

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. LICENSES AND PERMITS**
- 111. ALCOHOLIC BEVERAGES**
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CHAPTER 110: LICENSES AND PERMITS

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Alcoholic beverages, see Chapter 111

Bingo, gambling, and amusement establishments, see Chapter 112

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' 110.01 LICENSE AND PERMIT GENERAL PROVISIONS.

(A) *General rule.* Except as otherwise provided in the code, all licenses and permits granted by the city shall be governed by the provisions of this chapter.

(B) *Acts prohibited.* No person shall conduct any activity or use any property for which a license or permit is required by law or the code without a currently valid license or permit for the activity or use.

(C) *Application.* Every application for a license shall be made to the City Administrator on a form provided by him or her. It shall be accompanied by payment to the City Administrator of the prescribed fee. If, after investigation, the City Administrator is satisfied that all requirements of law and the code have been met, he or she shall present the application to the Council for action or, if the license or permit does not require Council approval, he or she shall issue the license or permit.

(D) *Bond.* Where bond is required for any license or permit, the bond shall be a corporate surety bond executed on a form approved by the City Attorney and shall be filed with the City Administrator before the license or permit is issued. Bond shall be in the amount established by ordinance, code provision, Minnesota Statute, or Council resolution, as may apply, and shall be conditioned that the licensee or permittee shall comply with the applicable ordinance, code provisions, and laws pertaining to the licensed or permitted activity and that the licensee or permittee will defend, indemnify, and hold harmless the city from all loss or damage by reason of inadequate work performed by him or her or by reason of accident caused by the negligence of the licensee or permittee or his or her agents or employees.

(E) *Insurance.* When a licensee or permittee is required to have in force a policy of insurance, the policy shall be approved as to substance and form by the City Attorney. The policy shall provide that it is non-cancelable without 15 days notice to the city, and the coverage shall be for the term of the license or permit. Satisfactory evidence of coverage by insurance shall be filed with the City Administrator before the license or permit is issued. Each license or permit shall terminate upon termination of the required insurance coverage.

Penalty, see ' 10.99

' 110.02 LICENSE AND PERMIT FEES.

(A) *Fee established.* License fees are in the amount established in the governing section of this chapter or as otherwise provided in the code, or as otherwise established by resolution of the City Council, which resolution shall supersede any inconsistent provisions relating to fees established by this code. The license and permit fees as set forth in the various sections of the code are the official and controlling provisions.

(B) *Prorated fees.* If the initial license is to run for less than a full year, the applicant shall pay a pro rata fee, with any unexpired fraction of a month being counted as one month.

(C) *Refunds.* License fees shall not be refunded in whole or in part unless otherwise specified by the code or by law.

' 110.03 LICENSE TERM.

Unless otherwise specified, a license shall be valid for a calendar year or the part of the year for which it is issued and shall expire on December 31.

' 110.04 LICENSE TRANSFERABILITY.

No license issued under the code may be transferred to any other person, except as provided in the code. Where a license relates to specific premises, the license shall not be changed to another location without approval of the Council or other licensing authority.

Penalty, see ' 10.99

' 110.05 INSPECTIONS.

(A) *Authorized personnel.* Any city official or employee having a duty to perform with reference to a license under the code and any police officer may inspect and examine any licensee or his or her business or premises to enforce compliance with applicable provisions of the code. Subject to the provisions of division (B), he or she may at any reasonable time enter any licensed premises or premises for which a license is required in order to enforce compliance with the code.

(B) *Search warrants.* If the licensee objects to the inspection of his or her premises, the city official or employee charged with the duty of enforcing the provisions of the code shall procure a valid search warrant before conducting the inspection.

' 110.06 DUTIES OF LICENSEES AND PERMITTEES.

Every licensee and permittee shall have the duties set forth in this section:

(A) *Inspection.* He or she shall permit at reasonable times inspections of his or her business and examination of his or her books and records by authorized officers or employees.

(B) *Compliance with law.* He or she shall comply with laws, code provisions, ordinances, and regulations applicable to the licensed business, activity, or property.

