

TITLE XI: BUSINESS REGULATIONS

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ISSUANCE OF LICENSES AND PERMITS

§ 110.01 COMPLIANCE REQUIRED.

It shall be unlawful for any person, either directly or indirectly, to engage in any business or to use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a license or permit is required by any provision of this chapter or any other law or ordinance of the city, without a license or permit therefor being first procured and kept in effect at all times as required by any such provision of this chapter or any other law or ordinance of the city.

§ 110.02 ONE ACT CONSTITUTES DOING BUSINESS.

For the purpose of this chapter, any person shall be deemed to be engaged in any business for which a license or permit is required and thus subject to the requirements of this chapter when he or she does one act of:

- (A) Selling any goods or service for which a license is required;
- (B) Soliciting the business or offering the goods or services for sale or hire; and
- (C) Acquiring or using any vehicle or any premises in the city for such business purposes.

§ 110.03 AGENTS RESPONSIBLE FOR OBTAINING LICENSE.

The agents or other representatives of nonresidents who are doing business in the city shall be personally responsible for the compliance with the provisions of this chapter by their principals and of the businesses they represent.

§ 110.04 SEPARATE LICENSE FOR BRANCH ESTABLISHMENTS.

A license shall be obtained in the manner prescribed herein for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business, provided that warehouses and distributing plants used in connection with and incidental to a business licensed under any provision of this chapter shall not be deemed to be a separate place of business or branch establishment.

§ 110.05 NO LICENSE REQUIRED FOR MERE DELIVERY.

No license shall be required of any person for any mere delivery in the city of any property purchased or acquired in good faith from the person at his or her regular place of business outside the corporate limits where no intent by the person is shown to exist to evade the provisions of this chapter.

§ 110.06 APPLICATION FOR LICENSE.

- (A) Every person required to procure any permit, license or transfer under the provisions of this chapter or any other law or ordinance of the city shall submit an application for the license to the City Administrator in writing.
- (B) The application shall conform to the following:

(1) Be a written statement upon forms provided by the City Administrator, the form to include an affidavit to be sworn to by the applicant before a person authorized to administer an oath;

(2) Contain all information necessary to comply with the section of this chapter under which the license is required and any other information required by such application;

(3) Contain, in addition to all other matters required by ordinance or by law to be shown, set forth the following facts:

(a) Name and address of applicant;

(b) Purpose for which license or permit is asked;

(c) As to license any occupation or permit the doing of any act, the place within the corporate limits where such occupation or act is to be carried on or done;

(d) The length of time the licenses or permits is to cover;

(4) All questions on the application blank must be answered and all information required must be furnished. Any application for a license made by an individual owner shall be signed and sworn to by such owner; if made by a partnership, it shall be signed and sworn to by one of the partners; and if a corporation, by one of the duly elected officials of the corporation.

§ 110.07 FEES, BONDS AND INSURANCE.

(A) Every applicant for any permit, license or transfer of a license to be issued or granted by the city shall pay the full amount of the permit fee, license fee or transfer fee required by this code and other ordinances of the city and shall file with the application any bond, insurance policy or certificate therefor and certified copy of a state license, if such are required for the license.

(B) Except as otherwise specifically stated in the regulations for specific licenses or permits, the fees for the various licenses, permits and transfers shall be as fixed or estimated in this code or as otherwise provided in the fees ordinances adopted by the city.

§ 110.08 NO SPLIT FEE.

The fee for each license issued shall be the full amount provided in this code or other ordinance of the city, and no reduction in the amount of the fee shall be made because part of the license year has elapsed prior to the date the license is issued, unless specifically stated.

§ 110.09 PERMIT FEE DOUBLED.

Should any person, firm or corporation begin any construction, installation, alteration or repair for which a permit is required, without having secured the necessary permit therefor, either previous to or during the day of the commencement of any such work, or on the next succeeding day when such work is commenced on a Saturday afternoon or on a Sunday or a holiday, he or she shall, when subsequently securing the permit, be required to pay double the fee provided for the permit and shall be subject to all the penal provisions of this code or other ordinances of the city.

§ 110.10 LICENSE BONDS.

If the provisions under which any license is to be issued require the licensee to furnish a bond, the bond shall be duly executed by the licensee and a corporate surety and shall be furnished to the City Administrator at the time the application is filed or as soon thereafter as the City Administrator shall request. The bond shall be in such amount and with such penalty provisions as shall be required by the provision and shall be approved as to form, execution, surety and amount by the City Administrator. The bonds may be in form as to terminate with the annual license period or may be in form so as to provide for automatic renewal in the event the license is renewed.

§ 110.11 PROCEDURE FOR ISSUANCE OF LICENSES.

(A) On receipt of an application for any license, the City Administrator shall transmit the same, together with license bond and a copy of receipt for license fee to the Chief of Police or other department responsible therefor, who shall cause investigation to be made of the qualifications of the applicant, and the City Administrator shall determine whether the applicant has complied with all requirements of the ordinance under which the license is to be issued and which requirements are prerequisites to the issuance of the license.

Unless the subdivision of the ordinance pursuant to which the license is to be issued requires issuance of the license by the Council, the City Administrator shall issue the license upon determination that the prerequisites have been complied with, but if he or she shall have determined that the prerequisites have not been complied with, he or she shall deny the application for issuance of the license.

If any ordinance shall require issuance of a license by the Council, the City Administrator shall refer the application, together with a report of the investigation and determination with respect to the applicant and his or her compliance with the requirements of the ordinance to the Council. The Council shall thereupon consider the report and findings and may grant or deny the license. The applicant for any license which has been denied by the City Administrator may appeal the decision of the City Administrator to the Council by filing, with the City Administrator within ten days after receipt of notice of the denial, a request for review by the Council of the determination by the City Administrator. The City Administrator shall thereupon refer the request to the Council at its next regular meeting, at which time the Council shall hear the applicant and review the determination of the City Administrator and may grant or deny such license.

(B) Upon determination of the Council that a license shall be issued, the determination shall be transmitted to the City Administrator who shall issue the license certificate in duplicate under the seal of the city and deliver one copy to the applicant and retain the other in the license book as a part of the records of the city.

§ 110.12 CERTIFIED COPIES.

The record or a certified copy thereof shall be prima facie evidence to the person therein named.

§ 110.13 UNLAWFUL LICENSES.

Any license or permit issued in any other manner than that herein prescribed shall be of no effect.

§ 110.14 CONTENTS OF LICENSE.

Each license issued under this chapter shall state upon its face the following:

- (A) The name of the licensee and any other name under which the business shall be conducted;
- (B) The name and address of each business so licensed;
- (C) The amount of license fee;
- (D) The dates of issuance and expiration thereof; and
- (E) Such other information as the City Administrator or Council shall determine.

§ 110.15 LICENSE PERIOD.

All permits, licenses or transfers issued under any provision of this chapter shall terminate on December 31 of the calendar year in which issued unless a different termination date with respect to specific licenses shall be specifically provided with respect to the permit, license or transfer.

§ 110.16 RENEWAL LICENSE PROCEDURE.

Applications for renewal of any license shall be made to the City Administrator on forms provided by him or her and shall contain any information required for renewal of the license by the section of this chapter under which the license is to be issued and such additional information as the City Administrator or Council shall require.

§ 110.17 DUPLICATE AND REPLACEMENT LICENSE PROCEDURE.

A duplicate license certificate or tag shall be issued by the City Administrator to replace any license certificate or tag previously issued which has been lost, stolen, defaced or destroyed, without any willful conduct on the part of the licensee, upon the filing by the licensee of an affidavit attesting to such fact and paying to the City Administrator the required fee.

§ 110.18 REBATE OF FEE.

No rebate or refund of any license fee or part thereof shall be made by reason of non-use of the license or by reason of a change in location or business rendering the use of the license ineffective, provided that the City Administrator shall have authority to refund a license fee collected through an error or in cases where the application is denied by the City Administrator or the Council.

§ 110.19 DUTIES OF LICENSEE.

- (A) *Compliance required.* Every licensee and permittee under any provision of this chapter or other ordinances of the city shall have the duties set forth in this section.
- (B) *Permit inspection.* Permit all reasonable inspections of his or her business and examinations of his or her books and records by such authorities so authorized by law.

- (C) *Comply with governing law.* Ascertain and at all times comply with all laws, ordinances and regulations applicable to such business.
- (D) *Cease business.* Refrain from operating the licensed business after expiration of his or her license and during the period his or her license is revoked or suspended.
- (E) *License displayed.* All licenses, tags, plates or other method of identification authorized by this chapter or other ordinances of the city shall be kept on display at a conspicuous place on the licensed premises, vehicle or device, or where neither premises, vehicle or device are licensed, on the person of the licensee, or in the case of licenses for billboards or signboards, at the place of business of the licensee.
- (F) *Unlawful possession.* Not loan, sell, give or assign to any other person, or to allow any other person to use or display or to have in his or her possession, any license or insignia which has been issued to the licensee.
- (G) *Taxes.* Pay prior to date penalty attaches for nonpayment, all special assessment and real and personal property taxes levied against real and personal property owned by the licensee and used in the licensed business.
- (H) *Inspections.* All persons licensed hereunder are subject to proper periodic inspections, so far as to give the police officers and other duly authorized inspectors the right and power at all times to enter upon their premises for the purpose of ascertaining the manner in which the business is being conducted.

§ 110.20 CHANGE OF LOCATION OF LICENSED PREMISES.

A licensee or permittee shall not have the right to change the location of the licensed premises, except upon the approval of the City Administrator if the license shall be issued by him or her or upon the approval of the Council if the license shall be issued by the Council. Application for the renewal shall be made in writing in such form as shall be prescribed by the City Administrator and shall be accompanied by the required removal fee.

§ 110.21 TRANSFER OF LICENSE.

No licensee shall have the right to transfer his or her license to any other person unless specifically authorized by this chapter or pursuant to which the license was issued.

§ 110.22 ENFORCEMENT.

(A) *Inspections.* It shall be the duty of the health officer to inspect all premises licensed hereunder for the purpose of determining any violation of law relating to health. It shall be the duty of the police officers to inspect and examine all premises, businesses and enterprises subject to license or which have been licensed by the city, and the City Administrator shall have the right to direct the health officer, any police officer or any other appropriate officer to make such inspections at all reasonable times.

(B) *Sealing of unlicensed, defective or unsafe machines or devices and affixing license insignia.* Any food vending machine, cigarette vending machine, pinball machine, children's amusement device,

mechanical amusement device or other amusement device which is defective or unsafe, which is licensed and has no license tag or other license insignia affixed as required by law or is required to be licensed and such machine or device is not currently licensed, may be sealed by a tape or wire to prevent its continued use. The tape or tag attached to the seal shall state that the machine or device is not to be used.

(C) *Removing seal, using machine prohibited.* No person shall remove or deface a seal affixed under these provisions except under the direction of an authorized agent of the city. No person shall use any machine or device on which a seal has been affixed under the provisions hereof.

