

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: ALCOHOLIC BEVERAGES

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GENERAL PROVISIONS

§ 110.01 STATE LAW ADOPTED BY REFERENCE.

The provisions of M.S. Ch. 340A, as it 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.

(Ord. 75, passed 10-18-2007)

§ 110.02 CITY LAW MAY BE MORE RESTRICTIVE THAN STATE LAW.

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

(Ord. 75, passed 10-18-2007)

§ 110.03 DEFINITIONS.

In addition to the definitions contained in M.S. § 340A.101, as it may be amended from time to time, for the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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. Having appropriate facilities to serve meals for seating not less than 50 guests at one time. An eating facility where the customer may order food from printed menus until midnight and where 60% or more of the restaurant revenues come from food sales. A financial statement will be required to be submitted to the city annually prior to license renewal. To be a *RESTAURANT*, as defined by this section, an establishment shall have a license from the state as required by M.S. § 157.16, as it may be amended from time to time, and meet the definition of either a “small establishment”, “medium establishment” or “large establishment”, as defined in M.S. § 157.16, subd. 3d, as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a *RESTAURANT* for purposes of this chapter unless it meets the definitions of a “small establishment”, “medium establishment” or “large establishment”.
(Ord. 75, passed 10-18-2007)

§ 110.04 NUDITY IN 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 any other license issued under this chapter or the imposition of a civil penalty under the provisions of § 110.99 of this chapter.
(Ord. 75, passed 10-18-2007) Penalty, see § 110.99

§ 110.05 CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor or 3.2% malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this chapter, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted.
(Ord. 75, passed 10-18-2007) Penalty, see § 110.99

§ 110.06 MINORS ON PREMISES.

(A) No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquor or 3.2% malt liquor are sold at retail on sale; except that, persons under the age of 18 years 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.

(Ord. 75, passed 10-18-2007) Penalty, see § 110.99

§ 110.07 PURCHASE AND CONSUMPTION RESTRICTIONS.

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

(Ord. 75, passed 10-18-2007) Penalty, see § 110.99

LICENSING**§ 110.20 NUMBER OF LICENSES THAT MAY BE ISSUED.**

(A) State law establishes the number of liquor licenses that a city may issue.

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

(C) The Council is not required to issue the full number of licenses that it has available.

(Ord. 75, passed 10-18-2007)

§ 110.21 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 December 31 of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety and the accompanying city consent to the permit shall expire on March 31 of each year.

(Ord. 75, passed 10-18-2007)

§ 110.22 KINDS OF LIQUOR LICENSES.

(A) 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 § 110.20 of this chapter.

(B) The council of a city which has a municipal liquor store is authorized to issue only those licenses specified in § 110.35 of this chapter:

(1) 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;

(2) 3.2% malt liquor off-sale license;

(3) Temporary 3.2% malt liquor licenses which may be issued only to a club, charitable, religious or non-profit organization;

(4) 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 § 110.23 of this chapter shall not exceed \$240 or a greater amount which may be permitted by M.S. § 340A.408, subd. 3, as it may be amended from time to time;

(5) 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; theaters; 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 § 110.23 of this chapter shall not exceed the amounts provided for in M.S. § 340A.408, subd. 2b, as it may be amended from time to time. The Council may, in its sound discretion, authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of M.S. § 340A.404, subd. 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 sports, convention or cultural facility owned by the city, under the provisions of M.S. § 340A.404, subd. 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;

(6) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided in M.S. § 340A.504, subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant, as defined in § 110.03 of this chapter, 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 § 110.23 of this chapter, shall not exceed \$200, or the maximum amount provided by M.S. § 340A.504, subd. 3(b), as it may be amended from time to time;

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

(8) 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;

(9) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: theaters; restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S. § 340A.404, subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in § 110.03 of this chapter; to licensed bed and breakfast facilities which meet the criteria in M.S. § 340A.4011, subd. 1, as it may be amended from time to time, and to theaters that meet the criteria in M.S. § 340A.404, subd. 1(b), 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 § 110.23 of this chapter, 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;

(10) One-day consumption and display permits with the approval of the Commissioner of Public Safety to a non-profit organization in conjunction with a social activity in the city sponsored by the organization;

(11) 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 § 110.23 of this

chapter shall not exceed \$300, or the maximum amount permitted by M.S. § 340A.414, subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year;

(12) 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;

(13) Temporary off-sale wine licenses, with the approval of the Commission of Public Safety, may be issued for the off-sale of wine at an auction. A license issued under this division (B)(13) 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 § 110.23 of this chapter;

(14) 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.24, 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 (B)(15) 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;

(15) Brewer off-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under division (B)(14) above or that produces fewer than 3,500 barrels of malt liquor in a year or otherwise meets the criteria established at M.S. § 340A.24, 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.285, 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 (B)(14) 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

(16) 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.