(C) *Display of license.* He or she shall display the license or other insignia given him or her as evidence of the license in a conspicuous place on the premises, vehicle, or device to which the license relates. If the license is not so related, the license shall be carried on the licensee's person whenever he or she is carrying on the licensed activity.

(D) *Unlawful disposition.* The licensee shall not lend or give to any other person his or her license or license insignia.
Penalty, see ' 10.99

' 110.07 LICENSE AND PERMIT SUSPENSION OR REVOCATION.

The Council may suspend for a period not exceeding 60 days or revoke any license or permit for violation of any provision of law, code provision, ordinance, or regulation applicable to the licensed or permitted activity or property. Except where mandatory revocation is provided by law without notice and hearing and except where suspension may be made without a hearing, the holder of the license or permit shall be granted a hearing upon at least 10 days notice before revocation or suspension is ordered. The notice shall state the time and place of the hearing and the nature of the charges against the licensee.

CHAPTER 111: ALCOHOLIC BEVERAGES

Section

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- 111.04 License application, bond, and insurance
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- 111.10 Restrictions on purchase and consumption
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- 111.13 Nudity on the premises of licensed establishments prohibited

Cross-reference:

General offenses; alcoholic beverages, see ' 130.50

Public nuisances affecting morals and decency; intoxicating liquor, see ' 92.03

' 111.01 ADOPTION OF STATE LAW.

The provisions of M.S. Chapter 340A, as it may be amended from time to time, relating to the definition of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor are adopted and made a part of this chapter as if set out in full.

' 111.02 LICENSE REQUIRED.

(A) *General requirement.* No person, except a wholesaler or manufacturer to the extent authorized under state license, shall directly or indirectly deal in, sell, or keep for sale in the city any intoxicating liquor without a license to do so as provided in this chapter. Liquor licenses shall be of three kinds: “on-sale,” “off-sale,” and club licenses. A person meeting the requirements of this chapter shall be permitted at the discretion of the City Council to simultaneously hold both an “off-sale” and “on-sale” license.

(B) *On-sale licenses.*

(1) “On-sale” licenses shall be issued only to hotels, clubs, restaurants, and exclusive liquor stores and shall permit “on-sale” of liquor only.

(2) For purposes of this chapter, the term **RESTAURANT** shall mean 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 the single location. To be a “restaurant” as defined by this section, an establishment shall have a license from the state as required by M.S. § 157.16, as it may be amended from time to time, and meet the definition of either a “small establishment,” “medium establishment” or “large establishment” as defined by M.S. § 157.16, Subd. 3, 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 a restaurant for purposes of this chapter unless it meets the definitions of “small establishment,” “medium establishment” or “large establishment.”

(C) *Off-sale licenses.* “Off-sale” licenses shall be issued only to drug stores and exclusive liquor stores and shall permit “off-sale” of liquor only. State law will determine the number of licenses which may be issued within any given year; the city Council may issue licenses in accordance with State law governing the number of allowable licenses.

(D) *Special club licenses.* Special club licenses shall be issued only to incorporated clubs which have been in existence for 15 years or more or to congressionally chartered veterans' organizations which have been in existence for 10 years.

(E) *Optional 2:00 A.M. closing license.* Any person holding a valid on-sale intoxicating liquor license or a valid 3.2 malt liquor license may sell alcohol until two o'clock a.m. as provided in subd 111.02(B) of this Chapter 111 only after submitting information as prescribed by the City; and after paying the required fee, as established by resolution of the City Council from time to time; after securing an Optional 2:00 A.M. Closing License from the City; and only after obtaining an Optional 2:00 A.M. Closing License from the State of Minnesota.

