts of tax less than \$0.01 shall be considered an additional cent. The tax shall be stated and charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the city and shall be extinguished only by payment to the city. In no case shall the tax imposed by this chapter upon an operator exceed the amount of tax which the operator is authorized and required by this chapter to collect from the lodger.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.03 COLLECTIONS.

Each operator shall collect the tax imposed by this chapter at the time the rent is paid. The tax collections shall be deemed to be held in trust by the operator for the city. The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a receipt of payment from the operator.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.04 EXCEPTIONS AND EXEMPTIONS.

(A) No tax shall be imposed on rent paid by a lodger at any hotel, motel or rooming house where 50% or more of the rent received from all lodgers is for lodging furnished for a continuous period of 30 days or more to the same lodgers.

(B) No tax shall be imposed on rent for lodging paid by any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

(C) An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the city to tax. No exemption shall be granted, except upon a claim therefor made at the time

the rent is collected and a claim shall be made in writing and under penalty of perjury on forms provided by the city. All claims shall be forwarded to the city when the returns and collections are submitted as required by this chapter.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.05 ADVERTISING NO TAX.

It is unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax, or any part thereof, will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997) Penalty, see § 110.99

§ 115.06 PAYMENT AND RETURNS.

(A) The taxes imposed by this chapter shall be paid by the operator to the city monthly no later than 25 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon the forms and containing the information as the City Administrator may require. The operator may offset against the taxes payable, with respect to any reporting period, the amount of taxes imposed by this chapter previously paid as a result of any transaction the consideration for which became uncollectible during the reporting period, but only in proportion to the portion of the consideration which became uncollectible.

(B) The return shall contain the following minimum information:

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

- (5) The amount of uncollectible rental charges subject to the lodging tax.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.07 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS.

The City Administrator shall, after return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of the examination shall be the tax to be paid.

If the tax due is found to be greater than that paid, the excess shall be paid to the city within ten days after receipt of a notice thereof. Notice of excess tax due shall be given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the city within ten days after determination of the refund.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.08 REFUNDS.

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

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.09 FAILURE TO FILE A RETURN.

(A) If any operator required by this chapter to file a return fails to do so within the time prescribed, or makes an incorrect, false or fraudulent return, the operator shall, upon written notice and demand, file the return or corrected return within five days of receipt of the written notice and shall at the same time pay any tax due on the basis thereof. If the persons shall fail to file the return or corrected return, the City Administrator shall make a return or corrected return for the person from the knowledge and information as the City Administrator can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by the return) shall be paid within five days of the receipt of written notice and demand for the payment. Any return or assessment made by the City Administrator shall be prima facie correct and valid, and the person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

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

(C) Upon a showing of good cause, the City Administrator may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by this chapter;

provided that, interest during the period of extension shall be added to the taxes due at the rate of 10% per annum.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.10 PENALTIES.

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

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

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

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

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

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.11 ADMINISTRATION OF TAX.

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

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.12 EXAMINE RECORDS.

(A) The city may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this chapter.

(B) Every operator is directed to give to the city the means, facilities and opportunity for the examinations and investigations as are hereby authorized.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.13 VIOLATIONS.

It is unlawful for any person to willfully fail to make a return required by this chapter, or to fail to pay the tax after written demand for payment, or to fail to remit the taxes collected or any penalty or interest imposed by this chapter after written demand for the payment, or to refuse to permit the city to examine the books, records and papers under his or her control, or to willfully make any incomplete, false or fraudulent return.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997) Penalty, see § 110.99

§ 115.14 USE OF PROCEEDS.

Ninety-five percent of the proceeds obtained from the collection of taxes (including interest and penalties) pursuant to this chapter shall be used in accordance with M.S. § 469.190, as the same may be amended from time to time, to fund a local convention or tourism bureau establishment for the purpose of marketing and promoting the city as a tourist or convention center.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.15 APPEALS.

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

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

(C) Upon receipt of the petition, the City Administrator, or his or her designee, shall set a date for a hearing and give the petitioner at least five days' prior written notice of the date, time and place of the hearing.

(D) At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. The petitioner may be represented by counsel of petitioner's choosing at petitioner's own expense.

(E) The hearing shall be conducted by the City Administrator or his or her designee; provided, only that the person conducting the hearing shall not have participated in the drafting of the order, notice or determination for which review is sought.

(F) The person conducting the hearing shall make written findings of fact and conclusions based upon the applicable provisions of this chapter and the evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination made by the City Administrator.

(G) Any decision rendered by the City Administrator pursuant hereto may be appealed to the Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the City Administrator within ten days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the Council agenda as soon as it is practical. The Council shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the Council that the findings and conclusions were incorrect, the Council may modify, reverse or affirm the decision of the City Administrator or his or her designee.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

§ 115.16 EFFECTIVE DATE.

This chapter is effective 1-1-1997 and the tax imposed should apply to rents collected for lodging furnished on that date and thereafter.

(Prior Code, § 6.50) (Ord. 97, 2nd Series, eff. 1-1-1997)

CHAPTER 116: ADULT BUSINESSES AND USES

Section

General Provisions

- 116.01 Purpose
- 116.02 Definitions
- 116.03 Adult uses; principal and accessory

Licenses

- 116.15 Generally
- 116.16 Persons and locations ineligible for a license
- 116.17 License application
- 116.18 License application verification
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- 116.20 License fees
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License Restrictions

- 116.35 Posting of license
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- 116.37 Minors
- 116.38 Maintenance of order
- 116.39 Distance requirements for live adult entertainment
- 116.40 Interaction with patrons
- 116.41 Gratuity prohibition
- 116.42 Adult car wash requirements

- 116.99 Penalty

Cross-reference:

For similar sections, see §§ 111.017, 118.112 and 130.07

GENERAL PROVISIONS**§ 116.01 PURPOSE.**

In order to protect the city's community image, property values, public health, safety, welfare and business environment, the city has found it necessary, in light of the harmful and unwanted secondary effects that certain businesses generate, to restrict where the businesses may locate within the city and to regulate those businesses. Only those businesses with secondary effects on neighboring properties and the city are intended to be regulated. This chapter is not intended to restrict or regulate art. (Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.02 DEFINITIONS.

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

ADULT BUSINESS. Any and every type of business, premises, enterprise, establishment, operation, entity or place which allows, provides for or is engaged in "adult uses", as defined in this chapter.

ADULT USES. Every type and variety of bookstore, adult motion picture theater, adult motion picture sales/rental operation, adult mini-motion picture theater, massage parlor, steam room/bathhouse/sauna facility, companionship establishment, rap/conversation parlor, adult health/sport club, cabaret, adult gift or novelty business, motion picture arcade, adult modeling studio, adult hotel/motel, body painting studio and any other premises, enterprise, establishment, business, operation or place that is open to some or all members of the public, at, in, on or from which materials, entertainment or services are presented, displayed, depicted, described, distributed, sold or rented that constitute or contain an emphasis on specified anatomical areas or specified sexual activities, and shall include each and every specified adult business. Any activity or material that is classified as obscene under M.S. § 617.241, as the same may hereafter be amended, does not constitute an **ADULT USE** and is specifically prohibited.

(1) **ADULT USE - ACCESSORY.** An adult use for which the presentation, display, depiction, description, distribution, sale or rental of goods, services, entertainment or materials that constitute or contain an emphasis on specified anatomical areas or specified sexual activities is not a dominant activity. An **ADULT USE - ACCESSORY** typically does not involve or include any activity, except the sale or rental of merchandise.

