

**TITLE XI: BUSINESS REGULATIONS**

Chapter

**110.GENERAL LICENSING PROVISIONS**

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## CHAPTER 110: GENERAL LICENSING PROVISIONS

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## ***FIREWORKS***

### **§ 110.01 DEFINITION.**

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

***FIREWORKS.*** Shall have the same definition as contained in M.S. § 624.20, Subdivision 1(c), as it may be amended from time to time, or any superceding statute.

(Ord. 146, passed 6-2-2003)

### **§ 110.02 PERMIT REQUIRED.**

(A) No person shall sell or possess for sale fireworks without first having obtained an annual permit from the city.

(B) The designated Fire Official shall give final approval or denial of an application for the manufacture, storage for commercial purposes, or sale of fireworks within 30 days of the application being made to the city.

(C) Permits shall be issued for the calendar year applied for and shall be issued on May 1.

(D) Prior to processing the application, a criminal records check may be conducted. Neither the applicant nor the responsible party for the permit shall have been convicted of a felony or a fire or fireworks-related misdemeanor within the last 3 years.

(E) Prior to processing the application, the designated Fire Official shall determine that the proposed location is code compliant.

(F) The application shall include a letter from the person legally responsible for the property on which the fireworks related activity would occur. The letter shall grant permission to the applicant for the use of the property. (Ord. 146, passed 6-2-2003) Penalty, see § 10.99

### **§ 110.03 SALES AND STORAGE OF FIREWORKS.**

(A) No person shall sell or store fireworks within 50 feet of any fuel dispensing apparatus. Fireworks sales and display shall not be permitted within malls, within buildings where alcohol is sold and within assembly areas such as halls, theatres, churches, or schools. The designated Fire Official shall determine compliance.

(B) It shall be unlawful for any seller of any fireworks to permit smoking at any site containing fireworks. 'No Smoking' signs must be conspicuously posted and approved fire extinguishers must be available for use.

(C) In buildings that do not have an approved automated sprinkling system, retail sales displays of fireworks shall be limited to a gross weight of 400 pounds of fireworks and packaging. In buildings that do contain an approved automated sprinkling system, the amount of fireworks contained in retail sales displays shall be a maximum of 1,000 gross pounds of fireworks and packaging.

(D) The requirements of this subchapter are in addition to any requirements imposed by any building and zoning regulations, fire codes, or state law.

(E) Only persons 18 years of age or older may purchase fireworks and the age of the purchaser must be verified by photographic identification.

(F) Exterior storage, display, sales, or transient sales of fireworks are permitted subject to a site plan review. Site plans shall be submitted for review and approval a minimum of 30 days before display. A distance of 100 feet shall be provided from the exterior display to adjacent buildings, combustibles, or flammable liquids. No manufacturing, sales, or storage for commercial purposes shall occur on residentially zoned property or properties used for educational purposes or assemblies.

(G) A list of all consumer fireworks displayed and stored on the property shall be available at all times. The list shall document the name, weight, and quantity of the fireworks and be accompanied by the material safety date sheets.

(H) Manufacturing, warehouse buildings, or display in excess of the quantities listed in division (C) above for retail consumer fireworks shall be classified as an H occupancy as defined in the building code and protected as such, similar to explosives and aerosols and in accordance with Explosives Article 77 of the Fire Code.

(I) A handout describing fireworks shall be provided to each consumer purchasing fireworks.  
(Ord. 146, passed 6-2-2003) Penalty, see § 10.99

#### **§ 110.04 USE AND POSSESSION.**

(A) It is unlawful to use, fire, or discharge any fireworks along the route of and during any parade, in any place of public assembly, on any public property or in any commercial/industrial zoning district.

(B) It is unlawful at any time to throw, toss, or aim any fireworks at any person, animal, vehicle, or other thing or object or used in any manner that may threaten or cause possible harm to life or property.

(C) The discharge of fireworks shall be prohibited inside a building and within 15 feet of any building.

(D) The Fire Official may ban fireworks if dry or windy conditions occur.

(E) Juveniles may not possess fireworks unless under the direct supervision of a responsible adult.

(F) Fireworks may not be discharge in such a manner that may create a nuisance nor between the hours of 12:00 a.m. to 7:00 a.m. Fireworks use shall also be subject to any additional ordinances such a noise and/or assembly.

(Ord. 146, passed 6-2-2003) Penalty, see § 10.99

#### **§ 110.05 VIOLATIONS.**

(A) Materials that violate and/or pose a threat to public safety may be confiscated and destroyed. Costs associated with disposal shall be assessed back to the property owner or permit holder.

(B) Violations of this regulation, city ordinance, or state statute may result in revocation of the permit.

(C) Violations of these fire rules are misdemeanor offenses.