§ 110.23 TERMINATION OF LICENSE.

At any time that the City Administrator or other official responsible for enforcement shall determine that any person licensed under this chapter or other ordinance of the city shall have failed to comply with any requirement of law or with any provision of this chapter, the City Administrator shall notify the licensee in writing of the violation, the notice to be delivered by the U.S. Mail or personally as the City Administrator may determine, and deposit of the notice in the U.S. Mail, addressed to the address stated on the license application, shall constitute service of the notice. If the person cannot be otherwise found, the notice may be posted on the premises licensed.

The notice shall require compliance with the provision of law, code or ordinance specified within a reasonable time to be specified by the City Administrator. Upon expiration of the time, unless the licensee shall have requested a hearing in writing, the City Administrator, in the event that the license involved shall have been issued by the City Administrator, may terminate the license, or in the event that the license has been issued by the Council, the City Administrator shall report the matter to the Council and the Council may thereafter terminate the license, subject to compliance with any procedure prescribed by the provisions of the ordinance pursuant to which the license or permit was issued.

§ 110.24 HEARING.

In the event that a hearing is requested by the licensee, the City Administrator shall set a time for the hearing not less than ten days and not more than 20 days after request, at which time the City's Administrative Hearing Officer shall hear all testimony offered by the licensee and shall inform the licensee of all information upon which alleged violation of law by the licensee has been determined. On completion of the hearing, the Administrative Hearing Officer shall make a recommendation to the City Council to either suspend or terminate the license in question. The City Council will render the final decision on the status of the license at the next regularly scheduled Council meeting after the recommendation of the Administrative Hearing Officer is received.

§ 110.25 PAYMENT OF TAXES ON LICENSED PREMISES.

It shall be a condition to the issuance of any license by the city pursuant to this code or any of the ordinances of the city hereinafter referred to and amended that all real estate taxes and special assessments levied against the premises licensed shall be paid prior to the last date when payable without penalty. Upon receipt of evidence that the taxes or special assessments levied against any such premises have become delinquent, the City Administrator shall notify the licensee of the delinquency and that all licenses issued for the premises under the circumstances hereinafter described shall be terminated and canceled 30 days after date of the notice, and unless the taxes and special assessments

are paid and the County Treasurer's receipt for the same delivered to the City Administrator within the 30 day period, the license described in the notice shall upon termination of the 30 day period be deemed canceled and terminated, provided, however, that no such license shall be canceled or terminated during the time in which any judicial proceeding is pending, challenging the validity of the amount of the tax or special assessment in question.

The City Council may, notwithstanding this section, authorize the issuance of a license, or the continuation of an existing license, where it determines, in its sole discretion, that extenuating or extraordinary circumstances exist surrounding the delinquency or the impact of the delinquency as set forth in this section.

FEES, CHARGES AND RATES

§ 110.40 FEES, CHARGES AND RATES AUTHORIZED AND DEFINED.

The fees, charges and rates for the purposes set forth in this chapter for licenses, permits and municipal services shall be in the amounts set forth in this chapter or in the City's fee ordinance as may be amended from time to time. Reference to the amounts set forth herein in other portions of this code or in other ordinances may be made in such terms as "required fee," "established fee," "required license fee," "license fee" and "license fee in the required amount," without specific reference to this chapter, in which event the amounts herein set forth shall be applicable.

§ 110.41 PRIORITY OF APPLICATION.

If fees, charges and rates are set forth specifically in parts of this code other than this chapter or in other ordinances which are now in effect, but have not been set forth in this chapter, in that event, the fees, charges and rates thereby specifically set forth shall be effective for all purposes. In the event that such amounts shall appear in other places in this code or in other ordinances or codes but shall appear in this chapter, the amounts appearing in this chapter shall supersede the others.

§ 110.42 COLLECTION, LATE PAYMENT CHARGE, SPECIAL ASSESSMENT.

Payment shall be made in accordance with billings from the city not later than the billing date established for the account. In addition to the charges provided, there shall be a late charge as set by the Council and as may be set from time to time for payments made after the fifteenth day after the billing date. When a charge is more than 15 days past due, it shall be considered delinquent. It shall be the duty of the Director of Finance to endeavor to promptly collect delinquent accounts. All delinquent accounts shall be certified by the Director of Finance who shall prepare an assessment notice and present the assessments to City Council for certification to the tax roll providing for assessment of delinquent amounts, plus interest at a rate of 5% (five) per annum from the date they become delinquent against the respective properties served.

This assessment roll shall be delivered to the Council for adoptions on or before December 15 of each year. The action may be optional or subsequent to taking legal action to collect delinquent accounts.

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GENERAL REGULATIONS

§ 111.001 AMUSEMENTS.

(A) *License required, generally.* No person or persons shall be allowed to open any public show or exhibition for the purpose of gain or compensation, unless first duly licensed by the Council.

(B) *Circuses and the like.* No person or persons shall make or exhibit any circus, caravan, menagerie, show, exhibition or performance for which money is received without first obtaining a license therefor.

§ 111.002 GAMBLING PROHIBITED.

M.S. §§ 609.75 to 609.763, as they may be amended from time to time, are hereby adopted by reference as if set forth in full in this code.

§ 111.003 JUNK YARDS.

(A) *License required.* Any person, partnership or corporation desiring to establish or maintain a junk yard, general wrecking yard or motor vehicle wrecking yard or business in the city shall make written application to the Council for a license, setting forth the applicant’s name and address and the legal description of the premises upon which it is proposed to conduct the business. The proposed use requesting a license must meet all requirements of the City’s Zoning Code as may be amended from time to time.

The Council may grant or reject the application. If a permit is granted, a license to operate shall be issued by the City Administrator upon payment of the required license fee as duly set by the Council from time to time. All permits shall expire on December 31 following issuance thereof. The permit can be renewed from year to year upon application to the Council on payment of the required license fee as duly set by the Council from time to time.

(B) *Fences.* Any person, partnership or corporation operating such junk yard or motor vehicle wrecking business shall keep the premises in a neat and orderly condition. All such premises shall be enclosed by a fence as required by the City's Zoning Code and kept in a state of excellent condition. No junk or motor vehicle shall be allowed to remain outside of such fence.

(C) *Revocation.* The Council shall have the right to revoke such license at any time for cause, but only after a hearing, notice of which shall be served upon the owner of such business at least ten days before the hearing.

§ 111.006 NUDITY ON CERTAIN LICENSED PREMISES PROHIBITED.

(A) *Purpose.*

(1) The city does ordain that it is in the best interests of the public health, safety and general welfare of the people of the city that certain types of activities, as set forth in this section, are prohibited upon the premises of licensed liquor, wine and beer establishments so as to best protect and assist the owners and operators and employees of these premises, as well as patrons and the public in general.

(2) Further, the city does ordain that the standards in this section reflect the prevailing community standards in the city. This section is intended to prevent harm stemming from the physical immediacy in combination of alcohol, nudity, and sex.

(3) It is also the intent of the city to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, such as prostitution, sexual assault and disorderly conduct.

(B) *Certain acts prohibited.* It shall be unlawful for any licensee to permit or allow any person or persons from being upon the licensed premises when such person does not have his or her buttocks, anus, breast and genitals covered with a nontransparent material.

(C) *Violation.* A violation of this section is a misdemeanor and is justification for revocation or suspension of any license.

DRUG PARAPHERNALIA

§111.010 PURPOSE

The purposes of Sections 111.0070 through 111.0074 are as follows:

- (A) To protect and promote the public health, safety and general welfare by prohibiting the possession, manufacturing, delivery and advertisement of drug paraphernalia within the City.
- (B) To deter the use of controlled substances by controlling certain paraphernalia associated with their use and manufacture.
- (C) To reduce the availability of drug paraphernalia in order to prevent their availability from inducing, promoting, suggesting or increasing the public acceptability of controlled substances.

§111.011 DEFINITIONS

The term "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Minnesota Statutes, Chapter 152. It includes, but is not limited to:

- (A) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance can be derived.
- (B) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
- (C) Isomeric devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance.
- (D) Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.
- (E) Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.
- (F) Diluents and adulterants such as quinine, hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use or designed for use in cutting controlled substances.
- (G) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana.
- (H) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances.
- (I) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.

(J) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.

(K) Hypodermic syringes, needles and other objects used, intended for use or designed for use in injecting controlled substances into the human body.

(L) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.
2. Water pipes.
3. Carburetion tubes and devices.
4. Smoking and carburetion masks.
5. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
6. Miniature cocaine spoons, and cocaine vials.
7. Chamber pipes.
8. Carburetor pipes.
9. Electric pipes.
10. Air driven pipes.
11. Chillums.
12. Bongs.
13. Ice pipes or chillers.

§111.012 PROHIBITED PARAPHERNALIA:

(A) **Prohibited Use:** It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of Minnesota statutes as may be amended from time to time.

(B) **Prohibited Delivery:** It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of Minnesota statutes as may be amended from time to time.

(C) **Prohibited Advertising:** It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

§111.013 EVIDENCE OF PARAPHERNALIA

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (A) Statements by an owner or by anyone in control of the object concerning its use.
- (B) Prior convictions, if any, of any owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.
- (C) The proximity of the object, in time and space, to a direct violation of Sections 111.0070 through 111.0073.
- (D) The proximity of the object to controlled substances.
- (E) The existence of any residue of controlled substances on the object.
- (F) Direct or circumstantial evidence of the intent of an owner, or anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of Sections 111.0070 through 111.0073; the innocence of an owner, or of anyone in control of the object, as to a direct violation of Sections 111.0070 through 111.0073 shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.
- (G) Instructions, oral or written, provided with the object concerning its use.
- (H) Descriptive materials accompanying the object that explain or depict its use.
- (I) National and local advertising concerning its use.
- (J) The manner in which the object is displayed for sale.
- (K) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
- (L) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise.
- (M) The existence and scope of legitimate uses for the object in the community.
- (N) Expert testimony concerning its use.

§111.014 PENALTIES: Any person who violates Sections 111.007 through 111.010 is guilty of a misdemeanor.

AUCTIONS AND AUCTIONEERS

§ 111.020 AUCTIONEERS.

An auctioneer who intends to conduct an auction in the city shall submit proof of licensure by the county under M.S. Chapter 330, as it may be amended from time to time, as well as proof of compliance with the bond requirements of M.S. Chapter 330, as it may be amended from time to time, at least 14 days before the date of the auction.

FIREWORKS

§ 111.040 FIREWORKS.

(A) *Definitions.*

(1) *Fireworks.* For the purpose of this section, “fireworks” will have the same definition as contained in Minnesota Statute § 624.20, subd. 1, or any superceding statute.

(B) *Sale and Use of Fireworks Prohibited.* It will be unlawful for any person to offer for sale, expose for sale, sell at retail, or wholesale, or use, or explode any fireworks, except as otherwise hereinafter provided.

