

# City of Stewart – Codification of Ordinances

## TITLE XI: BUSINESS REGULATIONS

### Chapter

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## CHAPTER 110: GENERAL LICENSING PROVISIONS

### Section

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### § 110.01 LICENSES REQUIRED TO ENGAGE IN CERTAIN BUSINESSES

No person shall engage in any of the trades, businesses or professions for which licenses are required by Title XI of this code or by any other ordinance of the city or provision of this code without first applying for and obtaining a license from the City Clerk-Treasurer or other duly authorized issuing authority.

### § 110.02 APPLICATION FOR LICENSE

- (A) All original applications for licenses, unless otherwise specifically provided, shall be made to the City Clerk-Treasurer or other authorized official in writing upon forms to be furnished by him or her and shall contain:
  - (1) The applicant's full name, address and telephone number and the full name of each officer, partner or business associate, if applicable;
  - (2) His or her present occupation and principal place of business;
  - (3) His or her place of residence for the preceding five years;
  - (4) The nature and location of the intended business or enterprise;
  - (5) The period of time for which the license is desired;
  - (6) A description of the merchandise, goods or services to be sold;
  - (7) If a motor vehicle is to be used, a full description of the motor vehicle, including the make, model, year, color, license number and vehicle registration (VIN) number of the vehicle; and
  - (8) Other information concerning the applicant and his or her business as may be reasonable and proper, having regard to the nature of the license desired.
- (B) Any change in the information required by division (A) of this section must be reported to the City Clerk-Treasurer or other authorized official within 14 days of that change.
- (C) Renewal of an annual license may be granted to a licensee in good standing on the basis of the original application, unless otherwise provided. However, if a request for renewal is not submitted to the City Clerk-Treasurer or other authorized official within 21 days after the date of expiration for the preceding license, the applicant must fill out an original application.
- (D) With each original or renewal application, the applicant shall deposit the fee required for the license requested.
- (E) It shall be unlawful to knowingly make any false statement or representation in the license application.

### § 110.03 ISSUANCE OF LICENSE

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

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Treasurer.

### **§ 110.04 DATE AND DURATION OF LICENSE**

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

### **§ 110.05 LICENSE NOT TRANSFERABLE**

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

### **§ 110.06 LICENSE CERTIFICATE TO BE DISPLAYED**

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

### **§ 110.07 REVOCATION OR SUSPENSION**

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

- (1) For conditions or considerations which, had they existed at the time of issuance, would have been valid grounds for its denial;
- (2) For any misrepresentation of a material fact in the application discovered after issuance of the license;
- (3) For any misrepresentation or materially false statement made in the course of carrying on the trade, business or profession;
- (4) For violation of any provision of this chapter or other federal, state or municipal law or ordinance relating to the operation of the business or enterprise for which the license has been issued; or
- (5) Upon conviction of a licensee for any federal, state or municipal law or ordinance involving the creation of a nuisance, a breach of the peace, interference with the rights of property owners or any other offense constituting a threat to the public health, safety, morals or general welfare of the public.

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

### **§ 110.08 APPEAL AND REVIEW**

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

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## CHAPTER 111: COMMERCIAL AMUSEMENTS

### Section

- 111.01 Bowling; billiards and pool
- 111.02 Circuses, carnivals, shows and other entertainment
- 111.03 Amusement devices
- 111.04 Deposit required
- 111.05 License fee for public entertainment or exhibition
- 111.06 Amusement rides

### § 111.01 BOWLING; BILLIARDS AND POOL

Each proprietor of a billiard or pool table or of a bowling alley or a combination of both shall pay an annual license fee in an amount established by the city.

### § 111.02 CIRCUSES, CARNIVALS, SHOWS AND OTHER ENTERTAINMENT

- (A) (1) Pursuant to M.S. §437.07, as it may be amended from time to time, each person, desiring to conduct, stage or give a circus, carnival, theatrical exhibition, public show, athletic game or other entertainment, for which there is a charge for admission, shall first obtain a license and pay the license fee or fees as established by the city.
- (2) Local school entertainment, charitable organizations, lecture courses and lectures on historic, literary or scientific subjects are not subject to the provisions of this section; provided, that the entertainment is not for profit.
- (B) In addition to any other requirements, the applicant for a license shall give at least one week's notice in writing to the City Clerk-Treasurer or other authorized official, stating the dates of the performances and the location at which the performances are to be presented. The City Clerk-Treasurer shall give his or her consent to the issuance of the license if he or she deems that the location is suitable for the purpose; that it will properly accommodate the patrons; that the nature of the performance or exhibition does not pose a threat to the health, safety or general welfare of the public; and that the use of the location will not create too great a burden upon the Police Department or the Fire Department.
- (C) No circus, carnival, theatrical exhibition, public show, athletic game or other entertainment shall be given for more than two consecutive days, except in cases where the City Council by resolution allows a longer period or where the exhibition is to be conducted on municipal property and the use thereof for a longer period shall have been approved by the City Council.

### § 111.03 AMUSEMENT DEVICES

- (A) The term **COIN-OPERATED MECHANICAL AMUSEMENT DEVICE** means any machine, which upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score. It includes such devices as marble machines, pinball machines, skill ball, mechanical grab machines, mechanical rides intended for use by children, such as merry-go-rounds, horses, Ferris wheels and the like; carnival, fair and/or festival rides and all similar games, operations or transactions under whatever name they may be indicated.
- (B) A person, firm, corporation or association must not display for public use any coin-operated mechanical amusement device without obtaining a license for it and paying the fee established by the city. Applications for a license must be made to the City Clerk-Treasurer.
- (C) The license or licenses obtained must be posted permanently and conspicuously at the location of the machine in the premises where the machine is to be operated.

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### § 111.04 DEPOSIT REQUIRED

- (A) At the time application for a license is made, where use of municipal grounds is contemplated, the applicant shall deposit with the City Clerk-Treasurer or other designated municipal official a cash bond in an amount to be determined by the City Council, conditioned upon the restoration and cleaning up of the grounds in a manner satisfactory to the Mayor. In the event the grounds are restored and cleaned up properly following the exhibition, the deposit shall be returned; otherwise the same shall be forfeited to the city to the extent of actual costs to the city for restoration and cleaning up of the grounds.
- (B) No licensee shall fail to restore or clean up the grounds upon which the circus, carnival or other entertainment has taken place.

### § 111.05 LICENSE FEE FOR PUBLIC ENTERTAINMENT OR EXHIBITION

The fee for the license shall be in an amount as established by the city.

### § 111.06 AMUSEMENT RIDES

- (A) For the purposes of this section **AMUSEMENT RIDE** shall mean a mechanical device that carries or conveys passengers along, around or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement subject to regulation under M.S. §184B.01 through §184B.09, as it may be amended from time to time. **AMUSEMENT RIDE** does not include:
- (1) A coin-operated ride that is manually, mechanically or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator;
  - (2) Nonmechanized playground equipment, including but not limited to swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, playground slides, trampolines and physical fitness devices; or
  - (3) Any other amusement device regulated under §111.03 of this code, as that ordinance may be amended from time to time.
- (B) A person, firm, corporation or association must not operate an amusement ride without first obtaining a license under §111.02 of this code, as that ordinance may be amended from time to time and providing the City Clerk-Treasurer with a copy of:
- (1) A certificate stating that the insurance required by M.S. §184B.02, as it may be amended from time to time, is in effect; and
  - (2) An affidavit attesting that the inspection required by M.S. §184B.03, as it may be amended from time to time, has been performed. The City Clerk-Treasurer, upon receipt shall furnish such information to the local law enforcement office.

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## CHAPTER 112: LIQUOR REGULATIONS

### Section

#### ***General Provisions***

- 112.01 Adoption of state law by reference
- 112.02 City may be more restrictive than state law
- 112.03 Definitions
- 112.04 Nudity on the premises of licensed establishments prohibited
- 112.05 Consumption in public places
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#### ***Licensing***

- 112.20 Number of licenses which may be issued
- 112.21 Term and expiration of licenses
- 112.22 Kinds of liquor licenses
- 112.23 License fees; pro rata
- 112.24 Council discretion to grant or deny a license
- 112.25 Application for license
- 112.26 Description of premises
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- 112.28 Transfer of license
- 112.29 Investigation
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- 112.31 Restrictions on issuance
- 112.32 Conditions of license
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#### ***Municipal Liquor Stores***

- 112.50 Application of this subchapter
- 112.51 Existing municipal stores continued
- 112.52 Location
- 112.53 Operation
- 112.54 Proof of financial responsibility
- 112.55 Issuance of other licenses

- 112.99 Penalties

#### ***GENERAL PROVISIONS***

##### **§ 112.01 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.

##### **§ 112.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW**

The hours of operation and days of sale shall be those set by M.S. §340A.101 and M.S. §340A.504,

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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.

### § 112.03 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% malt”, includes both intoxicating liquor and 3.2% 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(3)(d), 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”.

### § 112.04 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% malt liquor license or the imposition of a civil penalty under the provisions of §112.99(B).

### § 112.05 CONSUMPTION IN PUBLIC PLACES

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

### § 112.06 GENERAL SALES

- (A) No on-sale licensee shall permit any glass, bottle or other container containing intoxicating liquor or 3.2% 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.
- (B) 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.

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- (C) Any violation of any condition of this section may be grounds for revocation or suspension of the license.

### **LICENSING**

#### **§ 112.20 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(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.

#### **§ 112.21 TERM AND EXPIRATION OF LICENSES**

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on June 30<sup>th</sup> 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<sup>st</sup> of each year.

#### **§ 112.22 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 §112.20. The Council of a city which has a municipal liquor store is authorized to issue only those licenses specified in §112.55:

- (A) 3.2% 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% malt liquor with the incidental sale of tobacco and soft drinks;
- (B) 3.2% malt liquor off-sale license;
- (C) Temporary 3.2% 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 5-1-1994. The fee for an off-sale intoxicating liquor license established by the Council under § 112.23 shall not exceed \$100 or a greater amount which may be permitted by M.S. §340A.408(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 §112.23 shall not exceed the amounts provided for in M.S. §340A.408(2)(b), 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(4)(b), 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



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- sports, convention or cultural facility owned by the city, under the provisions of M.S. §340A.404(4)(a), 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(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 §112.03, 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 §112.23, shall not exceed \$200 or the maximum amount provided by M.S. §340A.504(3)(c), 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(5), as it may be amended from time to time and which meet the definition of restaurant in §112.03; and to licensed bed and breakfast facilities which meet the criteria in M.S. §340A.401(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 §112.23 shall not exceed one-half 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% malt liquor license is authorized to sell malt liquor with a content over 3.2% (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 §112.23 shall not exceed \$300 or the maximum amount permitted by M.S. §340A.14(6), as it may be amended from time to time. Consumption and display permits shall expire on March 31<sup>st</sup> of each year;
  - (L) Culinary class limited on-sale licenses may be issued to a business establishment not otherwise eligible for an on-sale intoxicating liquor license that, as part of its business, conducts culinary or cooking classes for which payment is made by each participant or advance reservation required. The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or 12 ounces of intoxicating malt liquor, during and as part of the class, for consumption on the licensed premises only;
  - (M) Temporary off-sale wine licenses, with the approval of the Commission of Public Safety,

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may be issued for the off-sale of wine at an auction. A license issued under this subdivision authorizes the sale of only vintage wine of a brand and vintage that is not commonly being offered for sale by any wholesaler in the state. The license may authorize the off-sale of wine for not more than three consecutive days provided not more than 600 cases of wine are sold at any auction. The licenses are subject to the terms, including license fee, imposed by §112.23;

- (N) Brew pub on-sale intoxicating liquor or on-sale 3.2% malt liquor licenses, with the approval of the Commissioner of Public Safety, may be issued to brewers who operate a restaurant in their place of manufacture and who meet the criteria established at M.S. §340A.301(6)(d) and (7)(b), as it may be amended from time to time. Sales under this license at on-sale may not exceed 3,500 barrels per year. If a brew pub licensed under this section possesses a license for off-sale under division (O) below, the brew pub's total combined retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels;
- (O) Brewer off-sale intoxicating liquor license, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under division (N) above or that produces fewer than 3,500 barrels of malt liquor in a year and otherwise meets the criteria established as M.S. §340A.301(6)(d) and (7)(b), as it may be amended from time to time. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the city. Malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. All malt liquor sold under this license shall be packaged in the manner required by M.S. §340A.301(7), as it may be amended from time to time. Sales under this license may not exceed 500 barrels per year. If a brewer licensed under this section possesses a license under division (N) above, the brewer's total retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels; and
- (P) Brewer temporary on-sale intoxicating liquor licenses may be issued, with the approval of the Commissioner of Public Safety, to brewers who manufacture fewer than 3,500 barrels of malt liquor in a year for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer.

### § 112.23 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 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 prorated on a quarterly basis.
- (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(5), as it may be amended from time to time.
- (F) Off-sale intoxicating liquor licensees may request a reduction in their annual license fee by the amount specified in M.S. §340A.408 if at the time of initial application or renewal they:
  - (1) Agree to have a private vendor approved by the city train all employees within 60 days

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of hire and annually thereafter in laws pertaining to the sale alcohol, the rules for identification checks and the responsibilities of establishments serving intoxicating liquors;

- (2) Post a policy requiring identification checks for all persons appearing to be 30 years old or less;
- (3) Establish a written cash award and incentive program to award employees who catch underage drinkers and a written penalty program to punish employees in the event of a failed compliance check; and
- (4) Failure to abide by the provisions of this division may result in suspension of the license until the conditions of the fee reduction are met and may result in suspension and/or revocation of the license pursuant to §112.36 of this chapter.