(Ord. 75, passed 10-18-2007)

§ 110.23 LICENSE FEES; PRO RATA.

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

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

(C) 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.
(Ord. 75, passed 10-18-2007)

§ 110.24 COUNCIL DISCRETION TO GRANT OR DENY 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 the right to a license under this chapter.
(Ord. 75, passed 10-18-2007)

§ 110.25 LICENSE APPLICATION.

(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.
(Ord. 75, passed 10-18-2007)

§ 110.26 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.
(Ord. 75, passed 10-18-2007)

§ 110.27 RENEWAL APPLICATIONS.

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 license renewed.
(Ord. 75, passed 10-18-2007)

§ 110.28 LICENSE TRANSFER.

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.
(Ord. 75, passed 10-18-2007)

§ 110.29 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 amount actually expended on the investigation shall not be refundable in the event the application is denied. 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 preliminary investigation if the investigation is to be conducted within the state, and \$10,000, less any amount paid for the preliminary 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.

(Ord. 75, passed 10-18-2007)

§ 110.30 HEARING AND ISSUANCE.

(A) 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.

(B) After the investigation and hearing, the Council shall, in its sound discretion, grant or deny the application. No license shall be effective until the proof of financial security has been approved by the Commissioner of Public Safety.

(Ord. 75, passed 10-18-2007)

§ 110.31 ISSUANCE RESTRICTIONS.

(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, services charges or other financial claims of the city are delinquent and unpaid.

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

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

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

(Ord. 75, passed 10-18-2007) Penalty, see § 110.99

§ 110.32 LICENSE CONDITIONS.

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.

(Ord. 75, passed 10-18-2007) Penalty, see § 110.99

§ 110.33 HOURS AND DAYS OF SALE.

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

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

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

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

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

(Ord. 75, passed 10-18-2007) Penalty, see § 110.99

§ 110.34 SUSPENSION AND REVOCATION.

(A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. § 14.69, 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 M.S. § 110.04, as it may be amended from time to time, the license shall be revoked.

(2) The license shall be suspended by the Council after a finding under division (B)(1) above 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) (1) 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.

(2) Any suspension under this division (C) 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 § 110.99 of this chapter may be imposed in addition to or in lieu of any suspension or revocation under this chapter.

(Ord. 75, passed 10-18-2007)

§ 110.35 ISSUANCE OF OTHER LICENSES.

(A) *On-sale licenses for the sale of intoxicating liquor.* The Council may issue, in its sound discretion, on-sale licenses to a club under M.S. § 340A.404, subd. 1(a)(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 hotel and restaurants. The number of on-sale licenses issued under this section is governed by M.S. § 340A.413, as it may be amended from time to time, as limited by the provisions of this chapter. The issuance of these licenses is governed by the provisions of this chapter.

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

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

(Ord. 75, passed 10-18-2007)

MUNICIPAL LIQUOR STORES

§ 110.50 APPLICATION.

This subchapter shall apply only to a city that has in existence on the effective date of this chapter a municipal liquor store.

(Ord. 75, passed 10-18-2007)

§ 110.51 EXISTING MUNICIPAL LIQUOR 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 § 110.35 of this chapter, no intoxicating liquor may be sold at retail elsewhere in the city.

(Ord. 75, passed 10-18-2007)

§ 110.52 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 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.

(Ord. 75, passed 10-18-2007)

§ 110.53 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 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 years 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 of operations 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 § 110.33 of this chapter. 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.

(Ord. 75, passed 10-18-2007) Penalty, see § 110.99

§ 110.54 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. (Ord. 75, passed 10-18-2007)

§ 110.99 PENALTY.