(Ord. 146, passed 6-2-2003) Penalty, see § 10.99

## ***GAMBLING DEVICES***

### **§ 110.20 PURPOSE.**

The purpose of this subchapter is to regulate and control the use of certain gambling devices specified hereunder and to prohibit the commercialization of the use.

(Ord. 80, passed 5-7-1979)

### **§ 110.21 DEFINITIONS.**

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

***ACTIVE MEMBER.*** A member of the organization requesting a license whose dues are paid for the current membership year and who has been a member for at least 6 months. In any organization where dues are not required, the last 6-month membership period is sufficient.

***ELIGIBLE ORGANIZATIONS.*** Any fraternal, religious, veterans, or other nonprofit organization which has been in existence for at least 3 years and has at least 30 active members.

***GAMBLING DEVICES.*** Shall include only the following devices: paddlewheels, tipboards, or an apparatus used in conducting raffles.

***PADDLEWHEEL.*** A wheel marked off into 6 sections containing 1 or more numbers, and which, after being turned or spun, uses a pointer or marker to indicate winning chances.

***PROFIT.*** The gross receipts from the operations of gambling devices and the conduct of raffles, less reasonable sums expended for prizes, local licensing fees, taxes, and maintenance costs for the devices.

***RAFFLE.*** A game in which a participant buys a ticket for a chance at a prize with the winner determined by a random drawing.

***TIPBOARD.*** A board, placard, or other device measuring at least 12 inches square, marked off in a grid or similar pattern, in which each section contains a hidden number or numbers, or other symbols, which determines the winning chances.

(Ord. 80, passed 5-7-1979)

### **§ 110.22 LICENSE REQUIRED.**

No gambling device shall be used in any manner except by an eligible organization which has secured a license for that purpose, as provided in this subchapter, provided, however, that an organization which uses the gambling devices defined above less than 5 times in any calendar year is not required to obtain such a license. However, such an organization must notify the City Clerk/Administrator of the time and place of the use at least 5 days prior to the time the use takes place.

(A) A license shall be valid for 12 calendar months from the date of issuance.

(B) The annual license fee shall be \$50.

(C) A license application shall be acted on by the Council no sooner than 30 days and no later than 180 days from the date of application.

(D) No license for the use of the gambling devices may be transferred to any other person or organization. No gambling device license shall be transferred to any location other than the location specified in the license, without prior approval of the City Council.

(Ord. 80, passed 5-7-1979) Penalty, see § 10.99

### **§ 110.23 LICENSE APPLICATIONS.**

Every application for a gambling device license shall be made to the City Clerk/Administrator on a form supplied by the city and containing the information as the city or Clerk/Administrator may require. No person shall make a false statement in an application. Copies of each application shall be referred to the city's Police Chief, Fire Chief, and Building Inspector for their recommendations. The recommendations shall be given to the Council before action is taken on the license. The recommendations should be given as soon as possible, but in any case not more than 30 days after the application is made. It is required of any organization making application for a gambling device license that it update the information set out in the application if any change is made.

(Ord. 80, passed 5-7-1979)

### **§ 110.24 SUSPENSION OR REVOCATION.**

The Council may suspend for a period not exceeding 60 days, or revoke, any gambling device license violation of any provisions of Chapter 507, 1978, Laws or this subchapter. The holder of this license shall be granted a hearing upon at least 10 days notice before the revocation or suspension is ordered. The notice shall state the time and place of the hearing and the nature of the charges against the licensee. The hearing shall be in front of the City Council and the ultimate decision shall be made by the Council by majority vote.

(Ord. 80, passed 5-7-1979)

### **§ 110.25 USE OF GAMBLING DEVICES BY ELIGIBLE ORGANIZATIONS.**

(A) Each licensed eligible organization shall appoint a single manager to supervise the use of gambling devices.

(B) The manager must be a member of the licensed organization, with dues paid for the current membership period, and must have been a member of the organization for at least 2 years.

(C) In any case where dues are not required of a member, the length of his or her membership alone shall suffice.

(D) The manager shall give a fidelity bond in the sum of \$10,000 in favor of the organization conditioned on the faithful performance of his or her duties, provided, however, that the City Council may waive the bond requirement upon a showing by the proposed manager and the licensed organization that bond is not required to protect the organization.

(E) The waiver shall be granted upon a majority vote of the Council.

(F) Terms of the bond shall provide that notice shall be given in writing to the City Council not less than 30 days prior to its cancellation.

(G) All use of gambling devices shall be made under the direct supervision of the manager who shall be responsible for the conduct of those individuals using the gambling devices to ensure the conduct complies with all applicable laws and ordinances.

(H) No person may act as a manager for more than 1 organization.

(I) In cases where the manager is ill or otherwise incapacitated, the licensed organization may appoint an individual to perform the duties of the manager if notice is given of that fact in writing to the City Council 24 hours before the use is made.