(2) **ADULT USE - EXEMPT.** An adult use wherein the presentation, display, depiction, description, distribution, sale or rental of goods, services, entertainment or materials that constitute or contain an emphasis on specified anatomical areas or specified sexual activities is conducted only on a diminutive scale, such that it is extremely incidental to any dominant activity and, individually or in

combination, occupies or comprises less than five square feet of the total floor, wall and shelf area of the adult use. **ADULT USES - EXEMPT** shall not include or involve any activity, except the sale or rental of merchandise, and no external or internal advertising of any adult or sexually-oriented merchandise shall be permitted.

(3) **ADULT USE - PRINCIPAL.** An adult use in, on or from which the sole or a dominant activity involves the presentation, display, depiction, description, distribution, sale or rental of goods, services, entertainment or materials that constitute or contain an emphasis on specified anatomical areas or specified sexual activities.

(4) **DOMINANT ACTIVITY.** Any activity or activities that, individually or in combination, provide at least 20% of the gross receipts of the adult use's entire business operation at that site, or occupy or comprise up to 10% or more of the total floor, wall and shelf area within the site or 150 square feet or more of floor, wall and shelf area within the site.

PROTECTED USE. The following: licensed day care centers or facilities; public or private educational facilities classified as preschools, elementary, junior high or senior high schools; public libraries; public parks; on-sale liquor establishments; churches and church-related facilities; community centers; and residential zoning or uses.

SPECIFIED ADULT BUSINESS. The following:

(1) **ADULT BOOKSTORE.** A business or commercial enterprise that provides for barter, rental or sale items consisting of printed matter, pictures, slides, records, audio tape, videotape, motion picture film or other visual or aural media, from which minors are excluded by reason of age or where a substantial or significant portion of the items are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(2) **ADULT GIFT OR NOVELTY BUSINESS.** A business or commercial enterprise that has as a principal activity the sale of devices, implements, equipment or novelties that are designed, marketed, used or sold for the primary purpose of stimulating human genitals or otherwise providing sexual stimulation.

(3) **ADULT HEALTH CLUB** or **ADULT SPORTS CLUB.** A business or commercial enterprise that is named, signed, advertised or promoted as a facility or club providing health- or sports-related goods, services or equipment, from which minors are excluded by reason of age or that is distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(4) **ADULT HOTEL OR MOTEL.** A business or commercial enterprise that provides rooms, facilities or lodging on a short-term basis and wherein material or entertainment is presented, displayed, provided or otherwise made available that is distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(5) **ADULT MINI-MOTION PICTURE THEATER.** A business or commercial enterprise operating in, on, or from a building or portion thereof that has a legal capacity of less than 50 persons, from which minors are excluded by reason of age or that is used for presenting visual media or materials that are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(6) **ADULT MODELING STUDIO.** A business or commercial enterprise the primary or dominant activity of which is to provide for its customers to observe, paint, paint upon, sketch, draw, sculpt, photograph, videograph or otherwise depict or portray, with the intent of providing sexual stimulation or sexual gratification to the customers, specific anatomical areas of one or more models or subjects, or one or more models or subjects who are engaging in specified sexual activities.

(7) **ADULT MOTION PICTURE ARCADE.** Any place to which the public is permitted or invited wherein coin-, slug-, electronically- or mechanically-controlled or operated still or motion picture machines, projectors or other image-producing devices are provided or maintained to show images to no more than one person per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities, whether the individual viewing areas are or are not screened, including, but not limited to, doors and curtains, in any way to obstruct the viewing areas from monitoring.

(8) **ADULT MOTION PICTURE THEATER.** A business or commercial enterprise operating in, on or from a building or portion thereof that has a legal capacity of 50 or more persons, from which minors are excluded by reason of age or that is used for presenting visual media or materials that are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(9) **BODYPAINTING STUDIO.** A business or commercial enterprise that provides the service of applying paint or other substance, whether transparent or non-transparent, to or on any specified anatomical area of any person.

(10) **CABARET.** A business or commercial enterprise that provides dancing or other live entertainment, from which minors are excluded by reason of age or where the entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of specified anatomical areas or specified sexual activities.

(11) **COMPANION ESTABLISHMENT.** A business or commercial enterprise that provides the service of engaging in or listening to conversation, talk or discussion or engaging in activities between an owner, employee or agent of the enterprise and a customer, if the service is distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(12) **CONVERSATION/RAP PARLOR.** A business or commercial enterprise that provides the service of engaging in or listening to conversation, talk or discussion, from which minors are excluded by reason of age or where the service is distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(13) ***MASSAGE PARLOR***. A massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if the service is distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(14) ***SAUNA, STEAM ROOM or BATHHOUSE FACILITY***. A business or commercial enterprise that provides one or more steam or heat bathing rooms or sauna or steam room facilities, where the services provided are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities, or from which minors are excluded by reason of age.

ADULT USE - OTHER. Any place to which the public is permitted, a business or commercial enterprise that is distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

SPECIFIED ANATOMICAL AREA. The following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breast(s) below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITY. The following:

- (1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct; anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;
- (2) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence;
- (3) Use of human or animal ejaculation, sodomy, oral copulations, coitus or masturbation;
- (4) Fondling or touching nude human genitals, pubic region, buttocks or female breast;
- (5) Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually-revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any persons;
- (6) Erotic or lewd touching, fondling or other sexually-oriented conduct with an animal by a human being; or
- (7) Human excretion, urination, menstruation, vaginal or anal irrigation when engaged in to create or stimulate sexual arousal.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.03 ADULT USES; PRINCIPAL AND ACCESSORY.*(A) Adult uses - principal.*

(1) All “adult uses - principal” shall require a conditional use permit.

(2) All “adult uses - principal” shall be located within the I-2 Heavy Industrial District.

(3) All “adult uses - principal” shall be located at least the following specified distances, measured radially in a straight line from the closest point of the building or actual leased space of the “adult - use principal” to the property line of a protected use or other adult use, whether the protected use is located in the city or an adjoining community:

(a) A distance of at least 500 feet from the following:

1. Licensed day care centers;
2. Public or private educational facilities classified as preschools, elementary, junior high or senior high schools;
3. Public libraries;
4. Public parks;
5. On-sale liquor establishments;
6. Churches and church-related facilities; and
7. Community centers.

(b) A distance of at least 500 feet from the following:

1. Other adult uses; and
2. Residential zoning.

(4) No “adult use - principal” shall locate in any building which is also utilized for any protected use.

(5) At the time of application for a conditional use permit, any property that is proposed to be occupied by an “adult use - principal” must comply with all current zoning, health, fire and building regulations that apply to the site and building.

(6) No “adult use - principal” may occupy a lot with a lot width of less than 200 feet. In addition, each “adult use - principal” shall provide one parking space for each employee on duty, plus parking for customers according to the following schedule:

(a) Motion picture theater: one space per six seats actually provided or the maximum seating capacity of the theater;

(b) Motion picture arcade: one space per machine; and

(c) All other “adult uses - principal”: one space per 15 square feet of floor area that is open to or used by the public or customers of the “adult use - principal”.

(7) All “adult uses - principal” shall comply with the following sign requirements.

(a) All signs shall be flat wall signs.

(b) The amount of allowable sign area shall be one square foot of sign area per foot of lot frontage on a street.

(c) No merchandise 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 in front of the building.

(d) Window areas shall not be covered or made opaque in any way. No signs shall be placed in any window. A one-square foot sign shall be placed on the door to state hours of operation and admittance is restricted to adults only.

(8) “Adult use - principal” businesses shall not be open between the hours of 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor between 1:00 a.m. and 12:00 noon on Sunday.

(B) *Adult uses - accessory.*

(1) All “adult uses - accessory” shall require a conditional use permit.

(2) All “adult uses - accessory” shall be located only within the B-2 District, Auto-Oriented Business District.