(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. § 14.69, as they 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 license 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 § 110.34 of this chapter, includes any and all violations of the provisions in this section, 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. (Ord. 75, passed 10-18-2007)

CHAPTER 111: TOBACCO

Section

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- 111.02 Definitions and interpretations
- 111.03 License required; fees
- 111.04 License denial; basis
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- 111.06 Vending machines
- 111.07 Self-service sales
- 111.08 Responsibility
- 111.09 Compliance checks and inspections
- 111.10 Illegal acts
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§ 111.01 PURPOSE.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products and tobacco-related devices, and such sales, possession and use are violations of both state and federal laws. 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.

(Ord. 18, passed 12-1-1997)

§ 111.02 DEFINITIONS AND INTERPRETATIONS.

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

the singular. The masculine shall include the feminine and neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissive.

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in CFR, title 16, § 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in CFR, title 16, § 1700.20, as in effect on January 1, 2015.

CIGAR. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in M.S. § 297F.01, subd. 3, as it may be amended from time to time.

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.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. ***ELECTRONIC DELIVERY DEVICE*** includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. ***ELECTRONIC DELIVERY DEVICE*** includes any component part of a product, whether or not marketed or sold separately. ***ELECTRONIC DELIVERY DEVICE*** does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. ***INDIVIDUALLY WRAPPED TOBACCO*** and ***TOBACCO PRODUCTS*** shall include, but not be limited to, single cigarette packs, single bags or cans of 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***.

LICENSED PRODUCTS. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

LOOSIES. The common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. ***LOOSIES*** does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

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

MOVEABLE PLACE OF BUSINESS. Any form of business operated out of a kiosk, 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 over-the-counter sales transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. **NICOTINE OR LOBELIA DELIVERY PRODUCT** does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. **RETAIL ESTABLISHMENTS** shall include, but not be limited to, grocery stores, convenience stores, restaurants, tobacco product shops, liquor stores, gasoline service stations and bars.

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

SELF-SERVICE MERCHANDISING. Open displays of licensed products in a retail establishment in any manner where any person shall have access to the licensed products, without the assistance or intervention of the licensee or the licensee’s employee and physical exchange of the licensed products between the customer and the licensee or employee is not required in order to access the licensed product. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. **SMOKING** also includes carrying or using an activated electronic delivery device.

TOBACCO. Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. **TOBACCO** does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

TOBACCO-RELATED DEVICE. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. **TOBACCO-RELATED DEVICE** includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. **TOBACCO-RELATED DEVICES** may or may not contain tobacco.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens or other form of payment directly into the device by the person seeking to purchase the licensed products.

YOUTH-ORIENTED FACILITY. Any facility with residents, customers, visitors, or inhabitants of which 25% or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. **YOUTH-ORIENTED FACILITY** includes, but is not limited to, schools, playgrounds, recreation centers, and parks. (Ord. 18, passed 12-1-1997)

§ 111.03 LICENSE REQUIRED; FEES.

(A) 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.

(1) *Application.*

(a) An application for a license to sell licensed products 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.

(b) Upon receipt of a completed application, the city's Clerk/Treasurer shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the 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.

(2) *Action.* The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Clerk/Treasurer shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the Council's decision.

(3) *Term.* All licenses issued under this chapter shall be valid through December 31 of the same year it is issued.

(4) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in § 111.99 of this chapter.

(5) *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 permitted.

(6) *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.

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

(8) *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.

(9) *Issuance as privilege and not a right.* The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

(10) *Proximity to youth-oriented facilities.* No license will be granted to any person for a retail establishment location that is within 1,000 feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year before the date this section was enacted into law.

(11) *Smoking prohibited.* Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this chapter.

(12) *Samples prohibited.* No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.

(B) No license shall be issued under this chapter until the appropriate license fee is paid in full. The fee for license under this chapter shall be \$20.

(Ord. 18, passed 12-1-1997) Penalty, see § 111.99

§ 111.04 LICENSE DENIAL; BASIS.

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

(B) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this chapter. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

(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 licensed products;

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

(5) The applicant is prohibited by federal, state or other local law, ordinance or other regulation, from holding such a license.
(Ord. 18, passed 12-1-1997)

§ 111.05 PROHIBITED SALES.