(C) *Permit Required.* No person will sell or possess for sale fireworks without first having obtained an annual permit from the City.

(1) *Application for Fireworks Display.* An application for a fireworks display permit will be made in writing to the City Administrator at least fifteen (15) days in advance of the date of display. The application will be promptly referred to the Fire Marshal.

(a) *Investigation.* The Fire Marshal, or their duly designated appointee, will make an investigation to determine whether the operator of the display is competent and whether the display is of such a character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. The Fire Marshal or their duly designated appointee will report the results of this investigation to the City Administrator, and, if they reports that in their opinion, the operator is competent and that the display as planned will conform to safety requirements, including the rules and regulations of the State Fire Marshal hereinafter provided for, the City Administrator will issue a permit for the display when the applicant pays a permit fee set forth in the Licenses, Fees and Permits Ordinance as amended from time to time. After such permit will have been granted, sales, possession, use, and distribution of fireworks for such display will be lawful for that purpose only. No permit so granted will be transferable.

(2) *Application for Permitted Sales, Use, and/or Possession.* An application for a permitted use, sale, and/or possession permit will be made in writing to the City Administrator at least fifteen (15) days in advance of the date of display. The application will be promptly referred to the Fire Marshal.

(a) *Investigation.* The Fire Marshal, or their duly designated appointee, will make an investigation to determine whether the applicant is competent. The Fire Marshal, or their duly designated appointee, will report the results of this investigation to the City Administrator, and, if they report that in their opinion, the applicant is competent and that the permitted sale, use, and/or possession will conform to safety requirements, including the rules and regulations of the State Fire Marshal hereinafter provided for, the City Administrator will issue a permit when the applicant pays a permit fee set forth in the Licenses, Fees and Permits as amended from time to time. After such permit will have been granted, sales, possession, use, and/or distribution of fireworks will be lawful. No permit so granted will be transferable.

(3) The Fire Marshal, or their duly designated appointee, will give final approval of denial of an application for the manufacture, storage for commercial purposes, or sale of fireworks within 30 days of such application being made to the City.

(4) Permits for permitted use, sale, and/or possession will be issued for the calendar year applied for and will expire on December 31st of that year. Display permits will be issued for the duration of the event only and expire thereafter.

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

(6) Prior to processing the application, the Fire Marshal, or their duly designated appointee, will determine that the proposed location is code compliant.

(7) The application will include a letter from the person legally responsible for the property on which the fireworks related activity would occur. Such letter will grant permission to the applicant for the use of said property.

(8) No display will be given unless a permit therefore has first been secured in the manner hereinafter set forth, provided, however, no such permit will be required when such display is given by the City of Cambridge within its own limits.

(D) Exceptions and Permitted Sales and Uses.

(1) Section D will not be construed to prohibit the sale or uses set forth in any of the following subdivisions:

(2) Sales at wholesale to those persons holding valid permits for a fireworks display from a governmental subdivision of the State.

(3) Sales outside the State.

(4) Any resident wholesaler, dealer, or jobber, from selling at wholesale such fireworks is not herein prohibited.

(5) The sale of any kind of fireworks for shipment directly out of the State.

(6) The use of fireworks by airplanes and railroads or other transportation agencies for signal purposes or illumination.

(7) The sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

(8) Supervised public displays of fireworks by cities, villages, and fair associations, amusement parks, and other organizations, when granted a permit and conducted as hereinafter provided.

(E) Regulations.

(1) No person will sell or store consumer fireworks within 50 feet of any fuel dispensing apparatus unless the total aggregate quantities of consumer fireworks are below the exempt amounts listed within Chapter 7 of NFPA 1124 *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles*®, 2003 Edition, within an approved structure or building. Consumer fireworks sales and display shall be limited to mercantile occupancies as defined in NFPA 10, *Life Safety Code*®. No person shall construct a retail display nor offer for sale explosives, explosive materials, or fireworks upon highways, sidewalks, public property, or in assembly or educational occupancies. The designated Fire Office will determine compliance.

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

(3) Exempt amounts: The requirement of Chapter 7 of NFPA 1124® shall not apply to consumer fireworks retail sales facilities or stores where the total quantity of consumer fireworks on hand does not exceed 56.8 kg [125 lb (net)] of pyrotechnic composition or, in a building protected throughout with an approved automatic sprinkler system installed in accordance with NFPA 12 *Standard for the installation of sprinkler systems*® 113.6 kg [250 lb (net)] of pyrotechnic composition. Where the actual weight of the pyrotechnic composition of consumer fireworks is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition. Amounts in excess of the exempt amounts shall be required to comply with NFPA 1124®.

(4) The requirements of this ordinance are in addition to any requirements imposed by any building and zoning regulations, fire codes, or State law.

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

(6) Exterior storage, display, sales, or transient sales of fireworks are permitted subject to a site plan review. Site plans will be submitted for review and approval a minimum of thirty (30) days before display. Approved minimum separation distances in compliance with table 7.7.2 of NFPA 1124® shall be provided from the exterior display to adjacent buildings, combustibles, or flammable liquids. No manufacturing, sales, or storage for commercial purposes will occur on residentially zoned property or within 100 feet thereof.

(7) A list of all consumer fireworks displayed for sale and stored on the property will be available at all times. The list will document the name, weight, and quantity of the fireworks and be accompanied by the material safety data sheets.

(8) Manufacturing, warehouse buildings, or sales displays in *excess* of the quantities listed in (3) for retail consumer fireworks will be classified as defined in the Building Code and where applicable, subject to the requirement of NFPA 24® and the current edition of the Minnesota State Fire Code.

(9) A handout describing fireworks use, safety, and warnings shall be provided by the retailer to each consumer purchasing fireworks.

(F) Use and Possession.

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

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

(3) The discharge of fireworks will be prohibited inside a building and within fifteen (15) feet of any building.

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

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

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

(G) Officers May Seize Illegal Fireworks. The State Fire Marshal, or any sheriff, police officer, constable, or local fire marshal, will seize, take, remove, or cause to be removed, at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of Sections 1 et seq.

(H) Penalties.

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

(2) Violations of this regulation, City Ordinance, or State Statute may result in revocation of the permit.

(3) Any violation of this Ordinance is a misdemeanor.

(I) Repeal of Conflicting Ordinances. All other ordinances or parts of ordinances of the City of Cambridge that may be in conflict herewith are hereby repealed.

CHAPTER 112: PEDDLERS AND SOLICITORS

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§ 112.01 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 ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Non-Commercial Door-to-Door Advocate. A person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purpose of this ordinance, the term door-to-door advocate shall fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

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 personnel property that the person is carrying or otherwise transporting. For the purposes of this ordinance, 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 considered 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." The definition of *Solicitor* does not include situations wherein the homeowner expressly consents to the presence of the person selling items prior to the person selling the items entering the property. (For example, in-home parties of Tupperware, Southern Living at Home, Longaberger Baskets, and the like.)

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 in any one location for more than fourteen (14) consecutive days. Food trucks/carts are governed by the City's Zoning Code, Chapter 156, Section 156.087.

§ 112.02 EXCEPTIONS TO DEFINITIONS

For the purpose of this chapter, the terms ***PEDDLER, SOLICITOR, and TRANSIENT MERCHANT*** shall not apply to:

(A) Non-commercial door-to-door advocates. Nothing within this ordinance shall be interpreted to prohibit or restrict non-commercial door-to-door advocates. Person engaging in non-commercial door-to-door advocacy shall not be required to register as a solicitor under Section 112.07.

(B) Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retail seller of the items being sold by the wholesaler.

(C) Any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products, such as baked goods or milk.

(D) Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route.

(E) Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, when attempting to establish a regular delivery route, or when publications are delivered to the community at large.

(F) Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales.

(G) Any person participating in an organized multi-person bazaar or flea market.

(H) Any person conducting an auction as a properly licensed auctioneer.

(I) Any officer of the court conducting a court-ordered sale.

Exemption from these definitions shall not excuse any person from complying with any other applicable statutory provision or requirement provided by another city ordinance.

§ 112.03 LICENSING; EXEMPTIONS

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

(B) *City license required.* Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to § 112.07.

(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 Chief of Police. All applications shall be signed by the applicant. All applications shall include the following information:

- (1) Applicant's full legal name.
- (2) All other names under which the applicant conducts business or to which applicant officially answers.
- (3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, and the like).
- (4) Full address of applicant's permanent residence.
- (5) Telephone number of applicant's permanent residence.
- (6) Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent.
- (7) Full address of applicant's regular place of business (if any).
- (8) Any and all business related telephone numbers of the applicant.
- (9) The type of business for which the applicant is applying for a license.

(10) Whether the applicant is applying for an annual or daily license.

(11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days).

(12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.

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

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

(15) Proof of any requested county license.

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

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

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

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

(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 ordinance.

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the Chief of Police, 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 Chief of Police determines that the application is incomplete, the Chief of Police must inform the applicant of the required necessary information that is missing. If the application is complete, the Chief of Police 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 Chief of Police must issue the license unless there exist grounds for denying the license under § 112.04, in which case the Chief of Police must deny the license. If the Chief of Police 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 Minnesota Court of Appeals for a writ of certiorari.

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

(G) *License exemptions.*

(1) No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated, or raised on any farm.

(2) No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place movement for the primary purpose of exercising that person's State or Federal Constitutional rights such as the freedom of speech, freedom of the press, freedom of religion and the like. This exemption will not apply 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.

§ 112.04 LICENSE INELIGIBILITY

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

(A) The failure of an applicant to obtain and demonstrate proof of having obtained any required county license.

(B) The failure of an applicant to truthfully provide any information requested by the city as part of the application process.

(C) The failure of an applicant to sign the license application.

(D) The failure of an applicant to pay the required fee at the time of application.

(E) A conviction within the past five (5) years of the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects upon the person's ability to conduct the business for which the license is being sought in a professional, honest and legal manner. Such violations shall include, but are not limited to, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.

(F) The revocation with the past five (5) years of any license issued to an applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant.

(G) When an applicant has a bad business reputation. Evidence of a bad business reputation shall include, but is not limited to, the existence of more than three (3) complaints against an applicant with the Better Business Bureau, the Office of the Minnesota Attorney General or other state attorney general's office, or other similar business or consumer rights office or agency, with the preceding twelve (12) months, or three (3) complaints filed with the city against an applicant within the preceding five (5) years.

§ 112.05 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 § 112.04.
- (4) Violation of any provision of this chapter.

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

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

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

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

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

§ 112.06 LICENSE TRANSFERABILITY

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

§ 112.07 REGISTRATION

All solicitors, and any person exempt from the licensing requirements of this chapter under § 112.03, shall be required to register with the city. Persons engaging in door-to-door advocacy shall not be required to register. 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 Chief of Police shall issue to the registrant a Certificate of Registration as proof of the registration. Certificates of Registration shall be non-transferable.