' 111.03 HOURS OF SALE

(A) *Intoxicating Liquor.* No sale of intoxicating liquor shall be made between one o'clock a.m. on Sunday nor until eight o'clock a.m. on Monday, except as permitted by subpart C of this Subd 111.03. No “on-sale” shall be made between the hours of one o'clock a.m. and eight o'clock a.m. on any weekday, except as permitted by subpart C of this Subd 111.03. No "on-sale" shall be made after eight o'clock p.m. on December 24. No "off-sale" shall be made before eight o'clock a.m. or after ten o'clock p.m. of any day. No "off-sale" shall be made on Thanksgiving Day or Christmas Day, December 25. No "off-sale" shall be made on December 24 after eight o'clock p.m. Notwithstanding the provisions of this section, regulating the hours of sale of on-sale intoxicating liquor, those establishments to which special "on-sale" Sunday licenses have been granted may sell "on-sale" intoxicating liquor between the hours of twelve o'clock noon on Sunday and one o'clock a.m. on Monday, except as permitted by subpart C of this Subd. 111.03.

(B) *Non-intoxicating Liquors.* No sale of non-intoxicating malt liquor shall be made between the hours of one o'clock a.m. and eight o'clock a.m. on any weekday, Monday through Saturday inclusive, except as permitted by subpart C of this Subd. 111.03

(C) *Optional 2 A.M. Closing.* Any Person holding a valid on-sale intoxicating liquor license or a valid 3.2 malt liquor license shall be permitted to sell alcohol until 2:00 A.M. only where otherwise permitted by City Code until only 1:00 A.M. provided that they have obtained an Optional 2:00 A.M. Closing License from the state of Minnesota and an Optional 2 A.M. Closing License from the City of Fertile, as provided in subd. 111.02(E) of this Chapter 111.

' 111.04 LICENSE APPLICATION, BOND, AND INSURANCE.

(A) *Application form.*

(1) *Generally.*

(a) Every application for a license to sell liquor shall state:

1. The name of the applicant and his or her age and address.
2. Representations as to his or her character, with such references as the Council may require.
3. His or her citizenship.
4. The type of license applied for.
5. The business in connection with which the proposed license will operate and the operator of the business.
6. The length of time the applicant has been in that business at that place or, if a new business, the location of the proposed business.
7. The name and address of the owners of the real estate, fixtures, buildings, and furniture where the sales will be made.
8. The name and address of every person who will have charge, management, or control or in any way participate in the charge, management, or control of the premises where the sales are to be made.
9. Whether the applicant, the owner of the premises, or any person identified in division 7 above has been convicted in the preceding five years of any violation of any provision of M.S. Chapter 340A, as it may be amended from time to time.
10. An acknowledgment that the information furnished under this subsection is a continuing obligation and any changes from the original application will be furnished to the City Administrator in writing within three days of the change.

11. Such other information as the Council may require from time to time.

(b) In addition to containing such information, the application shall be in the form prescribed by the Commissioner of Public Safety and shall be acknowledged under oath and filed with the City Administrator. No person shall make a false statement in an application.

(2) *Corporate applicants.* If the applicant is a corporation, the applicant shall also provide:

(a) The name and address of each shareholder, officer, and director.

(b) The business purpose of the corporation.

(c) The date of incorporation.

(d) Such other information as the Council may require.

(B) *Liability insurance.* Compliance with financial responsibility requirements of state law and of this ordinance is a continuing condition of any license granted pursuant to this ordinance. No liquor license may be issued, maintained, or renewed unless the applicant demonstrates proof of financial responsibility as defined in Minnesota Statutes Section 340A.409 with regard to liability under the statutes, Section 340A.801. Such proof shall be filed with the commissioner of public safety. (Applicants for liquor licenses to whom the requirement for proof of financial responsibility applies include applicants for wine licenses with sales of less than \$10,000.00 of wine per year.) Any liability insurance policy filed as proof of financial responsibility under this subdivision shall conform to Minnesota Statutes Section 340A.409.

(C) *Approval of security.* The security offered under Subdivision 2 shall be approved by the city council and in the case of applicants for “on-sale” wine licenses and “off-sale” licenses, by the state commissioner of public safety. Liability insurance policies required by this ordinance but not by state law and surety bonds required under Subdivision 2 shall be approved as to form by the city attorney. Operation of a licensee’s business without having on file with the city at all times effective security as required in Subdivision 2 is a cause for revocation of the license.