(A) *In general.* No person shall sell or offer to sell any licensed product:

(1) By means of any type of vending machine;

(2) By means of loosies;

(3) 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 products subject to this chapter;

(4) By means of self-service display. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. Any retailer selling licensed products at the time this chapter is adopted must comply with this section within 90 days of the effective date of this chapter;

(5) By means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions; and

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

(B) *Legal age.* No person shall sell any licensed product to any person under the age of 21.

(1) *Age verification.* Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

(2) *Signage*. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is

(C) *Electronic delivery device*. No person shall sell or offer for sale any electronic delivery device.

(D) *Liquid packaging*. No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
(Ord. 18, passed 12-1-1997) Penalty, see § 111.99

§ 111.06 VENDING MACHINES.

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

(Ord. 18, passed 12-1-1997) Penalty, see § 111.99

§ 111.07 SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products or tobacco-related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product or the tobacco-related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products or tobacco-related devices at the time this chapter is adopted shall comply with this section within 30 days.
(Ord. 18, passed 12-1-1997) Penalty, see § 111.99

§ 111.08 RESPONSIBILITY.

All licensees are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee.

(Ord. 18, passed 12-1-1997)

§ 111.09 COMPLIANCE CHECKS AND INSPECTIONS.

(A) All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. 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 17 years, but less than 21 years, to enter the licensed premises to attempt to purchase licensed products. 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 the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and any 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.

(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.

(Ord. 18, passed 12-1-1997)

§ 111.10 ILLEGAL ACTS.

Unless otherwise prohibited, 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 licensed products 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 licensed products. 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, sniff or otherwise use any licensed products.

(D) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any licensed products, and it shall be a violation of this chapter for any person to purchase or otherwise obtain such 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 licensed products. 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.

(Ord. 18, passed 12-1-1997) Penalty, see § 111.99

§ 111.11 VIOLATIONS; ADMINISTRATION.

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

(B) *Hearings.*

(1) Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within ten business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within ten business days of the issuance of the citation will terminate the person's right to a hearing.

(2) The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least ten business days prior to the hearing.

(C) *Hearing Officer.* The City Council shall serve as the Hearing Officer.

(D) *Decision.* If the Hearing Officer determines that a violation of this chapter did occur, that decision, along with the Hearing Officer's reasons for finding a violation and the penalty to be imposed under § 111.99 of this chapter, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the Hearing Officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator. A decision will be issued within ten business days of the hearing.

(E) *Appeals.* Appeals of any decision made by the Hearing Officer shall be filed in the district court for the city in which the alleged violation occurred.
(Ord. 18, passed 12-1-1997)

§ 111.12 EXCEPTIONS AND DEFENSES.

Nothing in this chapter shall prevent the providing of licensed products to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.
(Ord. 18, passed 12-1-1997)

§ 111.99 PENALTY.

(A) *Misdemeanor prosecution.* Nothing in § 111.11 of this chapter shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter. If the city elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

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

(C) *Licensees and employees.* Any licensee, and any employee of a licensee, found to 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.

(D) *Other individuals.* Other individuals, other than minors regulated by division (E) below, found to be in violation of this chapter shall be charged an administrative fee of \$50.

(E) *Minors.* Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase licensed products shall be charged with the offense, referred to the Community Concern for Youth Program or released at the discretion of the law enforcement officer.

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

(Ord. 18, passed 12-1-1997)

CHAPTER 112: AMUSEMENTS AND LEISURE

Section

112.01 Bingo, raffles and the like

112.02 Pinball machines

112.99 Penalty

§ 112.01 BINGO, RAFFLES AND THE LIKE.

(A) *Provisions of state law adopted.* The provisions of M.S. §§ 349.11 through 349.23, as they may be amended from time to time, regulating to the games of bingo, paddle wheels, tip boards, pull-tabs or ticket jars and lotteries are adopted and made a part of this section as if set out in full. In addition, the regulations of this section shall apply to the conduct of bingo and lotteries and the use of such gambling devices within the city.

(B) *Licenses.*

(1) *License required.* The conduct of bingo and lotteries and the use of gambling devices within the city without a license is prohibited. Any organization authorized by law to conduct bingo occasions, use gambling devices or conduct lotteries may do so only after receiving a license so authorizing from the Council.