§ 112.08 PROHIBITED ACTIVITIES

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

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

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

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

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

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

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

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

(H) Otherwise operating their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

§ 112.09 EXCLUSION BY PLACARD

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

§ 112.10 PENALTY

Any individual found in violation of any provision of this ordinance, shall be a guilty of a misdemeanor.

CHAPTER 114: ALCOHOLIC BEVERAGES

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§114.001 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 percent 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.

§114.002 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW

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

§114.003 DEFINITIONS

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

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

RESTAURANT. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by Minn. Stat. § 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 Minn. Stat. § 157.16, subd. 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 ordinance unless it meets the definitions of a “small establishment”, “medium establishment” or “large establishment”.

§114.004 NUDITY ON 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 ordinance. 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 ordinance, as set forth in this section, reflects the prevailing community standards of the city.

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

(C) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or any other license issued under this ordinance or the imposition of a civil penalty under the provisions of 114.0030(B).

§114.005 CONSUMPTION IN PUBLIC PLACES

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this ordinance, in a municipal liquor dispensary if one exists in the city, Cambridge City Hall, City Center Mall, the Armed Forces Reserve & Community Center, or where the consumption and display of liquor is lawfully permitted.

§114.006 RAFFLES, SILENT AUCTIONS AND FUND RAISING EVENTS FOR CHARITABLE PURPOSES OF WINE, BEER OR INTOXICATING LIQUORS

No person shall conduct a silent auction, raffle or other fund raising event pursuant to Minn. Stat. § 340A.707 with prizes or awards of wine, beer or intoxicating liquors without notifying the city clerk of the event at least ten days prior to the occurrence of the event. The event holder shall provide the city with the following information: the person or organization holding the event, the day, time and location of the event, type of fund raising event (silent auction, raffle or otherwise), type and amount of wine, beer, intoxicating liquor to be awarded as prizes, and the charitable purposes to which the event proceeds will be donated.

§114.007 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 ordinance is limited to the number of license which were issued as of the effective date of this ordinance, 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 Minn. Stat. 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 Minn. Stat. § 340A.413, subd. 3 as it may be amended from time to time, but not all of them have been issued, the larger number of licenses is no longer in effect until the Council by ordinance determines that any or all of the licenses may be issued. The Council is not required to issue the full number of licenses that it has available.

§114.008 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.

§114.009 KINDS OF LIQUOR LICENSES

Cambridge has a municipal liquor store and is only authorized to issue licenses specific in 114.009 and 114.029.

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

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

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

(D) Off-sale intoxicating liquor licenses, which may be issued only to the exclusive liquor store.

(E) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by Minn. Stat. § 340A.101, as it may be amended from time to time, and this ordinance: 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 114.0010 of this ordinance shall not exceed the amounts provided for in Minn. Stat. § 340A.408, subd. 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 Minn. Stat. § 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 Minn. Stat. § 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.

(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 Minn. Stat. § 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 114.003 of this ordinance, 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 114.0010 of this ordinance, shall not exceed \$200, or the maximum amount provided by Minn. Stat. § 340A.504, subd. 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; a political committee registered under state law; or a state university. 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 Minn. Stat. § 340A.404, subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in section 3; to licensed bed and breakfast facilities which meet the criteria in Minn. Stat. § 340A.4011, subd. 1, as it may be amended from time to time and to theaters that meet the criteria of Minn. Stat. § 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 114.0010 of this ordinance, 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 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

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

(K) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of 114.0010 of this ordinance shall not exceed \$300, or the maximum amount permitted by Minn. Stat. § 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.

(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, 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 Minnesota. 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 114.0010.

(N) Brew pub on-sale intoxicating liquor or on-sale 3.2 percent 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 Minn. Stat. § 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 114.009 (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 malt liquor licenses, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under 114.009 (N) above and otherwise meets the criteria established at Minn. Stat. § 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 Minn. Stat. § 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 114.009 (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 750 barrels.

Brewer off-sale malt liquor licenses may also be issued, with approval of the Commissioner, to a holder of a brewer's license under Minn. Stat. § 340A.301, subd. 6(c), (i) or (j) and meeting the criteria established by Minn. Stat. § 340A.28 as may be amended from time to time. The amount of malt liquor sold at off-sale may not exceed 750 barrels annually. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the jurisdiction in which the brewer is located, and the malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. Packaging of malt liquor for off-sale under this license must comply with section 340A.285.

(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.

(Q) A brewer taproom license, may be issued to the holder of a brewer's license under M.S. § 340A.301 Subd. 6(c), (i) or (j) as it may amended from time to time. A brewer's taproom license authorizes on-sale of malt liquor produced by the brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer. A brewer may have only one taproom license and may not have an ownership interest in a brewer licensed under Minn. Stat. § 340A.301 Subd. 6(d) as it may be amended from time to time. A brewer taproom license may not be issued to a brewer that brews more than 250,000 barrels of malt liquor annually or a winery that produces more than 250,000 gallons of wine annually. Within ten days of issuing a brewer taproom license the City Clerk will inform the Commissioner of Public Safety of the licensee's name, address, trade name and the effective date and expiration date of the license. The City Clerk will inform the Commissioner of Public Safety of a license transfer, cancellation, suspension, or revocation during the license period.

(R) A cocktail room license may be issued to the holder of a state microdistillery license if at least 50 percent of the annual production of the licensee is processed and distilled on premises. A microdistillery cocktail room license authorizes on-sale of distilled liquor produced by the distiller for consumption on the premises of or adjacent to one distillery location owned by the distiller. The holder of a microdistillery cocktail room license may also hold a license to operate a restaurant at the distillery. No more than one cocktail room license may be issued to any distiller and a microdistillery cocktail room license may not be issued to any person having an ownership interest in a distillery licensed under Minn. Stat. § 340A.301 subd. 6 (a). No single entity may hold both a microdistillery cocktail room and taproom license and a microdistillery cocktail room and taproom license may not be co-located. Within ten days of the issuance of a microdistillery cocktail room license, the city shall inform the commissioner of public safety of the licensee's name and address and trade name, and the effective date and expiration date of the license. The city shall also inform the commissioner of public safety of a microdistillery cocktail room license transfer, cancellation, suspension, or revocation during the license period.

(S) A microdistiller off-sale license may be issued to the holder of a state microdistillery license if at least 50 percent of the annual production of the licensee is processed and distilled on premises. A microdistiller off-sale license authorizes off-sale of one 375 milliliter bottle per customer per day of product manufactured on-site provided the product is also available for distribution to wholesalers.

(T) A microdistiller temporary on-sale intoxicating liquor license may be issued to the holder of a state microdistillery license. A microdistillery temporary on-sale intoxicating liquor license authorizes on-sale of intoxicating liquor in connection with a social event within the city sponsored by the microdistillery.

§114.010 LICENSE FEES; PRO RATA

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

(B) The Council may establish from time to time in the Ordinance Establishing Fees and Charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this ordinance. 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 Minn. Stat. § 340A.408, subd. 5, as it may be amended from time to time.

§114.011 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 ordinance.

§114.012 APPLICATION FOR LICENSE

(A) *Form.* Every application for a license issued under this ordinance 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 ordinance, the applicant shall demonstrate proof of financial responsibility as defined in Minn. Stat. § 340A.409, as it may be

amended from time to time, with regard to liability under Minn. Stat. § 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 Minn. Stat. § 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this ordinance without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

§114.013 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.

§114.014 APPLICATIONS FOR RENEWAL

At least 90 days before a license issued under this ordinance 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.

§114.015 TRANSFER OF LICENSE

No license issued under this ordinance 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.

§114.016 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.

§114.017 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.

§114.018 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 granted within 200 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.

§114.019 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 ordinance 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.

(1) *Compliance checks.* Compliance checks shall mean the system the City uses to investigate and ensure that those authorized to sell alcohol, beer, or malt beverages are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by the City's ordinance and/or state statute.

Compliance checks shall also mean the use of minors who attempted to purchase alcohol, beer, or malt beverages for educational, research, and training purposes as authorized by state and federal laws.

(a) *Compliance checks and inspections.* All licensed premises shall be open to inspection by the City or other authorized City representative 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 seventeen (17) years but less than twenty-one (21) years old to enter the licensed premises to attempt to purchase alcohol, beer, or malt beverages. Minors used for the purposes 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 alcohol, beer, or a malt beverage when such items are obtained as a part of a compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age.

The results of City conducted alcohol compliance checks can be used by the City to determine whether or not the license holder's application for renewal will be granted.

(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 ordinance is a continuing condition of any license.

(F) Failure by on off-sale intoxicating liquor license who has received a fee reduction pursuant to 114.0010 (f) of this ordinance to abide with the provisions of 114.0010 (f).

§114.020 HOURS AND DAYS OF SALE

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

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

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

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

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

§114.021 MINORS ON PREMISES

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

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

§114.022 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 Minn. Stat. § 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.

§114.023 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 a City-initiated compliance check or to comply with any applicable statute, regulation, or provision of this ordinance 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, Minn. Stat. §§ 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 use the Administrative 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 ordinance or Minn. Stat. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:

(1) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of 114.004, 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 ordinance 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.

(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 ordinance 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, 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 ordinance have again been met.

(D) The provisions of 114.0030 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this ordinance.

§114.024 APPLICATION OF SECTIONS 114.025-.029

Sections 114.025-.029 apply to Cambridge because the City has a municipal liquor store.

§114.025 EXISTING MUNICIPAL STORES CONTINUED

The city has in existence on the effective date of this ordinance a municipal liquor store for the sale of intoxicating liquor. Except as provided in 114.0029, no intoxicating liquor may be sold at retail elsewhere in the city.

§114.026 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.

§114.027 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 ordinance 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 ordinance and with the laws relating to the sale of intoxicating liquor and 3.2 percent 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 Minn. Stat. § 471.6985, as it may be amended from time to time.

(E) *Hours of operation.* No off sale of intoxicating liquor shall be made in the municipal liquor dispensary on Sunday, ~~nor~~ before 11:00 am or after 6:00 pm or before 8:00 a.m. or after 10:00 p.m. Monday through Saturday ~~of any day.~~ No sale shall be made on Easter, Thanksgiving Day, after 8:00 pm on Christmas Eve Day, December 24, or Christmas Day, December 25. 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.

§114.028 PROOF OF FINANCIAL RESPONSIBILITY

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

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

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

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

§114.030 PENALTIES

(A) Any person violating the provisions of this ordinance or Minn. Stat. 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 Minn. Stat. Ch. 340A, as it may be amended from time to time, and of this ordinance. 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, Minn. Stat. §§ 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 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.
- (3) For the third and subsequent violations within any three-year period, \$2,000.

(C) The term “violation” as used in 114.0023 includes any and all violations of the provisions in this section, or of Minn. Stat. 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.

§ 114.031 SEVERABILITY

If any section of this chapter is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without invalidating the section or provision.