(J) The notice shall give the name of the replacement manager together with the reasons for the replacement.

(K) No compensation shall be paid to any person in connection with the operation of a gambling device or a conduct of a raffle by any licensed organization.

(L) No person who is not an active member of an organization or its auxiliary or the spouse or the surviving spouse of an active member may participate in any manner in the organization's operation of a gambling device or conduct of a raffle.

(Ord. 80, passed 5-7-1979) Penalty, see § 10.99

#### **§ 110.26 GROSS RECEIPTS.**

(A) Each organization licensed to operate gambling devices shall keep a record of its gross receipts, expenses, and profits for each single gathering or occasion at which gambling devices are operated or a raffle is conducted. All deductions from gross receipts from each single gathering or occasion shall be documented with receipts or other records indicating the amount, description of the purchased item or service or other reason for the deduction, and the recipient. The distribution of profits shall be itemized as to payee, purpose, amount, and date of payment.

(B) Gross receipts from the operation of gambling devices and the conduct of raffles shall be segregated from other revenues of the organization, including bingo gross receipts, and placed in a separate account. Each organization shall have separate records of its gambling operations. The person who accounts for the gross receipts, expenses, and profits from the operation of gambling devices or the conduct of raffles shall not be the same person who accounts for other revenues of the organization, except that the person may be the same person who accounts for bingo device gross receipts, expenses, and profits.

(C) Each organization licensed to operate gambling devices or to conduct raffles shall report monthly to its membership, and to the City Council, its gross receipts, expenses, and profits from gambling devices or raffles, and the distribution of profits itemized as required in this subdivision.

(D) Records required by this section shall be preserved for 3 years, and organizations shall make available their records relating to operation of gambling devices and the conduct of raffles for public inspection at reasonable times and places.

(Ord. 80, passed 5-7-1979)

#### **§ 110.27 LOCATION.**

Gambling devices shall be operated and raffles conducted by a licensed organization only upon premises which it owns or leases except that tickets for raffles conducted in accordance with this section may be sold off the premises. Leases, unless authorized in another location by the City Council, shall be for a period of not less than 1 year, and shall be in writing. No lease shall provide that rental payments be based on a percentage of receipts or profits from gambling devices or raffles. Copies of all leases shall be provided to the City Council with the application. (Ord. 80, passed 5-7-1979)

**§ 110.28 PRIZES.**

Total prizes from the operation of paddlewheels and tipboards awarded in any single day in which they are operated shall not exceed \$500. Total prizes resulting from any single spin of a paddlewheel or from any tipboard shall not exceed \$100. Total prizes awarded in any calendar year by any organization from the operation of paddlewheels and tipboards and the conduct of raffles shall not exceed \$15,000. Merchandise prizes shall be valued at fair market retail value.

(Ord. 80, passed 5-7-1979)

**§ 110.29 INSPECTION AND INVESTIGATION.**

Any city official or employee having a duty to perform with reference to a gambling device license, and any police officer may inspect and examine the gambling devices records of licensed organizations upon 24-hours notice.

(Ord. 80, passed 5-7-1979)

**§ 110.30 USE OF GAMBLING DEVICE RECEIPTS.**

No expense shall be incurred or amounts paid in connection with the use of gambling device receipts, except those reasonably expended for supplies and equipment, prizes, rent, or utilities used in connection with gambling device.

(Ord. 80, passed 5-7-1979)

**§ 110.31 USE OF GAMBLING DEVICE PROFITS.**

(A) Profits from the use of any gambling device shall be expended only as authorized by a resolution recorded in the official minutes at a regular meeting of the licensed organization and only for 1 or more of the following purposes:

(1) Benefitting persons by enhancing their opportunity for religious or educational advancement by relieving them or protecting them from disease, suffering, or distress, by contributing to their well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded;

(2) Initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures;

(3) Lessening the burdens borne by government or voluntarily supporting or augmenting or supplementing services which government would normally render to the people; and/or

(4) The improving, expanding, maintaining, or repairing of real property owned or leased by the licensed organization.

(B) Profits from the use of gambling devices shall not be expended for the erection or acquisition of any real property, unless the City Council specifically authorizes the expenditures after finding that the property will be used exclusively for 1 or more of the purposes specified in this section.

(Ord. 80, passed 5-7-1979) Penalty, see § 10.99

**§ 110.32 EXEMPTIONS.**

Gambling devices may be used without complying with the requirements of §§ 110.25 or 110.27, if conducted in connection with a civic celebration recognized by a resolution of the City Council, provided that gambling devices shall not be used for more than 12 days during any one recognized civic celebration, or by an organization that is not licensed in accordance with this subchapter.

(Ord. 80, passed 5-7-1979)

**§ 110.33 EFFECTIVE DATE.**

This subchapter becomes effective upon its passage and publication according to law.

