

Mountain Iron – Business Regulations

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: GENERAL BUSINESS PROVISIONS

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GENERAL PROVISIONS

§ 110.01 LICENSING MASSAGE PARLORS.

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

MASSAGE. The performance of manipulative exercises upon the human body of another by rubbing, kneading, stroking or tapping with the hand or hands or with any mechanical or bathing device.

MASSAGE PARLOR. Any place or establishment wherein a massage is made available to the public for a monetary or valuable consideration.

(B) It is unlawful for any person, partnership or corporation to own, establish, maintain or operate a massage parlor without a license therefor from the city in accordance with this section.

(C) The annual license fee for a massage parlor shall be set from time to time by resolution of the City Council.

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(D) The provisions of this section shall not apply to:

(1) A duly licensed medical doctor, osteopath, chiropractor, nurse or physical therapist while engaged in the practice of their respective profession; or

(2) A person engaging in the practice of massage on his or her spouse or relative within the first degree of consanguinity in either of their residences; or

(3) A place or establishment which is a duly licensed hospital, dispensary, convalescent home or nursing home.

(E) In a prosecution for violation of this section, these exceptions shall constitute affirmative defenses and it shall be incumbent upon the defendant to show that he or she or the place involved is not subject to the provisions of this section.

(F) Each word, phrase and division of this section is declared to be an individual section or provision and the holding of any word, phrase and division to be void, ineffective or unconstitutional for any cause whatsoever shall not be deemed to affect any other word, phrase or division or the application of any word, phrase or division to circumstances or facts not connected with such holding.

(Prior Code, Chapter 16) Penalty, see § 10.99

LODGING TAX

§ 110.20 DEFINITIONS.

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

LODGER. The person obtaining lodging from an operator.

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

MUNICIPALITY. The City of Mountain Iron.

OPERATOR. A person who provides lodging to others or any officer, agent or employee of such person.

PERSON. Any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate or any other combination of individuals. Whenever the term ***PERSON*** is used in any provision of this chapter prescribing and imposing a penalty,

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the term as applied to a corporation, association or partnership shall mean the officers or partners thereof as the case may be.

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

TAX ADMINISTRATOR. The City Administrator.

§ 110.21 IMPOSITION OF TAX.

There is imposed a tax of 3% on the rent charged by an operator for providing lodging to any person after September 15, 1988. The tax shall be stated and charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the municipality and shall be extinguished only by payment to the municipality. In no case shall the tax imposed by this section upon an operator exceed the amount of tax that the operator is authorized and required by this chapter to collect from a lodger.

(Prior Code, § 64.02)

§ 110.22 COLLECTIONS.

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

(Prior Code, § 64.03)

§ 110.23 EXEMPTIONS.

An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the municipality to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected and such a claim shall be made in writing and under penalty of perjury on forms provided by the Tax Administrator. All such claims shall be forwarded to the Tax Administrator when the returns and collections are submitted as required by this chapter.

(Prior Code, § 64.04)

§ 110.24 ADVERTISING NO TAX.

It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than one cent shall be considered an additional cent.

(Prior Code, § 64.05) Penalty, see § 10.99

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§ 110.25 PAYMENT AND RETURNS.

(A) The tax imposed by this chapter shall be paid by the operator to the Tax Administrator monthly not later than 25 days after the end of the month in which the taxes were collected. At the time of payment the operator shall submit a return upon such forms and containing such information as the Tax Administrator may require. The return shall contain the following minimum information:

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

(B) The operator may offset against the taxes payable with respect to any reporting period the amount of taxes imposed by this chapter previously paid as a result of any transaction, the consideration for which became uncollectable during such reporting period, but only in proportion to the portion of such consideration which became uncollectable.
(Prior Code, § 64.06)

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

The Tax Administrator shall, after return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the tax is found to be greater than that paid, such excess shall be paid to the Tax Administrator ten days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the Tax Administrator ten days after determination of such refund.
(Prior Code, § 64.07)

§ 110.27 REFUNDS.

Any person may apply to the Tax Administrator for a refund of taxes paid for the prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one year after such tax was paid or within one year from the filing of the return, whichever period is the longer. The Tax Administrator shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to such

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person at the address stated upon the return. If such claim is allowed in whole or in part, the Tax Administrator shall credit the amount of the allowance against any taxes due under this subchapter from the claimant and the balance of said allowance, if any, shall be paid by the Tax Administrator to the claimant.