CHAPTER 115: TOBACCO REGULATIONS

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§ 115.01 PURPOSE

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco products and tobacco related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices, and the sales, possession and use are violations of both state and federal laws; and because studies, which are accepted and adopted, 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 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, electronic cigarettes, electronic delivery device, and nicotine or lobelia delivery 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, electronic delivery device, and nicotine or lobelia delivery 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 otherwise 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.

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

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices.

ELECTRONIC DELIVERY DEVICE AND ELECTRONIC CIGARETTE. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

HOOKAH. "Hookah" shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.

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.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

LOOSIES. The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term “loosies” does not include individual cigars with a retail price, before any sales taxes, of more than \$1.00 per cigar.

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, kiosk, trailer 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.

NICOTINE OR LOBELIA DELIVERY DEVICES. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

PUBLIC PLACE. Any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings.

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.

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

SAMPLING. The lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic cigarettes in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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, tobacco-related device, or nicotine or lobelia delivery device between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

SMOKING. Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product or exhaling vapor from any electronic delivery

device, such as vaping. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco or plant product intended for inhalation.

SMOKING LOUNGE. A tobacco products shop which allows customers to be seated.

TOBACCO or TOBACCO RELATED PRODUCTS. Tobacco and tobacco products includes cigarettes and 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, including by vaping, or any component, part, or accessory of a tobacco product; cigars; pipe tobacco, 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; dipping tobaccos; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

TOBACCO PRODUCTS SHOP: A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of tobacco, tobacco related products, tobacco related devices and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

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

VAPOR LOUNGE. A vapor products shop which allows customers to be seated.

VAPOR PRODUCTS SHOP: A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of electronic delivery devices, electronic cigarettes and related products and in which the sale of other products is merely incidental. "Vapor products shop" does not include a vapor products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

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

No person shall sell or offer to sell any tobacco, tobacco products, tobacco related devices, electronic cigarettes, electronic delivery devices, or nicotine or lobelia delivery devices without first having obtained a license to do so from the city.

(A) *Application.* An application for a license to sell tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery devices, or nicotine or lobelia delivery devices

shall be made on a form provided by the city. The applications 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 Administrator shall forward the application to the City Council for action at its next regularly scheduled Council meeting. If the City Administrator 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.

(B) *Action.* If the City Council may either approve or deny the license, or it may delay action for a reasonable period of time necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the City Administrator 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.

(C) *Term.* All licenses issued under this chapter shall be valid for the calendar year of the date of issue and expire on December 31 (January 1 – December 31).

(D) *Licensee's responsibility.* Every licensee is responsible for the conduct in the licensed establishment, and any sale of tobacco or tobacco products by any employee authorized to sell in the establishment is the act of the licensee

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in this Title XI: Business Regulations.

(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 premises.

(I) *Renewals.* The renewal of a license under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license. The applicant must provide proof that an employee training program on tobacco sales has been provided during the license year by submitting records supporting that training at the time of their license renewal each year.

(J) *Issuance is a 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.

(K) *Proximity to youth-oriented facilities.* No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, electronic

cigarettes, electronic delivery device or nicotine or lobelia delivery devices within 1,000 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling such products in that location for at least one year before the date this section was enacted into law. For the purpose of this section, a youth-oriented facility includes any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products consumed or used primarily by persons under the age of 21.

(L) *Smoking.* Except as allowed under Minn. Stat. § 144.414, smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products generally is prohibited.

(M) *Penalty,* see Section 115.12 VIOLATIONS.

§ 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 set by Council resolution or ordinance.

Penalty, see §115.12 VIOLATIONS.

§ 115.05 BASIS FOR DENIAL OF LICENSE

(A) Grounds for denying the issuance or renewal of a license under this chapter include but are 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, tobacco products, tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices;
- (3) The applicant has had a license to sell tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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 such a license.

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

§ 115.06 PROHIBITED SALES

(A) *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, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices:

- (1) To any person under the age of 18 years;
- (2) By means of any type of vending machine, except as may otherwise be provided in this chapter;
- (3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco product or tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices and whereby there is not a physical exchange of tobacco, tobacco product or tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices between the licensee or the licensee's employee and the customer;
- (4) By means of loosies as defined in § 115.02;
- (5) 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;
- (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) *Smoking and Sampling Prohibitions.*

(1) Except for exceptions listed in Minn. Stat. § 144.4167, smoking generally shall be prohibited and no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. Other than provided for in 144.4167, subd. 4, tobacco sampling, including sampling of electronic delivery devices and products used in electronic delivery devices, is specifically prohibited in the city.

(2) To ensure that tobacco smoke or vapor electronic delivery devices does not enter public places and places of work and that persons entering such places are not exposed involuntarily to smoke or vapor, smoking and the use of electronic delivery devices are prohibited within twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public places and places of work. This prohibition does not apply to entrances and exits used solely in the event of an emergency and appropriately signed for that purpose.

(C) *Smoking Lounges.* Smoking lounges, hookah lounges and vapor lounges are prohibited. However, the licensed establishment is permitted to set up and test new devices for customers

purchasing new tobacco, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices.

(D) *Cigars.* No person shall sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. This restriction shall not apply to any sales, offer to sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$1.00 per cigar and after any price promotions or discounts are taken into account and before the imposition of sales tax, but excluding retail sales tax, and tobacco product shops only accessible to those 18 years or older.

(1) This section shall not apply to premium cigars as defined in Minnesota Statutes 297F.01 subd. 13a.

(2) The minimum pricing established in this section shall be adjusted periodically for inflation at least every three years.

(E) *Penalty.* See Section 115.12 VIOLATIONS.

§ 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, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Penalty. See Section 115.12 VIOLATIONS.

§ 115.08 SELF-SERVICE SALES

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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, tobacco-related device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer.

All tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery 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, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.

A license holder who operates an establishment or fully enclosed portion of an establishment that sells at least 90 percent of its products in tobacco, or tobacco products, tobacco-related devices, electronic delivery devices or electronic cigarettes, is exempt from the self-service merchandising

provision if the license holder prohibits anyone under 18 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under 18 years of age from entering the establishment.

§ 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, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the licensee's employee to whatever penalties are appropriate under this chapter, state or federal law or other applicable law or regulation.

§ 115.10 COMPLIANCE CHECKS AND INSPECTIONS

All licensed premises shall be open to inspection by the local law enforcement 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 premises to attempt to purchase tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices.

Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices when such items are obtained or attempted to be 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. 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, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices to any minor. Every licensee is responsible for the conduct in the licensed establishment, and any sale of tobacco or tobacco products by any employee authorized to sell in the establishment is the act of the licensee.

(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, tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices. This division shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices.

(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, tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices and it shall be a violation of this chapter for any person to purchase or otherwise obtain such items on behalf of a minor. 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, tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices. This division shall not apply to minors lawfully involved in a compliance check.

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

§ 115.12 VIOLATIONS

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

(B) *Violations.*

(1) *Notice.* A person violating this chapter may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) 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 (10) business days of the issuance of the citation and delivered to the city administrator or other designated city officer. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The city administrator or other designated city officer shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days. 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 city and the accused violator by in person delivery or mail as soon as practicable. 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 city and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) *Costs.* If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(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 within ten (10) business days.

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

(C) *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 consecutive days.

(2) *Other individuals.* Other individuals, other than minors regulated by division (C)(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, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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 Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(4) *Statutory penalties.* If the administrative penalties authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

§ 115.13 EXCEPTIONS AND DEFENSES

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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.

§ 115.14 SEVERABILITY

If any section of this chapter is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without invalidating the section or provision.

CHAPTER 117: PAWNBROKERS

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§ 117.01 PURPOSE

(A) The City Council finds that use of services provided by pawnbrokers provides an opportunity for the commission of crimes and their concealment because pawn businesses have the ability to receive and transfer property stolen by others easily and quickly. The City Council also finds that consumer protection regulation is warranted in transactions involving pawnbrokers. The purpose of this chapter is to prevent pawn businesses from being used as facilities for the commission of crimes, and to assure that such businesses comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the citizens of the city.

(B) To help the Police Department better regulate current and future pawn businesses, decrease and stabilize costs associated with the regulation of the pawn industry, and increase identification of criminal activities in the pawn industry through the timely collection and sharing of pawn transaction information, this chapter also implements and establishes the required use of the Automated Pawn System (APS).

§ 117.02 DEFINITIONS

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

Billable Transaction. Every reportable transaction conducted by a pawnbroker is a billable transaction except renewals, redemptions or extensions of existing pawns on items previously reported and continuously in the licensee's possession, voided transactions, and confiscations.

Pawnbroker. Any natural person, partnership or corporation, either as principal, or agent or employee thereof, who loans money on deposit or pledge of personal property, or other valuable thing, or who deals in the purchasing of personal property, or other valuable thing on condition of selling the same back again at a stipulated price, or who loans money secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged. To the extent that a pawnbroker's business includes buying personal property previously used, rented or leased, or selling it on consignment, the provisions of this chapter shall be applicable.

Reportable Transaction. Every transaction conducted by a pawnbroker in which merchandise is received through a pawn, purchase, consignment or trade, or in which a pawn is renewed, extended or redeemed, or for which a unique transaction number or identifier is generated by their point-of-sale software, or an item is confiscated by law enforcement, is reportable except:

(1) The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the pawnbroker must maintain a record of such purchase or consignment which describes each item, and must mark each item in a manner which relates it to that transaction record.

(2) Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

§ 117.03 LICENSE REQUIRED

(A) No person shall engage in the business of pawnbroker at any location without a pawnbroker license for that location. No pawnbroker license may be transferred to a different location or a different person. Issuance of a license under this chapter shall not relieve the licensee from obtaining any other licenses required to conduct business in the same or any other locations.

(B) *License classifications.* Licenses renewed under provisions of this chapter shall be classified according to the number of billable transactions submitted annually to the Police Department during the 12 month period ending December 31 prior to renewal:

(1) Class A - Licensees that submitted 400 or more transactions.

(2) Class B - Licensees that submitted fewer than 400 transactions.

(C) *License fees.* The city shall determine the annual license fee.

(1) The annual license fees for licenses issued under this chapter shall be as follows:

(a) Class A - To be determined by the City Council.

(b) Class B - To be determined by the City Council.

(2) The billable transaction license fee shall be classified according to the medium by which daily reports required by § 117.09 are submitted to the Police Department. These classifications shall be as follows:

(a) Modem - Required of all Class A licensees, optional for Class B licensees.

(b) Manual - Required of all Class B licensees who do not fulfill Class A reporting requirements.

(3) The billable transaction license fee shall reflect the cost of processing transactions and other related regulatory expenses as determined by the City Council, and shall be reviewed and adjusted, if necessary, every six months. Licensees shall be notified in writing 30 days before any adjustment is implemented.

(4) Billable transaction fees shall be billed monthly and are due and payable within 30 days. Failure to do so is a violation of this chapter.