(Ord. 80, passed 5-7-1979)

***SEXUALLY-ORIENTED BUSINESSES***

**§ 110.45 LICENSE REQUIRED**

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

(Ord. 162, passed 4-3-2006) Penalty, see § 10.99

**§ 110.46 LICENSE APPLICATION.**

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

(A) *All applicants.*

(1) Whether the applicant is a natural person, corporation, partnership, or other form of organization.

(2) The legal description of the premises to be licensed, along with a floor plan of the premises. The floor plan shall detail all internal operations and activities, including a statement of the total floor space occupied by the business. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimension of the interior of the premises to an accuracy of plus or minus 6 inches.

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

(4) Whether the applicants holds similar licenses in other communities. State the issuer of such licenses.

(B) *Applicants who are natural persons.*

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

(2) Where the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places where used.

(3) The street and city addresses at which the applicant has lived during the preceding 2 years.

(4) The type, name and location of every business or occupation in which the applicant has been engaged during the preceding 2 years and name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding 2 years.

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

(C) *Applicants that are partnerships.*

(1) The name(s) and addresses of all general partners and all of the information concerning each general partner that is required of applicants in division (B).

(2) The name(s) of the managing partner(s) and the interest of each partner in the business.

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

(D) *Corporate or other applicants.*

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

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

(3) The name of the manager(s), proprietors(s) or other agent(s) in charge of the business and all of the information concerning each manager, proprietor or agent that is required of the applicants in division (B).  
(Ord. 162, passed 4-3-2006)

**§ 110.47 LICENSE APPLICATION EXECUTION.**

If the application is that of a natural person, the application shall be signed, and sworn to by that person (notarized); if of a corporation, by an officer thereof; if of a partnership by one of the general partners; if of an unincorporated association, by the manager or managing officer thereof.  
(Ord. 162, passed 4-3-2006)

**§ 110.48 LICENSE APPLICATION CERTIFICATION.**

Applications of licenses under this subchapter shall be submitted to the Clerk/Administrator. Within 20 calendar days of receipt of a complete application and payment of all license application fees, the City Council or its agents and employees 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 subchapter.  
(Ord. 162, passed 4-3-2006)

**§ 110.49 LICENSE APPLICATION  
CONSIDERATION.**

No later than 10 calendar days after the completion of the license application verification and investigation by the City Council or its agents and employees, the City Council shall accept or deny the license application in accordance with this subchapter. If the application is denied, the issuing authority shall notify the applicant of the determination in writing. The notice shall be mailed by certified and regular mail to the applicant at the address provided on the application form. And it shall inform the applicant of the applicant's right within 20 calendar days of receipt of the notice by the applicant, to request an appeal of the determination for reconsideration by the City Council or to immediately challenge the determination in a court of law. If an appeal to the City Council is timely received, the hearing before the City Council shall take place within 20 calendar days of the receipt of the appeal. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises by the City Building Official or Permit Administrator. During the application consideration process prescribed herein, an applicant operating a business not previously subject to the license provisions of this subchapter may remain operating pending the outcome of the application consideration by the City Council.  
(Ord. 162, passed 4-3-2006)

**§ 110.50 LICENSE FEES.**

(A) *Application fee.*

(1) The license application fee shall be established by ordinance.

(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 city for deposit into the general fund. 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. In the case of a withdrawal of an application, the City Clerk shall refund the license application fee less any charges incurred for city administration time and expenses incurred up until the date of the withdrawal request.

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

(B) *Investigation fee.* An applicant for any license under this subchapter shall deposit with the City Clerk at the time an original application is submitted, \$1,000 to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this subchapter. The investigation fee shall be non-refundable.

(Ord. 162, passed 4-3-2006)

**§ 110.51 PERSONS AND LOCATIONS  
INELIGIBLE FOR A LICENSE.**

The City Council shall issue a license under this subchapter to an applicant unless 1 or more of the following conditions exists:

- (A) The applicant is not 18 years of age or older on the date the application is submitted to the city.
- (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 business license revoked from the city or any other jurisdiction within a 1-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 in the past 5 years.

(F) The sexually-oriented business does not meet the zoning requirements in the Zoning Code.

(G) The sexually-oriented business does not meet the requirements of the Zoning Code.

(H) The applicant has not paid the license and investigation fees required in § 110.50.  
(Ord. 162, passed 4-3-2006)

### **§ 110.52 LICENSE RESTRICTIONS.**

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

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

(C) *Maintenance of order.* A licensee under this subchapter shall be responsible for the conduct of the business being operated and shall not allow any illegal activity to take place on or near the licensed premises including but not limited to prostitution, public indecency, indecent exposure, disorderly conduct or the sale or use of illegal drugs. Every act or omission by an employee or independent contractor of the licensee constituting a violation of this subchapter shall be deemed the act or omission of the licensee if such 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.