' 111.05 LICENSE FEE AND TERM.

(A) *Fees.* The annual fee for a liquor license shall be \$1000 for an “on-sale” license, \$100 for an “off-sale” license, \$100 for a Club License pursuant to M.S. ' 340A.408(2)(b), as it may be amended from time to time, for a club license, \$150 for a Sunday and Wine Optional License.

(B) *Payment.* Each application for a license shall be accompanied by a receipt from the City Administrator for payment in full of the license fee and the fixed investigation fee required under ' 111.05, if any. All fees shall be paid into the General Fund. If an application for a license is rejected, the City Administrator shall refund the amount paid as the license fee.

(C) *Term, pro rata fee.*

(1) Each license shall be issued for a period of one year except that if the application is made during the license year, a license may be issued for the remainder of the year for a pro rata fee, with any unexpired fraction of a month being counted as one month.

(2) Every license shall expire on the last day of the calendar year of issue.

' 111.06 LICENSE ISSUANCE AND TRANSFERABILITY.

(A) *Preliminary investigation.* On an application for issuance or transfer of an existing “on-sale” or “off-sale” license, the applicant shall pay with his or her application an investigation fee of \$500 and the city shall conduct a preliminary background and financial investigation of the applicant. The applicant shall be charged only for the actual costs incurred by the city in connection with its investigation up to a maximum amount of \$500. The application in such case shall be made on a form prescribed by the State Bureau of Criminal Apprehension and contain such additional information as the Council may require. If the Council deems it in the public interest to have an investigation made on a particular application for renewal for an “on-sale” license, it shall so determine. If the Council determines that a comprehensive background and investigation of the applicant is necessary, it may conduct the investigation itself or contract with the Bureau of Criminal Investigation for the investigation. No license shall be issued, transferred, or renewed if the results show to the satisfaction of the Council that issuance would not be in the public interest. If an investigation outside the state is required, the applicant shall be charged the actual cost not to exceed \$10,000; provided, however, that \$3,000 shall be payable in advance and such additional sums shall be paid in the amounts and at the times requested by the City Administrator as may be needed to complete the investigation. The fee shall be payable by the applicant whether or not the license is granted.

(B) *Hearing and issuance.* The City Council shall investigate all facts set out in the application and not investigated in the preliminary background and financial investigation conducted pursuant to division (A). 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 discretion, grant or refuse the application. No “off-sale” license shall be effective until it, together with the security furnished by the applicant, has been approved by the Commissioner of Public Safety.

(C) *Person and premises licensed; transferability.* Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without City Council approval. Any transfer of stock of a corporate license is deemed a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license.

' 111.07 PERSONS INELIGIBLE.

No license shall be granted to any person made ineligible for the license by state law.

' 111.08 PLACES INELIGIBLE.

(A) *General prohibition.* No license shall be issued for any place or any business ineligible for a license under state law.

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

(C) *Distance from school or church.* No license shall be granted within 600 feet of any school or church. In applying this restriction the distance shall be measured between the main front entrances of the two buildings following the route of ordinary pedestrian travel.

' 111.09 CONDITIONS OF LICENSE.

(A) *In general.* Every license is subject to the conditions in the following subdivisions and all other provisions of this chapter and of any applicable ordinance, code provision, state law, or regulation.

(B) *Licensee's responsibility.* Every licensee is responsible for the conduct of his or her place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises authorized to sell intoxicating liquor there is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.

(C) *Inspections.* Every licensee shall allow any peace officer, health officer, or properly designated officer or employee of the city to enter, inspect, and search the premises of the licensee during business hours without a warrant.

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

(E) *Federal stamps.* No licensee shall possess a federal wholesale liquor dealer's special tax stamp or a federal gambling stamp.

' 111.10 RESTRICTIONS ON PURCHASE AND CONSUMPTION.