§ 117.04 INVESTIGATION FEE

An applicant for a new license under this chapter, or for the renewal of an existing license that is more than six months past due, shall deposit a fee determined by the City Council with the Police Department at the time an original application is submitted to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this chapter. If the investigation process is conducted solely within the State of Minnesota, the initial investigation fee as determined by the City Council shall be retained by the city and the remainder of the deposit shall be returned to the applicant upon completion of the investigation. If the investigation is conducted outside the State of Minnesota, the issuing authority may recover the actual investigation costs not exceeding \$10,000.

§ 117.05 EXPIRATION OF LICENSE

All licenses shall expire on January 1.

§ 117.06 APPLICATION REQUIRED

(A) *Contents.* An application form provided by the Police Department must be completed by every applicant for a new license or for renewal of an existing license. Every new applicant must provide all the following information:

(1) If the applicant is a natural person:

(a) The name, place and date of birth, street resident address, driver's license number and phone number of applicant.

(b) Whether the applicant is a citizen of the United States or resident alien.

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

(d) The name of the business if it is to be conducted under a designation, name, or

style other than the name of the applicant and a certified copy of the certificate as required by M.S. § 333.01, as it may be amended from time to time.

(e) The street address at which the applicant has lived during the preceding five years.

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

(g) Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the applicant must furnish information as to the time, place, and offense of all such convictions.

(h) The physical description of the applicant.

(i) Applicant's current personal financial statement and true copies of the applicant's federal and state tax returns for the two years prior to application.

(j) If the applicant does not manage the business, the name of the manager(s) or other person(s) in charge of the business and all information concerning each of them required in (A)(1)(a) through (A)(1)(h).

(2) If the applicant is a partnership:

(a) The name(s) and address(es) and driver's license number(s) of all general and limited partners and all information concerning each general partner required in subdivision (A)(1).

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

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

(d) A true copy of the federal and state tax returns for partnership for the two years prior to application.

(e) If the applicant does not manage the business, the name of the manager(s) or other person(s) in charge of the business and all information concerning each of them required in (A)(1)(a) through (A)(1)(h).

(3) If the applicant is a corporation or other organization:

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

(b) A true copy of the certificate of incorporation, articles of incorporation or association agreement, and by-laws shall be attached to the application. If the applicant is a foreign

corporation, a certificate of authority as required by M.S. § 303.06, as it may be amended from time to time, must be attached.

(c) The name of the manager(s) or other person(s) in charge of the business and all information concerning each manager, proprietor, or agent required in (a) through (h) of subdivision (A)(1).

(d) A list of all persons who control or own an interest in excess of 5% in such organization or business form or who are officers of the corporation or business form and all information concerning said persons required in subdivision (A)(1) above. This subdivision, however, shall not apply to a corporation whose stock is publicly traded on a stock exchange and is applying for a license to be owned and operated by it.

(4) For all applicants:

(a) Whether the applicant holds a current pawnbroker, precious metal dealer or secondhand goods dealer license from any other governmental unit.

(b) Whether the applicant has previously been denied, or had revoked or suspended, a pawnbroker, precious metal dealer, or secondhand dealer license from any other governmental unit.

(c) The location of the business premises.

(d) If the applicant does not own the business premises, a true and complete copy of the executed lease.

(e) The legal description of the premises to be licensed.

(f) Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.

(g) Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application must be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed.

(h) Such other information as the City Council or issuing authority may require.

(B) *New manager.*

(1) When a licensee places a manager in charge of a business, or if the named manager(s) in charge of a licensed business changes, the licensee must complete and submit the appropriate application within 14 days. The application must include all appropriate information required in this section.

(2) Upon completion of an investigation of a new manager, the licensee must pay an amount equal to the cost of the investigation to assure compliance with this chapter. If the investigation process is conducted solely within the State of Minnesota, the fee shall be determined by the City Council. If the investigation is conducted outside the State of Minnesota, the issuing authority may recover the actual investigation costs not exceeding \$10,000.

(C) *Application execution.* All applications for a license under this chapter must be signed and sworn to under oath or affirmation by the applicant. If the application is that of a natural person, it must be signed and sworn to by such person; if that of a corporation, by an officer thereof; if that of a partnership, by one of the general partners; and if that of an unincorporated association, by the manager or managing officer thereof.

(D) *Investigation.* The Police Department must investigate the truthfulness of the statements set forth in the application and shall endorse the findings thereon. The applicant must furnish to the Police Department such evidence as the Department may reasonably require in support of the statements set forth in the application.

(E) *Persons ineligible for a license.* No licenses under this chapter will be issued to an applicant who is a natural person, a partnership if such applicant has any general partner or managing partner, a corporation or other organization if such applicant has any manager, proprietor or agent in charge of the business to be licensed, if the applicant:

(1) Is a minor at the time that the application is filed;

(2) Has been convicted of any crime directly related to the occupation licensed as prescribed by M.S. § 364.03, Subdivision 2, as it may be amended from time to time, and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensee under this chapter as prescribed by M.S. § 364.03, Subdivision 3, as it may be amended from time to time; or

(3) Is not of good moral character or repute.

§ 117.07 BOND REQUIRED

Before a license will be issued, every applicant must submit a \$5,000 bond. All bonds must be conditioned that the principal will observe all laws in relation to pawnbrokers, and will conduct business in conformity thereto, and that the principal will account for and deliver to any person legally entitled any goods which have come into the principal's hand through the principal's business as a pawnbroker, or in lieu thereof, will pay the reasonable value in money to the person. The bond shall contain a provision that no bond may be canceled except upon 30 days written notice to the Police Department, which shall be served upon the licensing authority.

§ 117.08 RECORDS REQUIRED

At the time of any reportable transaction other than renewals, extensions or redemptions, every licensee must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the Police Department:

(A) A complete and accurate description of each item including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item.

(B) The purchase price, amount of money loaned upon, or pledged therefor.

(C) The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.

(D) Date, time and place the item of property was received by the licensee, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records.

(E) Full name, current residence address, current residence telephone number, date of birth and accurate description of the person from whom the item of the property was received, including sex, height, weight, race, color of eyes and color of hair.

(F) The identification number and state of issue from any of the following forms of identification of the seller:

(1) Current valid Minnesota driver's license.

(2) Current valid Minnesota identification card.

(3) Current valid photo identification card issued by another state or province of Canada.

(G) The signature of the person identified in the transaction.

(H) (1) Effective 60 days from the date of notification by the Police Department of acceptable video standards the licensee must also take a color photograph or color video recording of:

(a) Each customer involved in a billable transaction.

(b) Every item pawned or sold that does not have a unique serial or identification number permanently engraved or affixed.

(2) If a photograph is taken, it must be at least two inches in length by two inches in width and must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate. Such photographs must be available to the Chief of Police, or the Chief's designee, upon request. The major portion of the photograph must include an identifiable front facial close-up of the person who pawned or sold the item. Items photographed must be accurately depicted. The licensee must inform the person that he or she is being photographed by displaying a sign of sufficient size in a conspicuous place in the premises. If a video photograph is taken, the video camera must zoom in on the person pawning or selling the item so as to include an identifiable close-up of that person's face. Items photographed by video must be accurately depicted. Video photographs must be electronically referenced by time and date so they can be readily matched and correlated with all other records of the transaction to which they relate. The licensee must inform the person that he or she is being videotaped orally and by displaying a sign of sufficient size in a conspicuous place on the premises. The licensee must keep the exposed videotape for three months.

(I) Effective 60 days from the date of notification by the Police Department licensees must fulfill the color photograph requirements in division (H) by submitting them as digital images, in a format specified by the issuing authority, electronically cross-referenced to the reportable transaction they are associated with. Notwithstanding the digital images may be captured from required video recordings, this provision does not alter or amend the requirements in division (H).

(J) For renewals, extensions and redemptions, the licensee shall provide the original transaction identifier, the date of the current transaction, and the type of transaction.

(K) The records must at all reasonable times be open to inspection by the Police Department or department of licenses and consumer services. Data entries shall be retained for at least three years from the date of transaction. Entries of required digital images shall be retained a minimum of 90 days.

§ 117.09 DAILY REPORTS TO POLICE

(A) Effective no later than 60 days after the Police Department provides licensees with the current version of the Automated Pawn System Interchange File Specification, licensees must submit every reportable transaction to the Police Department daily in the following manner: Licensees must provide to the Police Department all reportable transaction information by transferring it from their computer to the Automated Pawn System via modem using the current version of the Automated Pawn System Interchange File Specification. All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the issuing authority. Any transaction that does not meet the Automated Pawn System Interchange File Specification must be corrected and resubmitted the next business day. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs patrons that all transactions are reported to the Police Department daily.

(B) Licensees will be charged for each billable transaction reported to the Police Department.

(1) If a licensee is unable to successfully transfer the required reports by modem, the licensee must provide the Police Department, upon request, printed copies of all reportable transactions along with the video tape(s) for that date, by 12:00 noon the next business day.

(2) If the problem is determined to be in the licensee's system and is not corrected by the close of the first business day following the failure, the licensee must continue to provide the required reports as detailed in this section, and must be charged a \$50 reporting failure penalty, daily, until the error is corrected.

(3) If the problem is determined to be outside the licensee's system, the licensee must continue to provide the required reports in this section, and resubmit all such transactions via modem when the error is corrected.

(4) If a licensee is unable to capture, digitize or transmit the photographs required in § 117.08, the licensee must immediately take all required photographs with a still camera, cross-reference the photographs to the correct transaction, and make the pictures available to the Police Department upon request.

(5) Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed.

(6) Notwithstanding, the Police Department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.

§ 117.10 RECEIPT REQUIRED

Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three years. The receipt must include at least the following

information:

- (A) The name, address and telephone number of the licensed business.
- (B) The date and time the item was received by the licensee.
- (C) Whether the item was pawned or sold, or the nature of the transaction.
- (D) An accurate description of each item received including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item.
- (E) The signature or unique identifier of the licensee or employee that conducted the transaction.
- (F) The amount advanced or paid.
- (G) The monthly and annual interest rates, including all pawn fees and charges.
- (H) The last regular day of business by which the item must be redeemed by the pledger without risk that the item will be sold, and the amount necessary to redeem the pawned item on that date.
- (I) The full name, current residence address, current residence telephone number, and date of birth of the pledger or seller.
- (J) The identification number and state of issue from any of the following forms of identification of the seller:
 - (1) Current valid Minnesota driver's license.
 - (2) Current valid Minnesota identification card.
 - (3) Current valid photo driver's license or identification card issued by another state or province of Canada.
- (K) Description of the pledger or seller including approximate sex, height, weight, race, color of eyes and color of hair.
- (L) The signature of the pledger or seller.
- (M) All printed statements as required by M.S. § 325J.04 Subdv. 2, as it may be amended from time to time, or any other applicable statutes.

§ 117.11 REDEMPTION PERIOD

Any person pledging, pawning or depositing an item for security must have a minimum of 60 days from the date of that transaction to redeem the item before it may be forfeited and sold.