(Prior Code, § 64.08)

§ 110.28 FAILURE TO FILE A RETURN.

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

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

(C) Upon a showing of good cause, the Tax Administrator may grant an operator one 30 day extension of time within which to file a return and make payment of taxes as required by this chapter, provided that interest during such period of extension shall be added to the taxes due at the rate of 10% per annum.

(Prior Code, § 64.09)

§ 110.29 PENALTIES.

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

(B) In case of any failure to make and file a return within the time prescribed by this chapter, unless it is shown that such failure is not due to willful neglect, there shall be added to the tax in addition to the 10% specific penalty provided in division (A) of this section, 10% if the failure is for not more than 30 days with an additional 5% for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25% in the aggregate. If the penalty as computed does not exceed \$10, a minimum penalty of \$10 shall be assessed. The amount so added to any tax shall be collected at the same time and the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

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

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

(E) The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the maximum rate per annum as prescribed by M.S. § 270.75, as it may be amended from time to time, from the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and collected as part thereof.

(Prior Code, § 64.10)

§ 110.30 ADMINISTRATION OF TAX.

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

(Prior Code, § 64.11)

§ 110.31 EXAMINE RECORDS.

The Tax Administrator and those persons acting on behalf of the Tax Administrator authorized in writing by the Tax Administrator or the municipality may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this chapter. Every such operator is directed and required to give to the said person authorized to examine the books, papers and records, the means, facilities and opportunity for such examinations and investigations as are authorized.

(Prior Code, § 64.12)

§ 110.32 USE OF PROCEEDS.

Five percent of the proceeds obtained from the collection of taxes pursuant to this chapter shall be paid to the Tax Administrator for costs of collections. Ninety-five percent of the proceeds obtained from the collection of taxes pursuant to this chapter shall be used in accordance with M.S. § 469.190, as it may be amended from time to time, to provide funding to Iron Trail Travel and Convention Bureau for the purpose of marketing and promoting the municipality as a tourist or convention center.

(Prior Code, § 64.14)

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§ 110.33 APPEALS.

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

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

(C) Upon receipt of the petition the Tax Administrator shall set a date and time for a meeting with the petitioner and shall give the petitioner at least five days prior written notice of the date, time and place of the meeting.

(D) At the meeting, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. If the meeting does not result in the matter being resolved to the satisfaction of the petitioner, the petitioner may appeal to the Mountain Iron City Council.

(E) A petitioner seeking to appeal a decision to the City Council must file a written notice of appeal with the City Council, in care of the City Administrator, within ten days after the Tax Administrator's decision following the meeting in division (D) of this section has been mailed to the petitioner. The matter will thereupon be placed on the Council agenda as soon as is practical. At least five days prior to the hearing before the City Council, the Tax Administrator shall prepare and serve on the petitioner a memorandum of proposed findings of fact and conclusions of law. A copy of the memorandum shall be presented to the City Council at the time of the appeal hearing. The Council shall then review the proposed findings of fact and conclusions to determine whether they are correct. Upon a determination by the Council that findings and conclusions are incorrect, the Council may modify, reverse or affirm the decision of the Tax Administrator based upon an application of the sections of this chapter and the evidence presented.

(Prior Code, § 64.15)

§ 110.34 VIOLATIONS.

Any person who shall willfully fail to make a return required by this chapter, who shall fail to pay the tax after written demand for payment, shall fail to remit the taxes collected or any penalty or interest imposed by this chapter after written demand for such payment or who shall refuse to permit the Tax Administrator or any duly authorized agents or employees to examine the books, records and papers under his or her control or who shall willfully make any incomplete, false or fraudulent return shall be guilty of a misdemeanor.

(Prior Code, § 64.13) Penalty, see § 10.99

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CHAPTER 111: SPECIAL EVENTS

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- 111.02 Definitions
- 111.03 Permit required
- 111.04 Application for permit
- 111.05 Issuance of permit, conditions and posting
- 111.06 Exceptions to the permit
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§ 111.01 PURPOSE AND FINDINGS.

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

(Ord. 03-99, passed 9-20-1999)

§ 111.02 DEFINITIONS.

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

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

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

(Ord. 03-99, passed 9-20-1999)

§ 111.03 PERMIT REQUIRED.

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

(Ord. 03-99, passed 9-20-1999)

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§ 111.04 APPLICATION FOR PERMIT.