(A) *Liquor in unlicensed places.* No person shall mix or prepare liquor for consumption in any public place or place of business unless it has a license to sell liquor "on-sale" or a permit from the Commissioner of Public Safety under M.S. ' 340A.414, as it may be amended from time to time, and no person shall consume liquor in any such place.

(B) *Consumption in public places.* No person shall consume liquor in a public park or other public place without first securing a written permit from the City.

Cross-reference:

Alcoholic beverages; permits and consumption in public places, see ' 130.50

' 111.11 LICENSE SUSPENSION AND REVOCATION.

The Council may either suspend for a period not to exceed 60 days or revoke any liquor license upon a finding that the licensee has failed to comply with any applicable statute, regulation, code provision, or ordinance relating to intoxicating liquor. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to M.S. " 15.0418 through 15.0426, as they may be amended from time to time.

' 111.12 VIOLATIONS.

Any licensee who violates any section of this chapter may be prosecuted and punished in the manner prescribed by state law for the same offense.

' 111.13 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.

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

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

(C) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license. Penalty, see ' 10.99

CHAPTER 112: AMUSEMENTS

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BINGO

' 112.01 ADOPTION OF STATE LAW.

The provisions of M.S. " 349.11 through 349.23, as they may be amended from time to time, relating to the game of bingo are adopted and made a part of this chapter as if set out in full. In addition, the regulations of this chapter apply to the conduct of bingo within the city.

' 112.02 LICENSE REQUIRED.

The unlicensed conduct of bingo within the city is prohibited. Any organization authorized by law to conduct bingo games may do so only after applying for and receiving a license from the Council.

Penalty, see ' 10.99

' 112.03 LICENSE APPLICATION AND BOND.

(A) *Generally.*

(1) The application shall state where the games will be played and the dates and hours for which permission to play the games is requested. The application shall be verified by a duly authorized officer of the organization and by the designated bingo manager. No application shall be accepted by the city unless accompanied by the full annual license fee.

(2) Application shall be made to the City Administrator on the form provided therefor by the city.

(B) *Bond.* No bingo license shall be issued until the bingo manager furnishes a fidelity bond in the sum of \$10,000 in favor of the organization. The bond shall be conditioned on the faithful performance by the manager of his or her duties. The bond shall not be cancelable except upon 30 days written notice to the city. The Council may, by unanimous vote, agree to waive the fidelity bond requirement. If the waiver is granted, the license must be endorsed to indicate such action.

' 112.04 LICENSE FEES AND TERM.

Licenses shall be issued for each calendar year or part thereof upon payment of a license fee in the amount of \$50.

' 112.05 LICENSE REVOCATION.

No licensee shall have a vested right in any bingo license and such licenses may be suspended or revoked by the Council at any time upon showing that any misrepresentation has been made in the license application or any report required of the licensee, or the licensee has violated or caused to be violated any provisions of this subchapter or the state bingo law.

GAMBLING**' 112.15 INTERPRETATION OF PROVISIONS.**

Nothing in this subchapter shall be construed to mean that the Council must permit gambling within the city.

Cross-reference:

Public nuisances affecting morals and decency; gambling, betting, bookmaking, and the like, see ' 92.03

' 112.16 ADOPTION OF STATE LAW.

The provisions of M.S. ' 349.26, as it may be amended from time to time, relating to the licensing of certain kinds of gambling are adopted and made a part of this subchapter as if set out in full. In addition, the regulations imposed by this subchapter apply to the conduct of gambling so licensed.

' 112.17 LICENSE REQUIRED.

No person shall directly or indirectly operate a gambling device or conduct a raffle or other game of chance without a license to do so as provided in this subchapter.

Penalty, see ' 10.99

Cross-reference:

Public nuisances affecting morals and decency; gambling, betting, bookmaking, and the like, see ' 92.03

' 112.18 PERSONS ELIGIBLE FOR LICENSE.

A license shall be issued only to a fraternal, religious, or veterans' organization and to any corporation, trust, or association organized for exclusively scientific, literary, charitable, educational, or artistic purposes, and any club which is organized and operated exclusively for pleasure or recreation. The organization, corporation, trust, or association shall have been in existence for at least three years and shall have at least 30 active members.