### **§ 112.24 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.

### **§ 112.25 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.

### **§ 112.26 DESCRIPTION OF PREMISES.**

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

### **§ 112.27 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.

### **§ 112.28 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.

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### § 112.29 INVESTIGATION.

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

### § 112.30 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.

### § 112.31 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

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premises within which liquor is to be sold.

### § 112.32 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) Within 90 days after employment, every person selling or serving liquor in an establishment which has an “on-sale” license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.
- (B) 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.
- (C) 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.
- (D) No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.
- (E) Compliance with financial responsibility requirements of state law and of this chapter is a continuing condition of any license.
- (F) Failure by an off-sale intoxicating liquor licensee who has received a fee reduction pursuant to §112.23(F) of this chapter to abide with the provisions of §112.23(F).

### § 112.33 HOURS AND DAYS OF SALE.

- (A) *Two a.m. closing.* The sale of on-sale intoxicating liquor is allowed between the hours of 8:00 a.m. Monday through Saturday 2:00 a.m. Establishments serving liquor until a 2:00 a.m. closing must obtain a special license.
- (B) *Sunday hours.* The sale of on-sale intoxicating liquor on Sundays is allowed between the hours of 10:00 a.m. on Sunday and 1:00 a.m. on the following Monday. Establishments serving liquor on Sundays must obtain a special license. The annual fee for the license shall be set by §33.01. Application for the license shall be in a written form provided and approved by the city.

### § 112.34 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% 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% 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.

### § 112.35 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 place.

### § 112.36 SUSPENSION AND REVOCATION.

- (A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor

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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% malt liquor or violation of §112.04, the license shall be revoked.
  - (2) The license shall be suspended by the Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule or provision of this chapter for at least the minimum periods as follows:
    - (a) For the first violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed;
    - (b) For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed;
    - (c) For the third violation within any three-year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed; and
    - (d) For a fourth violation within any three-year period, the license shall be revoked.
  - (3) The Council shall select the day or days during which the license will be suspended.
- (C) Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this chapter or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk-Treasurer, 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 §112.99 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.

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

#### **§ 112.50 APPLICATION OF THIS SUBCHAPTER.**

This subchapter, consisting of §112.50 through 112.55, applies only to a city that has in existence on the effective date of this chapter a municipal liquor store.

#### **§ 112.51 EXISTING MUNICIPAL STORES CONTINUED.**

If the city has in existence on the effective date of this chapter a municipal liquor store for the sale of intoxicating liquor, the store is continued. Except as provided in §112.55, no intoxicating liquor may be sold at retail elsewhere in the city.

#### **§ 112.52 LOCATION.**

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

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

### § 112.53 OPERATION.

- (A) *Manager.* The municipal liquor store shall be in the immediate charge of a Liquor Store Manager selected by the Council and paid compensation as is fixed by the Council. The Manager shall not be a person who would be prohibited by law or any provision of this chapter from being eligible for an intoxicating liquor license. The Manager shall furnish a surety bond to the city, conditioned upon the faithful discharge of the duties of the office, in a sum as specified by the Council. The bond premium may be paid by the city or the Manager, in the discretion of the Council. The Manager shall operate the municipal liquor store under the Council's direction and shall perform those duties in connection with the store as may be established by the Council. The Manager shall be responsible to the Council for the conduct of the store in full compliance with this chapter and with the laws relating to the sale of intoxicating liquor and 3.2% malt liquor.
- (B) *Other employees.* The Council may also appoint additional employees as may be required and shall fix their compensation. All employees, including the Manager, shall hold their positions at the pleasure of the Council. No person under the age of 18 shall be employed in the store. The Council may require the employees to furnish surety bonds conditioned for the faithful discharge of their duties in a sum as specified by the Council. The premium on the bond may be paid by the city or the employees, as the Council determines.
- (C) *Municipal Liquor Store Fund.* All of the revenues received from the operation of a municipal liquor store shall be deposited in a Municipal Liquor Store Fund from which all ordinary operating expenses, including compensation of the Manager and employees, shall be paid. Surpluses accumulating in the fund may be transferred to the General Fund of the city or to any other appropriate fund of the city by resolution of the Council and may be expended for any municipal purpose. The handling of municipal liquor store receipts and disbursements shall comply with the procedure prescribed by law and charter for the receipts and disbursements of city funds generally.
- (D) *Financial statement.* The Council shall provide within 90 days following the end of the calendar year for publication a balance sheet using generally accepted accounting procedures and a statement of operations of the municipal liquor store for that year. The balance sheet and statement shall be published in accordance with the provisions of M.S. §471.6985, as it may be amended from time to time.
- (E) *Hours of operation.* The hours during which the sale of intoxicating liquor may be sold shall be as provided in §112.33. No person, other than the Manager or a store employee, may remain in the municipal liquor store longer than one-half hour after the time when the sale of intoxicating liquor must cease.

### § 112.54 PROOF OF FINANCIAL RESPONSIBILITY.

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

### § 112.55 ISSUANCE OF OTHER LICENSES.

- (A) *On-sale licenses for the sale of intoxicating liquor.* The Council may issue in its sound discretion on-sale licenses to a club under M.S. §340A.404(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

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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% malt liquor licenses.* The Council may issue 3.2% malt liquor licenses in its sound discretion as provided in this chapter.

### § 112.99 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 three-year period: \$500;
  - (2) For the second violation within any three-year period: \$1,000; and
  - (3) For the third and subsequent violations within any three-year period, \$2,000.
- (C) The term “violation” as used in this section includes any and all violations of the provisions of this chapter or of M.S. 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 three-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.



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## CHAPTER 113: PEDDLERS AND SOLICITORS

### Section

113.01	Definitions
113.02	Exceptions to definitions
113.03	Licensing; exemptions
113.04	License ineligibility
113.05	License suspension and revocation
113.06	License transferability
113.07	Registration
113.08	Prohibited activities
113.09	Exclusion by placard
113.10	Effectiveness

### § 113.01 DEFINITIONS.

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

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

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

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

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

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

### § 113.02 EXCEPTIONS TO DEFINITIONS.

(A) For the purpose of the requirements of this chapter, the terms **PEDDLER**, **SOLICITOR** and **TRANSIENT MERCHANT** shall not apply to any person selling or attempting to sell at wholesale any goods, wares, products, merchandise or other personal property to a retailer of the items being sold by the wholesaler. The terms also shall not apply to any person who

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makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route.

- (B) In addition, persons conducting the type of sales commonly known as garage sales, rummage sales or estate sales, as well as those persons participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of **PEDDLERS**, **SOLICITORS** and **TRANSIENT MERCHANTS**, as shall be anyone conducting an auction as a properly licensed auctioneer or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.
- (C) Nothing in this chapter shall be interpreted to prohibit or restrict door-to-door advocacy. Persons engaging in door-to-door advocacy shall not be required to register as solicitors under §113.07. The term **DOOR-TO-DOOR ADVOCACY** includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas.

### § 113.03 LICENSING; EXEMPTIONS.

- (A) *County license required.* No person shall conduct business as a peddler, solicitor or transient merchant within the city limits without first having obtained the appropriate license from the county as required by M.S. Ch. 329 as it may be amended from time to time, if the county issues a license for the activity.
- (B) *City license required.* Pursuant to M.S. §437.02, as it may be amended from time to time, except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to §113.07.
- (C) *Application.* Application for a city license to conduct business as a peddler or transient merchant shall be made at least 14 regular business days before the applicant desires to begin conducting business. Application for a license shall be made on a form approved by the City Council and available from the office of the City Clerk-Treasurer. All applications shall be signed by the applicant. All applications shall include the following information:
- (1) Applicant's full legal name;
  - (2) All other names under which the applicant conducts business or to which applicant officially answers;
  - (3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features and the like);
  - (4) Full address of applicant's permanent residence;
  - (5) Telephone number of applicant's permanent residence;
  - (6) Full legal name of any and all business operations owned, managed or operated by applicant or for which the applicant is an employee or agent;
  - (7) Full address of applicant's regular place of business (if any);
  - (8) Any and all business related telephone numbers of the applicant;
  - (9) The type of business for which the applicant is applying for a license;
  - (10) Whether the applicant is applying for an annual or daily license;
  - (11) The dates during which the applicant intends to conduct business and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days);
  - (12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient

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merchant intends to set up business;

- (13) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses;
  - (14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant;
  - (15) Proof of any requested county license;
  - (16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant;
  - (17) A general description of the items to be sold or services to be provided;
  - (18) All additional information deemed necessary by the City Council;
  - (19) The applicant's driver's license number or other acceptable form of identification; and
  - (20) The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.
- (D) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established by the city.
- (E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Clerk-Treasurer, within two regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the City Clerk-Treasurer determines that the application is incomplete, the City Clerk-Treasurer must inform the applicant of the required necessary information that is missing. If the application is complete, the City Clerk-Treasurer must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving a complete application the City Clerk-Treasurer must issue the license unless there exist grounds for denying the license under §113.04, in which case the Clerk-Treasurer must deny the license. If the City Clerk-Treasurer denies the license, the applicant must be notified in writing of the decision, the reason for denial and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request. The decision of the City Council following the public hearing can be appealed by petitioning the State Court of Appeals for a writ of certiorari.
- (F) *Duration.* An annual license granted under this chapter shall be valid for one calendar year from the date of issue. All other licenses granted under this chapter shall be valid only during the time period indicated on the license.
- (G) *License exemptions.*
- (1) No license shall be required for any person to sell or attempt to sell or to take or attempt to take orders for, any product grown, produced, cultivated or raised on any farm.
  - (2) No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street or other type of place-to-place when the activity is for the purpose of exercising that person's State or Federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.
  - (3) Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.

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### § 113.04 LICENSE INELIGIBILITY.

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

- (A) The failure of the applicant to obtain and show proof of having obtained any required county license;
- (B) The failure of the applicant to truthfully provide any of the information requested by the city as a part of the application or the failure to sign the application or the failure to pay the required fee at the time of application;
- (C) The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner. Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices and any form of actual or threatened physical harm against another person;
- (D) The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant; and
- (E) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office or other similar business or consumer rights office or agency, within the preceding 12 months or three complaints filed against the applicant within the preceding five years.

### § 113.05 LICENSE SUSPENSION AND REVOCATION.

- (A) *Generally.* Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:
  - (1) Fraud, misrepresentation or incorrect statements on the application form;
  - (2) Fraud, misrepresentation or false statements made during the course of the licensed activity;
  - (3) Conviction of any offense for which granting of a license could have been denied under §113.04; and
  - (4) Violation of any provision of this chapter.
- (B) *Multiple persons under one license.* The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee shall serve as a suspension or revocation of each authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.
- (C) *Notice.* Prior to revoking or suspending any license issued under this chapter, the city shall provide the license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application or if no residential address is listed, to the business address provided on the license application.
- (D) *Public hearing.* Upon receiving the notice provided in division (C) of this section, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Clerk-Treasurer within ten regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request. Within three regular business days of the hearing, the City Council shall notify the licensee of its decision.

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

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

### **§ 113.06 LICENSE TRANSFERABILITY.**

No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

### **§ 113.07 REGISTRATION.**

(A) All solicitors and any person exempt from the licensing requirements of this chapter under §113.03, shall be required to register with the city. Persons engaging in door-to-door advocacy shall not be required to register.

(B) The term ***DOOR-TO-DOOR ADVOCACY*** includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas.

(C) Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Clerk-Treasurer shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferable.

### **§ 113.08 PROHIBITED ACTIVITIES.**

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

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

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

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

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

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

(F) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person; and

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

### **§ 113.09 EXCLUSION BY PLACARD.**

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

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### **§ 113.10 EFFECTIVENESS.**

The provisions of §113.01, 113.02, 113.08 and 113.09 shall automatically apply upon adoption of this chapter. Sections 113.03, 113.04, 113.05, 113.06 and 113.07 shall not be effective until the adoption of a City Council resolution or ordinance authorizing the licensing of persons covered by those sections.

(Ord. No. 175, passed 04-08-2019)

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## CHAPTER 114: TATTOO AND BODY PIERCING SERVICES

### Section

- 114.01 Definitions
- 114.02 Prohibitions
- 114.03 Application for license; fees; issuance
- 114.04 Inspection of facilities
- 114.05 Suspension or revocation of license
- 114.06 Consent for performing procedures on persons under 18
- 114.07 Prohibitions relating to persons under 18
- 114.08 Defenses to violations
- 114.09 Training standards; records; safety and sanitation; equipment

### § 114.01 DEFINITIONS.

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

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

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

**BUSINESS.** Any entity that provides services for compensation.

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

**PARENT or GUARDIAN.** Parent, guardian or other adult person having the primary care or custody of the minor.

**TATTOO.** The same meaning given in M.S. §609.2246(2), as it may be amended from time to time.

### § 114.02 PROHIBITIONS.

No person shall do any of the following:

- (A) Operate a business that offers tattooing or body piercing services unless the City Council issues it a license to do so;
- (B) Perform a tattooing or body piercing procedure in a manner that does not meet the safety and sanitation standards established by this chapter and any federal, state or local laws, rules or regulations; and/or
- (C) Perform a tattooing procedure, body piercing procedure or ear piercing procedure with an ear piercing gun in a manner that does not meet the standards for appropriate disinfection and sterilization of invasive equipment or parts of equipment used in performing the procedures established by this chapter and any federal, state or local laws, rules or regulations.

### § 114.03 APPLICATION FOR LICENSE; FEES; ISSUANCE.

- (A) A person seeking approval to operate a business that offers tattooing or body piercing services shall apply to the city on forms the city or the Board of Health shall prescribe and provide. The applicant shall submit all information the city and the Board of Health determines is necessary to process the application. The applicant shall include the fee established under the city's ordinance or as established by the Board of Health.