(3) All “adult uses - accessory” shall be located at least the following specified distances, measured radially in a straight line from the closest point of the building or actual leased space of the “adult use accessory” to the property line of a protected use or other adult use, whether the protected use is located in the city or an adjoining community:

(a) A distance of at least 500 feet from the following:

1. Residential zoning;
2. Licensed day care centers;
3. Public or private educational facilities classified as preschools, elementary, junior high or senior high schools;
4. Public libraries;
5. Public parks;
6. On-sale liquor establishments;
7. Churches and church-related facilities; and
8. Community centers.

(b) A distance of at least 500 feet from the following: other adult uses.

(4) No “adult use - accessory” shall locate in any building which is also utilized for any protected use.

(5) “Adult uses - accessory” shall restrict and prohibit access to minors by the physical separation from areas of general access of items that are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(a) Display areas for movies that are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities shall be restricted from general view and shall be located within a separate room, the access or entrance to which is in clear view and under control of the persons responsible for the operation or controlled in some other effective manner which meets with the approval of the Zoning Administrator.

(b) Magazines that are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities shall not be accessible to minors and shall be covered with a wrapper or other means to prevent display of any materials other than the publication title.

(c) “Adult uses - accessory” offering or providing items that are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities and that are not specifically cited above shall comply with the intent of this chapter, subject to the final approval of the City Council.

(6) “Adult uses - accessory” shall be prohibited from external advertising and signing of items that are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities.

(7) At the time of application for the conditional use permit, any property that is to be occupied by an “adult use - accessory” must comply with all the current zoning, health, fire and building regulations that apply to the site and building.
(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

LICENSES

§ 116.15 LICENSE REQUIRED.

No person shall own or operate an adult-oriented business, whether “principal” or “accessory” use, within the city unless the person is currently licensed under this chapter.
(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002) Penalty, see § 116.99

§ 116.16 PERSONS AND LOCATIONS INELIGIBLE FOR A LICENSE.

The issuing authority (City Council) shall issue a license under this chapter to an applicant unless one or more of the following conditions exist:

- (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 (adult business/use) 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 adult business/use does not meet the zoning requirements prescribed in this chapter;
- (G) The premises to be licensed as an adult business/use are currently licensed by the city or operating as a tanning facility, tattoo establishment, pawn shop, therapeutic massage enterprise or an establishment licensed to sell alcoholic beverages; and/or
- (H) The applicant has not paid the license and investigation fees required in this chapter.
(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.17 LICENSE APPLICATION.

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

(1) What type of entity is attempting to secure a license, whether it is a natural person, corporation, partnership, or other form of organization, and include the name(s) and address(es) of the entity;

(2) The name(s) and address(es) of applicant(s);

(3) The name and street address of the business;

(4) 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;

(5) Other documentation to be included if the entity is a:

(a) *Partnership.* 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 amended from time to time, a certified copy of the certificate shall be attached to the application; and

(b) *Corporation.* A true copy of the certificate of incorporation, articles of incorporation or association agreement and bylaws 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 amended from time to time, shall be attached.

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

(B) The application shall be signed and sworn to by the natural person; in the case of a corporation, by an officer thereof; in the case of a partnership, by one of the general partners; in the case of an unincorporated association, by the manager or managing officer thereof.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.18 LICENSE APPLICATION VERIFICATION.

Applications for licenses under this chapter shall be submitted to the City Council (hereinafter referred to as the “issuing authority”). Within 30 calendar days of receipt of a completed 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. (Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.19 LICENSE APPLICATION CONSIDERATION.

(A) No later than 30 calendar days after the completion of the license application or license renewal application, verification and investigation by the issuing authority or its agents and employees, as prescribed in § 116.18, 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. The notice shall inform the applicant of the applicant's right, within 30 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.

(B) If an appeal to the City Council is timely received, the hearing before the City Council shall take place within 30 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 by the Building and Zoning Office for the licensed premises.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.20 LICENSE FEES.

(A) *Application fee.*

(1) The license application fee shall be \$500. This shall be an annual fee.

(2) The license application 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.

(3) In the event that a license is approved for a building that is not ready for occupancy, the license period shall commence 90 days after the approval of the license by the issuing authority or upon the date a certificate of occupancy is issued for the building; provided, the issuance of the certificate is within the 90-day period. However, if the building is not ready for occupancy within the 90 days after the approval of the license, the license shall be null and void; and the applicant shall be required to file another license application.

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

(C) *Renewal application.* All licenses issued under this chapter shall be effective for a period of one year commencing with the date of approval by the issuing authority. 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. The issuing authority shall verify any and all of the information requested of the applicant on the renewal application, including the ordering of criminal background checks and shall conduct any necessary investigation to assure compliance with this chapter.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.21 LICENSE NON-TRANSFERABLE.

The license granted under this chapter is for the person and 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.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.22 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(s) contained in a license application or a renewal application;

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

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

(4) A licensee's criminal conviction that is directly related to the use or business licensed; and/or

(5) Conducting the licensed use or business 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 of suspension as detailed herein 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 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 amended from time to time, relating to the illegal distribution, possession or sale of obscene materials;

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

(7) A licensee has been convicted of a felony, gross misdemeanor or misdemeanor, including but not limited to, convictions relating to sex offenses, obscenity offenses, adult uses or violation of this chapter, 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, including but not limited to, offenses relating to sex offenses, obscenity offenses or adult uses, or in violation of any provision of this chapter, in or on the licensed 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; and/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.

(1) A revocation or suspension shall be preceded by written notice to the licensee and a public hearing.

(2) The notice shall provide at least ten 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 address listed on the most recent application.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

LICENSE RESTRICTIONS**§ 116.35 POSTING OF LICENSE.**

A license issued under this chapter must be posted in a conspicuous place in the premises for which it was issued.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.36 EFFECT OF LICENSE.

A license issued under this chapter is only effective for the compact and contiguous space specified in the approved license application.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.37 MINORS.

No licensee of an “adult use - principal” business 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 the state, 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. The provisions of this restriction shall also be enforced by licensees of an “adult use - accessory” business as it relates to the areas of the premises licensed for the adult business/use.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002) Penalty, see § 116.99

§ 116.38 MAINTENANCE OF ORDER.

(A) A licensee under this chapter shall be responsible for the conduct of the business/use, 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.

(B) 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.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002) Penalty, see § 116.99

§ 116.39 DISTANCE REQUIREMENTS 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 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.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002) Penalty, see § 116.99

§ 116.40 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.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002) Penalty, see § 116.99

§ 116.41 GRATUITY PROHIBITION.

No customers, spectator or patron 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.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002) Penalty, see § 116.99

§ 116.42 ADULT CAR WASH REQUIREMENTS.

Adult businesses/uses that are adult car washes shall meet all of the requirements of this chapter.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

§ 116.99 PENALTY.

A violation of this chapter shall be considered a misdemeanor under state law and each day that a prohibited violation occurs or exists will constitute a separate violation.

(Prior Code, § 6.51) (Ord. 119, 2nd Series, eff. 5-7-2002)

CHAPTER 117: TOBACCO

Section

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GENERAL PROVISIONS

§ 117.01 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997; Am. Ord. 186, 2nd Series, passed 7-21-2020)

§ 117.02 LICENSE REQUIRED.

It is unlawful for any person to 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.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997) Penalty, see § 117.99

§ 117.03 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

§ 117.04 BASIS FOR 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.

(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 chapter.

(C) The following applies:

(1) The applicant is under the age of 21 years;

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

(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; and

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

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997; Am. Ord. 186, 2nd Series, passed 7-21-2020)

§ 117.05 PROHIBITED SALES.