' 112.19 LICENSE APPLICATION AND BOND.

(A) *Generally.* The application for a license shall state where the gambling device will be used or the lottery conducted and the dates and hours for which the activity to be licensed will be conducted. The application shall be verified by a duly authorized officer of the organization and by the designated gambling manager. No application shall be accepted unless accompanied by the full license fee.

(B) *Bond.* No license shall be used under this part until the gambling manager furnishes a fidelity bond in the sum of \$10,000 in favor of the organization. The bond shall be conditioned on the faithful performance by the manager of his or her duties. The bond shall not be cancelable except upon 30 days written notice to the city. The Council may, by unanimous vote, agree to waive the fidelity bond requirement. If the waiver is granted, the license shall be endorsed to indicate such action.

' 112.20 LICENSE FEES AND LIMITATIONS.

The license fees for the operation of any gambling device or conduct of any raffle shall be determined by the Council and thereafter adopted as a part of the code. Each license shall be limited to the activity or occasion specified in the application and no organization shall be issued more than two such licenses in any calendar year.

' 112.21 LICENSE REVOCATION.

No licensee shall have a vested right in any license under this subchapter and the license may be suspended or revoked by the Council at any time upon showing that any misrepresentation has been made in the license application or in any report required of the licensee or the licensee has violated or caused to be violated any provisions of this subchapter or the applicable state law.

AMUSEMENT ESTABLISHMENTS

' 112.30 APPLICABILITY OF PROVISIONS.

This subchapter does not apply to land known as the Polk County Fair Grounds.

' 112.31 DEFINITIONS.

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

AMUSEMENT DEVICE. Any game of skill or chance requiring the payment of money to play or operate.

AMUSEMENT ESTABLISHMENT. Any building, area, or place whose principle purpose is providing entertainment derived from the operation of amusement devices; or any building, area, or place where more than five amusement devices are located.

AMUSEMENT ESTABLISHMENT LICENSE. A license to operate an amusement establishment issued by the city that is valid for one year and is subject to revocation for violating provisions of this subchapter.

' 112.32 LICENSE REQUIRED.

No person shall establish, maintain, or operate an amusement establishment without a valid license issued by the city.

Penalty, see ' 10.99

' 112.33 LICENSE APPLICATION AND FEES.

Owners of any amusement establishment must complete an application issued by the city and submit a fee of \$50 per year.

' 112.34 LICENSE REVOCATION.

Council may suspend or revoke any license provided for herein for violation of any provision or condition of this subchapter or any state law. Revocation or suspension by the Council shall be preceded by a written notice to the licensee of a public hearing at which the licensee has been allowed to be present and to make presentation. The notice shall give at least eight days notice of time and place of the hearing and shall state the nature of the charges against the licensee. Council may, without advance notice, suspend any license pending a hearing on revocation for a period not to exceed 30 days.

' 112.35 CONDITIONS OF OPERATION.

Amusement establishments are subject to the following conditions:

(A) *Nuisances prohibited.* No amusement establishment shall be conducted in a manner which constitutes or creates a public nuisance. For purposes of this subchapter, a public nuisance shall include the following:

(1) Maintaining or permitting any condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any significant number of members of the public.

(2) Maintaining or permitting any condition which unreasonably hinders, interferes with, or otherwise adversely affects the business of any other commercial establishment within the city.

(3) Maintaining or permitting any condition which threatens or impairs the health, safety, or morals of juveniles or is otherwise conducive to unlawful or delinquent behavior by juveniles or to conduct which unreasonably annoys or is offensive to a significant number of members of the public, including, but not limited to, remaining in or about the premises or adjacent properties without a purpose related to the patronage of the amusement establishment.

(B) *Hours of operation.* Hours of operation shall be 8:00 a.m. to 11:00 p.m. Monday, Tuesday, Wednesday, and Thursday; 8:00 a.m. to midnight Friday and Saturday; and 1:00 p.m. to 11:00 p.m. Sunday.