(D) *Distance requirement for live adult entertainment.* All performers, dancers and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating or 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 10 feet from all patrons, customers or spectators and shall dance or provide the entertainment on a platform intended for that purpose, which shall be raised at least 2 feet from the level of the floor on which patrons or spectators are located.

(E) *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.

(F) *Gratuity prohibition.* No customer, 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.

(G) *Adult car wash requirements.* Sexually-oriented businesses that are adult car washes shall meet all of the requirements of this subchapter.  
(Ord. 162, passed 4-3-2006) Penalty, see § 10.99

**§ 110.53 RESTRICTIONS REGARDING LICENSE TRANSFER.**

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

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

(Ord. 162, passed 4-3-2006) Penalty, see § 10.99

**§ 110.54 RESTRICTIONS REGARDING HOURS OF OPERATION.**

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

(A) Adult body painting studio, adult book stores, adult companionship establishment, adult modeling studio, adult motion picture theaters, adult mini-motion picture theaters, adult sauna, adult car wash: Monday through Sunday B not open before 8:00 a.m. or after 11:00 p.m.

(B) Adult entertainment facilities, including adult oriented cabarets: Monday through Sunday -- not open before 8:00 a.m. or after 1:00 a.m.

(Ord. 162, passed 4-3-2006) Penalty, see § 10.99

**§110.55 RESTRICTIONS REGARDING MINORS.**

No licensee shall allow minors to enter the licensed premises. The licensee shall request proof of age of all persons the licensee believes to be under the age of 18 years. Proof of age may be established only by a valid driver's license or identification card issued by the State of Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person; a valid military identification card issued by the United States Department of Defense, or in the case of a foreign national from a nation other than Canada, a valid passport.

(Ord. 162, passed 4-3-2006) Penalty, see § 10.99

**§ 110.56 RENEWAL APPLICATION.**

(A) *Annual licenses; deadline of renewal applications.* All licenses issued under this subchapter shall be effective for only 1 year commencing with the date of approval by the City Council. An application for the renewal of an existing license shall be submitted to the City Clerk at least 30 calendar days prior to the expiration date of the license.

(B) *Verification, investigation and consideration of renewal application.* Within 20 calendar days of receipt by the City Clerk/Administrator of a fully completed renewal application, the City Council 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 subchapter. No later than 10 calendar days after the completion of the renewal application verification and investigation by the City

Council, as prescribed herein, the City Council shall issue a renewal license unless 1 or more of the following conditions exist:

- (1) The applicant is not 18 years of age or older on the date the renewal application is submitted to the city.
- (2) The applicant failed to supply all of the information requested on the renewal application.
- (3) The applicant gave false, fraudulent or untruthful information on the renewal application.
- (4) The sexually-oriented business was found in the immediately preceding license year to have violated the license restrictions prescribed in this subchapter.
- (5) The sexually-oriented business does not meet the zoning requirements in the Zoning Code.
- (6) The premises to be licensed as a sexually-oriented business is currently licensed by the city as a tanning facility, tattoo establishment, pawnshop, therapeutic massage enterprise, or an establishment licensed to sell alcoholic beverages.
- (7) The applicant has had a conviction of a felony or gross-misdemeanor or misdemeanor relating to sex offenses, obscenity offenses, or sexually-oriented businesses in the in the past 5 years.
- (8) The applicant has had a sexually-oriented business license revoked from the city or any other jurisdiction within a 1-year period immediately preceding the date the renewal application was submitted.

(B) *Notice of denial.* If the City Council denies a renewal application, the City Council shall notify the applicant in accordance with this subchapter and the notice shall state grounds of the denial.

(C) *Appeal to the City Council or court of law.* After the denial of a renewal application by the City Council, the applicant may appeal the determination of the City Council for reconsideration or by immediately challenging the determination in a court of law. If the city denies renewal of a license under this section, the applicant shall not be issued a license under this section for 1 year from the date of the denial. If subsequent to the denial, the City Council finds that the basis for the denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the denial became final.  
(Ord. 162, passed 4-3-2006)

#### **§ 110.57 SANCTIONS FOR LICENSE VIOLATIONS.**

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

- (1) Fraud, misrepresentation, or false statement contained in a license application or a renewal application.
- (2) Fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business.
- (3) Any violation of this subchapter or related state law.
- (4) A licensee's criminal conviction that is directly related to the occupation or business licensed as defined by M.S. § 368.03, Subdivision 2, as it may be amended from time to time, provided that the licensee cannot show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the licensed occupation or business as defined by M.S. § 364.03, Subdivision 3, as it may be amended from time to time.

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

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

(1) The licensee's license was in the preceding 14 months and an additional cause of suspension as detailed in division (A) 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 has knowingly allowed prostitution on the premises.