It is 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 21 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 verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco-related 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 § 117.01;

(E) Containing opium, morphine, jimson weed, belladonna, 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; and

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

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997; Am. Ord. 186, 2nd Series, passed 7-21-2020)

§ 117.06 VENDING MACHINES.

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

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997) Penalty, see § 117.99

§ 117.07 SELF-SERVICE SALES.

It is unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products or tobacco-related devices by any means whereby the customer may have access to the items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product or the tobacco-related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers or in a case or other storage unit not left open and accessible to the general public. Licensees which prohibit individuals less than 21 years of age from entering the premises and which derive at least 90% of their revenue from tobacco and tobacco-related products are exempt from this section.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997; Am. Ord. 186, 2nd Series, passed 7-21-2020) Penalty, see § 117.99

§ 117.08 RESPONSIBILITY.

(A) All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco-related devices on the licensed premise, and the sale of an item by an employee shall be considered a sale by the license holder.

(B) Nothing in this chapter shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

§ 117.09 COMPLIANCE CHECKS AND INSPECTIONS.

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

(B) From time to time, but at least once per year, the city shall conduct compliance checks by engaging minors over the age of 17 years, but less than 21 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products or tobacco-related devices. If minors are under the age of 18, then written consent of their parents or guardians is needed to participate in compliance checks.

(C) Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco-related devices when the items are obtained as part of the compliance check. No minor used in compliance checks shall attempt to use a false identification or theatrical makeup misrepresenting the minor's age. All minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee and shall produce any identification for which he or she is asked. The minor shall be accompanied by the city police or an authorized city official to the location of the compliance check.

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

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997; Am. Ord. 186, 2nd Series, passed 7-21-2020) Penalty, see § 117.99

VIOLATIONS

§ 117.20 NOTICE.

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

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

§ 117.21 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.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

§ 117.22 HEARING OFFICER.

The Council or a person or persons designated by the Council shall serve as the Hearing Officer.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

§ 117.23 DECISION.

(A) If the Hearing Officer determines that a violation of this chapter did occur, that decision, along with the Hearing Officer's reasons for finding a violation and the penalty to be imposed under this chapter, shall be recorded in writing, a copy of which shall be provided to the accused violator.

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

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

§ 117.24 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.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

§ 117.25 MISDEMEANOR PROSECUTION.

Nothing in this chapter 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.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

§ 117.26 CONTINUED VIOLATION.

Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

§ 117.99 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 a 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 herein, found to be in violation of this chapter shall be charged an administrative fee of \$50.

(C) *Misdemeanor*. Nothing in this chapter shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter.

(Prior Code, § 6.30) (Ord. 101, 2nd Series, eff. 12-25-1997)

CHAPTER 118: ALCOHOLIC BEVERAGES

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GENERAL PROVISIONS

§ 118.001 DEFINITIONS.

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

3.2 MALT LIQUOR - BEER. Malt liquor containing not less than 0.05% alcohol by volume, nor more than 3.2% alcohol by weight. (This definition includes so-called “malt coolers” with the alcoholic content limits stated herein.)

ALCOHOLIC BEVERAGE. Any beverage containing more than 0.05% alcohol by volume, including, but not limited to, beer, wine and liquor as defined in this section.

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

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

BREWER. A person who manufactures beer for sale.

CLUB.

(1) An incorporated organization organized under the laws of the state for civic, fraternal, social or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans’ organization, which:

(a) Has more than 50 members;

(b) Has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members; and

(c) Is directed by a board of directors, executive committee or other similar body chosen by the members at a meeting held for that purpose.

(2) No member, officer, agent or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body.

DEPARTMENT. The Department of Public Safety.

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

- (1) A resident proprietor or manager;
- (2) A dining room serving the general public at tables and having facilities for seating at least 25 guests at one time; and
- (3) At least ten guest rooms.

INTOXICATING LIQUOR. Ethyl alcohol, distilled, fermented, spirituous, vinous and malt beverages containing more than 3.2% of alcohol by weight.

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

LICENSED PREMISES. The premises described in the issued license.

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

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

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

MALT LIQUOR. Any beer, ale or other beverage made from malt by fermentation and containing not less than 0.05% alcohol by volume.

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

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

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

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

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

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

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

WINE. The product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake. (This definition includes "wine coolers" with the alcoholic content limits stated herein.) For purposes of on-sale wine licenses, **WINE** may contain up to 14% alcohol by volume for consumption with the sale of food. For all other purposes, **WINE** is a product containing not less than 0.05%, nor more than 24% alcohol by volume for non-industrial use.

(Prior Code, § 5.01) (Ord. 90, 2nd Series, eff. 5-11-1995; Ord. 41, 2nd Series, eff. 4-10-2006; Ord. 136, 2nd Series, passed 11-1-2011)

§ 118.002 MUNICIPAL DISPENSARY.

(A) *Establishment.*

(1) A municipal dispensary is hereby established, to be operated within the city for the sale of liquor potable as a beverage and containing more than 3.2% of alcohol by weight. The dispensary shall be at a place or places as the Council shall determine and may be either leased or owned by the city.

(2) It shall be in the charge of a person known as the manager, who shall have assistants as may be necessary.

(3) All employees, including the manager, shall hold their positions at the pleasure of the Council.

(B) *Dispensary Fund.*

(1) A Liquor Dispensary Fund is hereby created into which all revenues received from the operation of the dispensary shall be paid, and from which all operating expenses shall be paid.

(2) Any surplus accumulating in this Fund may, from time to time, be transferred to the General Fund by resolution of the Council, and expended for any municipal purpose.

(Prior Code, § 5.80) (Ord. 41, 2nd Series, eff. 4-10-1986)

LICENSING GENERALLY**§ 118.015 APPLICATION.**

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

(Prior Code, § 5.02) (Ord. 66, 2nd Series, eff. 7-25-1991)

§ 118.016 FALSE STATEMENTS.

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

(Prior Code, § 5.02) (Ord. 41, 2nd Series, eff. 4-10-2006) Penalty, see § 118.999

§ 118.017 APPLICATION AND INVESTIGATION FEES.

At the time of initial, or transfer of an existing, application for an on-sale liquor license, the applicant shall pay to the city an application fee, not refundable to applicant, to cover the costs of the city in processing the application and the investigation thereof. If an investigation outside the city 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.

(Prior Code, § 5.02) (Ord. 90, 2nd Series, eff. 5-11-1995)

§ 118.018 ACTION.

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

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

(C) *Transfer.* No license shall be transferable between persons or to a different location without Council approval. Any change in individual ownership, incorporation or substitution of partners is a transfer. It is unlawful to make any transfer in violation of this division (C).

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

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

(F) *Revocation or suspension.*

(1) For any license granted under the provisions of this chapter, the Council may revoke, suspend for a period not to exceed 60 days, impose a civil fine not to exceed \$2,000, or any combination of these sanctions, for each violation on a finding that the licensee has failed to comply with a statute, regulation or provision of the city code relating to alcoholic beverages. The Council shall revoke the license upon conviction of any licensee or agent or employee of a licensee for violating any law relating to the sale or possession of beer, wine or liquor upon premises of the licensee, or if the revocation is mandatory by statute. If it shall be made to appear at the hearing thereon that the violation was not willful, the Council may order suspension; provided that, revocation shall be ordered upon the third violation or offense. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing before the Council, a committee of the Council or a hearing under the Administrative Procedures Act being M.S. §§ 14.001 et seq., as may be determined by the Council in action calling the hearing. The hearing shall be called by the Council upon written notice to the licensee served in person or by certified mail not less than 15, nor more than 30, days prior to the hearing date, stating the time, place and purpose thereof.