(C) *Entrances and exits.* Each amusement establishment shall have one main entrance. All rear and side exits will serve as emergency exits only.

(D) *Compliance with other laws.* The operator of an amusement establishment shall comply with all other applicable provisions of state and local laws and shall take such action as may be reasonably necessary to ensure compliance by patrons of the establishment.

(E) *Maintenance of order and maintenance of premises.* The operator of an amusement establishment shall at all times maintain order on the licensed premises and the adjacent common areas, such as sidewalks, parking lots, and hallways. It shall further be the responsibility of the licensee to maintain the licensed premises and adjacent common areas, such as sidewalks, parking lots, and hallways, free from litter.

Penalty, see ' 10.99

CHAPTER 113: PEDDLERS AND SOLICITORS

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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.

CANVASSER. See **SOLICITOR**.

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

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

REGULAR BUSINESS DAY. Any day during which the City Hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be counted as regular business days.

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

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

' 113.02 EXCEPTIONS TO DEFINITIONS.

(A) For the purpose of the requirements of this chapter, the terms ***PEDDLER, SOLICITOR,*** and ***TRANSIENT MERCHANT*** shall not apply to any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retailer of the items being sold by the wholesaler. The terms also shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route.

(B) In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, persons participating in an organized multi-person bazaar or flea market, as well as persons participating in fundraising sales (i.e., organized through the school, etc.) shall be exempt from the definitions of ***PEDDLERS, SOLICITORS,*** and ***TRANSIENT MERCHANTS,*** as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision, code provision, or local ordinance.

' 113.03 LICENSING; EXEMPTIONS.

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

(B) *City license required.* Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to ' 113.07.

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

- (1) The applicant's full legal name.
- (2) All other names under which the applicant conducts business or to which applicant officially answers.
- (3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, and the like).
- (4) The full address of the applicant's permanent residence.
- (5) The telephone number of the applicant's permanent residence.
- (6) The full legal name of any and all business operations owned, managed, or operated by the applicant, or for which the applicant is an employee or agent.
- (7) The full address of the applicant's regular place of business (if any).
- (8) Any and all business-related telephone numbers of the applicant.
- (9) The type of business for which the applicant is applying for a license.
- (10) Whether the applicant is applying for an annual or daily license.
- (11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days).
- (12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.
- (13) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute, any local code provision, or any local ordinance, other than traffic offenses.

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

(15) Proof of any requested county license.

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

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

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

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

(20) The license plate number, registration information, and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established in the city's fee schedule as adopted from time to time by an ordinance passed by the City Council.

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Administrator shall forward the application to the City Council within two regular business days of receipt. An application shall be determined to be complete only if all required information is provided. The City Administrator, within two regular business days of receipt, shall determine if the application is complete. If the City Administrator determines that the application is incomplete, the City Administrator shall inform the applicant of the required necessary information which is missing. The City Council shall review the application and order any investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving the application from the City Administrator, the City Council shall vote whether or not to issue the license. If the City Council approves the application, the City Administrator shall be instructed to issue a license to the applicant. If the City Council rejects the application, the applicant shall be notified in writing of the City Council's decision, the reason for denial, and of his or her right to appeal the denial by requesting, within 20 days of receiving the City Council's notice of rejection, a public hearing to be heard within 20 days of the date of the request. The final decision of the City Council following the public hearing shall be appealable by petitioning the Minnesota Court of Appeals for a Writ of Certiorari.

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

(G) *License exemptions.*

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

(2) No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when the activity is for the purpose of exercising that person's State or Federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.

(3) Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.
Penalty, see ' 10.99

' 113.04 LICENSE INELIGIBILITY.

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

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

(B) The failure of the applicant to truthfully provide any of the information requested by the city as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application.

(C) The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local code provision or ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner. Such violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.

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

(E) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding 12 months, or three such complaints filed against the applicant within the preceding five years.

' 113.05 LICENSE SUSPENSION AND REVOCATION.

(A) *Generally.* Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:

(1) Fraud, misrepresentation, or incorrect statements on the application form.