(4) A licensee or an employee or independent contractor of the licensee has knowingly allowed possession, use or sale of controlled substances on the premises.

(5) A licensee violated any of the provisions of M.S. §§ 617.241 through 617.299, as it may be 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 sexually-oriented business during a period of time when the licensee's license was suspended.

(7) A licensee has been convicted of an offense prescribed in this subchapter for which the time period required has not elapsed.

(8) On 2 or more occasions within a 12-month period, a person or persons has/have committed and offense prescribed in this subchapter, 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 an independent contractor of the licensee has knowingly allowed specified sexual activities to occur in or on the licensed premises.

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

(C) *Notice of hearing.* A revocation or suspension shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least 8 days notice of the time and place of the public hearing and shall state the nature of the charges against the licensee. The notice shall be mailed to the licensee by regular and certified mail at the most recent address listed on the application. (Ord. 162, passed 4-3-2006)

## **§ 110.60 DELINQUENT TAXES, ASSESSMENTS AND CHARGES**

The council, in its discretion, shall have the right to refuse to issue or renew any permit or license for the sale of fireworks, or for gambling, or for any sexually-oriented business on any premises on which taxes, assessments or other financial claims of the city are delinquent or unpaid. Delinquent or unpaid taxes, assessments or other financial claims of the city on the premises for which the permit or license has been issued shall be ground for the revocation of said permit or license.

## CHAPTER 111: ALCOHOLIC BEVERAGES

### Section

#### *General Provisions*

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#### *Municipal Liquor Stores*

- 111.50 Proof of financial responsibility
- 111.51 Issuance of other licenses
  
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**§ 111.01 ADOPTION OF STATE LAW BY REFERENCE.**

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

**§ 111.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.**

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

**§ 111.03 DEFINITIONS.**

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

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

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

**§ 111.04 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.**

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

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

unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.

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

Penalty, see § 111.99

#### **§ 111.05 CONSUMPTION IN PUBLIC PLACES.**

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

Penalty, see § 111.99

### ***LICENSING***

#### **§ 111.20 NUMBER OF LICENSES WHICH MAY BE ISSUED.**

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

#### **§ 111.21 TERM AND EXPIRATION OF LICENSES.**

Each license shall be issued for a maximum period of 1 year. All licenses, except temporary licenses, shall expire on June 30 of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying city consent to the permit, shall expire on March 31 of each year.

#### **§ 111.22 KINDS OF LIQUOR LICENSES.**

The Council of a city that does not have a municipal liquor store is authorized to issue the following licenses and permits, up to the number specified in § 111.20. The Council of a city which has a municipal liquor store is authorized to issue only those licenses specified in § 111.55.

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

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

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

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

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

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

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

(H) Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.

(I) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: theaters, restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S. § 340A.404, Subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in § 111.03; and to licensed bed and breakfast facilities which meet the criteria in M.S. § 340A.401, Subd. 1, as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of § 111.23 shall not exceed 2 of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license may be authorized with approval given permission to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

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

(K) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of § 111.23 shall not exceed \$300, or the maximum

amount permitted by M.S. § 340A.14, Subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.

**§ 111.23 LICENSE FEES; PRO RATA.**

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

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

(C) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be paid annually.

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

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

**§ 122.24 COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.**

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

**§ 111.25 APPLICATION FOR LICENSE.**

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

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

## **§ 111.26 DESCRIPTION OF PREMISES.**

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed.

## **§ 111.27 APPLICATIONS FOR RENEWAL.**

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

## **§ 111.28 TRANSFER OF LICENSE.**

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

Penalty, see § 111.99

## **§ 111.29 INVESTIGATION.**

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

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

## **§ 111.30 HEARING AND ISSUANCE.**

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

**§ 111.31 RESTRICTIONS ON ISSUANCE.**

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

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

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

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

(E) No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing on the effective date of this chapter or to the renewal of an existing license.

(F) No license shall be granted within 500 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold. Penalty, see § 111.99

**§ 111.32 CONDITIONS OF LICENSE.**

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

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

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

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

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

**§ 111.33 HOURS AND DAYS OF SALE.**

(A) The hours of operation and days of sale shall be those set by M.S. § 340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows.

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

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

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

(E) Any violation of any condition of this section may be grounds for revocation or suspension of the license. Penalty, see § 111.99

#### **§ 111.34 MINORS ON PREMISES.**

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

(B) No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

Penalty, see § 111.99

#### **§ 111.35 RESTRICTIONS ON PURCHASE AND CONSUMPTION.**

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. ' 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.

Penalty, see § 111.99

#### **§ 111.36 SUSPENSION AND REVOCATION.**

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

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

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

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

(a) For the first violation within any three-year period, at least 1 day suspension in addition to any criminal or civil penalties which may be imposed.