(2) As additional restrictions or regulations on licensees under this chapter, and in addition to grounds for revocation or suspension stated in the city code or statute, the following shall also be grounds for the action:

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

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

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

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

(G) Corporate applicants and licensees.

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

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

(Prior Code, § 5.02) (Ord. 90, 2nd Series, eff. 5-11-1995; Ord. 41, 2nd Series, eff. 4-10-2006)

§ 118.019 DUPLICATE LICENSES.

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

(B) All duplicate licenses shall be clearly marked "DUPLICATE".

(Prior Code, § 5.02) (Ord. 90, 2nd Series, eff. 5-11-1995)

§ 118.020 POSTING.

All licensees shall conspicuously post their licenses in their places of business.
(Prior Code, § 5.02)

§ 118.021 RESIDENT MANAGER OR AGENT.

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

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

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

(Prior Code, § 5.02) (Ord. 41, 2nd Series, eff. 4-10-1986)

§ 118.022 PERSONS DISQUALIFIED.

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

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

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

- (3) A person under the age of 21 years;
- (4) A person not of good moral character and repute; or
- (5) A person not a citizen of the United States or a resident alien.

(B) No person holding a license from the Department as a manufacturer, brewer (except as provided by statute), wholesaler or importer, may have a direct or indirect interest, in whole or in part, in a business holding an alcoholic beverage license from the city.
(Prior Code, § 5.02) (Ord. 105, 2nd Series, eff. 7-29-1998)

§ 118.023 NUMBER OF LICENSES.

The number of private on-sale liquor licenses issued shall be governed by M.S. § 340A.413 “Restrictions on the number of intoxicating liquor licenses that may be issued,” as amended from time to time, including all restrictions, exclusions and exceptions as stated therein regarding the number of licenses allowed for cities of the fourth class.
(Prior Code § 5.03) (Ord. 150, 2nd Series, passed 7-21-2015)

§ 118.024 DELINQUENT TAXES AND CHARGES.

No license under this chapter shall be granted for operation on any premises upon which taxes, assessments or installments thereof, or other financial claims of the city, are owed and are delinquent and unpaid.
(Prior Code, § 5.04)

§ 118.025 CONDITIONAL LICENSES.

Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefor, place the special conditions and restrictions, in addition to those stated in this chapter, upon any license as it, in its discretion, may deem reasonable and justified.
(Prior Code, § 5.05)

§ 118.026 PREMISES LICENSED.

Unless expressly stated therein, a license issued under the provisions of this chapter shall be valid only in the compact and contiguous building or structure situated on the premises described in the license, and all transactions relating to a sale under the license must take place within the building or structure.
(Prior Code, § 5.06)

§ 118.027 FEES; REFUNDMENT.

(A) No pro-rata share of an annual license fee for a license to sell liquor or beer, either on-sale or off-sale, shall be refunded to the licensee, or to his or her estate, if:

- (1) The business ceases to operate because of destruction or damage;
- (2) The licensee dies;
- (3) The business ceases to be lawful for a reason other than a license revocation or suspension;

or

- (4) The licensee ceases to carry on the licensed business under the license.

(Prior Code, § 5.11)

(B) Except as otherwise specifically provided, all fees for licenses provided for in this chapter, including, but not by way of limitation, license fees, investigation and administration fees, shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. The fees may, from time to time, be amended by the Council by resolution; provided, however, that, before any liquor license fee shall be increased, a 30-day notice shall be mailed to all affected licensees and a hearing held thereon. A copy of the resolution shall be kept on file in the office of the City Administrator and open to inspection during regular business hours. For the purpose of fixing the fees, the Council may categorize and classify; provided that, the categorization and classification shall be included in the resolution authorized by this section.

(Prior Code, § 5.17) (Ord. 41, 2nd Series, eff. 4-10-1986; Ord. 90, 2nd Series, eff. 5-11-1995)

LICENSES REQUIRED

§ 118.040 BEER LICENSE REQUIRED.

It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of beer, as part of a commercial transaction, without a license therefor from the city. This section shall not apply to sales by manufacturers to wholesalers or to sales by wholesalers to persons holding beer licenses from the city. Annual on-sale beer licenses may be issued only to restaurants, hotels, clubs and bowling centers. Any person licensed to sell liquor at on-sale shall not be required to obtain an on-sale license and may sell beer on-sale without an additional license.

(Prior Code, § 5.30) (Ord. 68, 2nd Series, eff. 7-25-1991) Penalty, see § 118.999

§ 118.041 HOURS AND DAYS OF BEER SALES.

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

(Prior Code, § 5.32) (Ord. 41, 2nd Series, eff. 4-10-1986; Ord. 150, 2nd Series, passed 7-21-2015) Penalty, see § 118.999

§ 118.042 TEMPORARY BEER LICENSE.

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

(B) *Conditions.*

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

(2) The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary beer license on premises owned or controlled by the city. Any license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the city, the applicant shall file with the city, prior to issuance of the license, a certificate that there is in effect an insurance policy or pool providing minimum coverages of:

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

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

(3) The applicant shall comply with all other restrictions, limitations and regulations for the sale of beer under the city code and statutes.

(Prior Code, § 5.33) (Ord. 45, 2nd Series, eff. 5-14-1987; Ord. 105, 2nd Series, eff. 7-29-1998)

§ 118.043 SUNDAY ON-SALE INTOXICATING LIQUOR LICENSE.

(A) *Application.* A restaurant, club, bowling center or hotel with a seating capacity for at least 30 persons and which holds an on-sale intoxicating liquor license shall qualify for a Sunday on-sale intoxicating liquor license. The establishments, prior to serving intoxicating liquor on Sunday, must obtain a Sunday on-sale intoxicating liquor license by filing application with the city. The license shall be issued by the city for a period of one year or the yearly anniversary of that establishment's annual liquor license, whichever is earliest, and the fee for the license will be established pursuant to § 118.027(B), but may not exceed an amount as allowed by state law.

(B) *Conditions.* A restaurant, club, bowling center or hotel with a seating capacity for at least 30 persons and which holds an on-sale intoxicating liquor license may sell intoxicating liquor for consumption on its premises in conjunction with the sale of food between the hours of 8:00 a.m. on Sunday and 1:00 a.m. on Monday; provided that, the licensee is in conformance with the State Clean Indoor Act being M.S. §§ 144.411 et seq.

(Prior Code, § 5.34) (Ord. 110, 2nd Series, eff. 12-15-1998; Ord. 150, 2nd Series, passed 7-21-2015)

§ 118.044 LIQUOR LICENSE REQUIRED.

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

- (1) To potable liquors as are intended for therapeutic purposes and not as a beverage;
- (2) To industrial alcohol and its compounds not prepared or used for beverage purposes;
- (3) To wine in the possession of a person duly licensed under this chapter as an on-sale wine licensee;
- (4) To sales by manufacturers to wholesalers duly licensed as such by the Department;
- (5) To sales by wholesalers to persons holding liquor licenses from the city; or
- (6) To the municipal liquor store.

(B) The voters of the city having authorized the issuance at a special election called for that purpose, the city may issue on-sale liquor licenses to:

- (1) Hotels;
- (2) Restaurants;
- (3) Bowling centers; and
- (4) Clubs or congressionally chartered veterans' organizations; provided that, the organization has been in existence for at least three years and liquor sales will be made only to members and bona fide guests.

(Prior Code, § 5.50) (Ord. 68, 2nd Series, eff. 7-25-1991) Penalty, see § 118.999

§ 118.045 HOURS AND DAYS OF LIQUOR SALES.