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

(3) Conviction of any offense for which granting of a license could have been denied under ' 113.04.

(4) Violation of any provision of this chapter.

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

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

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

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

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

Penalty, see ' 10.99

' 113.06 LICENSE TRANSFERABILITY.

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

Penalty, see ' 10.99

' 113.07 REGISTRATION.

All solicitors, and any person exempt from the licensing requirements of this chapter under ' 113.03, shall be required to register with the city. 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-transferable.

Penalty, see ' 10.99

' 113.08 PROHIBITED ACTIVITIES.

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

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

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

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

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

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

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

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

Penalty, see ' 10.99

' 113.09 EXCLUSION BY PLACARD.

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

other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

Penalty, see ' 10.99

CHAPTER 114: TOBACCO REGULATIONS

Section

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' 114.01 PURPOSE AND INTENT.

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

' 114.02 DEFINITIONS.

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

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

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include but not be limited to single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered individually packaged.

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

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

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

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

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

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. The phrase shall not include vending machines. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the tobacco between the clerk and the customer.

TOBACCO or TOBACCO PRODUCTS. Any substance or item containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.

TOBACCO RELATED DEVICES. Any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco related device.

' 114.03 LICENSE.

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

(B) *Application.* An application for a license to sell tobacco, tobacco products, or tobacco related devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City 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.

(C) *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 the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

(D) *Term.* All licenses issued under this chapter shall be valid for one calendar year from the date of issue.

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in ' 114.99.

(F) *Transferability*. All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

(G) *Moveable place of business*. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this chapter.

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

(I) *Renewals*. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

(J) *Issuance as privilege and not a right*. The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Penalty, see ' 114.99

' 114.04 LICENSE FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established in the city's schedule of fees.

Penalty, see ' 114.99

' 114.05 LICENSE DENIAL.

(A) Grounds for denying the issuance or renewal of a license under this chapter include but are not limited to the following:

(1) The applicant is under the age of 18 years.

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

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

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

(5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license.

(B) However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license.

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

Penalty, see ' 114.99

' 114.06 PROHIBITED SALES.

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

(A) To any person under the age of 18 years.

(B) By means of any type of vending machine, except as may otherwise be provided in ' 114.07.

(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, tobacco product, or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco related device between the licensee, or the licensee's employee, and the customer.

(D) By means of loosies as defined in ' 114.02.

(E) Containing opium, morphine, jimsonweed, belladonna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.

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

Penalty, see ' 114.99

' 114.07 VENDING MACHINES.

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

Penalty, see ' 114.99

' 114.08 SELF-SERVICE SALES.

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

Penalty, see ' 114.99

' 114.09 RESPONSIBILITY OF LICENSEES.

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

Penalty, see ' 114.99

' 114.10 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 premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by city-designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. 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.

Penalty, see ' 114.99

' 114.11 OTHER ILLEGAL ACTS RELATED TO MINORS.

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

(A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This division (B) shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, snuff or otherwise use any tobacco, tobacco product, or tobacco related device.

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

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

Penalty, see ' 114.99

' 114.12 EXCEPTIONS AND DEFENSES.

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

' 114.99 VIOLATIONS AND PENALTY.*(A) Violations.*

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

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

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the Hearing Officer.

(4) *Decision.* If the Hearing Officer determines that a violation of this chapter did occur, that decision, along with the Hearing Officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the Hearing Officer finds that no violation occurred or finds grounds for not imposing any penalty, the findings shall be recorded and a copy provided to the acquitted accused violator.

(5) *Appeals.* Appeals of any decision made by the Hearing Officer shall be filed in the district court for the city in which the alleged violation occurred.

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

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

(B) Administrative penalties.

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

(2) *Other individuals.* Other individuals, other than minors regulated by division (B)(3) of this section, found to be in violation of this chapter shall be charged an administrative fee of \$50.

(3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices shall be subject to an administrative fine, or may be subject to tobacco related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. Such administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents, and children to determine an appropriate penalty for minors in the city.

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