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

(Ord. 03-99, passed 9-20-1999)

§ 111.05 ISSUANCE OF PERMIT, CONDITIONS AND POSTING.

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

- (1) Location and hours during which the event may be held;
- (2) Sanitation/availability of potable water;
- (3) Security/crowd management;
- (4) Parking and traffic issues;
- (5) Emergency and medical services;
- (6) Clean up of premises and surrounding area/trash disposal;
- (7) Insurance;
- (8) Lighting;
- (9) Fire service/safety;
- (10) Temporary construction, barricades/fencing;
- (11) Removal of advertising/promotional materials;
- (12) Noise levels;
- (13) Alcohol consumption;
- (14) Any other conditions which the Council deems necessary.

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(B) Upon Council approval, the City Administrator shall issue a permit to the person(s) named in the permit application. The permit shall clearly state the conditions, if any, imposed by the Council. Copies of the permit shall be posted in three prominent locations during the special event.

(Ord. 03-99, passed 9-20-1999)

§ 111.06 EXCEPTIONS TO THE PERMIT.

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

(A) Special events sponsored and managed by the city;

(B) Funerals and funeral processions;

(C) The grounds of any school, playground, place of worship, hotel conference center, stadium, athletic field, arena, auditorium or similar permanent place of assembly when used for regularly established assembly purposes.

(Ord. 03-99, passed 9-20-1999)

§ 111.98 VIOLATIONS.

(A) Any person who violates any condition of a special event permit or any provision of this chapter shall be guilty of a misdemeanor punishable as prescribed by state law.

(B) Enforcement of this section may, at the Council's discretion, take any of the following forms:

(1) Citation/criminal prosecution;

(2) Injunctions, declaratory judgements or other civil remedies;

(3) Permit revocation;

(4) Disbursement of persons gathered.

(Ord. 03-99, passed 9-20-1999) Penalty, see § 10.99

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CHAPTER 112: GAMBLING

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- 112.05 Charitable Gambling Fund

§ 112.01 DEFINITIONS.

The terms contained in this section shall have the meaning as ascribed to them by M.S. §§ 349.11 *et seq.*, as it may be amended from time to time, and any successor statutes dealing with regulation of lawful charitable gambling.

NET PROFITS. Profits less allowable expenses under the laws and regulations of the State of Minnesota relating to lawful gambling.
(Ord. 01-99, passed 4-19-1999)

§ 112.02 DONATION REQUIRED.

Any organization licensed to conduct lawful gambling within the city shall donate 10% of its net profits from the conduct of lawful gambling each month to the Special Charitable Gambling Fund. Such donations shall be made within 15 days at the end of each calendar quarter. For purposes of this section, a calendar quarter shall be deemed to end at 11:59 p.m. on the last day of March, June, September and December.
(Ord. 01-99, passed 4-19-1999)

§ 112.03 REPORTS.

All organizations conducting lawful gambling within the city shall provide the City Administrator with copies of all reports it provides to the Charitable Gambling Board.
(Ord. 01-99, passed 4-19-1999)

§ 112.04 SUSPENSION, REVOCATION AND NONRENEWAL OF LICENSES.

If any organization shall fail to make payments required by this section or fail to provide the City Administrator with reports as required by this section, such failure shall be grounds for the city to recommend to the Charitable Gambling Board that the gambling license for such organization be suspended, revoked or not renewed.
(Ord. 01-99, passed 4-19-1999)

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§ 112.05 CHARITABLE GAMBLING FUND.

(A) There is created a Mountain Iron Charitable Gambling Fund which shall be held for safe-keeping by the city in an account separate from any city funds. Such funds shall be designated the Mountain Iron Charitable Gambling Fund. No expenditures shall be made from such funds except upon resolution by the City Council and then only for lawful purposes, as defined by M.S. § 349.12, Subd. 25, as it may be amended from time to time.

(B) Each organization within the city which is licensed by the state to conduct lawful gambling shall contribute 10% of its net profits, as defined by M.S. § 349.12, as it may be amended from time to time, monthly to the Mountain Iron Charitable Gambling Fund.

(Ord. 01-99, passed 4-19-1999)

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CHAPTER 113: PEDDLING, HAWKING, CANVASSING, SOLICITING AND AUCTIONEERING

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§ 113.01 DEFINITIONS.