No on-sale of liquor shall be made between the hours of 1:00 a.m. and 8:00 a.m. on the days of Monday through Sunday, nor between the hours of 8:00 p.m. on December 24 and 8:00 a.m. on December 25. Notwithstanding the preceding, a restaurant, club, bowling center or hotel with a valid Sunday on-sale intoxicating liquor license may sell intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 8:00 a.m. on Sunday and 1:00 a.m. on Monday; provided that, the licensee is in conformance with the State Clean Air Act.

(Prior Code, § 5.52) (Ord. 110, 2nd Series, eff. 12-15-1998; Ord. 150, 2nd Series, passed 7-21-2015) Penalty, see § 118.999

§ 118.046 TEMPORARY LIQUOR LICENSE.

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

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

(C) *Terms and conditions of license.*

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

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

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

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

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

(6) No more than three four-day, four three-day or six two-day licenses in any combination not to exceed 12 days per year may be issued to any one organization or registered political committee, or for any one location within a 12-month period.

(D) *Insurance required.* The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary liquor license on premises owned or controlled by the city. Any license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the city, the applicant shall file with the city, prior to issuance of the license, a certificate that there is in effect an insurance policy or pool providing minimum coverages of:

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

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

(Prior Code, § 5.53) (Ord. 45, 2nd Series, eff. 5-14-1987; Ord. 46, 2nd Series, eff. 6-25-1987; Ord. 105, 2nd Series, eff. 7-29-1998; Ord. 150, 2nd Series, passed 7-21-2015)

§ 118.047 SPORTS, CONVENTION OR CULTURAL FACILITIES LICENSE.

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

(Prior Code, § 5.54) (Ord. 45, 2nd Series, eff. 5-14-1987)

§ 118.048 ON-SALE WINE LICENSE REQUIRED.

(A) (1) It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale or otherwise dispose of wine on-sale, as part of a commercial transaction, without a license therefor from the city.

(2) This section shall not apply:

(a) To sales by manufacturers to wholesalers duly licensed as such by the Department;

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

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

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

(B) A holder of an on-sale wine license issued pursuant to division (A) above who is also licensed to sell 3.2% malt liquors at on-sale, is authorized to sell intoxicating malt liquors at on-sale without an additional license.

(Prior Code, § 5.60) (Ord. 90, 2nd Series, eff. 5-11-1995; Ord. 136, 2nd Series, passed 11-1-2011; Ord. 181, 2nd Series, passed 10-15-2019) Penalty, see § 118.999

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

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

(Prior Code, § 5.62) (Ord. 105, 2nd Series, eff. 7-29-1998; Ord. 150, 2nd Series, passed 7-21-2015) Penalty, see § 118.999

OUTDOOR SALES AND SERVICE OF ALCOHOLIC BEVERAGES

§ 118.050 DEFINITIONS.

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

LICENSE ENDORSEMENT. An endorsement to an on-sale beer, wine and/or liquor license issued by the city that allows for the sales and service of beer, wine and/or liquor in outdoor areas.

OUTDOOR AREA. An area that is compact and contiguous to the principal structure owned by the person(s) or establishment named as the licensee for the beer, wine and/or liquor license issued by the city.

SIDEWALK CAFE. Sidewalk cafes are permitted in the Downtown Square. See § 95.21 for definitions and §§ 95.20 et seq. for regulations for sidewalk cafes.

(Ord. 171, 2nd Series, passed 6-5-2018)

§ 118.051 LICENSE REQUIRED.

Any person or establishment that intends to offer sales and service of beer, wine and/or liquor in an outdoor area shall obtain an endorsement on its on-sale beer, wine and/or liquor license(s) from the city permitting such sales and service. The licensee must declare its intention to provide outdoor sales and services in its annual license application.

(Ord. 171, 2nd Series, passed 6-5-2018)

§ 118.052 REQUIREMENTS FOR SALES AND SERVICE IN OUTDOOR AREAS.

A person or establishment that is granted an endorsement from the city for the sales and service of any alcoholic beverage in an outdoor area shall comply with the following requirements.

(A) *Time of sales and service.* The outdoor area in which alcohol will be served or consumed shall only be open during the hours set forth in §§ 118.041, 118.045, and 118.049, pursuant to the on-sale license issued to the person(s) or establishment.

(B) *Location and barrier.* The outdoor area shall be compact and contiguous to the principal building, and shall be defined by the use of a barrier around the entire perimeter of the outdoor area. A barrier may include, but is not limited to, vegetative screening, fences (according to §§ 152.420 through 152.428), or railings. Fences, railings and similar structures must create an effective barrier between a height of six inches and 36 inches (at a minimum) above grade level. Permitted sidewalk cafes in the Downtown Square shall install a continuous barrier of vegetative screening, fences, or railings around the perimeter of the sidewalk cafe. This barrier shall be a minimum of 36 inches in height and delineate the sidewalk cafe from the public sidewalk. (See §§ 95.20 through 95.26 of this code for additional requirements for sidewalk cafes and sidewalk extensions.)

(C) *Access.* The primary access and egress to or from the outdoor area shall be from the main premise (building); and no other access or egress openings will be allowed, except those required for emergency exits. Permitted sidewalk cafes in the Downtown Square may be allowed to have one gateway access from the sidewalk adjacent to their main business entrance. Patrons shall not leave the premises, the outdoor area, or the sidewalk cafe with a drink; nor can drinks be taken onto a public sidewalk.

(D) *Supervision.* A manager shall be assigned the responsibility of supervising the activities of the outdoor area at all times the outdoor area is in operation.

(E) *Waste collection.* Adequate garbage receptacles shall be provided for the outdoor area.

(F) *Maintenance.* Outdoor area facilities, barriers and furniture shall be suitable for outdoor use, secured and maintained by the business served by the outdoor area.

(G) *Amplification.* The use of amplification is allowed pursuant to an event amplification permit issued by the city. Amplification of the outdoor area shall be governed by the provisions of §§ 90.20, 90.23 and 90.26, and any other permit requirements. Background music that does not disturb the peace of the surrounding area is permitted during hours when service of alcoholic beverages is permitted.

(H) *Nonsmoking.* The use of the outdoor area shall be in compliance with state no-smoking regulations. Smoking may be allowed in the outdoor area, provided it is in compliance with the Minnesota “Freedom to Breathe Act of 2007”.

(I) *Compliance.* The endorsement to the licensee's licenses for the outdoor area shall be approved on a provisional basis. The Council may revoke, suspend or decline to renew the endorsement for the outdoor area portion of the licensed premises, on the grounds of failure to comply with the conditions outlined in this subchapter or other local or state laws.

(J) *Liability insurance.* The outdoor area must be included in the required liquor liability insurance for the premises. The licensees shall hold the city harmless and indemnify the city from any damages or injuries incurred in connection with the installation, use, or removal of the outdoor area.

(K) *Additional conditions.* The City Council may impose any additional conditions it deems necessary in the interest of the public health, safety and welfare at the time of initial approval or any renewal of the endorsement for an outdoor area. The conditions set forth allowing the outdoor area shall be reviewed during the annual renewal period.

(Ord. 171, 2nd Series, passed 6-5-2018)

§ 118.053 FAILURE TO COMPLY.

Failure to comply with the provisions of these sections or any other applicable provisions of local, state, or federal law may result in the suspension or revocation of the outdoor sales and service endorsement. Additional violations may result in suspension or revocation of the licensee's beer, wine and/or liquor license(s).

(Ord. 171, 2nd Series, passed 6-5-2018)

§ 118.054 NO EXPECTATION OF RENEWAL.

Any endorsement issued for outdoor sales and service of beer, wine and/or liquor shall be deemed annual, and as such, no expectation shall be assumed by the licensee that the endorsement for outdoor sales and service will be renewed.