- (A) *Removal of goods from licensed location.* During the 60 day redemption period, items may not be removed from the licensed location except

(1) As provided in § 117.18.

(2) Licenses are permitted to return pledged goods to the pledger at any time during the redemption period,

(3) A licensee is permitted to sell the pledged goods or remove the pledged goods from the licensed location or other storage facility approved by the City at any time after the expiration for the redemption period,

(4) Licensees who purchase goods not involving a pawn transaction are permitted to sell or remove the purchased goods from the pawnshop premises or other storage facility approved by the City 31 days or later from the purchase transaction date.

(5) Return of goods. Licensees must return pledged goods to a pledger or seller, or provide compensation for lost or damaged goods, upon payment of the full amount due to the licensee unless either

(a) the date of redemption is more than 60 days past the date of the pawn transaction, renewal, or extension and the pawnbroker has sold the pledged goods pursuant to Minn. Stat. § 325J.06 or

(b) the pledged goods have been taken into custody by a court or law enforcement officer or agency. Licensees are prohibited from redeeming any item to anyone other than the person to whom the receipt was issued or, to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledger at the time of the initial transaction and signed by the pledger, or with approval of the police license inspector. Written authorization for release of property to persons other than original pledger must be maintained along with original transaction record in accordance with § 117.08.

§ 117.12 POLICE ORDER TO HOLD PROPERTY

(A) *Investigative hold.* Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within 72 hours and will remain in effect for 15 days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, pursuant to this section, whichever comes first.

(B) *Order to hold.* Whenever the Chief of Police, or the Chief's designee, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the Chief or the Chief's designee. The order to hold shall expire 90 days from the date it is placed unless the Chief of Police or the Chief's designee determines the hold is still necessary and notifies the licensee in writing.

(C) *Order to confiscate.* If an item is identified as stolen or evidence in a criminal case, the Chief or Chief's designee may:

(1) Physically confiscate and remove it from the shop, pursuant to a written order from the Chief or the Chiefs designee;

(2) Place the item on hold or extend the hold as provided in this section and leave it in the

shop.

(D) When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

(E) When an order to hold/confiscate is no longer necessary, the Chief of Police or Chief's designee shall so notify the licensee.

§ 117.13 INSPECTION OF ITEMS

At all times during the terms of the license, the licensee must allow law enforcement officials to enter the premises where the licensed business is located, including all off-site storage facilities as authorized in § 117.18, during normal business hours, except in an emergency, for the purpose of inspecting such premises and inspecting the items, ware and merchandise and records therein to verify compliance with this chapter or other applicable laws.

§ 117.14 LABEL REQUIRED

Licensees must attach a label to every item at the time it is pawned, purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item and the description or the model and serial number of the item as reported to the Police Department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used.

§ 117.15 PROHIBITED ACTS

(A) No person under the age of 18 years may pawn or sell or attempt to pawn or sell goods with any licensee, nor may any licensee receive any goods from a person under the age of 18 years.

(B) No licensee may receive any goods from a person of unsound mind or an intoxicated person.

(C) No licensee may receive any goods, unless the seller presents identification in the form of a valid driver's license, a valid State of Minnesota identification card, or current valid photo driver's license or identification card issued by the state or providence of residency of the person from whom the item was received.

(D) No licensee may receive any item of property that possesses an altered or obliterated serial number or operation identification number or any item of property that has had its serial number removed.

(E) No person may pawn, pledge, sell, consign, leave, or deposit any article of property not their own; nor shall any person pawn, pledge, sell, consign, leave, or deposit the property of another, whether with permission or without; nor shall any person pawn, pledge, sell, consign, leave, or deposit any article of property in which another has a security interest; with any licensee.

(F) No person seeking to pawn, pledge, sell, consign, leave, or deposit any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of

date address of residence or telephone number; nor present a false or altered identification, or the identification of another; to any licensee.

§ 117.16 DENIAL, SUSPENSION OR REVOCATION

Any license under this chapter may be denied, suspended or revoked for one or more of the following reasons:

- (A) The proposed use does not comply with the any applicable zoning code.
- (B) The proposed use does not comply with any health, building, building maintenance or other provisions of this Code of Ordinances or state law.
- (C) The applicant or licensee has failed to comply with one or more provisions of this chapter.
- (D) The applicant is not a citizen of the United States or a resident alien, or upon whom it is impractical or impossible to conduct a background or financial investigation due to the unavailability of information.
- (E) Fraud, misrepresentation or bribery in securing or renewing a license.
- (F) Fraud, misrepresentation or false statements made in the application and investigation for, or in the course of, the applicant's business.
- (G) Violation within the preceding five years, of any law relating to theft, damage or trespass to property, sale of a controlled substance, or operation of a business.
- (H) The owner of the premises licensed or to be licensed would not qualify for a license under the terms of this chapter.

§ 117.17 BUSINESS AT ONLY ONE PLACE

A license under this chapter authorizes the licensee to carry on its business only at the permanent place of business designated in the license. However, upon written request, the Police Chief may approve an off-site locked and secured storage facility. The licensee shall permit inspection of the facility in accordance with § 117.14. All provisions of this chapter regarding record keeping and reporting apply to the facility and its contents. Property shall be stored in compliance with all provisions of the city code. The licensee must either own the building in which the business is conducted, and any approved off-site storage facility, or have a lease on the business premise that extends for more than six months.

CHAPTER 118: ADULT ESTABLISHMENTS

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§ 118.01 DEFINITIONS

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

Adult Establishment.

(1) Any business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise, or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from, items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to “Specified Sexual Activities” or “Specified Anatomical Areas”; or

(2) Any business that engages in any “Adult Use” as defined herein.

Adult Use. Any of the activities and businesses described below.

(1) **Adult Body Painting Studio.** An establishment or business that provides the service of applying paint, ink, or other substance, whether transparent or non-transparent, to the body of a patron when the person is nude.

(2) **Adult Bookstore.** An establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, movies, DVD or motion picture film if a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise consists of, or if a substantial or significant portion of its floor area (not

including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) is devoted to, or if substantial or significant portion of its gross revenues is derived from items, merchandise, devices or materials that are distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to “Specified Sexual Activities” or “Specified Anatomical Areas”.

(3) **Adult Cabaret.** A business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on: (1) the depiction of nudity, “Specified Sexual Activities” or “Specified Anatomical Areas”; or (2) the presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.

(4) **Adult Companionship Establishment.** A business or establishment that provides the service of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on “Specified Sexual Activities” or “Specified Anatomical Areas”.

(5) **Adult Conversation/Rap Parlor.** A business or establishment that provides the services of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on “Specified Sexual Activities” or “Specified Anatomical Areas”.

(6) **Adult Health/Sport Club.** A health/sport club that is distinguished or characterized by an emphasis on “Specified Sexual Activities” or “Specified Anatomical Areas”.

(7) **Adult Hotel or Motel.** A hotel or motel that presents material distinguished or characterized by an emphasis on matter depicting, describing, or relating to “Specified Sexual Activities” or “Specified Anatomical Areas”.

(8) **Adult Massage Parlor/Health Club.** A massage parlor or health club that provides massage services distinguished or characterized by an emphasis on “Specified Sexual Activities” or “Specified Anatomical Areas”.

(9) **Adult Mini-Motion Picture Theater.** A business or establishment with a capacity of less than 50 persons that as a prevailing practice presents on-premises viewing of movies, motion pictures, or other material distinguished or characterized by an emphasis on “Specified Sexual Activities” or “Specified Anatomical Areas”.

(10) **Adult Modeling Studio.** A business or establishment that provides live models who, with the intent of providing sexual stimulation or sexual gratification, engage in “Specified Sexual Activities” or display “Specified Anatomical Areas” while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted.

(11) **Adult Motion Picture Arcade.** Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are used 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 “Specified Anatomical Areas”.

(12) **Adult Motion Picture Theater.** A motion picture theater with a capacity of 50 or more persons that as a prevailing practice presents material distinguished or characterized by an emphasis on “Specified Sexual Activities” or “Specified Anatomical Areas” for observation by patrons.

(13) **Adult Novelty Business.** An establishment or business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from items, merchandise, or devices that are distinguished or characterized by an emphasis of material depicting or describing “Specified Sexual Activities” or “Specified Anatomical Areas”, or items, merchandise or devices that simulate “Specified Sexual Activities” or “Specified Anatomical Areas”, or are designed for sexual stimulation.

(14) **Adult Sauna.** A sauna that excludes minors by reason of age, and that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, if the service provided by the sauna is distinguished or characterized by an emphasis on “Specified Sexual Activities” or “Specified Anatomical Areas”.

(15) **Adult Steam Room/Bathhouse Facility.** A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, if the building or portion of a building restricts minors by reason of age and if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on “Specified Sexual Activities” or “Specified Anatomical Areas”.

Nude or Specified Anatomical Areas.

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

Specified Sexual Activities.

- (1) Actual or simulated: sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation of unclothed genitals; flagellation or torture in the context of a sexual relationship; the use of excretory functions in the context of a sexual relationship; anilingus; coprophagy; coprophilia; cunnilingus; fellatio; necrophilia; pedophilia; piquerism; or zoerastia;
- (2) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;
- (4) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts;
- (5) Situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding, or other physical restraint of any person;

(6) Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or human excretion, urination, menstruation, or vaginal or anal irrigation.

Substantial or Significant Portion. 25% or more.

§ 118.02 FINDINGS, PURPOSE AND INTENT

(A) *Findings of the City Council.* Studies conducted by the Minnesota Attorney General, the American Planning Association and cities such as St. Paul, Minneapolis and Rochester, Minnesota; Indianapolis, Indiana; Phoenix, Arizona; Los Angeles, California; Seattle, Washington; St. Croix County, Wisconsin, have studied the impacts that adult establishments have in those communities. These studies have concluded that adult establishments have an adverse impact on the surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. The City Council of the City of Cambridge makes the following findings regarding the need to regulate adult establishments. The findings are based upon the experiences of other cities where such businesses have located, as studied by city staff. Based on these studies and findings, the City Council concludes:

- (1) Adult establishments have adverse secondary impacts of the types set forth above.
- (2) The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by locational requirements, site design and operational regulations, and health requirements.
- (3) It is not the intent of the city council to prohibit adult establishments from having a reasonable opportunity to locate in the city.
- (4) M.S. § 462.357, as it may be amended from time to time, allows the city to adopt regulations to promote the public health, safety, morals and general welfare.
- (5) The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing adult establishments.
- (6) Adult establishments can contribute to an increase in criminal activity in the area in which such businesses are located, taxing city crime-prevention programs and law enforcement services.
- (7) Adult establishments can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of such businesses can, however, minimize this risk, provided such facilities are governed by operational regulations.
- (8) Adult establishments can increase the risk of exposure to communicable diseases including but not limited to Acquired Immune Deficiency Syndrome (AIDS) for which currently there is no cure. Experiences of other cities indicate that such businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of such establishments but also the general public.
- (9) Adult establishments can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises.