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- (B) To receive approval to offer tattooing or body piercing services, a business must demonstrate to the Board of Health the ability to meet the requirements established by this chapter and any federal, state or local laws, rules or regulations for safe performance of the tattooing or body piercing procedures, training of the individuals who perform the procedures and maintenance of records.
- (C) (1) If the Board of Health determines, following an inspection conducted under §114.04, that a business meets the requirements for approval, it shall so advise the city. The City Council may either approve or deny the license or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk-Treasurer shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.
- (2) Approval remains valid for one year unless earlier suspended or revoked under §114.05. A business's approval may be renewed. Approval is not transferable.

### **§ 114.04 INSPECTION OF FACILITIES.**

The Board of Health or a person or another body designed by the city, shall conduct at least one inspection of a business prior to approving the business under §114.03 to offer tattooing or body piercing services. The Board may conduct additional inspections as necessary for the approval process. The Board of Health may inspect an approved business at any time the Board considers necessary. In an inspection, the Board of Health shall be given access to the business's premises and to all records relevant to the inspection.

### **§ 114.05 SUSPENSION OR REVOCATION OF LICENSE.**

The City Council may suspend or revoke the approval of a business to offer tattooing or body piercing services at any time it determines that the business is being operated in violation of this chapter or any federal, state or local laws, rules or regulations. Proceedings for suspensions and revocations shall be conducted in accordance with rules adopted in Chapter 110 for the suspension or revocation of business licenses.

### **§ 114.06 CONSENT FOR PERFORMING PROCEDURES ON PERSONS UNDER 18.**

- (A) No person shall perform a tattooing procedure, body piercing procedure or ear piercing procedure with an ear piercing gun on an individual who is under 18 years of age unless consent has been given by the individual's parent, guardian or custodian in accordance with division (B) of this section. The consent must include both the custodial and non-custodial parents, where applicable.
- (B) A parent, guardian or custodian of an individual under age 18 who desires to give consent to a business to perform on the individual under age 18 a tattooing procedure, body piercing procedure or ear piercing procedure performed with an ear piercing gun shall do both of the following:
- (1) Appear in person at the business at the time the procedure is performed; and
  - (2) Sign a document provided by the business that explains the manner in which the procedure will be performed and methods for proper care of the affected body area following performance of the procedure.

### **§ 114.07 PROHIBITIONS RELATING TO PERSONS UNDER 18.**

- (A) (1) unless consent has been given in accordance with §114.06, no individual who is under age 18 shall obtain or attempt to obtain a tattooing service, body piercing service or ear piercing service performed with an ear piercing gun.
- (2) No individual who is under age 18 shall knowingly show or give false information concerning the individual's name, age or other identification for the purpose of



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obtaining a tattooing service, body piercing service or ear piercing service performed with an ear piercing gun.

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

### **§ 114.08 DEFENSES TO VIOLATIONS.**

- (A) An operator or employee of a business that performs tattooing services, body piercing services or ear piercing services performed with an ear piercing gun may not be found guilty of a violation of §114.06(A) or any federal, state or local laws, rules or regulations in which age is an element of the provisions if:
  - (1) The individual obtaining a tattooing service, body piercing service or ear piercing service performed with an ear piercing gun, at the time of so doing, exhibited to the operator or employee of the tattooing, body piercing or ear piercing business a driver's or commercial driver's license or an identification card issued under state law showing that the individual was then at least age 18;
  - (2) The operator or employee made a bona fide effort to ascertain the true age of the individual obtaining a tattooing, body piercing or ear piercing service by checking the identification presented, at the time of the service, to ascertain that the description on the identification compared with the appearance of the individual and that the identification had not been altered in any way; and
  - (3) The operator or employee had reason to believe that the individual obtaining a tattooing, body piercing or ear piercing service was at least age 18.
- (B) In any action or proceeding before a court of record in which a defense is raised under this section, the Registrar of Motor Vehicles or the Registrar's Deputy who issued a driver's or commercial driver's license or an identification card shall be permitted to submit certified copies of the records, in the Registrar's or Deputy's possession, of the issuance in lieu of the testimony of the personnel of the Bureau of Motor Vehicles at the hearing, action or proceeding.

### **§ 114.09 TRAINING STANDARDS; RECORDS; SAFETY AND SANITATION; EQUIPMENT.**

- (A) Each operator of a business that offers tattooing or body piercing services shall do all of the following:
  - (1) Maintain procedures for ensuring that the individuals who perform tattooing or body piercing procedures are adequately trained to perform the procedures properly;
  - (2) With respect to tattooing services, maintain written records that include the color, manufacturer and lot number of each pigment used for each tattoo performed;
  - (3) Comply with the safety and sanitation requirements for preventing transmission of infectious diseases, as established in any federal, state or local laws, rules or regulations;
  - (4) Require the individuals who perform tattooing and body piercing procedures to disinfect and sterilize all invasive equipment or parts of equipment used in performing the procedures by using methods that meet the disinfection and sterilization requirements established in any federal, state or local laws, rules or regulations; and
  - (5) Ensure that weekly tests of the business's heat sterilization devices are performed to

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determine whether the devices are functioning properly. In having the devices tested, the operator of the business shall use a biological monitoring system that indicates whether the devices are killing microorganisms. If a test indicates that a device is not functioning properly, the operator shall take immediate remedial action to ensure that heat sterilization is being accomplished. The operator shall maintain documentation that the weekly tests are being performed. To comply with the documentation requirement, the documents must consist of a log that indicates the date on which each test is performed and the name of the person who performed the test or, if a test was conducted by an independent testing entity, a copy of the entity's testing report. The operator shall maintain records of each test performed for at least two years.

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

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## CHAPTER 115: TOBACCO REGULATIONS

### Section

- 115.01 Purpose and intent
- 115.02 Definitions
- 115.03 License
- 115.04 Fees
- 115.05 Basis for denial of license
- 115.06 Prohibited sales
- 115.07 Vending machines
- 115.08 Self-service sales
- 115.09 Responsibility
- 115.10 Compliance checks and inspections
- 115.11 Other illegal acts
- 115.12 Exceptions and defenses
  
- 115.99 Violations and penalty

### § 115.01 PURPOSE AND INTENT.

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

### § 115.02 DEFINITIONS.

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

**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

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not be 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 container as described in this definition shall not be considered individually packaged.

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

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

**MOVEABLE PLACE OF BUSINESS.** 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. The phrase 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. The phrase shall not include vending machines. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the tobacco between the clerk and the customer.

**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 flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco leaf prepared in 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.

### § 115.03 LICENSE.

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

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

(C) *Action.* The City Council may either approve or deny the license or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or

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the applicant it deems necessary. If the City Council shall approve the license, the City Clerk-Treasurer shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

- (D) *Term.* All licenses issued under this chapter shall be valid for one calendar year from the date of issue.
- (E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in §115.99.
- (F) *Transfers.* All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.
- (G) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this chapter.
- (H) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- (I) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.
- (J) *Issuance as privilege and not a right.* The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

### § 115.04 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established in the city's Ordinance Establishing Fees and Charges, adopted pursuant to §30.11, as it may be amended from time to time.

### § 115.05 BASIS FOR DENIAL OF LICENSE.

- (A) Grounds for denying the issuance or renewal of a license under this chapter includes but is not limited to the following:
  - (1) The applicant is under the age of 18 years;
  - (2) The applicant has been convicted within the past five years of any violation of a federal, state or local law, ordinance provision or other regulation relating to tobacco or tobacco products or tobacco related devices;
  - (3) The applicant has had a license to sell tobacco, tobacco products or tobacco related devices revoked within the preceding 12 months of the date of application;
  - (4) The applicant fails to provide any information required on the application or provides false or misleading information; and
  - (5) The applicant is prohibited by federal, state or other local law, ordinance or other regulation from holding a license.
- (B) 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.
- (C) 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.

### § 115.06 PROHIBITED SALES.

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

- (A) To any person under the age of 18 years;
- (B) By means of any type of vending machine, except as may otherwise be provided in §115.07;

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- (C) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product or tobacco related device between the licensee or the licensee's employee and the customer;
- (D) By means of loosies as defined in §115.02;
- (E) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products; and/or
- (F) By any other means, to any other person, in any other manner or form prohibited by federal, state or other local law, ordinance provision or other regulation.

### **§ 115.07 VENDING MACHINES.**

It shall be 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.

### **§ 115.08 SELF-SERVICE SALES.**

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products or tobacco related devices by any means where by the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product or the tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products or tobacco related devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.

### **§ 115.09 RESPONSIBILITY.**

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

### **§ 115.10 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. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years to enter the licensed premise to attempt to purchase tobacco, tobacco products or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco related devices when those items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked.

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

### § 115.11 OTHER ILLEGAL ACTS.

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

- (A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any minor.
- (B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product or tobacco related device. This division (B) shall not apply to minors lawfully involved in a compliance check.
- (C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, snuff or otherwise use any tobacco, tobacco product or tobacco related device.
- (D) *Illegal procurement.* It shall be a violation of this chapter for any 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 those 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.
- (E) *Use of false identification.* It shall be a violation of this chapter for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

### § 115.12 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.

### § 115.99 VIOLATIONS AND PENALTY.

(A) *Violations.*

- (1) *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.
- (2) *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.
- (3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer.
- (4) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the acquitted accused violator.
- (5) *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.
- (6) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

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- (7) *Continued violation.* Each violation and every day in which a violation occurs or continues, shall constitute a separate offense.
- (B) *Administrative penalties.*
- (1) *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.
  - (2) *Other individuals.* Other individuals, other than minors regulated by division (B)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.
  - (3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products or tobacco related devices, shall be subject to an administrative fine or may be subject to tobacco related education classes, diversion programs, community services or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be established from time to time by the city.
  - (4) *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter.
  - (5) *Statutory penalties.* If the administrative penalties authorized to be imposed by M.S. §461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.



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## CHAPTER 116: REGULATING LAWFUL GAMBLING

### Section

- 116.01 Adoption of state law by reference
- 116.02 City may be more restrictive than state law
- 116.03 Purpose
- 116.04 Definitions
- 116.05 Applicability
- 116.06 Lawful gambling permitted
- 116.07 Council approval
- 116.08 Application and local approval of premises permits
- 116.09 Local permits
- 116.10 Revocation and suspension of local permit
- 116.11 License and permit display
- 116.12 Notification of material changes to application
- 116.13 Contribution of net profits to fund administered by city
- 116.14 Designated trade area
- 116.15 Records and reporting
- 116.16 Hours of operation
- 116.17 Severability
  
- 116.99 Penalty

### **§ 116.01 ADOPTION OF STATE LAW BY REFERENCE.**

The provisions of M.S. Ch. 349, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, provisions relating to sales and all other matters pertaining to lawful gambling, 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 Council that all future amendments of M.S. Ch. 349 are hereby adopted by reference or referenced as if they had been in existence at the time this chapter was adopted.

### **§ 116.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.**

The Council is authorized by the provisions of M.S. §349.213, as it may be amended from time to time, to impose and has imposed in this chapter, additional restrictions on gambling within its limits beyond those contained in M.S. Ch. 349, as it may be amended from time to time

### **§ 116.03 PURPOSE.**

The purpose of this chapter is to regulate lawful gambling within the city, to prevent its commercialization, to ensure the integrity of operations and to provide for the use of net profits only for lawful purposes.

### **§ 116.04 DEFINITIONS.**

In addition to the definitions contained in M.S. §349.12, as it may be amended from time to time, the following terms are defined for purposes of this chapter:

**BOARD.** The State of Minnesota Gambling Control Board.

**LICENSED ORGANIZATION.** An organization licensed by the Board.

**LOCAL PERMIT.** A permit issued by the city.

**TRADE AREA.** This city and each city and township contiguous to this city.

### **§ 116.05 APPLICABILITY.**

This chapter shall be construed to regulate all forms of lawful gambling within the city except:

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- (A) Bingo conducted within a nursing home or a senior citizen housing project or by a senior citizen organization if: the prizes for a single bingo game do not exceed \$10; total prizes awarded at a single bingo occasion do not exceed \$200; no more than two bingo occasions are held by the organization or at the facility each week; only members of the organization or residents of the nursing home or housing project are allowed to play in a bingo game; no compensation is paid for any persons who conduct the bingo; and a manager is appointed to supervise the bingo.
- (B) Raffles, if the value of all prizes awarded by the organization in a calendar year does not exceed \$1,500.

### **§ 116.06 LAWFUL GAMBLING PERMITTED.**

Lawful gambling is permitted within the city if the Council, by resolution adopted by a majority of its members authorizes lawful gambling to occur, provided it is conducted in accordance with M.S. §609.75 to 609.763, inclusive, as they may be amended from time to time; M.S. §349.11 to 349.23, inclusive, as they may be amended from time to time and this chapter.

### **§ 116.07 COUNCIL APPROVAL.**

Lawful gambling authorized by M.S. §349.11 to 349.23, inclusive, as they may be amended from time to time, shall not be conducted unless approved by the Council, subject to the provisions of this chapter and state law.