(Ord. 171, 2nd Series, passed 6-5-2018)

LIQUOR AND ON-SALE WINE LICENSE RESTRICTIONS AND REGULATIONS

§ 118.060 LICENSES IN CONNECTION WITH PREMISES OF ANOTHER.

(A) A license may not be issued to a person in connection with the premises of another to whom a license could not be issued under the provisions of this chapter.

(B) This subchapter does not prevent the granting of a license to a proper lessee because the person has leased the premises of a minor, a non-citizen who is not a resident alien or a person who has been convicted of a crime other than a violation of this chapter.
(Prior Code, § 5.70)

§ 118.061 EMPLOYMENT OF MINORS.

No person under 18 years of age may be employed in a place where liquor is sold for consumption on the premises, except persons under 18 years of age may be employed as musicians or in bussing or washing dishes in a restaurant or hotel that is licensed to sell liquor and may be employed as waiters or waitresses at a restaurant or hotel where only wine is sold; provided that, the person under the age of 18 may not serve or sell any wine.
(Prior Code, § 5.70) (Ord. 55, 2nd Series, eff. 12-14-1989) Penalty, see § 118.999

§ 118.062 GRANTING RESTRICTIONS.

(A) (1) On-sale wine licenses shall be granted only to restaurants as defined in this chapter; provided, however, for purposes of this subchapter, the restaurant shall have appropriate facilities for seating not less than 25 guests at one time.

(2) Notwithstanding the provisions of this subchapter, an on-sale wine license may be issued, with the approval of the Department, to a licensed bed and breakfast facility authorizing the licensee to furnish wine only to registered guests of the facility.

(B) No license shall be granted for any building within 300 feet of any public elementary or secondary school structure or within 200 feet of any church structure.
(Prior Code, § 5.70) (Ord. 55, 2nd Series, eff. 12-14-1989; Ord. 68, 2nd Series, eff. 7-25-1991)

CLUB LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS**§ 118.075 DEFINITIONS.**

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

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

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

MEMBER. Any person in good standing according to rules and regulations of the licensed club, wherever located, having evidence of current membership upon his or her person.
(Prior Code, § 5.71)

§ 118.076 PREMISES QUALIFIED.

(A) No club shall qualify unless it owns or leases a minimum usable floor area of 1,200 square feet for club activities.

(B) The premises shall meet all requirements of the State Building and Fire Codes and city code provisions relating to zoning.
(Prior Code, § 5.71)

§ 118.077 DAILY REGISTER.

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

(Prior Code, § 5.71) (Ord. 41, 2nd Series, eff. 4-10-1986)

§ 118.078 UNLAWFUL ACTS.

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

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

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

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

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

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

(Prior Code, § 5.71) (Ord. 68, 2nd Series, eff. 7-25-1991) Penalty, see § 118.999

RESPONSIBILITY**§ 118.090 FINANCIAL RESPONSIBILITY OF LICENSEES.**

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

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

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

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

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

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

(B) *Exception.* This section does not apply to on-sale beer licensees with sales of beer of less than \$25,000 for the preceding year, nor to off-sale beer licensees with sales of beer of less than \$50,000 for the preceding year, nor does it apply to holders of on-sale wine licenses with sales of wine of less than \$25,000 for the preceding year, if the licensee complies with the following alternatives.

(1) The city will accept a certificate of compliance issued from a certified public accountant that he or she has examined the records of sales of the establishment and successor or predecessor establishment at this location for the preceding calendar year and that by use of accepted accounting principles the certified public accountant has determined that sales of beer and wine, combined, did not exceed the statutory limits for the calendar year.

(2) The applicant shall sign a sworn statement that, in lieu of carrying the required insurance, the applicant agrees to provide to the City Administrator, on or before the following dates (April 15, July 15, October 15 and January 15) a certificate of compliance from a certified public accountant that he or she has examined the records of sales of the establishment, including predecessor or successor establishments located at the location, and by using accepted accounting principles that sales of beer and wine combined, at the establishment have not exceeded the statutory limits in total for that period of the year, and shall state what exact amount the sales of beer and wine equal from January 1 of the year to the end of the quarter for which the statement is provided.

(3) The applicant shall provide to the City Administrator a written agreement to cease sale of beer and wine at a time as sales receipts for the sale of beer and wine equal to the statutory limits for the calendar year or shall, at that time, provide the required certificate of insurance as provided for in division (A) above.

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

(Prior Code, § 5.12) (Ord. 41, 2nd Series, eff. 4-10-1985; Ord. 55, 2nd Series, eff. 12-14-1989; Ord. 105, 2nd Series, eff. 7-29-1998)

§ 118.091 INSURANCE CERTIFICATE REQUIREMENTS.

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

- (A) The limits are at least as high as required;
- (B) Coverage is effective for at least the license term approved; and

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

(Prior Code, § 5.13)

CONDUCT; UNLAWFUL ACTS**§ 118.105 CONSUMPTION AND DISPLAY.**

(A) *Consumption.* It is unlawful for any person to consume, or any licensee to permit consumption of, beer, wine or liquor on licensed premises more than 30 minutes after the hour when a sale thereof can legally be made.

(Prior Code, § 5.07)

(B) *Consumption and display.*

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

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

(a) *Eligible licensees.* If the applicant is otherwise eligible, licenses may be issued only to:

1. Persons who have not, within five years prior to application, been convicted of a felony or of violating provisions of this chapter or other law relating to the sale or furnishing of alcoholic beverages;

2. A restaurant;
3. A hotel;
4. A beer licensee;
5. A resort as defined by statute; or

6. A club or an unincorporated club otherwise meeting the definition of a club; provided that, no license may be issued to a club holding an on-sale liquor license.

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

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

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

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

(f) *Hours and days.* No licensee may permit a person to consume or display liquor, and no person may consume or display liquor, between 1:00 a.m. and 8:00 a.m. on Monday through Sunday. (Prior Code, § 5.85)

(C) *Consumption and display - one-day license.*

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

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

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

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

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

(Prior Code, § 5.86)

(Ord. 41, 2nd Series, eff. 4-10-1986; Ord. 45, 2nd Series, eff. 5-14-1987; Ord. 90, 2nd Series, eff. 5-11-1995; Ord. 150, 2nd Series, passed 7-21-2015) Penalty, see § 118.999

§ 118.106 CLOSING.

It is unlawful for any person, other than a licensee or his or her bona fide employee actually engaged in the performance of his or her duties, to be on premises licensed under this chapter more than 30 minutes after the legal time for making licensed sales, unless the licensed establishment is open to the public for serving food.

(Prior Code, § 5.07) Penalty, see § 118.999

§ 118.107 CONDUCT ON LICENSED PREMISES.

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

(Prior Code, § 5.08) (Ord. 41, 2nd Series, eff. 4-10-1986) Penalty, see § 118.999

§ 118.108 SALE BY EMPLOYEE.

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

(Prior Code, § 5.09) (Ord. 68, 2nd Series, eff. 7-25-1991) Penalty, see § 118.999

§ 118.109 LICENSE CONDITION AND UNLAWFUL ACT.

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

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

(Prior Code, § 5.10) Penalty, see § 118.999

§ 118.110 CONSUMPTION AND POSSESSION ON STREETS AND OTHER PUBLIC AND PRIVATE PLACES.

It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any street, public property or private parking lot to which the public has access, except public property and private parking lots to which the public has access when and where permission has been specifically granted or licensed by the Council; except, also city parks between the hours of 8:00 a.m. and 10:30 p.m.; provided that, this section shall not apply to the possession of an unsealed container in a motor vehicle when the container is kept in the trunk of the vehicle if it is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. For the purpose of this section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers.