(b) For a second violation within any 3-year period, at least 3 consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(c) For the third violation within any 3-year period, at least 7 consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(d) For a fourth violation within any 3-year period, the license shall be revoked.

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

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

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

### ***MUNICIPAL LIQUOR STORES***

#### **§ 111.50 PROOF OF FINANCIAL RESPONSIBILITY.**

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

#### **§ 111.51 ISSUANCE OF OTHER LICENSES.**

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

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

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

**§ 111.99 PENALTIES.**

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

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

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

(C) The term ‘violation’ as used in this section includes any and all violations of the provisions of this chapter, or of M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding 3-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.

**§ 111.100 DELINQUENT TAXES, ASSESSMENTS AND CHARGES**

The council, in its discretion, shall have the right to refuse to issue or renew a permit for the sale of intoxicating liquor on any premises on which taxes, assessments or other financial claims of the city are delinquent or unpaid. Delinquent or unpaid taxes, assessments or other financial claims of the city on the premises for which the license has been issued shall be ground for the revocation of an intoxicating liquor license.



## CHAPTER 112: TOBACCO REGULATIONS

### Section

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- 112.14 Delinquent taxes, assessments and charges

### § 112.01 PURPOSE.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices; and the sales, possession, and uses are violations of both state and federal laws, and because studies have shown that most smokers begin smoking before age 18; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this chapter shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

(Ord. 135, passed 12-10-2001)

### § 112.02 DEFINITIONS.

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

**CARTON.** A package containing 10 or more individual packages of cigarettes.

**CITY.** The City of Avon, Minnesota.

**LOCATION.** The building, room or rooms, space or area where tobacco is sold at retail, identified by a postal address and under the control of 1 person.

**MINOR.** Any individual, without regard to sex, who has not attained the age of 18 years.

**OPERATOR.** The person in legal possession and control of a location by reason of ownership, lease, contract, or agreement, for the sale of tobacco at retail.

**PERSON.** An individual, a partnership, a corporation, group of individuals, or entities associated together for any purpose, which includes the sale of tobacco.

**RETAIL TOBACCO DEALER.** Any person or entity selling, offering for sale, exposing for sale or having in possession tobacco for sale.

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

**SELF-SERVICE VENDING.** 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; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour, Cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts, refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in the manner as to be suitable for chewing or smoking in a pipe or cigarette papers.

**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.

**TOBACCO SHOP.** A self-contained facility or section of a retail store which is physically separated from other areas of the business, that is not more than 1000 square feet in area, in which tobacco products are offered for sale, with or without other non-tobacco products, which includes open air display of individual products for inspection and selection by patrons, and which is continuously staffed by an employee or to which the entrance and exit to the enclosed is clearly visible to the cashier.

**TOBACCO VENDING MACHINE.** Any mechanical, electrical, or other device which upon the insertion of a coin or coins, tokens or other objects shall release or dispense in packages or otherwise, tobacco for the purpose of selling the same at retail.

(Ord. 135, passed 12-10-2001)

### **§ 112.03 LICENSE REQUIRED.**

No person shall sell at retail any tobacco within the city's territorial limits unless the person holds a retail tobacco dealer's license in full force and effect.

(A) *Application.* Any person desiring a retail tobacco dealer's license shall make and file with the City Clerk/Administrator a written application executed in duplicate containing the applicant's full name, residential and business addresses and telephone numbers, and the name of the business for which the license is sought, and any other information the Council requires, and accompanied by the required fee established.

(B) *Investigation.* The City Clerk/Administrator shall immediately transmit a copy of the application to the Chief of Police, who shall investigate all facts and information regarding the applicant's fitness to receive the license and perform the duties imposed by this chapter. Upon completing the investigation, the Chief of Police shall forward a written report of his or her findings and recommendations to the City Council regarding the issuance of a license to the applicant.

(C) *Issuance.* The City Council shall consider the facts and the Chief of Police's recommendations, together with any material facts which it may have or obtain, and then, by resolution shall approve or deny the application and forward a copy of the resolution to the City Clerk/Administrator. If the Council approves the application, the City Clerk/Administrator shall execute and deliver a license to the application.

(D) *Term.* The license shall be for 1 calendar year from the issued date, or, if it is a first license for the location by the licensee, then for the balance of the current year. If the Council denies the license, the City Clerk/Administrator shall give notice of the denial to the applicant.

(E) *Fees.* The Council shall fix the basic fee to be charged for a license at each separate location.

(F) *Transfers.* All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. Transfers of licenses to another person or location shall not be made without the Council's prior approval.

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

(H) *Renewal.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The applicant shall request a renewal at least 30 days but not more than 60 days before the current license expires. The issuance of a license under this chapter shall be considered a privilege and not an absolute right and shall not entitle the license holder to an automatic renewal.