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

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 Chapter, 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 movement, for the purpose of offering for sale, displaying for exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, other personnel property, or services that the person is carrying or otherwise transporting. For purpose of this Chapter, the term peddler shall have the same common meaning as the term hawker.

PERSON. Any natural individual, group, organization, corporation, partnership, or similar association.

PROFESSIONAL FUNDRAISER. Any person, including a corporation or other entity, who, for compensation, performs any solicitations or other services for a religious, political, social, or other charitable organization.

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.

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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 movement, 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. For purposes of this Chapter, the term solicitor shall have the same meaning as the term canvasser.

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

§ 113.03 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 Chapter 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 113.13.

(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.

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

Exemption from these definitions shall not, for the scope of this chapter, excuse any person from complying with any other applicable statutory provision or requirement provided by this or any other City Chapter.

§ 113.05 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 may be required by Minn. Stat. ch. 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 within this jurisdiction as a peddler or a transient merchant without first obtaining a City license. Solicitors need not be licensed, but are required to register with the City pursuant to Section 113.13.

(C) Application. An application for a City license to conduct business as a peddler or transient merchant shall be made at least fourteen (14) regular business days before the applicant desires to begin conducting a business operation within the City. Application for a license shall be made on a form approved by the City Council and available from the office of the City Administrator. All applications shall be signed by the applicant. All applications shall include the following information:

- (1) The applicant's full legal name.
- (2) Any and all other names under which the applicant has or does conduct business, or to which the applicant will officially answer to.
- (3) A physical description of the applicant (hair color, eye color, height, weight, any distinguishing marks or 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 an agent.
- (7) Full address of applicant's regular place of business, if any exists.
- (8) Any and all business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines.

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(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. If the applicant is applying for a daily license, the number of days he or she will be conducting business within the City, with a maximum of fourteen (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 his or her business.

(13) A statement as to whether or not the applicant has been convicted with the last five (5) years of any felony, gross misdemeanor or misdemeanor for violating any state or federal statute or any local Chapter, other than minor traffic offenses.

(14) A list of the three (3) most recent locations where the applicant has conducted business as a peddler or transient merchant.

(15) Proof of any required county license.

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

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

(18) Any and all additional information as may be 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, vehicle identification number (VIN) and physical description for any vehicle to be used in conjunction with the licensed business operation.

(D) Fee. All applications for a license under this chapter shall be accompanied by the fee established by City Resolution as it may be amended from time to time.

(E) Procedure. Upon receipt of the application and payment of the license fee, the City Administrator will, within two (2) regular business days, determine if the application is complete. An application will be considered complete if all required information is provided. If the City Administrator determines that the application is incomplete, the City Administrator must inform the applicant of the required, necessary information that is missing. If the application is complete, the City Administrator must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten (10) regular

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business days of receiving a complete application the City Administrator must issue the license unless grounds exist for denying the license application under Section 113.07, in which case the clerk must deny the request for a City peddler or transient merchant license. If the City Administrator denies the license application, the applicant must be notified in writing of the decision, the reason for denial and the applicant's right to appeal the denial by requesting, within twenty (20) days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal with twenty (20) days of the date of the request for a hearing. 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 issuance. All other licenses granted to peddlers and transient merchants under this Chapter shall be valid only during the time period indicated on the license.

(G) Professional fundraisers not exempt. A professional fundraiser working on behalf of an otherwise exempt group or person shall not be exempt from the licensing requirements of this Chapter.

(H) 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 for any person going from house-to-house, door-to-door, business-to-business, street-to-street, or any 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 what would properly be considered a commercial activity.

§ 113.07 LICENSE INELIGIBILITY.

The following shall be grounds for denying a peddler or transient merchant license:

(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.

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(E) A conviction with 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 Chapter, 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.

§ 113.09 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) Subsequent knowledge by the City of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.

(2) Fraud, misrepresentation or false statements made during the course of the licensed activity.

(3) Subsequent conviction of any offense to which the granting of the license could have been denied under Section 113.07.

(4) Engaging in any prohibited activity as provided under Section 113.15 of this Chapter.

(5) Violation of any other 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 a 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

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person or by mail to the permanent residential address listed on the license application, of if no residential address is listed, to the business address provided on the license application.

(D) **Public Hearing.** Upon receiving the notice provided in part (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 within ten (10) days following the service of the notice, the City may proceed with the suspension or revocation. For the purpose of a mailed notice, 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 twenty (20) days from the date of the request for the public hearing. Within three (3) 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 part (C) of this section.