(Prior Code, § 5.15) (Ord. 68, 2nd Series, eff. 7-25-1991) Penalty, see § 118.999

§ 118.111 POSSESSION IN CERTAIN BUILDINGS AND GROUNDS.

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

(Prior Code, § 5.16) Penalty, see § 118.999

§ 118.112 NUDITY OR OBSCENITY PROHIBITED.

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

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

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

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

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

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

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

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

(Prior Code, § 5.90) (Ord. 41, 2nd Series, eff. 4-10-1986) Penalty, see § 118.999

Cross-reference:

For similar sections, see § 111.017, Ch. 116 and § 130.07

MINORS

§ 118.125 CONSUMPTION.

It is unlawful for any:

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

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

(Prior Code, § 5.14) Penalty, see § 118.999

§ 118.126 PURCHASING.

It is unlawful for any person:

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

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

(C) To induce a minor to purchase or procure any alcoholic beverage.
(Prior Code, § 5.14) Penalty, see § 118.999

§ 118.127 POSSESSION.

It is unlawful for a minor to possess any alcoholic beverage with the intent to consume it at a place other than the household of the minor's parent or guardian. Possession of an alcoholic beverage by a minor at a place other than the household of the parent or guardian is prima facie evidence of intent to consume it at a place other than the household of his or her parent or guardian.
(Prior Code, § 5.14) (Ord. 41, 2nd Series, eff. 4-10-1985) Penalty, see § 118.999

§ 118.128 ENTERING LICENSED PREMISES.

(A) It is unlawful for any minor, as defined in this chapter, to enter licensed premises for the purpose of purchasing or consuming any alcoholic beverage.

(B) It is not unlawful for any person who has attained the age of 18 years to enter licensed premises for the following purposes:

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

(2) To consume meals; and/or

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

(Prior Code, § 5.14) (Ord. 68, 2nd Series, eff. 7-25-1991) Penalty, see § 118.999

§ 118.129 MISREPRESENTATION OF AGE.

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

(Prior Code, § 5.14) (Ord. 41, 2nd Series, eff. 4-10-1986) Penalty, see § 118.999

§ 118.130 PROOF OF AGE.

Proof of age for purchasing or consuming alcoholic beverages may be established only by a valid driver's license or identification card issued by the state, another state or a province of Canada, and including the photograph and date of birth of the licensed person; or by a valid military identification

card issued by the United States Department of Defense; or, in the case of a foreign national, from a nation other than Canada, by a valid passport.

(Prior Code, § 5.14) (Ord. 90, 2nd Series, eff. 5-11-1995)

§ 118.999 PENALTY.

Every person violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof. Conviction for violation shall also automatically revoke the license to sale at retail beer, wine or 3.2% malt liquor and the license shall be reinstated only upon application for license and conformance with the provisions of §§ 118.015 through 118.022 of this code of ordinances.

(Prior Code, § 5.99) (Ord. 41, 2nd Series, eff. 4-10-1986)

CHAPTER 119: FRANCHISES

Section

- 119.01 Definition
- 119.02 Franchise ordinances
- 119.03 Power of regulation reserved
- 119.04 Conditions in every franchise
- 119.05 Further provisions of franchises

§ 119.01 DEFINITION.

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

FRANCHISE. Any special privileges granted to any person in, over, upon or under any of the streets or public places of the city, whether the privilege has heretofore been granted by it or by the state, or shall hereafter be granted by the city or by the state.

(Prior Code, § 2.71)

§ 119.02 FRANCHISE ORDINANCES.

(A) The Council may grant franchises by ordinance.

(B) Franchise rights shall always be subject to the superior right of the public to the use of streets and public places.

(C) All persons desiring to make any burdensome use of the streets or public places, inconsistent with the public's right in those places, or desiring the privilege of placing in, over, upon or under any street or public place any permanent or semi-permanent fixtures for the purpose of constructing or operating railways, telegraphing or transmitting electricity, or transporting by pneumatic tubes, or for furnishing to the city or its inhabitants or any portion thereof, transportation facilities, water, light, heat, power, gas or any other utility, or for any other purpose, shall be required to obtain a franchise before proceeding to make the use of the streets or public places or before proceeding to place the fixtures in the places.

(Prior Code, § 2.71)

§ 119.03 POWER OF REGULATION RESERVED.

The city shall have the right and power to regulate and control the exercise by any person, of any franchise however acquired, and whether the franchise has been heretofore granted by it or by the state. (Prior Code, § 2.71)

§ 119.04 CONDITIONS IN EVERY FRANCHISE.

All conditions specified in this section shall be a part of every franchise even though they may not be expressly contained in the franchise.

(A) The grantee shall be subject to and will perform on its part all the terms of this section and will comply with all pertinent provisions of any city charter and city code, as the same may from time to time be amended.

(B) The grantee shall, in no case, claim or pretend to exercise any power to fix fares, rates and charges; but that the fares, rates and charges shall, at all times, be just, fair and reasonable for the services rendered and shall in all cases be fixed and from time to time changed, unless regulated by an agency of the state, in the manner following:

(1) A reasonable rate shall be construed to be one which will, with efficient management, normally yield above all operating expenses and depreciation, a fair return upon all money invested.

(2) If possible, maximum rates and charges shall be arrived at by direct negotiation with the Council.

(3) If direct negotiations fail to produce agreement, the Council shall, not less than 30 days before the expiration of any existing rate schedule or agreement, appoint an expert as its representative, the franchisee shall likewise appoint an expert as its representative and the two of them shall appoint a third person, preferably an expert, and the three of them shall constitute a board of arbitration. The board shall report its findings as soon as possible and the rates and charges it shall agree upon by majority vote shall be legal and binding, subject only to review by a court of competent jurisdiction upon application of one of the parties.

(C) The Council shall have the right to require reasonable extensions of any public service system from time to time, and to make the rules and regulations as may be required to secure adequate and proper service and to provide sufficient accommodations for the public.

(D) The grantee shall not issue any capital stock on account of the franchise or the value thereof, and that the grantee shall have no right to receive upon condemnation proceedings brought by the city to acquire the public utility exercising the franchise, any return on account of the franchise or its value.

(E) No sale or lease of the franchise shall be effective until the assignee or lessee shall have filed with the city an instrument, duly executed, reciting the facts of the sale or lease, accepting the terms of the franchise, and agreeing to perform all the conditions required of the grantee thereunder.

(F) Every grant in the franchise contained of permission for the erection of poles, masts or other fixtures in the streets and for the attachment of wires thereto, or for the laying of tracks in, or of pipes or conduits under the streets or public places, or for the placing in the streets or other public places of any permanent or semi-permanent fixtures whatsoever, shall be subject to the conditions that the Council shall have the power to require alterations therein, or relocation or rerouting thereof, as the Council may at any time deem necessary for the safety, health or convenience of the public, and particularly that it shall have the power to require the removal of poles, masts and other fixtures bearing wires and the placing underground of all facilities for whatsoever purpose used.

(G) Every franchise shall contain a provision granting the city the right to acquire the same in accordance with statute.

(H) The franchisee may be obligated by the city to pay the city fees to raise revenue or defray increased costs accruing as a result of utility operations, or both, including, but not limited to, a sum of money based upon gross operating revenues or gross earnings from its operations in the city.
(Prior Code, § 2.71)

§ 119.05 FURTHER PROVISIONS OF FRANCHISES.

The enumeration and specification of particular matters which must be included in every franchise or renewal or extension thereof, shall not be construed as impairing the right of the city to insert in any franchise or renewal or extension thereof other and further conditions and restrictions as the Council may deem proper to protect the city's interests, nor shall anything contained in this section limit any right of power possessed by the city over existing franchises.
(Prior Code, § 2.71)