(2) *Applications.* An application for a license to use gambling device and conduct raffles or a combination license shall state what gambling devices will be used and the dates and hours when they will be used or lotteries conducted. Each application shall be made to the city's Clerk/Treasurer on a form prescribed by him or her and shall be sufficient to show that the applicant is eligible for a license and that the operations described conform to the law and this section.

(3) *Duration of licenses.* All licenses issued under this section shall be for a period of one year and shall expire on December 31.

(4) *Fees.* The annual license fee for a bingo license shall be \$1. The annual fee for a license to use gambling devices shall be \$1. The annual fee for a combination license shall be \$2.

(5) *Transfer.* No license issued under this section shall be transferred to any other person or organization. No such license shall be transferred to any location other than that specified in the license without the prior approval of the Council.

(C) *Suspension and revocation.*

(1) No license shall have a vested right in any license issued under this section.

(2) Any such license may be suspended for a period not exceeding 60 days or revoked by the Council at any time for violation of any provision of this section or applicable state law. The licensee shall be granted an opportunity for a hearing upon at least ten days' notice before revocation or suspension is ordered.

(3) The notice shall state the time and place of the hearing and the nature of the charges against the licensee.

(Ord. 51, passed 7-2-1984) Penalty, see § 112.99

§ 112.02 PINBALL MACHINES.

(A) It shall hereafter be unlawful for any person, partnership or corporation to maintain or operate a pinball game machine within the corporate limits of the city without first securing a license to maintain and operate such pinball game machine as hereafter provided.

(B) Any person, partnership or corporation obtaining a license to maintain and operate a pinball game machine within the corporate limits of the city shall pay a license fee as the Council may, by resolution, direct.

(C) It shall be unlawful for any person, partnership or corporation to maintain or operate a pinball game machine, which shall pay out money or chips redeemable in trade within the corporate limits of the city.

(D) Nothing contained in this section shall be constructed as in any way permitting or licensing the maintenance or operation of slot machines within the corporate limits of the city.

(Ord. 15, passed 5-4-1937) Penalty, see § 112.99

§ 112.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person violating any provision of § 112.01 of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than \$500 or more imprisonment for not to exceed 90 days or both, plus in either case the costs of prosecution.

(C) Any person, partnership or corporation maintaining or operating a pin ball game machine within the corporate limits of the city and any person, partnership or corporation violating any of the provisions of § 112.02 of this chapter shall, upon conviction thereof, be punished by a fine of not more than \$100 and the costs of prosecution or by imprisonment for not more than three months.
(Ord. 15, passed 5-4-1937; Ord. 51, passed 7-2-1984)

CHAPTER 113: PEDDLING AND SOLICITATIONS

Section

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§ 113.01 DEFINITIONS.

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

HAWKER and ***PEDDLER***. Any person selling any goods or products from a vehicle pack, going about from place to place carrying said goods for the purpose of sale and delivery. If the goods or products be edible, such person is a ***HAWKER***; if the goods be non-edible, such a person is a ***PEDDLER***.

LOCALLY GROWN. Vegetables, butter, eggs or other farm or garden products grown within a 50-mile radius of the city.

SOLICITOR. Any person selling goods by sample or taking orders for future delivery and accepting a deposit or advance payment.

TRANSIENT MERCHANT. Any person, individual corporation, limited liability company, co-partnership and corporation, both principal and agent, who engages in, does or transacts any temporary and transient business in the city either in one locality or in traveling from place to place, selling goods, wares and merchandise; and who, for the purpose of carrying on such business, hires, leases, occupies or uses a building, structure, vacant lot or railroad car for the exhibition and sale of such goods, wares and merchandise.

(Ord. 3, passed - -2017)

§ 113.02 LICENSE REQUIRED.

It is unlawful for any transient merchant, hawker, peddler or solicitor to sell or offer for sale any merchandise or attempt to do any business in the city without having obtained a license from the Council to do so.

(Ord. 3, passed - -2017) Penalty, see § 113.99

§ 113.03 LICENSE APPLICATION.