(10) The risk of criminal activity and/or public health problems can be minimized through location requirements and a regulatory scheme as prescribed herein.

(B) *Purpose.* It is the purpose of this chapter, and the related provisions of Chapter 156, to regulate adult establishments 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 establishments away from residential areas, schools, churches, libraries, parks, and playgrounds;

(4) Prevent concentration of adult establishments within certain areas of the city.

(C) *Intent.* The provisions of this chapter and Chapter 156 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 these provisions 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.

§ 118.03 APPLICATION

(A) 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 and Chapter 156.

(B) No adult establishment 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 of Minnesota, or the United States of America. Nothing in this chapter shall be construed as authorizing or permitting conduct that 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.

§ 118.04 LICENSE REQUIRED

It is unlawful for any person or entity to own, lease, rent, manage, or operate an adult establishment without a valid license issued by the City pursuant to this chapter.

§ 118.05 LICENSE APPLICATION

(A) An application for a license must be made on a form provided by the City. The completed application must contain the following information:

(1) *All applicants.* For all applicants:

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

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

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

(d) The name and street address of other adult establishments operated by the applicant and whether the applicant has had a previous adult establishment license suspended or revoked.

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

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

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

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

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

(e) Whether the applicant has ever been convicted of a misdemeanor, gross misdemeanor or felony relating to sex offenses, obscenity offenses, or adult establishments.

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

(a) The name(s) and address(es) of the partnership, the name(s) and address(es) of all partners and all of the information concerning each partner that is required of applicants in subsection (2) of this section.

(b) Whether the partnership is general or limited.

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

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

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

(b) A true copy of the certificate of incorporation, articles of incorporation or association agreement and bylaws shall be attached to the application. If the applicant is a foreign corporation, a certificate of authority as required by M.S. § 303.06, as it may be amended from time to time, shall be attached. If the entity is a limited liability company, then true and accurate copies of the articles of organization and any membership agreements shall be attached to the application.

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

(d) Accurate and complete business records showing the names, addresses, and dates of birth of all officers, directors and controlling stockholders for the business.

(e) The name of the registered corporate agent and the address of the registered office for service of process.

(B) Changes in the information provided on the application or provided during the investigation must be promptly reported in writing to the City by the applicant or licensee. If such a change takes place during the investigation, it must be reported to the City Administrator in writing before action is taken on the application. A failure by an applicant or licensee to report such a change may result in a denial or revocation of a license.

(C) A background investigation form must be completed and will be reviewed by the Police Department.

(D) The Police Chief or his/her designee shall review the license application and background investigation form for full disclosure and accurate information. The City Council shall review and will approve all qualified Adult Business license applications within 60 days of receipt of the license application and background investigation form.

§ 118.06 DISQUALIFICATIONS AND REQUALIFICATION

(A) No license will be issued if one (1) or more of the following conditions exist:

(1) The applicant is under twenty-one (21) years old;

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

(3) The applicant gives false, fraudulent, or untruthful information on the license application;

(4) The applicant has been convicted of a misdemeanor, gross misdemeanor, or felony relating to sex offenses, obscenity offenses, or adult establishments, except as provided in § 118.06(B);

(5) The adult establishment is not in full compliance with the City code and all provisions of state and federal law;

(6) The applicant has not paid the required license fee;

(7) The applicant has been denied a license by the City or any other Minnesota municipal corporation to operate an adult establishment or such license has been suspended or revoked, except as provided in § 118.06(B);

(8) The applicant is not the proprietor of the establishment for which the license is sought.

(B) An applicant may qualify for a license:

(1) After the suspension period has expired, upon proof from the applicant that the conditions giving rise to the suspension have been remedied;

(2) After one (1) year has elapsed in the case of a previous license denial or revocation;

(3) After two (2) years have elapsed since the date of conviction or the date of release from confinement in the case of a misdemeanor or gross misdemeanor offense;

(4) After five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is later, in the case of a felony offense; or

(5) After five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is later, if the conviction is of two (2) or more misdemeanor or gross misdemeanor offenses or combination of misdemeanor or gross misdemeanor offenses occurring within any twenty-four (24) month period.

§ 118.07 EXPIRATION AND RENEWAL

(A) *Expiration.* An adult establishment license expires at the end of the calendar year.

(B) *Renewal.* A licensee may renew a license by completing an application as provided in § 118.05. Upon a timely application, the applicant will be allowed to continue business until the City determines whether the applicant meets the criteria for renewal of the license. If the City denies the renewal, the applicant shall not be issued a license for one (1) year from the date of denial.

§ 118.08 SUSPENSION

(A) *Causes of suspension.* The City may suspend a license if it determines that the licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any provision of this chapter;

(2) Refused to allow an inspection of the adult establishment as authorized by this chapter; or

(3) Knowingly permitted unlawful gambling by any person on the adult establishment premises.

(B) *Duration.* The suspension shall continue until the condition or offense giving rise to the suspension has been remedied, as demonstrated by the licensee, and may be continued by the City Council for a period determined reasonable and appropriate under the circumstance to deter future offenses, not to exceed 30 days.

§ 118.09 REVOCATION

(A) *Suspended licenses.* The City may revoke a license if a cause of suspension in § 118.08 occurs and the license has been suspended at least once before within the preceding twelve (12) months.

(B) *Causes of revocation.* The City may 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 establishment during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in § 118.06 (A) (4), regardless of whether the conviction is being reviewed on appeal; or

(6) Except in the case of an adult hotel or motel, a licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, or masturbation to occur in or on the licensed premises.

(C) *Duration.* Revocation of a license shall continue for one (1) year. After the revocation period, the licensee may apply for an adult establishment license as provided in § 118.05, the issuance of which will be controlled by § 118.06.

§ 118.10 PROCEDURES FOR ACTION AGAINST LICENSE

Non-renewals, suspensions, and revocations of an adult establishment license are governed by the following procedures:

(A) *Notice and hearing.* In the event that the City proposes to non-renew, suspend, or revoke a license, the City will notify the licensee in writing and hold a hearing on the proposed non-renewal, suspension, or revocation of the license. The notice to the licensee must state the basis for the proposed action and the date, time, and location of the hearing. The notice may be served upon the licensee personally or by leaving the notice at the licensed business premises with the person in charge thereof, or by mailing the notice by U.S. mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on the license application.

The hearing must be held by the City Council within thirty (30) days of the date of the notice. The City Council must determine whether to non-renew, suspend, or revoke a license and provide notice of its decision to the licensee within thirty (30) days after the close of the hearing or within sixty (60) days of the date of the notice, whichever is sooner.

(B) *Effect of Decision.* If the Council determines to non-renew, suspend or revoke a license, the decision becomes effective fifteen (15) days after notice of the decision is provided to the licensee, at which point the licensee must cease operating the adult establishment. If, within that fifteen (15) days, the licensee files and serves an action in state or federal court challenging the Council's decision, the decision is stayed until the conclusion of such action, unless otherwise ordered by the court.

§ 118.11 POSTING

The license, if granted, must state on its face the name of the person or entity to whom it is granted, the expiration date, and the address of the adult establishment. The license must be posted in a conspicuous place at or near the entrance to the adult establishment.

§ 118.12 FEES

The annual license fee and investigation fee for adult establishments shall be an amount set by the City Council from time to time.

§ 118.13 LOCATION

Adult establishments shall be a permitted land use as prescribed by Chapter 156.

§ 118.14 OPERATION

The owner and operator of an adult establishment must demonstrate to the city that the operation requirements in this subsection have been and are continually met.

(A) *Off-site viewing.* Any business operating as an adult establishment shall prevent off-site viewing of its merchandise or materials, which if viewed by a minor, would be in violation of M.S. Chapter 617, as it may be amended from time to time, or other applicable federal or state statutes or local ordinances. Covering or otherwise making window areas opaque shall be prohibited.

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

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

(D) *Motion picture booths.* Individual motion picture viewing booths must be designed and operated as follows:

- (1) Booths must be without doors and the booth interiors and occupant must be visible from the rooms in which they are located;
- (2) Only one person at a time shall be allowed in a viewing booth;
- (3) Walls separating booths must be such that occupants cannot engage in sexual activity;

- (4) Each booth must be clean and sanitary;
- (5) Minimum lighting requirements as set forth in § 118.14(E) must be maintained.

(E) *Illumination.* Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises. Illumination of the building interior shall be adequate to observe the location and activities of all persons in the premises.

(F) *Signs.* Signs for adult establishments shall not contain representational depiction of specified anatomical areas, specified sexual activities, or obscene words or pictures that would offend public morals or decency. Signs for adult establishments shall comply with the city's ordinances for signs and the additional regulations as stated below.

- (1) Window signs shall be prohibited. No signs shall be placed in any window other than a one square foot sign on the door.

- (2) All signs shall be flat wall signs. No signs shall be freestanding or contain any flashing lights, moving elements, or electronically or mechanically changing messages.

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

(G) *Access by minors.* No minor shall be permitted on the licensed premises. Adult goods or materials may not be offered, sold transferred, conveyed, given or bartered to a minor, or displayed in a fashion that allows them to be viewed by a minor, whether or not the minor is on the licensed premises.

(H) *Additional conditions for adult cabarets.* The following additional conditions apply to adult cabarets:

- (1) No dancer, live entertainer or performer shall be under 18 years old.

- (2) All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least two feet from the level of the floor.

- (3) No dancer or performer shall perform any dance or live entertainment closer than six feet to any patron.

- (4) No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.

- (5) No patron shall pay or give any gratuity to any dancer or performer.

- (6) No dancer or performer shall solicit or receive any pay or gratuity from any patron.

(I) *Hours of operation.* No adult establishment shall be open to the public from the hours of 10:00 p.m. to 10:00 a.m. weekdays and Saturdays, nor at any time on Sundays or national holidays.

(J) *Alcohol.* No alcohol shall be sold, provided, or consumed on the licensed premises.

§ 118.15 INSPECTION

(A) *Access.* The property owner, business owner, on-site manager or any employee or agent shall permit health officials, representatives of the Police Department, Fire Department, and building inspector, to inspect the premises of an adult establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. The property owner, business owner and manager are at all times responsible for the conduct, activity and operation of the business.

(B) *Exceptions.* The provisions of this section do not apply to areas of an adult hotel or motel which are currently being rented by a customer for use as a permanent or temporary habitation. Temporary habitation is defined as a period of time of at least 12 hours.

§ 118.16 PENALTY

Any person who violates, neglects, refuses to comply with, or assists or participates in any way in the violation of any of the provisions or requirements of this chapter is guilty of a misdemeanor under Minnesota law. Each day such violation occurs, exists or continues shall constitute a separate offense. The city may also enforce any provision of this chapter by mandamus, injunction, or any other appropriate civil remedy in any court of competent jurisdiction.