### **§ 116.08 APPLICATION AND LOCAL APPROVAL OF PREMISES PERMITS.**

- (A) Any organization seeking to obtain a premises permit or bingo hall license or renewal of a premises permit or bingo hall license from the Board shall file with the City Clerk-Treasurer an executed, complete duplicate application together with all exhibits and documents accompanying the application as filed with the Board. The application and accompanying exhibits and documents shall be filed not later than three days after they have been filed with the Board.
- (B) Upon receipt of an application for issuance or renewal of a premises permit or bingo hall license, the City Clerk-Treasurer shall transmit the application to the Chief of Police or the Sheriff of the county in which this city is located, for review and recommendation.
- (C) The Chief of Police or Sheriff shall investigate the matter and make a review and recommendation to the City Council as soon as possible, but in no event later than 45 days following receipt of the notification by the city.
- (D) Organizations or bingo halls applying for a state-issued premises permit or bingo hall license shall pay the city a \$100 investigation fee. This fee shall be refunded if the application is withdrawn before the investigation is commenced.
- (E) The applicant shall be notified in writing of the date on which the Council will consider the recommendation.
- (F) The Council shall receive the Police Chief's or Sheriff's report and consider the application within 45 days of the date the application was submitted to the City Clerk-Treasurer.
- (G) The Council shall, by resolution, approve or disapprove the application within 60 days of receipt of the application.
- (H) The Council shall disapprove an application for issuance or renewal of a premises permit for any of the following reasons:
  - (1) Violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling within the last three years;

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- (2) Violation by the on-sale establishment or organization leasing its premises for gambling of any state statute, state rule or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to alcoholic beverages, gambling, controlled substances, suppression of vice and protection of public safety within the last three years;
- (3) Lawful gambling would be conducted at premises other than those for which an on-sale liquor license has been issued;
- (4) Lawful gambling would be conducted at more than one premises within the city. The city may limit the number of premises where lawful gambling may be conducted;
- (5) An organization would be permitted to conduct lawful gambling activities at more than one premises in the city;
- (6) More than one licensed organization would be permitted to conduct lawful gambling activities at one premises;
- (7) Failure of the applicant to pay any investigation fee provided by division (D) of this section within the prescribed time limit; and
- (8) Operation of gambling at the site would be detrimental to health, safety and welfare of the community.

(I) Otherwise the Council shall pass a resolution approving the application.

### **§ 116.09 LOCAL PERMITS.**

- (A) No organization shall conduct lawful gambling excluded or exempted from state licensure requirements by M.S. §349.166, as it may be amended from time to time, without a valid local permit. This section shall not apply to lawful gambling exempted from local regulation by §116.05.
- (B) Applications for issuance or renewal of a local permit shall be on a form prescribed by the city. The application shall contain the following information:
  - (1) Name and address of the organization requesting the permit;
  - (2) Name and address of the officers and person accounting for receipts, expenses and profits for the event;
  - (3) Dates of gambling occasion for which permit is requested;
  - (4) Address of premises where event will occur;
  - (5) Copy of rental or leasing arrangement, if any, connected with the event, including rental to be charged to organization; and
  - (6) Estimated value of prizes to be awarded.
- (C) The fee for a local permit shall be \$100. The fee shall be submitted with the application for a local permit. This fee shall be refunded if the application is withdrawn before the investigation is commenced.
- (D) Upon receipt of an application for issuance or renewal of a local permit, the City Clerk-Treasurer shall transmit the notification to the Chief of Police or Sheriff for review and recommendation.
- (E) The Chief of Police or Sheriff shall investigate the matter and make review and recommendation to the City Council as soon as possible, but in no event later than 45 days following receipt of the notification by the city.
- (F) The applicant shall be notified in writing of the date on which the Council will consider the recommendation.
- (G) The Council shall receive the Police Chief's or Sheriff's report and consider the application within 45 days of the date the application was submitted to the City Clerk-Treasurer.
- (H) The Council shall disapprove an application for issuance or renewal of a premises permit for any of the following reasons:

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- (1) Violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling within the last three years;
  - (2) Violation by the on-sale establishment or organization leasing its premises for gambling of any state statute, state rule or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to the operation of the establishment, laws relating to alcoholic beverages, gambling, controlled substances, suppression of vice and protection of public safety within the last three years;
  - (3) The organization has not been in existence in the city for at least three consecutive years prior to the date of application;
  - (4) The organization does not have at least 30 active members;
  - (5) Exempted or excluded lawful gambling will not take place at a premises the organization owns or rents;
  - (6) Exempted or excluded lawful gambling will not be limited to a premises for which an on-sale liquor license has been issued;
  - (7) An organization will have a permit to conduct exempted or excluded lawful gambling activities on more than one premises in the city;
  - (8) More than one licensed, qualified organization will be conducting exempted or excluded lawful gambling activities at any one premises;
  - (9) Failure of the applicant to pay permit fee provided by division (C) of this section within the prescribed time limit; and
  - (10) Operation of gambling at the site would be detrimental to health, safety and welfare of the community.
- (I) Otherwise, the Council shall approve the application.
- (J) Local permits shall be valid for one year after the date of issuance unless suspended or revoked.

### **§ 116.10 REVOCATION AND SUSPENSION OF LOCAL PERMIT.**

- (A) A local permit may be revoked or temporarily suspended for a violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling.
- (B) A license shall not be revoked or suspended until notice and an opportunity for a hearing have first been given to the permitted person. The notice shall be personally served and shall state the provision reasonably believed to be violated. The notice shall also state that the permitted person may demand a hearing on the matter, in which case the permit will not be suspended until after the hearing is held. If the permitted person requests a hearing, the Council shall hold a hearing on the matter at least one week after the date on which the request is made. If, as a result of the hearing, the Council finds that an ordinance violation exists, then the Council may suspend or revoke the permit.

### **§ 116.11 LICENSE AND PERMIT DISPLAY.**

All permits issued under state law or this chapter shall be prominently displayed during the permit year at the premises where gambling is conducted.

### **§ 116.12 NOTIFICATION OF MATERIAL CHANGES TO APPLICATION.**

An organization holding a state-issued premises permit or a local permit shall notify the city in writing whenever any material change in the information submitted in the application occurs within ten days of the change.

### **§ 116.13 CONTRIBUTION OF NET PROFITS TO FUND ADMINISTERED BY CITY.**

- (A) Each organization licensed to conduct lawful gambling within the city pursuant to M.S. §349.16, as it may be amended from time to time, shall contribute 10% of its net profits derived from lawful gambling in the city to a fund administered and regulated by the city without cost to the fund. The city shall disburse the funds for lawful purposes as defined by

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M.S. §349.12(25), as it may be amended from time to time.

(B) Payment under this section shall be made annually by June 30<sup>th</sup>.

(C) The city's use of these funds shall be determined at the time of adoption of the city's annual budget or when the budget is amended.

### **§ 116.14 RECORDS AND REPORTING.**

(A) Organizations conducting lawful gambling shall file with the City Clerk-Treasurer one copy of all records and reports required to be filed with the Board, pursuant to M.S. Ch. 349, as it may be amended from time to time and rules adopted pursuant thereto, as they may be amended from time to time. The records and reports shall be filed on or before the day they are required to be filed with the Board.

### **§ 116.15 HOURS OF OPERATION.**

Lawful gambling shall not be conducted between 1:00 a.m. and 8:00 a.m. on any day of the week.

### **§ 116.16 SEVERABILITY.**

If any provision of this chapter is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

### **§ 116.99 PENALTY.**

Any person who violates the following shall be guilty of a misdemeanor and shall be punished as provided in §10.99:

(A) Any provision of this chapter;

(B) M.S. §609.75 to 609.763, inclusive, as they may be amended from time to time; or

(C) M.S. §349.11 to 349.21, as they may be amended from time to time or any rules promulgated under those sections, as they may be amended from time to time;

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## CHAPTER 117: GARAGE AND RUMMAGE SALES

### Section

- 117.01 Definition
- 117.02 Restrictions and prohibitions
- 117.03 Exceptions
  
- 117.99 Penalty

### § 117.01 DEFINITION.

The following term, as used in this chapter, shall have the meaning stated:

***GARAGE OR RUMMAGE SALE.*** Any display and sale of personal property, conducted on premises located in any Residentially-Zoned District by the occupant and which garage or rummage sale does not require a business license or make taxable sales, leases or services.

### § 117.02 RESTRICTIONS AND PROHIBITIONS.

- (A) None of the items offered for sale shall have been obtained for resale or received on consignment for sale.
- (B) Any garage or rummage sale (community or neighborhood sale) shall be conducted solely within the boundaries of the property owned or occupied by the occupant who is conducting the sale.
- (C) There shall be no more than four garage or rummage sales conducted at any one premises during any period of 12 calendar months.
- (D) No garage or rummage sale shall be conducted during any part of more than three consecutive days.
- (E) No garage or rummage sale may be conducted before 7:00 a.m. or after 8:00 p.m.
- (F) Any related signage shall be limited to the premises and to other residential property, provided permission from the property owner is obtained and shall be removed at the termination of the sale. Signs shall be limited to four square feet.
- (G) There shall be no more than two consecutive sales with 30-day separation between all others.

### § 117.03 EXCEPTIONS.

This chapter shall not apply to any sale under court order, nor to any bona fide auction sale, nor to a sale of farm or garden products by the person producing same.

### § 117.99 PENALTY.

It is unlawful for any person to conduct a garage or rummage sale in violation of any of the provisions of this chapter. A violation of this chapter is a misdemeanor, to be punished as provided in §10.99.

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## CHAPTER 118: PUBLIC DANCES AND SPECIAL EVENTS

### Section

#### ***Public Dances***

- 118.01 Regulation of public dances
- 118.02 Definitions
- 118.03 Permit required
- 118.04 Application for permit
- 118.05 Insurance
- 118.06 Location
- 118.07 Permit to be posted
- 118.08 Liquor license required
- 118.09 Licensed police officer presence
- 118.10 Hours
- 118.11 Minors prohibited
- 118.12 Certain behavior prohibited
- 118.13 Lighting
- 118.14 Noise

#### ***Special Events***

- 118.20 Purpose and findings
  - 118.21 Definitions
  - 118.22 Permit required
  - 118.23 Application for permit
  - 118.24 Issuance of permit, conditions and posting
  - 118.25 Exceptions to the permit
- 
- 118.99 Penalty

### ***PUBLIC DANCES***

#### **§ 118.01 REGULATION OF PUBLIC DANCES.**

All public dances held in this city shall be conducted in accordance with the provisions of this chapter.

#### **§ 118.02 DEFINITIONS.**

The terms stated below shall have the following meanings:

***PUBLIC DANCING PLACE.*** Any room or space or other area, whether indoors or outside, which is open to the general public for the purpose of participating in public dancing.

***PUBLIC DANCE.*** Any dance where the general public may participate, whether or not a charge for admission for dancing is made.

#### **§ 118.03 PERMIT REQUIRED.**

No person shall conduct a public dance in this city unless a permit has been obtained from the City Clerk-Treasurer prior to the holding of the dance. The fees for a permit shall be as established by the city. In addition to this fee, the applicant shall pay the cost to the city of providing a licensed peace officer or officers to be present at the dance. The City Council shall establish criteria for determining the number of licensed peace officers required to be present at any dance. No permit shall be issued until the fee and the cost for providing the peace officer or officers has been paid.

#### **§ 118.04 APPLICATION FOR PERMIT.**

Any person desiring a permit to hold a public dance in this city shall submit an application for a permit on the form provided by the City Clerk-Treasurer, submitted to the City Clerk-Treasurer at least ten days before the date of the proposed dance. The application shall set forth the name and

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address of the applicant, who shall be the person responsible for conducting the public dance and any business, committee or organization sponsoring the dance, the place where the dance is to be held, the date of the dance and the time of its beginning and end. Proof of all insurance required by this chapter shall be submitted with the application and no permit shall be issued until proof of insurance has been received. A request for any use of a city building or other city property shall be included with the permit application and no permit shall be issued until the fees for the use of the city building or other city property have also been paid.

### **§ 118.05 INSURANCE.**

Insurance in the amount of \$500,000 per individual claim and \$1,500,000 per event is required. All insurance policies required for the event, including any insurance required by law for the sale of alcoholic beverages, shall list the city as a named insured and provide a provision to defend, indemnify and hold harmless the city and any of its employees from any claims arising from the event.

### **§ 118.06 LOCATION.**

The applicant shall make sure that adequate parking is available for the persons wishing to attend the dance and make sure that the location is safe and accessible. This information shall also be provided to the City Clerk-Treasurer before a permit shall be issued.

### **§ 118.07 PERMIT TO BE POSTED.**

(A) When a permit is issued, the holder of the permit shall post the permit in a prominent location on the premises on which the dance is to be held during the time the dance is occurring.

(B) The applicant shall be present at all times while the dance is occurring.

### **§ 118.08 LIQUOR LICENSE REQUIRED.**

No person shall give, hold, conduct or permit any public dance where liquor will be served, as defined in M.S. Ch. 340A, without obtaining a license from the city.

### **§ 118.09 LICENSED PEACE OFFICER PRESENCE.**

No public dance shall occur without at least one licensed peace officer or more, if more are required under the criteria established by the City Council, who shall be present at the public dancing place during the duration of the dance and after the dance, until all of the participants have left the public dancing place.

### **§ 118.10 HOURS.**

No public dance shall occur between the hours of 1:00 a.m. and 12:00 noon.

### **§ 118.11 MINORS PROHIBITED.**

No person under the age of 21 shall be allowed to be present by the permit holder or any peace officer at a public dance where alcohol is sold or consumed, unless accompanied by a parent or guardian.

### **§ 118.12 CERTAIN BEHAVIOR PROHIBITED.**

(A) No person present at any public dance shall engage in any disorderly conduct, as defined by M.S. §609.72, as it may be amended from time to time and any disorderly person may be immediately removed from the dance by the peace officer present at the public dancing place.

(B) Should a substantial number of persons at the public dance engage in disorderly conduct, the peace officer present may terminate the dance and remove all persons from the public dancing place.