In addition to the information required by § 113.02 of this chapter, each applicant will provide the following:

(A) The name and address of the applicant and of all persons associated with him or her in the business;

(B) The type of business for which the license is desired;

(C) The place where the business is to be conducted or carried out;

(D) The name and address of the applicant's employer or employers for the last two years prior to the date of the application;

(E) The length of time during which the applicant intends to do business within the city and the dates on which the sale or business will be conducted;

(F) An itemized description of the goods or merchandise to be offered for sale;

(G) A description of the nature and content of any advertising to be done to promote the sale of goods or merchandise;

(H) If the sale is to be conducted by a person or persons other than the applicant, credentials from the applicant shall be furnished authorizing such person or persons to act as the representative of the applicant; and

(I) The applicant's state sales tax permit number.
(Ord. 3, passed - -2017)

§ 113.04 BOND REQUIRED.

No transient merchant, hawker or peddler license shall be issued unless and until the applicant shall have filed with the city a corporate surety bond in the penal sum of \$10,000, or such greater amount as may be determined by the Council, with sufficient sureties and in favor of the city, but for the benefit of any residents who may sustain individual loss by means of fraud, artifice, trick or other means of theft practiced by the licensee on such resident; provided, however, that, a certificate evidencing such bond coverage and the availability of the penalty for the uses and purposes herein expressed, shall be sufficient to satisfy this chapter without a separate bond, in order that the applicant might be spared the necessity for duplicate bonding.

(Ord. 3, passed - -2017)

§ 113.05 LICENSE DURATION.

Each license shall be valid for the period specified therein and no license will extend for a period longer than one year.

(Ord. 3, passed - -2017)

§ 113.06 LICENSE NOT TRANSFERABLE.

Licenses issued under this chapter shall be non-transferable.

(Ord. 3, passed - -2017)

§ 113.07 LICENSE TO BE CARRIED.

All licenses issued under this chapter shall be carried by the licensee or conspicuously posted in his or her place of business and such licensee shall whenever requested show said license to any officer or citizen who demands to see the same.

(Ord. 3, passed - -2017)

§ 113.08 PERSON IN CHARGE OF PREMISES.

The owner or person in charge of any premises within the city who enters into an agreement with a transient merchant, as defined herein, to operate or temporarily conduct a transient merchant business on such premises shall be responsible for the conduct of such business on his or her premises, including the application for and obtaining of a license for such transient merchant business as provided in this chapter.

(Ord. 3, passed - -2017)

§ 113.09 FEES.

(A) (1) Transient merchant, hawker, peddler or solicitor license fees to include the first three operating days shall be as set by city resolution annually.

(2) In addition to the transient merchant, hawker, peddler or solicitor license fee a per diem of \$10 per day shall be charged after the initial three operating days.

(B) A solicitation license fee shall be as set by city resolution annually.

(Ord. 3, passed - -2017)

§ 113.10 EXCLUSIONS.

No applicant shall be required to apply for a license in the following cases:

(A) For the conduct of business by appointment;

(B) For the conduct of garage sales or rummage sales when conducted in or by a non-profit institution, or when conducted upon the premises of the owner of the articles being offered for sale; provided that, such sales do not last longer than three consecutive days in any one-month period of time; and, provided further that, such sales are adequately advertised by notices in a paper of local distribution or by placing of signs announcing the sale upon the premises;

(C) For the conduct of church bazaars or other such sales or fairs when such events are conducted by non-profit institutions; provided, such events do not last longer than 72 hours;

(D) To any regularly scheduled community event such as, but not limited to, the following: Verndale Straw-Hat and Sunbonnet Days; Christmas Tree Lighting; and events of similar nature;

(E) To any sale under court order;

(F) To any bona fide auction sale of a city resident;

(G) To any sale at wholesale to retail dealers only;

(H) Persons making an initial uninvited call upon the householders of the city as preliminary to the subsequent establishment of a regular service on a minimum monthly service for the sale and delivery to customers;

(I) Charitable organizations and representatives thereof, duly registered under the laws of state as set forth in state statutes or specifically exempted from registration under the provisions thereof, including, but not limited to, schools, scouts, organized youth athletic leagues, social, fraternal, educational or related organizations and their representatives; and

(J) Farmers or truck gardeners who order for sale or sell, vegetables, butter, eggs or other farm or garden products which are locally grown; provided, the sale of such items is restricted to the areas designated by the Council; provided that, every such farmer or truck gardener shall upon request of the city's Clerk/Treasurer, present satisfactory proof by means of sworn statements or otherwise, that such farmer or truck gardener is entitled to such license exemption; provided, further, that, whoever shall execute a false sworn statement or make any false representations which shall induce the city to grant such exemption, shall upon conviction thereof, be deemed to be guilty of a misdemeanor.
(Ord. 3, passed - -2017)

§ 113.11 PROHIBITED PRACTICES.