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

§ 113.11 LICENSE TRANSFERABILITY.

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

§ 113.13 REGISTRATION.

(A) All solicitors and any person exempt from the licensing requirements of this Chapter under Section 113.05 shall be required to register with the City prior to engaging in those activities. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Administrator shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferrable.

(B) Individuals that will be engaging in non-commercial door-to-door advocacy shall not be required to register.

§ 113.15 PROHIBITED ACTIVITIES.

No peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall conduct business in any of the following manner:

(A) Calling attention to his or her business or the 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.

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- (B) Obstructing the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, 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 specific individual or the general public.
- (D) Conducting business before 8 a.m. or after 8 p.m.
- (E) Failing to provide proof of license, or registration, and identification when requested.
- (F) Using the license or registration of another person.
- (G) Alleging false or misleading statements about the products or services 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.
- (H) Remaining on the property of another when requested to leave.
- (I) Otherwise operating their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

§ 113.17 EXCLUSION BY PLACARD.

Unless specifically invited by the property owner or tenant, no peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall enter onto the property of another for the purpose of conducting business as a peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or similar activity when the property is marked with a sign or placard:

- (A) At least four inches long.
- (B) At least four inches wide.
- (C) With print of at least 48 point in size.
- (D) Stating “No Peddlers, Solicitors or Transient Merchants,” “Peddlers, Solicitors, and Transient Merchants Prohibited,” or other comparable statement.

No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

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§ 113.19 PENALTY.

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

§ 113.21 SEVERABILITY.

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

(Amended Ord. 01-10, passed 1-20-10)

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CHAPTER 114: ALCOHOLIC BEVERAGES Original Code Chapter 11 Repealed and Replaced Ordinance Number 02-15, 03-02-15

Section

- 114.01 Adoption of State Law
- 114.02 City May Be More Restrictive
- 114.03 Definitions
- 114.04 Nudity Prohibited
- 114.05 Consumption in Public Places
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- 114.08 Types of Licenses
- 114.09 License Fee; Prorated
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- 114.13 Application Renewal
- 114.14 Transfer of License
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- 114.16 Hearing and Issuance
- 114.17 Restrictions on Issuance
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- 114.19 Hours and Days of Sale
- 114.20 Minors on Premises
- 114.21 Restrictions on Purchase and Consumption

- 114.98 Suspension and Revocation
- 114.99 Penalty

114.01 ADOPTION OF STATE LAW BY REFERENCE.

The provisions of [Minn. Stat. 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 Ordinance as if set out in full. It is the intention of the City Council that all future amendments to [Minn. Stat. Ch. § 340A](#) are hereby adopted by reference or referenced as if they had been in existence at the time this Ordinance is adopted.

114.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of [Minn. Stat. § 340A.509](#) as it may be amended from time to time, to impose, and has imposed in this ordinance, additional restrictions on the sale and

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possession of alcoholic beverages within its limits beyond those contained in [Minn. Stat. Ch. 340A](#) as it may be amended from time to time.

114.03 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 an “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”.

114.04 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.

A. The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the City that nudity is prohibited as provided in this section on the premises of any establishment licensed under this 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

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or any other license issued under this ordinance or the imposition of a civil penalty under the provisions of Section 23(B).

114.05 CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this ordinance or where the consumption and display of liquor is lawfully permitted, unless approved by the City Council.

114.06 NUMBER OF LICENSES WHICH MAY BE ISSUED.

State law establishes the number of liquor licenses that a City may issue.

114.07 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.

114.08 KINDS OF LIQUOR LICENSES.

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

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

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

(D) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores. The fee for an off-sale intoxicating liquor license established by the Council under Section 9 or a greater amount which may be permitted by [Minn. Stat. § 340A.408, subd. 3](#), as it may be amended from time to time.

(E) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by [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 Section 9 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

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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, Sunday on-sale intoxicating liquor licenses may be issued only to a on-sale intoxicating liquor licensee. The maximum fee for this license, which shall be established by the Council under the provisions of Section 9 of this ordinance 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.

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

(I) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: theaters, restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of [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.401, subd. 1](#), as it may be amended from time to time and to theaters that meet the criteria of [Minn. Stat. § 340A.404\(b\)](#) 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 Section 9 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 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 Section 10 of this ordinance 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.

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(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 Section 9.