### **§ 118.13 LIGHTING.**

(A) In order to protect the safety of persons attending a public dance, public dancing places shall be adequately illuminated and dancing therein while lights are extinguished, dimmed or turned low so as to give inadequate or imperfect illumination is hereby prohibited.



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(B) All exit areas shall be illuminated at all times during the public dance with light having intensity of not less than one footcandle at floor level.

(C) Illumination of less than 0.5 foot-candles in any area where dancing is occurring, permitted or encouraged is prohibited.

### § 118.14 NOISE.

All public dances shall be subject to the provisions of this code regulating noise.

### *SPECIAL EVENTS*

#### § 118.20 PURPOSE AND FINDINGS.

The purpose of this subchapter is to protect the health, safety and welfare of the citizens of this city by regulating the time, place and manner of conduct of special events and by establishing permit requirements for conducting special events as such are herein defined. The City Council finds that special events often exceed the city's capacity to provide usual city services. These city services include, but are not limited to sanitary, fire, police and utility services. The City Council also finds these regulations necessary to ensure that the events are conducted with sufficient consideration given to public safety issues, including, among other things, the impact of these events on parking and vehicular traffic within the city.

#### § 118.21 DEFINITIONS.

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

**PERSON.** A natural person, association, organization, club, group formed for a common purpose, partnership of any kind, limited liability company, corporation or any other legal entity.

**SPECIAL EVENTS.** An outdoor gathering of at least 25 individuals, whether on public or private property, assembled with a common purpose for a period of one hour or longer. **SPECIAL EVENTS** include, but are not limited to concerts, fairs, carnivals, circuses, parades, flea markets, marathons, walkathons, festivals, races, bicycle events, celebrations or any other gathering or events of similar nature. **SPECIAL EVENTS** do not include noncommercial events held on private property, such as graduation parties or social parties.

#### § 118.22 PERMIT REQUIRED.

No person shall hold, conduct or participate in a special event within the city, unless a permit has been issued for such event upon timely written application made to the city.

#### § 118.23 APPLICATION FOR PERMIT.

Written application for special event permits must be made at least 30 days in advance of the event's proposed date in a form prescribed by the City Council. This application period shall not begin to run until a complete application has been filed with the city. Application forms shall be made available in the office of the City Administrator. A fee, in the amount specified by the city, shall be paid to the city along with the completed application form. In addition to the fee, the applicant shall pay all additional costs incurred by the city as a direct result of the special event. Failure to provide a complete application or to pay the fee, as herein required, is sufficient reason to deny the special event permit.

#### § 118.24 ISSUANCE OF PERMIT, CONDITIONS AND POSTING.

(A) Special event permits will be issued upon City Council approval. The Council may attach reasonable conditions to the permit as are deemed necessary to protect the health, safety and welfare. The conditions may pertain to any of the following:

- (1) Location and hours during which the event may be held;
- (2) Sanitation/availability of potable water;
- (3) Security/crowd management;

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- (4) Parking and traffic issues;
  - (5) Emergency and medical services;
  - (6) Clean-up of premises and surrounding area/trash disposal;
  - (7) Insurance in the amount of \$1,500,000 per event and \$500,000 per individual claim. All required policies shall name the city as an additional insured. Applicants shall agree to defend and indemnify the city from any and all claims;
  - (8) Lighting;
  - (9) Fire service/safety;
  - (10) Temporary construction, barricades/fencing;
  - (11) Removal of advertising/promotional materials;
  - (12) Noise levels;
  - (13) Alcohol consumption; and/or
  - (14) Any other conditions which the Council deems necessary.
- (B) Upon Council approval, the City Clerk-Treasurer shall issue a permit to the person(s) named in the permit application. The permit shall clearly state the conditions, if any, imposed by the Council. Copies of the permit shall be posted in three prominent locations during the special event.

### **§ 118.25 EXCEPTIONS TO THE PERMIT.**

The permit requirement contained in this chapter does not apply to the following:

- (A) Special events sponsored and managed by the city;
- (B) Funerals and funeral processions;
- (C) The grounds of any school, playground, place of worship, hotel conference center, stadium, athletic field, arena, auditorium or similar permanent place of assembly when used for regularly established assembly purposes.

### **§ 118.99 PENALTY.**

- (A) Any permit holder violating any of the provisions of this chapter relating to public dances shall be guilty of a misdemeanor and punished as provided in §10.99 and their public dance permit is suspended immediately at the time of any arrest or citation for violating this chapter.
- (B) (1) Any person who violates any condition of a special event permit or any provision of this chapter shall be guilty of a misdemeanor punishable as prescribed by §10.99.
- (2) Enforcement of this division may, at the Council's discretion, take any of the following forms:
  - (a) Citation/criminal prosecution;
  - (b) Injunctions, declaratory judgments or other civil remedies;
  - (c) Permit revocation; and
  - (d) Disbursement of persons gathered.

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## CHAPTER 119: SEXUALLY ORIENTED BUSINESSES

### Section

#### ***General Provisions***

- 119.01 Purpose and intent
- 119.02 Definitions
- 119.03 Application
- 119.04 Location
- 119.05 Hours of operation
- 119.06 Effective date

#### ***Conditions***

- 119.20 Off-site viewing
- 119.21 Entrances
- 119.22 Layout
- 119.23 Illumination
- 119.24 Signs

#### ***License Provisions***

- 119.35 Licenses require
- 119.36 Applications
- 119.37 Requalification
- 119.38 Posting
- 119.39 Council action
- 119.40 Appeals
- 119.41 Fees
- 119.42 Inspection
- 119.43 Expiration and renewal
- 119.44 Suspension
- 119.45 Revocation
- 119.46 Transfer of license

### **GENERAL PROVISIONS**

#### **§ 119.01 PURPOSE AND INTENT.**

- (A) *Findings.* It is the purpose of this chapter to regulate adult oriented businesses to promote the health, safety, morals and general welfare of the citizens of the city and to establish reasonable and uniform regulations to:
- (1) Prevent additional criminal activity within the city;
  - (2) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;
  - (3) To locate adult oriented businesses away from residential areas, schools, churches and parks and playgrounds; and
  - (4) Prevent concentration of adult oriented businesses within certain areas of the city.
- (B) *Exception.* The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to adult oriented materials protected by the First Amendment or to deny access by distributors and exhibitors of adult oriented entertainment to their intended market.

#### **§ 119.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly

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indicates or requires a different meaning.

**ADULT USE.** Any of the activities and businesses described below constitute adult oriented businesses which are subject to the regulation of this chapter.

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

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

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

**ADULT HOTEL OR MOTEL.** A hotel or motel form which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

**ADULT MINI-MOTION PICTURE THEATER.**

- (1) A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity for less than 50 persons used for presenting motion pictures, including, but not limited to, film and videotape, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- (2) Any business which present motion pictures, from which minors are excluded from all or part of the establishment, including films and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for viewing on the premises, including, but not limited to, private booths, viewing by means of coin operated or other mechanical devices and the hewing of excerpt of motion pictures offered for sale or rent.

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

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

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specified anatomical areas.

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

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

**SPECIFIED ANATOMICAL AREAS.** Any of the following conditions:

- (A) Less than completely and opaquely covered;
- (B) Human genitals, pubic region or pubic hair;
- (C) Buttock;
- (D) Female breast below a point immediately above the top of the areola; and
- (E) Human male genitals in a discernible turgid state, even if opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES.** Any of the following conditions:

- (A) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital or oral-genital intercourse, whether between human beings or between a human being and an animal;
- (B) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound or otherwise physically restricted on the part of one so clothed;
- (C) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ clothed or unclothed; and
- (D) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female or the breasts of a female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

### § 119.03 APPLICATION.

- (A) Except as in this chapter specifically provided, no structure shall be erected, converted, enlarged, reconstructed or altered and no structure or land shall be used, for any purpose nor in any manner which is not in conformity with this chapter.
- (B) No adult oriented business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the city, the laws of the state or the United States of America. Nothing in this chapter shall be construed as authorizing or permitting conduct which is prohibited or regulated by other statutes or ordinances, including, but not limited to, statutes or ordinances prohibiting the exhibition, sale or distribution of obscene material generally or the exhibition, sale or distribution of specified materials to minors

### § 119.04 LOCATION.

During the term of this chapter, no adult oriented businesses shall be located less than 800 feet from any residential zoning district boundary or site used for residential purposes and less than 1,000 feet from any church site, from any school site, from any day care facility or from any park which is adjacent to property zoned residential. In addition, no adult oriented business may be located within 800 feet of another adult oriented business. For purposes of this chapter, this distance shall be a horizontal measurement from the nearest existing residential district boundary

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or site used for residential purposes, church site, school site, day care site, park site or another adult oriented business site to the nearest boundary of the proposed adult oriented business site. In no case shall a license be issued to a premises which holds a liquor, non-intoxicating malt liquor or wine (on and/or off sale in each case) license.

### **§ 119.05 HOURS OF OPERATION.**

No adult oriented business site shall be open to the public from the hours of 1:00 a.m. to 9:00 a.m. of any day.

### ***CONDITIONS***

#### **§ 119.20 OFF-SITE VIEWING.**

An establishment operating as an adult oriented business shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of M.S. Ch. 617 or other applicable federal or state statutes or local ordinances.

#### **§ 119.21 ENTRANCES.**

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

#### **§ 119.22 LAYOUT.**

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

#### **§ 119.23 ILLUMINATION.**

Illumination of the premises exterior shall be adequate to observe the location and activities of all person on the exterior premises.

#### **§ 119.24 SIGNS.**

Signs for adult oriented businesses shall comply with the city's ordinance for signs addressed herein and in addition signs for adult oriented businesses shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the operation.

### ***LICENSE PROVISIONS***

#### **§ 119.35 LICENSES REQUIRED.**

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

#### **§ 119.36 APPLICATIONS.**

An application for a license must be made on a form provided by the city.

- (A) The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- (B) The applicant must be qualified according to the provisions of this section and the premises must be inspected and found to be in compliance with the appropriate state, county and local law and codes by the Health Official, Fire Marshal and Building Official.
- (C) Application for license shall contain the address and legal description of the property to be used; the names, addresses, phone numbers, dates of birth, of the owner, lessee, if any, the operator or manager and all employees; the names, address and phone number of two

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persons, who shall be residents of the state and who may be called upon to attest to the applicant's, manager's or operator's character; whether the applicant's manager or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete and are information the disposition thereof; the names and addresses of all creditors of the applicant, owner, lessee or manager insofar as the regarding credit which has been extended for the purposes of constructing, equipping, maintaining, operating or furnishing or acquiring the premises, personal effects, equipment or anything incident to the establishment, maintenance and operation of the business.

- (D) If the application is made on behalf of a corporation, joint business venture, partnership or any legally constituted business association, it shall submit along with its application, accurate and complete business records showing the names, addresses and dates of birth of all individuals having an interest in the business, including partners, officers, owners and creditors furnishing credit for the establishment, acquisition, maintenance and furnishings of said business and, in the case of a corporation, the names, addresses and dates of birth of all officers, general managers, members of the board of directors as well as any creditors who have extended credit for the acquisition, maintenance, operation or furnishing of the establishment including the purchase or acquisition of any items of personal property for use in the operation.
- (E) All applicants shall furnish to the city, along with their applications, complete and accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon which the building is proposed to be located or the furnishings thereof, personal property thereof or the operation or maintenance thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise.
- (F) The license fee required by this chapter has not been paid.
- (G) An applicant has been convicted of a crime involving any of the following offenses:
  - (1) Any sex crimes, as defined by M.S. §609.29 through 609.352 inclusive or as defined by any ordinance or statute in conformity therewith;
  - (2) Any obscenity crime, as defined by M.S. §617.23 through 617.299 inclusive or as defined by any ordinance or statute in conformity therewith; for which:
    - (a) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
    - (b) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or
    - (c) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the conviction is of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- (H) The fact that a conviction is being appealed shall have no effect on disqualification of the applicant or applicant's spouse.

### **§ 119.37 REQUALIFICATION.**

An applicant who has been convicted of an offense listed herein may qualify for an adult oriented business license only when the time period required hereby.

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### § 119.38 POSTING.

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

### § 119.39 COUNCIL ACTION.

The City Council shall act to approve or disapprove the license application within 120 days from the date the application was submitted; provided that, the application contains all of the information required by this chapter. If the application is deficient the Council shall act on the application within 120 days from the date that the deficiency has been corrected.

### § 119.40 APPEALS.

An within 90 days alter the decision by the Council, the applicant may appeal to the District Court by serving a notice upon the Mayor or Clerk-Treasurer of the municipality.

### § 119.41 FEES.

Fees to obtain a license to operate an adult oriented business shall be set by city resolution on the fee structure, but absent resolution amending this section, the fee shall be set by the city.

### § 119.42 INSPECTION.

- (A) *Access.* An applicant or licensee shall permit health officials, representatives of the police department, fire department and building inspection division, to inspect the premises of an adult oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- (B) *Refusal to permit inspections.*
  - (1) A person who operates an adult oriented business or his or her agent or employee commits an offense if she or he refuses to permit a lawful inspection of the premises by health officials, representatives of the Police Department, Fire Department and Building Inspection Division at any time it is occupied or open for business.
  - (2) Refusal to permit inspections may result in the suspension of the license as provided in §119.44.
- (C) *Exceptions.* The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

### § 119.43 EXPIRATION AND RENEWAL.

- (A) *Expiration.* Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in §119.36. Application for renewal must be made at least 60 days before the expiration date and when made less that 60 days before the expiration date, the expiration of the license will not be affected.
- (B) *Denial of renewal.* When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city rinds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

### § 119.44 SUSPENSION.

- (A) *Causes of suspension.* The city may suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:
  - (1) Violated or is not in compliance with any provision of this chapter;
  - (2) Engaged in the use of alcoholic beverages while on the adult oriented business premises other than at an adult hotel or motel;
  - (3) Refused to allow an inspection of the adult oriented business premises as authorized by this chapter;
  - (4) Knowingly permitted gambling by any person on the adult oriented business premises;



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

(B) *Notice.* A suspension by the city shall be procured by written notice to the licensee and a public hearing. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally or by leaving the same at the licensed business premises with the person in charge thereof.