(A) It is unlawful for any transient merchant, hawker, peddler or solicitor to:

(1) Engage in solicitation for any unlawful business or organizational purpose or activity;

(2) Practice harassment, nuisance, theft, deceit or menacing, troublesome or otherwise unlawful activities during the course of solicitation;

(3) Solicit to residential premises displaying at such entrance a sign with the words "Peddlers and Solicitors Prohibited" or "Solicitors Prohibited";

(4) Refuse to leave premises when requested by owner, lessee or person in charge thereof;

(5) Call attention to his or her business or to his or her merchandise by crying out, by blowing a horn, by ringing a bell or by any loud or unusual noise;

(6) Displaying merchandise, parking vehicles or placing temporary structure in such place or position as to prohibit or interfere with the movement of traffic or restrict the view of traffic on any city sidewalk, street or highway;

(7) Displaying or selling merchandise on any right-of-way or public property; and

(8) Soliciting to residential premises other than the hours between 8:00 a.m. through 8:00 p.m.

(B) It is unlawful for any solicitor to offer for sale any of the following items at a flea market, except by an authorized manufacturer's representative:

(1) Infant formula or other food intended primarily for consumption by a child under the age of two years; and

(2) Over-the-counter drugs, medical devices and cosmetics.
(Ord. 3, passed - -2017) Penalty, see § 113.99

§ 113.12 REVOCATION.

A license issued pursuant to this chapter may be revoked by the Council after notice and hearing for any of the following reasons:

(A) Any fraud, misrepresentation or false statement contained in the application;

(B) Any fraud, misrepresentation or false statement made in connection with the selling of the goods and merchandise offered for sale;

(C) Any violation of any provisions of this chapter; or

(D) The conduct of business by the applicant in an unlawful manner or in a manner which constitutes a breach of peace, nuisance or menace to the health, safety or general welfare of the public.
(Ord. 3, passed - -2017)

§ 113.13 INVESTIGATION.

(A) All applications for licensing or registration shall be immediately referred to the Chief of Police, and by him or her or other person acting in his or her stead, investigated as to the truth thereof. The Chief of Police shall have 24 hours within which to investigate and make a recommendation thereon.

(B) If he or she finds no past history of the applicant indicating violations similar to those declared unlawful in this chapter, he or she shall recommend issuing a license or approving registration, as the case may be, and the city's Clerk/Treasurer shall forthwith advise the applicant. The city's Clerk/Treasurer shall issue a license, upon payment of the fee therefor, to the approved applicant for business solicitation.

(C) If the Chief of Police finds a past history of the applicant indicating violations similar to those declared unlawful in this chapter, he or she shall recommend denial of the license or registration. In all matters of recommended denial, the applicant shall be forthwith advised thereof, and the application shall

be referred to the Council and considered by it at its next regular or special meeting occurring more than ten days thereafter. The applicant shall be afforded an opportunity to be heard at such meeting.
(Ord. 3, passed - -2017)

§ 113.99 PENALTY.

(A) Any person violating any provision of this chapter for which no other penalty is provided shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor shall be a sentence of not more than 90 days or a fine of not more than \$1,000, or both.

(B) Any person, firm or corporation who violates any provision of this chapter, which is designated to be a petty misdemeanor, shall, upon conviction, be guilty of a petty misdemeanor. The penalty which may be imposed for any petty offense which is a petty misdemeanor shall be a fine of not more than \$300.

(Ord. 3, passed - -2017)

CHAPTER 114: PERSONAL SALES

Section

114.01 Garage and rummage sales

§ 114.01 GARAGE AND RUMMAGE SALES.

For the conduct of garage sales or rummage sales, when conducted in or by a non-profit institution, or when conducted upon the premises of the owner, sales do not last longer than three consecutive days in any one-month period of time; and, provided further that, such sales are adequately advertised by notices in a paper of local distribution or by placing of signs announcing the sale upon the premises. (Ord. 68, passed 8-5-1996)