(I) *Moveable business place.* The city shall not issue a license to a moveable business place, including, but not limited to, a business operated out of a truck, van, automobile, or other vehicle or structure that is not a fixed address store front or other permanent structure authorized for sales transactions.  
(Ord. 135, passed 12-10-2001)

#### **§ 112.04 BASIS FOR LICENSE DENIAL.**

The following shall be grounds for denying the issuance of a renewal of a license under this chapter, but the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

(A) The applicant is a minor.

(B) The applicant has been convicted within the past 5 years of any violation of a federal, state or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.

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

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

(E) The applicant is prohibited by federal, state or other local law, ordinance or other regulation, from holding such a license.  
(Ord. 135, passed 12-10-2001)

#### **§ 112.05 PROHIBITED SALES.**

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

(A) To a minor;

(B) By means of any type of a tobacco vending machine, unless minors are at all times prohibited from entering the licensed establishment;

(C) By means of self-service vending;

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

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

(Ord. 135, passed 12-10-2001) Penalty, see § 10.99

#### **§ 112.06 SALES OF LESS THAN A CARTON.**

No retail tobacco licensee shall offer or sell any tobacco products, packaged as less than a carton, unless:

(A) By a vending display that is either on or accessible only from behind a check-out or service counter that is staffed by at least 1 on-duty clerk or employee, and the display is within clear view of that on-duty clerk or employee; or

(B) The displays are contained in a locked display cabinet, to which access is controlled by store employee. This section shall not apply to a tobacco shop.

(Ord. 135, passed 12-10-2001) Penalty, see § 10.99

#### **§ 112.07 SELF-SERVICE VENDING.**

(A) *Prohibition.* It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, or tobacco related devices by any means whereby the customer may have access to 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. Any retailer selling tobacco, tobacco products, or tobacco related devices at the time this chapter is adopted shall comply this section within 60 days.

(B) *Exception.* This section shall not apply to a retail tobacco dealer where minors are prohibited at all times from entering and which derives 40% or more of its revenue from the sale of tobacco and tobacco related products.

(Ord. 135, passed 12-10-2001) Penalty, see § 10.99

#### **§ 112.08 COMPLIANCE CHECKS.**

Compliance checks of all tobacco products vendors shall be conducted on a random basis, but at least annually, and the results reported to the City Council. Compliance checks shall comply with state law.

(Ord. 135, passed 12-10-2001)

#### **§ 112.09 OTHER ILLEGAL ACTS.**

Unless otherwise provided, it shall be a violation of this chapter for any:

(A) Person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor;

(B) Minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This division (B) shall not apply to Minors lawfully involved in a compliance check;

(C) Minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device;

(D) Minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain the items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This division (D) shall not apply to minors lawfully involved in a compliance check; and/or

(E) Minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

(Ord. 135, passed 12-10-2001)

### **§ 112.10 HEARINGS.**

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

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

(C) *Hearing officer.* The City Council shall serve as the hearing panel.

(D) *Decision.* If the hearing panel determines that a violation of this chapter did occur, that decision, along with the hearing panel'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. If the hearing panel finds that no violation occurred or finds grounds for not imposing any penalty, the findings shall be recorded and a copy provided to the acquitted accused violator.

(E) *Appeals.* Appeals of any decision made by the hearing panel shall be filed in the Stearns County District Court.

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

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

(Ord. 135, passed 12-10-2001)

### **§ 112.11 VIOLATIONS.**

(A) *Licensees.* The City Council may impose a penalty against any licensee found to have violated this chapter or whose employee shall have violated this chapter.

(B) *Other individuals.* Other individuals, other than minors regulated by division (C) below, found to be in violation of this chapter, shall be charged a fine.

(C) *Minors.* Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be charged a fine and shall be required to attend an appropriate tobacco education, cessation or diversion class or program from an approved source. The minor shall be responsible for all costs to attend the program(s).  
(Ord. 135, passed 12-10-2001) Penalty, see § 10.99

#### **§ 112.12 EXCEPTIONS AND DEFENSES.**

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.  
(Ord. 135, passed 12-10-2001)

#### **§ 112.13 CONFORMITY WITH OTHER LAWS.**

This chapter's remedies and administrative penalties are not exclusive and are in addition to any other remedies the law provides. This chapter does not specifically preclude criminal prosecution under state law regarding the use, possession, or sale of tobacco.  
(Ord. 135, passed 12-10-2001)

#### **§ 112.14 DELINQUENT TAXES, ASSESSMENTS AND CHARGES**

The council, in its discretion, shall have the right to refuse to issue or renew a permit for the sale of tobacco on any premises on which taxes, assessments or other financial claims of the city are delinquent or unpaid. Delinquent or unpaid taxes, assessments or other financial claims of the city on the premises for which the license has been issued shall be ground for the revocation of a tobacco license.