(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.301 subd. 6\(d\) and 7\(b\)](#), as it may be amended from time to time. Sales under this license at on-sale may not exceed 3,500 barrels per year. If a brew pub licensed under this section possesses a license for off-sale under Section 8 (O) below, the brew pub's total combined retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

(O) Brewer off-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under Section 9 (N) above or that produces fewer than 3,500 barrels of malt liquor in a year and otherwise meets the criteria established at [Minn. Stat. § 340A.301 subd. 6\(d\) and 7\(b\)](#), as it may be amended from time to time. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the City. Malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. All malt liquor sold under this license shall be packaged in the manner required by [Minn. Stat. § 340A.301, subd. 7](#) as it may be amended from time to time. Sales under this license may not exceed 500 barrels per year. If a brewer licensed under this section possesses a license under Section 8 (N) above, the brewer's total retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

(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.

114.09 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.

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(B) The Council may establish from time to time in the Resolution 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.

(F) Off-sale intoxicating liquor licensees may request a reduction in their annual license fee by the amount specified in [Minn. Stat. § 340A.408](#) if at the time of initial application or renewal they:

(1) Agree to have a private vendor approved by the City train all employees within 60 days of hire and annually thereafter in laws pertaining to the sale alcohol, the rules for identification checks, and the responsibilities of establishments serving intoxicating liquors;

(2) Post a policy requiring identification checks for all persons appearing to be 30 years old or less;

(3) Establish a written cash award and incentive program to award employees who catch underage drinkers and a written penalty program to punish employees in the event of a failed compliance check;

(4) Failure to abide by the provisions of this paragraph may result in suspension of the license until the conditions of the fee reduction are met and may result in suspension and/or revocation of the license pursuant to Section 23 of this ordinance.

114.10 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.

114.11 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

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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.

114.12 DESCRIPTION OF PREMISES.

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

114.13 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.

114.14 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.

114.15 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

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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.

114.16 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.

114.17 RESTRICTIONS ON ISSUANCE.

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

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

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

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

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

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

114.18 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 adequate training regarding the applicable laws, ordinances, safety, and detection of attempts to purchase alcohol by those under the legal age to do so.

(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.

(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 section 9 (f) of this ordinance to abide with the provisions of section 9 (f).

114.19 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.

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(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.

114.20 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.

144.21 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.

114.98 SUSPENSION AND REVOCATION.

(A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this 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 it may contract with the Office of Hearing Examiners for a hearing officer.

(B) The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this 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:

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(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 Section 4, 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 Administrator, a hearing before the Council shall be granted within ten days. Any suspension under this division (B) shall continue until the Council determines that the financial responsibility requirements of state law and this ordinance have again been met.

(D) The provisions of Section 23 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this ordinance.

114.99 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.

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(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 Section 22 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.

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CHAPTER 115: TOBACCO AND TOBACCO RELATED DEVICES REGULATIONS

01-14 February 3, 2014

Prior Code 12.01

Section

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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 and tobacco related devices and such sales, possession and use are violations of both state and federal laws; and because studies, which the city accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this section shall be intended to regulate the sale, possession and use of tobacco and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco and tobacco related devices and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

§ 115.02 DEFINITIONS.

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

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

INDIVIDUALLY PACKAGED. The practice of selling any tobacco 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 subdivision shall not be considered individually packaged. Cartons are defined as packaging containing ten or more packages of cigarettes.

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

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

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

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

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

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

TOBACCO and TOBACCO RELATED DEVICES. For the purposes of this Chapter, the terms "tobacco" and "tobacco related devices" shall have the meanings given them in Section 609.685 of the Minnesota Statutes and as the same may from time to time be amended, and shall include electronic cigarettes defined as any electronic-smoking device that can be used to deliver nicotine or any other substances to the person inhaling from the device. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name.

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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 or tobacco related device.

§ 115.03 LICENSE.

No person shall sell or offer to sell any tobacco or tobacco related device without first having obtained a license to do so from the city.

(A) *Application.* An application for a license to sell tobacco or tobacco related devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought and any additional information the city deems necessary. Upon receipt of a completed application, the City Administrator shall forward the application to the City Council for action at its next regularly scheduled City 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.* The City Council may either approve or deny the license or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Administrator shall issue the license to the applicant. If the City Council denies the license, notice of 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 expire on December 31 of the year for which they are issued.

(D) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in §§ 115.98 and 115.99.