### § 119.45 REVOCATION.

(A) *Suspended licenses.* The city may revoke a license if a cause of suspension in §119.44 occurs and the license has been suspended within the preceding 12 months.

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

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

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

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

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

(5) A licensee has been convicted of an offense listed herein, for which the time period required herein, has not elapsed;

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

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

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

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

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

(F) *Notice.* A revocation by the city shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least ten day's notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally or by leaving the same at the licensed premises with the person in charge thereof

### § 119.46 TRANSFER OF LICENSE.

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

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## CHAPTER 120: RENTAL PROPERTY REGULATIONS AND INSPECTIONS

### Chapter 120: Rental Property Regulations and Inspections

#### Section

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#### §120.01 PURPOSE AND SCOPE

**PURPOSE** The purpose of this ordinance is to provide minimum standards to safeguard life or limb, health, and public welfare by regulating and controlling the use and occupancy, maintenance and repair of all buildings and structures within the City used for the purpose of rental housing. The purpose of this ordinance is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this ordinance.

**SCOPE** The provisions of this ordinance shall apply to all buildings or portions thereof used, or designed or intended to be rented, leased, or let for human habitation. All provisions of this ordinance shall apply to dwellings in existence at the time of adoption of this ordinance. Licensed rest homes, convalescent homes, nursing homes, hotels, motels and units rented, let or leased to direct family members of the property owner are exempt from the provisions of this ordinance.

#### §120.02 DEFINITIONS

**APARTMENT BUILDING** is a building or portion of a building that contains three or more dwelling units.

**BUILDING CODE** is the Minnesota State Building Code.

**CODE OFFICIAL** is the official who is charged with the administration and enforcement of

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this ordinance, or any duly authorized representative.

**CONDEMN** shall mean to adjudge unfit for occupancy.

**CONGREGATE RESIDENCE** is any building or portion thereof that contains facilities for living, sleeping and sanitation, as required by this ordinance, and may include facilities for eating and cooking and for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, and fraternity or sorority house but does not include jails, hospitals, nursing homes, hotels or lodging houses.

**DWELLING** is a building wholly or partly used or intended to be used for living, sleeping, cooking or eating purposes by human occupants; but not including hotels and motels.

**DWELLING UNIT** is a room or a group of rooms located within a dwelling forming a single habitable unit with facilities, which are used or intended to be used for living, sleeping, cooking, sanitation, and eating purposes.

**EFFICIENCY DWELLING UNIT** is a dwelling unit containing only one habitable room and meeting the requirements of the Scope.

**EGRESS** is an arrangement of exit facilities to assure a safe means of exit from a building.

**ELECTRICAL CODE** is the Minnesota State Electrical Code.

**EXCESSIVE CLUTTER** is buildings, occupancies or rooms where the state of order or clutter is such that a health, safety, fire or egress issue exists, shall be deemed substandard as defined by this ordinance.

**EXTERMINATION** is the control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping; or by any other recognized and legal pest elimination method approved by the code official; and to remove all signs of extermination thereafter.

**FAMILY MEMBERS** are parent, stepparent, child, stepchild, foster child, brother, sister, grandparent, or grandchild.

**FIRE CODE** is the Minnesota State Fire Code.

**FLOOR AREA** is the net floor area within the enclosed walls of a room in which the ceiling height is not less than 5 feet, excluding areas used for closets and built-in equipment, such as cabinets, kitchen units, fixtures and appliances.

**HABITABLE ROOM** is a room or enclosed floor space, used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers or communicating corridors, closets and storage spaces.

**HEALTH OFFICER** is the legally designated health officer or official of the State, County and/or City.

**HOT WATER** is water supplied to plumbing fixtures at a temperature of not less than 120 degrees F (49 degrees C).

**INFESTATION** is the presence of insects, rodents, or other pests within or around the dwelling on the premises.

**KITCHEN** is a room or an area equipped for preparing and cooking food.

**LET** is to give the use of a dwelling, dwelling unit or rooming unit by an owner or manager to a tenant in return for rent.

**MANAGER** is a person or firm who has charge, care or control of a building or part thereof, in which dwelling units or rooming units are let.

**MECHANICAL CODE** is the Minnesota State Mechanical Code.

**NUISANCE** The following shall be defined as nuisances:

1. Any public nuisance known at common law or in equity jurisprudence.
2. Any attractive nuisance that may prove detrimental to children whether in a

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building, on the premises of a building or on an unoccupied lot. This includes any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation that may prove a hazard for inquisitive minors.

3. Whatever is dangerous to human life or is detrimental to health, as determined by the code official or health officer.
4. Overcrowding a room with occupants.
5. Insufficient ventilation or illumination.
6. Inadequate or unsanitary sewage or plumbing facilities.
7. Un-cleanliness, as determined by the health officer.
8. Whatever renders air, food or drink unwholesome or detrimental to the health of human beings, as determined by the health officer.

**OCCUPANCY** is the purpose for which a building or portion thereof is utilized or occupied.

**OCCUPANT** is any person living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

**OWNER** is a person, firm or corporation who, alone, jointly or severally with others, owns or has an ownership interest in a dwelling, dwelling unit or rooming unit within the city.

**PLUMBING CODE** is the State of Minnesota Plumbing Code.

**PLUMBING SYSTEM** is all potable water supplies and distribution pipes, all plumbing fixtures and traps and all drainage and vent pipes.

**PREMISES** are the dwelling and its land and all buildings thereon and areas thereof.

**REFUSE** is all putrescible and non-putrescible waste solids including garbage and rubbish. Putrescible are liable to undergo bacterial decomposition when in contact with air and moisture at normal temperatures.

**RENT** is a stated return or payment for the temporary possession of a dwelling, dwelling unit or rooming unit. The return or payment may be money or service or property.

**ROOMING HOUSE** is a building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one or two-family dwelling.

**ROOMING UNIT** is a room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking purposes, along with a private or shared sanitation facilities.

**SAFETY** is the condition of being reasonably free from danger and hazards, which may cause injury or illness.

**SUBSTANDARD BUILDING** is any building where any condition exists that endangers the life, limb, health, safety or welfare of the public or the occupants thereof.

**TENANT** can be a person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

**VARIANCE** is a difference between that which is required or specified and that, which is permitted.

### **§120.03 INSPECTOR**

The City shall appoint a person to be the code official for the City, who shall have as part of his/her duties, the inspection and reporting on rental units as required by this Section.

- A. Authority. The building official is hereby authorized and directed to enforce or cause the enforcement of all of the provisions of this ordinance. For such purposes, the building official or his/her designated representative shall have the powers of a code official. The code official shall have the power to render interpretations of this ordinance. Such interpretations shall be in conformity with the intent and purpose of this ordinance.
- B. Right of Entry. When it is necessary to make an inspection to enforce the provisions of this

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ordinance, or when the code official has reasonable cause to believe that there exists in a building or upon a premises a condition that is contrary to or in violation of this ordinance, the code official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this ordinance, provided that if such building or premises are occupied that credentials be presented to the occupant and entry requested. If such building or premises is unoccupied, the code official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the code official shall have recourse to the remedies provided by law to secure entry. When the code official has obtained a proper remedy by law to enter a building, no owner or occupant or operator of a building or premises may refuse entry and if the owner or occupant or operator of a building fails to allow entry the refusal is deemed a violation under this ordinance.

### **§120.04 ENFORCEMENT**

- A. Responsibilities Defined. Owners remain liable for violations of duties imposed by this ordinance even though an obligation is also imposed on the occupants of the building, and even though the owner has, by agreement, imposed on the occupant the duty of furnishing required equipment or of complying with this ordinance.
- B. Buildings and structures and parts thereof shall be maintained in a safe and sanitary condition. The owner or the owner's designated agent shall be responsible for such maintenance. To determine compliance with this subsection, the building may be re-inspected.
- C. Owners, in addition to being responsible for maintaining buildings in a sound structural condition, shall be responsible for keeping that part of the building or premises which the owner occupies or controls in a clean, sanitary and safe condition, including the shared or public areas in a building containing two or more dwelling units.
- D. Owners shall, when required by this ordinance or by health laws or the health officer, furnish and maintain such approved sanitary facilities as required, and shall furnish and maintain approved devices, equipment or facilities for the prevention of insect and rodent infestation, and when infestation has taken place, shall be responsible for any insects, rodents or other pests when such extermination is not specifically made the responsibility of the occupant by law or ruling.
- E. Occupants of a dwelling unit, in addition to being responsible for keeping in a clean, sanitary and safe condition that part of the dwelling or dwelling unit or premises which they occupy and control, shall properly dispose of their recyclables, rubbish, garbage and other organic waste.
- F. Occupants shall, when required by this ordinance or city ordinance furnish and maintain approved devices, equipment or facilities necessary to keep their premises safe and sanitary.
- G. Substandard Buildings. Buildings or portions thereof that are determined to be substandard as defined in this ordinance are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal.
- H. Appeals. Any person aggrieved by an order, requirement, decision or determination made by the code official pursuant to this ordinance may, within 10 days of the decision, appeal to the City Council in accordance with this Code.
- I. Violations. A violation of any provision of this Rental Housing Ordinance is a misdemeanor. Each day the property is in violation is a separate violation. Whenever it is determined by the Code Official that any property upon inspection there is found alleged violations, a correction notice shall be issued to the owner or designated representative.

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Such alleged violations must be corrected, re-inspected and verified by the Code Official for compliance with this Ordinance within the time period as set forth:

1. Smoke and Carbon Monoxide Detectors are required in all rental properties and shall be operational at ALL times. Any required detectors not properly operational at the time of the inspection shall be repaired at the time of inspection or shall be subject to a fine as defined in the fee schedule, with the first day penalty being assessed when the inspector leave the premises.
2. Smoke Detector Violations. Corrections must be completed immediately and re-inspected within three (3) working days.
3. All Other Violations. Preparations for the actual work for correcting the alleged violations shall be commenced within the time period as specified by the Code Official and the timeframe for the work to be re-inspected not to exceed thirty (30) days.
4. Penalties. The following penalties shall be imposed upon the property owner(s) if the alleged violations are not corrected and verified by the Code Official within the time period allowed by this Ordinance:
  - a. Fines. Presented on the City Fee Schedule
  - b. Extensions. Extensions may be granted by the Code Official. The request shall be made in writing and justifiable cause is demonstrated for the requested extension. All requests shall be made and delivered to the Code Official prior to the deadline for the completion of the work.
  - c. Orders after an Appeal. After any order of the code official or the City Council made pursuant to this ordinance becomes final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor and is subject to fines as stated in Section 120.04, (I), (3) and penalties or as specified by the City Council.
5. Prohibited Acts. Whoever does any of the following shall be guilty of a misdemeanor.
  - a. No License. A landlord allowing the occupancy of a dwelling unit or rooming unit prior to the issuance of a rental housing license and payment of the license inspection fee. Each subsequent day that a license is not obtained is considered a new violation.
  - b. Over Occupancy. Permitting a dwelling unit or rooming unit that is occupied by more persons than the dwelling unit or rooming unit is certified for occupancy.
  - c. Improper Occupancy. All buildings or portions thereof occupied for living, sleeping, cooking or dining purposes that were not designed or intended to be used for such occupancies shall be considered substandard.
  - d. Occupying Vacated Unit. Occupies or allows occupancy of a unit that was posted and ordered vacated.
  - e. Occupying Uncertified Bedrooms. Occupies or allows occupancy of a room as a bedroom that is not certified as a bedroom and does not qualify as a bedroom.
  - f. Tampering or Non-Functioning Smoke Detector. Any occupant, owner or manager of a dwelling or rooming unit who willfully disables a smoke detector or causes it to be nonfunctioning is guilty of a misdemeanor. If the unit is occupied by more than one tenant, each tenant shall be held accountable.
    1. Notification. The occupant of a dwelling or rooming unit must notify the owner or manager of the unit within 24 hours of discovering that a detector is not functioning. The owner or manager shall take immediate action to render the detector operational or replace it.

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### §120.05 APPLICATION

The owner of each rental housing unit shall make written application to the City Clerk-Treasurer for a license on a form to be supplied by the City and containing such information as necessary to administer and enforce the provisions of this Section. The legal owner of record of such rental housing unit, including any contract purchaser thereof shall make written application to the City Clerk-Treasurer for a license as provided in this Section prior to any initial occupancy, and prior to license renewal. Every applicant for a license shall assist the City in making an inspection of all portions of the building, including the notification to building occupants of the time of the inspection and requesting their cooperation during the course of the inspection

- A. A Rental Cycle shall begin on January 1<sup>st</sup> of even calendar years and expire on December 31<sup>st</sup> of odd calendar years, thus a (2) two year rental cycle. Once a license is issued it shall remain valid until it expires or such time as the code official determines that the dwelling, dwelling unit or rooming unit does not meet the minimum requirements set by this ordinance.
- B. Application to Existing Buildings. Additions, alterations or repairs, shall be done in compliance with the Building, Fire, Plumbing and Mechanical Codes. Applicable permits shall apply as required by the Minnesota State Building Code.
- C. Renewals. A rental housing license shall expire on December 31<sup>st</sup> of the end year of the current rental cycle. Inspection of all dwellings, dwelling units or rooming units shall be required prior to issuance of a new license. Applications for licenses shall be made in writing on forms provided by the City and accompanied by the fee amounts as established by the City Council. Such application shall be submitted at least sixty (60) days prior to the expiration date of the license.
- D. Homes that were in existence at the time of original adoption of this chapter, but were not certified rental units at the time, may become certified rental units in the future and may be given exemption from the provisions of this chapter upon application to Code Official and approval by the City Council.
- E. Owners submitting an application **for a new rental property or apartment** on or after July 1 of the end year of a new rental cycle, shall be issued a rental license for the upcoming rental cycle after all requirements have been met.

### §120.06 ISSUANCE OF LICENSE

It shall be unlawful for any person to conduct or operate or cause to be operated either as owner, lessee, agent or in any other capacity within the City, any rental housing as defined in this Section without having first obtained a license to do so as provided in this Section.

- A. If upon completion of the inspection of the building and habitable portions thereof, it is found that the minimum requirements of this code have been met, a license shall be issued.
- B. If the code official finds Code deficiencies, either at the time of license application or when a complaint of a violation has been made, he or she shall list the deficiencies, note necessary corrections, and give these findings to the building owner and all occupants with a notice to correct the deficiencies within a reasonable period of time, however, not to exceed thirty (30) days from issuance of the notice described above.
- C. If, upon re-inspection, the code official finds that the requirements of the Code have still not been met, a written denial specifying the defects shall be transmitted to the applicant.
- D. When a license has been denied, expired, suspended, or revoked as provided in this Section, no further rental and occupancy of dwelling units then vacant or which may become vacant shall be permitted until a license has been issued.
- E. Units occupied that are not licensed, based on the license being either expired, revoked, or suspended or denied shall be vacated by the occupants, within 30 days of the receipt by the

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occupant of notice of the expiration, suspension, revocation, or denial of the license.

- F. The units within a structure which are in compliance with this section minimum requirements may continue on condition that units in other portions of the structure in non-compliance do not create an immediate hazard to the health and safety to the persons in the occupied units. The extended occupancy may continue until final denial of the license and noncompliance is acted upon by the City Council.
- G. The code official for the city shall make an inspection of a licensee's rental units once every two years, unless there has been a complaint of a violation and the code official has found Code deficiencies.
- H. The code official may issue a temporary rental housing license not exceeding three (3) months in duration in order to bring the unit into compliance with this ordinance.

### **§120.07 EXPIRATION – Deleted Ordinance 176**

### **§120.08 TRANSFER – Deleted Ordinance 176**

### **§120.09 SUSPENSION AND REVOCATION**

A license or temporary certificate once issued or reissued may be suspended upon a finding by the code official that one or more of the requirements of this Section has been violated. Upon failure of the licensee to comply with a notice of violation, the license may be revoked by the City Council on recommendation of the code official.

- A. Suspended licenses may be revalidated upon meeting the requirements of this Section with payment of 50% of the applicable license and inspection fee. Issuance of a new license after revocation shall be subject to a payment of the full amount of applicable license and inspection fees.
- B. The license may be suspended or revoked by the City Council after written notice is sent the license holder specifying the ordinance or law violations with which they are charged. This notice shall also specify the date for hearing before the City Council. No hearing shall be scheduled less than ten (10) days from the date of the notice.
- C. At such hearing before the City Council, the license holder or their attorneys may submit and present witnesses on their behalf.
- D. After a hearing, the City Council may suspend or revoke the license if the Council deems it necessary to protect public health, safety or general welfare.

### **§120.10 DISPLAY**

Licenses or temporary certificates issued under this Section shall be displayed on the premises of the structure wherever feasible and produced on demand by any tenant or prospective tenant, and shall be available at reasonable times for inspection by the code official, or any law enforcement officer.

### **§120.11 FEES**

At the time of application the City Clerk-Treasurer shall collect the appropriate license and inspection fee in accordance with the Fee Schedule.

- A. Additional Fees. The City shall have the right, and just cause, to bill or to assess the responsible party for additional costs associated with:
  - 1. Required additional Follow up Rental Inspections, beyond the prescribed number allowed, for a single Rental Inspection cycle.
  - 2. Failure of the responsible party to appear for a scheduled inspection without prior notification of the inspector.
  - 3. After hours (defined as 5:00pm – 7:00am), weekend or holiday inspections.
  - 4. Penalty Fees and Fines imposed by the City Council for noncompliance.

### **§120.12 INSPECTIONS**

- A. Bi-Annual Inspections. The code official shall inspect a unit after receiving an application



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- and a scheduling an inspection per the application process
- B. Complaint Inspections. The code official shall inspect a unit upon receiving a legitimate complaint. Complainant's name shall be kept confidential pursuant to the Minnesota Data Privacy Act. Upon inspection and finding a violation the inspector shall notify the owner, manager or tenant in writing to correct the violation. The owner or manager may request an advisory inspection of a unit.
1. Substandard Property Condition:
    - a. When during the course of a Rental Housing Inspection or complaint investigation, the inspector encounters or observes a condition or conditions that are considered dangerous to life, safety, health or the welfare of the occupants, the inspector shall, if the situation warrants, issue a Substandard Property Condition Citation.
    - b. Prior to, or immediately after, the issuance of the Substandard Property Condition Citation, the inspector will be required to notify the City of the posting and the reason for the posting.
    - c. The inspector shall have the authority to require immediate evacuation of the premises in the event of immediate danger to life or safety.
    - d. The removal or defacing of, or tampering with, a Substandard Property Condition Citation posting shall be punishable as a criminal offense and subject to the provisions of State Statutes regulating misdemeanors as outlined in this ordinance.
    - e. The Property shall remain unoccupied until such time as the condition is, or conditions are, corrected and satisfactorily re-inspected.
  2. Sequence of Enforcement and Penalty Criteria: If upon completion of an initial rental housing inspection and subsequent re-inspection, with appropriate and documented notification of the property owner or agent, a property is found to remain in a state of non-compliance, the property owner or agent shall be given written notification of the remaining infraction(s) and shall be informed of the following:
    - a. The exact date and time of the second follow up inspection not to exceed 14 days from the first re-inspection.
    - b. Upon completion of the second follow up inspection:
      1. If the infractions have been satisfactorily addressed or corrected:
        - i. The city will, at their discretion, levy a re-inspection fee to cover the cost of the second follow up inspection and is listed on the Fee Schedule.
        - ii. If the infraction(s) remain(s), Section 120.04, (I), (4) shall be imposed, fees are listed on the Fees Schedule:
        - iii. The property owner or agent shall be notified in writing of Section 120.09, (B), (1) as to indicating their right of appeal.
  3. Substandard Property Condition Citation shall be issued in the event of a 'SUBSTANDARD BUILDING' and shall, upon posting of the citation, prohibit the occupancy of the building until such time as corrections are made and verified by inspection.

### **§120.13 SPACE AND OCCUPANCY STANDARDS**

No dwelling or dwelling unit shall be let for occupancy to another, which does not comply with the following requirements:

- A. Room Dimensions. Room dimensions shall comply with the following requirements:
1. Ceiling Heights. Habitable space shall have a ceiling height of not less than 6 feet 8 inches measured to the lowest projection from the ceiling. Where exposed beam ceiling members are spaced at less than 48 inches on center, ceiling height shall be measured to the bottom of these members. If any room in a building has a sloping ceiling, the

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- prescribed ceiling height for the room is required in only one-half the area thereof. No portion of the room measuring less than 5 feet from the finished floor to the finished ceiling shall be included in any computation of the minimum area thereof.
2. Floor Area. Dwelling units and congregate residences shall have at least one room for common living area that shall have not less than 120 square feet of floor area. Rooms used for sleeping purposes by two persons shall have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be an additional 50 square feet for each additional occupant.
  3. Width. No habitable room other than a kitchen shall be less than 7 feet in any dimension.
- B. Kitchen. Every dwelling unit shall have a room or portion of a room in which food may be prepared and/or cooked, which shall have adequate circulation area, and which shall be equipped with the following:
1. A kitchen sink that is in good working condition and properly connected to a water supply system which is approved by the appropriate authority and which provides at all times an adequate amount of heated and unheated running water under pressure, and which is connected to a sewer system approved by the City. Sinks shall be of nonabsorbent materials.
  2. A stove, or similar device, for cooking food, and a refrigerator, or similar device, for the safe storage of food at temperatures less than forty-five (45) degrees Fahrenheit but more than thirty-two (32) degrees Fahrenheit under ordinary maximum summer conditions, which are properly installed with all necessary connections for safe, sanitary and efficient operation; provided that such stove, refrigerator, and/or similar devices need not be installed when a dwelling unit is not occupied and when the occupant is expected to provide same on occupancy, and that sufficient space and adequate connections for the safe and efficient installation and operation of said stove, refrigerator and/or similar devices are provided.
  3. Cooking shall not be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be permitted to be present in a rooming unit or dormitory unit.
- C. Lighting. All enclosed portions of the dwelling unit customarily occupied by human beings shall be provided with natural light by means of exterior glazed openings with an area not less than one eighth of the total floor area, or shall be provided with artificial light. Such openings shall open directly onto a public way or a yard or court.
1. Public hallways, corridors, stairways and other exit facilities shall be adequately lighted.
- D. Ventilation.
1. Guestrooms and habitable rooms within a dwelling unit shall be provided with natural ventilation by means of operational exterior openings with an area of not less than 4 percent of the floor area of such rooms with a minimum of 4 square feet. Exterior openings for natural ventilation shall be provided with tight fitting insect screens, maintained in good condition. If artificial ventilation is provided, no natural ventilation is required.
  2. Bathrooms, with bathtub, shower, or combination thereof shall be provided with natural ventilation by means of operational exterior openings. In lieu of required exterior openings for natural ventilation in bathrooms containing a bathtub, shower, or combination thereof; and similar rooms, a working mechanical ventilation system connected directly to the outside is required.
- E. Sanitation. All sanitary facilities shall be installed and maintained in a safe and sanitary

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condition and in accordance with applicable requirements of the Plumbing Code.

1. Dwelling Unit. Dwelling units shall be provided with a bathroom equipped with facilities consisting of a water closet, lavatory, and either a bathtub or shower.
  2. Rooming Units. Where private water closets are not provided, there shall be provided at least one bathroom accessible from a public hallway.
- F. Bathroom Accessibility. Where bathrooms are shared by rooming units by occupants of a dwelling unit, the bathroom shall be located so that no occupant has to pass through another occupant's room to use the facility.
- G. Room Separations. Every water closet, bathtub or shower required by this ordinance shall be installed in a room that will afford privacy to the occupant. Bathrooms shall be separated from food-preparation areas by a tight fitting door.

### **§120.14 STRUCTURAL REQUIREMENTS**

General. Roofs, floors, walls, foundations and all other structural components of existing buildings are deemed acceptable provided that these items have been maintained and present no danger to human life or other dangerous condition and shall be maintained in a sound condition.

### **§120.15 MECHANICAL, ELECTRICAL, AND PLUMBING REQUIREMENTS**

- A. Heating. Dwelling units and guestrooms shall be provided with heating appliances capable of maintaining a room temperature of 68 degrees Fahrenheit at a point 3 feet above the floor in all habitable rooms, bathrooms and water closet compartments. Owners shall turn on the heating appliances when the outside temperature falls to 64 degrees Fahrenheit or below. Such facilities shall be installed and maintained in a safe condition and in accordance with their listings. Un-vented fuel-burning appliances are not permitted. All heating devices or appliances shall be of an approved type.
1. Chimneys and Vents. Every fuel-burning appliance shall discharge the products of combustion to a vent, factory-built chimney, masonry chimney or a chimney or vent that is approved by the appliance manufacturer. Chimneys or vents shall be designed for the type of appliance being vented.
  2. Exhaust Vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.
  3. Hazardous Mechanical Equipment. Mechanical equipment that was installed in violation of code requirements in effect at the time of installation or mechanical equipment not installed in accordance with generally accepted construction practices in areas where no codes were in effect or that has not been maintained in good and safe condition shall be considered substandard.
  4. Domestic Clothes Dryer Ducts. Exhaust ducts for domestic clothes dryers shall be constructed of metal and shall have a smooth interior finish. The exhaust duct shall be a minimum nominal size of four (4) inches in diameter. The entire exhaust system shall be supported and secured in place. The male end of the duct at overlapped duct joints shall extend in the direction of air flow. Clothes dryer transition ducts used to connect the appliance to the exhaust system shall be limited to single lengths not to exceed eight (8) feet and shall be listed and labeled for application. Transition ducts shall not be concealed within construction.
  5. Temperature and Pressure Relief Valves and Piping. No check valve or shutoff valve shall be installed between any safety device and the hot water equipment used, nor shall there be any shutoff valve in the discharge pipe from the relief valve. The

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discharge pipe shall be full size and run to within eighteen (18) inches of the floor or a safe place of disposal. The discharge end of discharge pipes shall be free from hose threading.