(E) *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.

(F) *Movable 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.

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

(H) *Renewals.* The renewal of a license issued under this chapter shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30

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days but no more than 60 days before the expiration of the current license. The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

§ 115.04 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be as set from time to time by resolution of the City Council.

§ 115.05 BASIS FOR DENIAL OF LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this chapter; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license; if a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this chapter:

- (A) The applicant is under the age of 18 years;
- (B) The applicant has been convicted within the past five years of any violation of a federal, state or local law, section provision or other regulation relating to tobacco or tobacco related devices;
- (C) The applicant has had a license to sell tobacco or tobacco related devices revoked within the preceding 12 months of the date of the application;
- (D) The applicant fails to provide any information required on the application or provide false or misleading information;
- (E) The applicant is prohibited by federal, state or other local law, section or other regulation from holding such a license.

§ 115.06 PROHIBITED SALES.

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

- (A) To any person under the age of 18 years;
- (B) By means of any type of vending machine, except as may otherwise be provided in this chapter;
- (C) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco,

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lighters or tobacco related device between the licensee or the licensee's employee and the customer, except for the sale of cartons of cigarettes;

(D) By means of looses as defined in § 115.02;

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

§ 115.07 VENDING MACHINES.

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco or tobacco related devices by the means of a vending machine. Penalty, see § 115.99

§ 115.08 SELF-SERVICE SALES.

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

(B) The following are exceptions to this chapter:

(1) In establishments where minors are at all times prohibited;

(2) In establishments where 90% or more of their revenues are from the sale of tobacco, tobacco products and tobacco related devices.

§ 115.09 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, lighters or tobacco related 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 chapter shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this section, state or federal law or other applicable law or regulation.

§ 115.10 TRAINING SESSIONS.

All licensees and their employees shall attend training on the problem of underage smoking, when to require identification, how to recognize false identification and general

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procedures for conducting sales and dealing with problems that may arise. Training sessions must be certified by the city in order to comply with this chapter.

§ 115.11 SIGNAGE.

All licensed premises are required to post signs indicating it is illegal to sell tobacco and tobacco related devices to anyone under the age of 18 years and that the possession and use of such items by minors is also illegal under both state law and local law. Signs shall be at least 8.5 inches by 11 inches in size and shall be conspicuously placed.

§ 115.12 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the City Police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years to enter the licensed premises to attempt to purchase tobacco, tobacco products or tobacco related devices. Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco or tobacco related devices when such items are obtained as a part of the compliance check. No minor used in compliance 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.

§ 115.13 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 or tobacco related device to any minor.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco or tobacco related device. 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 or tobacco related device.

(D) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco or tobacco related device, 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 or tobacco related device. This division shall not apply to minors lawfully involved in a compliance check.

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(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. Penalty, see § 115.99

§ 115.14 EXCEPTIONS AND DEFENSES.

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

§ 115.98 VIOLATIONS.

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

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

(C) *Hearing officer.* The City Administrative Hearings Board shall serve as the hearing officer.

(D) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officers reasons for finding a violation and the penalty to be imposed under § 115.99 shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty such findings shall be recorded and a copy provided to the acquired accused violator.

(E) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred.

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

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

§ 115.99 PENALTY.

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(A) *Licensees and employees.* Any licensee found to have violated this chapter shall be charged an administrative fine of \$100 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24 month period; and \$300, plus a suspension of not more than seven days, for a third or subsequent offense at the same location within a 24 month period. In addition, after the third offense, the license shall be suspended for not less than seven days and penalties for additional offenses will increase up to and including revocation.

(B) *Other individuals.* Other individuals, including any employee of a licensee, other than minors regulated by division (C) of this section, found to be in violation of this chapter shall be charged an administrative fee as shall be set from time to time by resolution of the City Council.

(C) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase tobacco, tobacco products or tobacco related devices shall be required to serve a minimum of ten community service hours for the city.

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

(E) Any person who shall violate any provision of this chapter for which no specific penalty is provided shall be punished as set forth in § 10.99 of this code.

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CHAPTER 116: CABLE FRANCHISE

Section

116.01 Adopted by reference

§ 116.01 ADOPTED BY REFERENCE.

Cable franchise Ordinance Number 15A, passed 12-30-1992, is hereby adopted by reference and made a part of this code as if set forth in full herein.
(Ord. 15A, passed 12-30-1992)