- B. Electrical. The electrical service, lines, switches, outlets, fixtures and fixture coverings, and supports in every building or structure shall be in good repair. Broken, loose, frayed, inoperative, defective or missing portions shall be repaired, replaced, or properly abandoned. All unsafe conditions shall be corrected.
  - 1. Electrical Equipment. All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner. All electrical equipment shall be of an approved type.
    - a. Extension cords shall be used only with portable appliances and shall not be used as a substitute for permanent wiring. Extension cords shall be plugged directly into an approved outlet, power tap or multi-plug adapter and shall, except for approved multi-plug extension cords, serve only one portable appliance. The amp capacity of the extension cord shall not be less than the rated capacity of the portable appliance supplied by the cord and shall be grounded when serving a grounded appliance. Extension cords shall be maintained in good condition without splices, deterioration or damage. Extension cords and flexible cords shall not be attached to the structure, extend through walls, ceilings, and floors or under doors or floor coverings, or be subject to environmental or physical damage.
  - 2. Switches and Outlets. Every habitable room shall be provided with at least one switched ceiling or wall light and one duplex outlet.
    - a. Outlets within 6 feet of a sink or bathtub shall be Ground Fault Interrupted (GFI) outlets.
  - 3. Hazardous Electrical Wiring. Electrical wiring that was installed in violation of ordinance requirements in effect at the time of installation or electrical wiring not installed in accordance with generally accepted construction practices in areas where no codes were in effect or that has not been maintained in good condition or that is not being used in a safe manner shall be considered substandard.
- C. Plumbing. All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.
  - 1. Fixtures. All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system. All plumbing fixtures shall be connected to an approved system of water supply and provided with hot and cold running water necessary for its normal operation. All plumbing fixtures shall be of an approved glazed earthenware type or of a similarly nonabsorbent material.
  - 2. Plumbing System Leaks. Leaking drain or supply lines shall be repaired or replaced. All unsafe conditions shall be corrected.
  - 3. Plumbing System Hazards. Where it is found that a plumbing system in a structure constitutes a hazard to the occupants or to the structure by reason of inadequate service, inadequate venting, improper installation, deterioration or damage or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.
  - 4. Contamination. The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture as required by the Minnesota State Plumbing Code. Hose bibs or faucets to which

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hoses may be attached and left in place, shall be protected by an approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

- a. Boilers. Rental properties with boilers must have approved backflow prevention devices installed. Boilers serving three (3) or more units must have a RPZ (Reduced Pressure Zone) valve installed on the potable water line. RPZ valves must be inspected annually and rebuilt every five (5) years by a licensed RPZ inspector. In lieu of backflow prevention, boilers may be permanently disconnected from the potable water line so that they are operating in a closed system separate from the public water supply.
5. Hazardous Plumbing. Plumbing that was installed in violation of code requirements in effect at the time of installation or plumbing not installed in accordance with generally accepted construction practices in areas where no codes were in effect or that has not been maintained in good condition or that is not free of cross-connections or siphonage between fixtures shall be considered substandard.

### **§120.16 MEANS OF EGRESS**

- A. General. Dwelling units or rooming units shall have access directly to the outside or to a common hallway or public corridor with egress to the outside. An exit shall not pass through a hazardous area such as a furnace room, boiler room, storage room, garage or similar areas.
- B. Means of Egress System. Means of egress system shall be deemed as meeting the intent of this ordinance, provided that the means of egress system or systems is evaluated by the code official and judged to be equivalent to the exit means of egress system that was required by the Code under which the building was constructed or equivalent provisions of the currently adopted Fire Code. This includes, but not limited to, number of exits, separation of exits, egress illumination, emergency egress illumination, emergency exit signage and illumination, corridors, corridor doors, and egress travel distance.
- C. Obstruction of Egress. Means of egress shall not be obstructed in any manner and shall remain free of any material or matter where its presence would obstruct or render the means of egress hazardous. All egress routes shall be properly maintained in a safe manner. A clear and unobstructed means of access with a minimum width of 30 inches and a minimum height of 78 inches shall be maintained from the operating face of an electrical service panel, meter or switchboard. Tenants shall at all times have free access to the service panel for their dwelling unit.
- D. Emergency Escape and Rescue Openings. Sleeping rooms below the fourth story shall have at least one operable window or exterior door approved for emergency escape or rescue. The approved window or door shall be operable from the inside to provide a full clear opening without the use of separate tools or special knowledge and shall open directly onto a public way or a yard or court located on the same lot as the building.
  1. Emergency Escape and Rescue Window Requirements. An emergency escape and rescue window from a sleeping room shall have a minimum net clear opening of 4.5 square feet, if the opening does not meet requirement the landlord has one rental cycle to replace to the minimum opening requirements. The minimum net clear opening height shall be 24 inches and the minimum net clear opening width shall be 20 inches. The finished sill shall not be more than 48 inches above the floor. If necessary to add a window, the new window shall meet the requirements of the Building Code for a new emergency escape and rescue window.
    - a. Replacement Emergency Escape and Rescue Windows. The replacement window,

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provided there are no changes to the structure, shall have a net clear opening of 4.5 square feet. The minimum net clear opening height shall be 24 inches and the minimum net clear opening width shall be 20 inches. The finished sill shall not be more than 48 inches above the floor.

- b. A room may not be used as a sleeping room unless it meets the requirements of (D) (1) of this section
  - c. If structural changes need to be made to bring the window into compliance, the new window shall meet the requirements of the Building Code for a new emergency escape and rescue window.
- E. Inadequate Exits. Except for those buildings or portions thereof that have been provided with adequate exit facilities conforming to the provisions of this ordinance, buildings or portions thereof whose exit facilities were installed in violation of ordinance requirements in effect at the time of their construction or whose exit facilities have not been increased in number or width in relation to any increase in occupant load due to alterations, additions or change in use or occupancy subsequent to the time of construction shall be considered substandard.
- 1. Notwithstanding compliance with code requirements in effect at the time of their construction, buildings or portions thereof shall be considered substandard when the code official finds that an unsafe condition exists through an improper location of exits, a lack of an adequate number or width of exits, or when other conditions exist that are dangerous to human life.

### **§120.17 LIFE SAFETY**

- A. General. All buildings or portions thereof shall be provided with the degree of fire resistive construction, fire warning devices and fire extinguishing devices as provided by this ordinance and the Fire Code.
- B. Smoke Detectors. Single station smoke detectors shall be installed on each floor and basement. A detector shall also be located in each sleeping room and the room or hallway located directly outside of the sleeping room. The inspector may require additional smoke detectors where additional protection may be required.
  - 1. Power Supply. The power supply can be either by battery operation or by the building wiring with battery backup.
- C. Carbon Monoxide (CO) Detectors
  - 1. Approved CO alarms shall be installed and maintained as follows:
    - a. CO alarms are required to be installed within ten (10) feet of each room lawfully used for sleeping purposes.
    - b. It shall be the owners responsibility of the multifamily dwelling that is required to be equipped with carbon monoxide alarms to:
      - i. Provide and install one approved and operational carbon monoxide alarm within ten (10) feet of each room lawfully used for sleeping, and
      - ii. Replace any required carbon monoxide alarm that has been stolen, removed, found missing, or rendered inoperable during a prior occupancy of the dwelling unit and which has not been replaced by the occupant prior to the commencement of a new occupancy of a dwelling unit.
    - c. An exception may be granted to owners who can demonstrate that there are NO sources of Carbon Monoxide in the building or garage.
- D. Fire Extinguishers. All rental units shall be equipped with a fire extinguisher with a minimum rating of 2A 10BC. The extinguisher shall be located within the individual dwelling unit or in a common hallway or corridor, on the same level, and within 50 feet of

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the dwelling unit door.

1. Fire extinguishers shall be serviced at least annually or as required by the code official. A tag with the name of the servicing company and the service date shall be affixed to the extinguisher and shall remain affixed until the next servicing.
- E. Fire Sprinkler Systems and Fire Alarm Systems. All existing fire sprinkler systems and fire alarm systems shall be maintained in accordance to the current Fire Code.
- F. Inadequate Fire-protection or Firefighters Equipment. Buildings or portions thereof shall be considered substandard when they are not provided with the fire- resistive construction or fire-extinguishing systems or equipment required by this ordinance, except those buildings or portions thereof that conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

### **§120.18 GENERAL BUILDING REQUIREMENTS**

- A. Handrails. Stairways having 4 or more risers shall have a continuous full-length handrail on at least one side.
  1. If the handrail does exist, it shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.
    - a. Stairways that are 66" (inches) in width or more require handrails on both sides.
    - b. Existing handrails that are not deemed to be hazardous by the code official are allowed to remain as they are.
  2. If a handrail does not exist, a new handrail is required. The handrail shall be mounted no less than 34 inches nor more than 38 inches above the nosing of the stair tread. The handgrip portion of the handrail shall not be less than 1 ¼" and no more than 2" in cross-sectional dimension. The ends of the handrails shall be returned to the walls
    - a. Stairways that are 66" (inches) in width or more require handrails on both sides.
    - b. Existing handrails that are not deemed to be hazardous by the code official are allowed to remain as they are.
- B. Guardrails. Unenclosed floor and roof openings, open sides of stairways, landings, decks, balconies, porches or occupied roofs which are more than 30 inches above the grade or floor below shall be protected by a guardrail.
  1. If the guardrail does exist, it shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.
    - a. Existing guardrails that are not deemed to be hazardous by the code official are allowed to remain as they are.
  2. If a new guardrail is required. Guardrails shall be a minimum of 36 inches high. Open railings shall have intermediate rails, spindles or an ornamental pattern such that a 4-inch sphere cannot pass through. When approved by the code official, the spacing between intermediate railings or openings in existing ornamental patterns may be accepted.
    - a. Existing guardrails that are not deemed to be hazardous by the code official are allowed to remain as they are.
- C. Storage of Items. Large amounts of combustible items and materials shall not be stored in attics or basements. Storage shall be maintained 2 feet or more below ceilings and floor joists. Combustible materials and items shall not be stored within 1 foot of any fuel burning appliances. Storage of items shall be orderly and shall not block or obstruct exits. A minimum 3-foot aisle shall be maintained to all exits, furnaces, water heaters, water meters, gas meters or other building service equipment.

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- D. Fuel Storage. LP tanks, gasoline containers and fueled equipment, including but not limited to motorcycles, mopeds, lawn-care equipment and portable cooking equipment, shall not be stored or repaired in an apartment building or dwelling unit.
- E. Barbecues and Open Flames. In any structure containing two or more dwelling units, no person shall kindle, maintain, or cause any fire or open flame on any balcony above ground level, on any roof, or on any ground floor patio within 15 feet of any structure. No person shall store or use any fuel, barbecue, torch, or similar heating or lighting chemicals or device in such locations.

### § 120.19 VIOLATIONS

Violation of this Section shall be a misdemeanor.

### § 120.20 NOTICES AND ORDERS OF THE CODE OFFICIAL

- A. Compliance Order. The code official shall prepare a compliance order, listing all violations and the date or dates when such violations shall be corrected. The property owner shall have the responsibility to correct all violations within the time limit set forth by the code official. Any questions regarding the compliance of said violations, the property owner may contact the code official.
- B. Substandard Occupancy. No occupancy shall be permitted for any dwelling or rental unit when, in the opinion of the code official, there exists inadequate maintenance, dilapidation, physical damage, unsanitary condition or abandonment which constitutes a fire hazard or a hazard to public safety or health.
- C. Notice to Vacate. The code official shall have to authority to issue a NOTICE TO VACATE order on any building that is, in the opinion of the code official and as defined in this ordinance, deemed substandard.

### § 120.21 APPEAL

- A. Appeal. Any person may appeal from any notice, order, decision, or determination of the code official. Said appeal shall be made in writing and submitted to City Hall within ten calendar days of any notice, order, decision or determination of the code official of a violation of the rental housing ordinance.
  - 1. Time Allotted for Appeal. The City Clerk shall determine whether the appeal has been filed within ten days and is timely. If it is determined that the appeal has not been filed timely, the City Clerk will file a report to be reviewed by the City Council at the next City Council meeting and a motion may be made to disallow the appeal.
- B. Scheduling and Noticing Appeal for Hearing. If the Appeal has been timely filed or allowed to continue per City Council, the City Clerk shall schedule an appeal hearing no sooner than 10 days from receipt of the appeal and the City Clerk shall mail written notice to the Appellant acknowledging receipt of the appeal, notifying the Appellant of the date, time and place of the hearing. The City Clerk shall deliver a copy of the appeal and a copy of the notice of hearing to the code official.
- C. Appeal Hearing. At the hearing the following process will be followed:
  - 1. The code official shall introduce the issue, explain the ordinance requirements and summarize the Appellant's appeal.
  - 2. Appellant shall state his or her case and may provide written submissions and witness testimony to the City Council.
  - 3. The City Council shall vote to:
    - a. Table the appeal for additional information/review; if the vote is to table for additional information/review, the City Council shall schedule a hearing setting the date, time and place of the next hearing and specify the additional information/evidence requested, specify who will be providing the information and



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- a deadline for the submission. Failure to provide the information by the deadline for submission, the City Council may proceed with the Appeal without the information and make a determination based on the evidence previously received;
- b. Uphold the appeal (which may take into consideration a reduction or conditional suspension of accumulated fines or penalties pursuant to 120.12 (2); or
  - c. Deny the appeal.
- D. The City Council shall make a decision in writing summarizing its determination within 45 days. The decision shall be placed in the City's property file and the City Clerk shall mail a copy of the written summary to Appellant and a copy to the code official. If the outcome of the appeal results in work remaining to be completed, a new deadline for compliance shall be established by the code official or as directed by the City Council.
- E. If the Appellant fails to appear at the hearing, the City Council may choose to deny the appeal or make a determination based on the written appeal and any documentation provided from Appellant.

### **§ 120.22 FINES AND OR PENALTIES**

Fines and/or penalties established in this Section may be assessed against the property owner and the appeal process shall not suspend or eliminate the accumulation of fines or penalties (Ord. No. 147, passed 2-1-2014, Ord. No. 149, passed 4-14-2014, Ord. No. 150, passed 7-14-2014, Ord. No. 151, passed 10-14-2014, Ord. No. 156 passed 4-13-2015, Ord. No. 173, passed 2-11-2019, Ord. No. 176, passed 11-12-19)

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