

## **TITLE XI: BUSINESS REGULATIONS**

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## CHAPTER 110: PEDDLERS AND SOLICITORS

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### § 110.01 DEFINITIONS.

(A) Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions.

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

**PEDDLER.** A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personnel 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, by state law, shall not be **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.

#### **§ 110.02 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, as well as those persons participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of ***PEDDLERS***, ***SOLICITORS*** and ***TRANSIENT MERCHANTS***, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse a person from complying with other applicable statutory provision or local ordinance.

#### **§ 110.03 LICENSING; EXEMPTIONS.**

*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.

#### **§ 110.04 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 111: SEXUALLY ORIENTED BUSINESS

### Section

- 111.01 Purpose; findings and conclusions
- 111.02 Definitions
- 111.03 Classifications
- 111.04 License required; issuance of fees
- 111.05 Inspection of premises
- 111.06 Expiration, suspension or revocation
- 111.07 Transfer of license
- 111.08 Location requirements
- 111.09 Adult motels
- 111.10 Live entertainment; theaters
- 111.11 Escort agencies
- 111.12 Nude modeling studios
- 111.13 Public nudity
- 111.14 Children prohibited in a sexually oriented business
- 111.15 Hours of operation
- 111.16 Exemptions
- 111.17 Injunction

- (a) Prevent the deleterious location and concentration of sexually oriented businesses within the city;
- (b) Prevent additional criminal activity within the city;
- (c) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate value of properties within the neighborhood;
- (d) Locate sexually oriented businesses away from schools, churches, residential properties, day-care centers, teen centers, libraries, parks, commercial recreational facilities for minors and businesses selling alcoholic beverages; and
- (e) Prevent the spread of sexually transmitted diseases.

### § 111.01 PURPOSE; FINDINGS AND CONCLUSIONS.

#### (A) *Purpose.*

(1) It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to:

(2) The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their

intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(B) *Findings.* Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters*, 426 U.S. 50 (1976), and *North End Cinema, Inc. v. Seattle*, 585 P.2d 1153 (Wash. 1978), and on studies in other communities including, but not limited to Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Los Angeles, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; and Beaumont, Texas; and also on findings found in the *Report of Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*, (June 6, 1989, State of Minnesota), the Council finds:

(1) Sexually oriented businesses in the city lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises;

(2) Certain employees of sexually oriented businesses defined in this chapter as adult theaters and cabarets engage in higher incidence of certain types of sexually oriented behavior at these businesses than employees of other establishments;

(3) Sexual acts, including masturbation, oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films,

videos or live sex shows, as defined under this chapter adult book stores, adult novelty shops, adult video stores, adult motion picture theaters or adult arcades;

(4) Offering and providing the space, encourages the activities, which create unhealthy conditions;

(5) Persons frequent certain adult theaters, adult arcades and other sexually oriented businesses for the purpose of engaging in sex within the premises of the sexually oriented businesses;

(6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections;

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982; 2,200 in 1983; 4,600 in 1984; 8,555 in 1985; and 253,448 through December 31, 1992;

(8) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990;

(9) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990;

(10) The surgeon general of the United States in his report of October 22, 1986, has advised

the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn;

(11) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts;

(12) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities;

(13) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films;

(14) The findings noted in divisions (1) through (15) herein raise substantial governmental concerns;

(15) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns;

(16) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent

incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the city. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein;

(17) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters;

(18) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments;

(19) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where the information is substantially related to the significant governmental interest in the operation of the uses, will aid in preventing the spread of sexually transmitted diseases;

(20) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this chapter is designed to prevent or who are likely to be witnesses to the activity;

(21) The fact that an applicant for an adult-use license has been convicted of a sexually related crime leads to the rational assumption that the applicant is likely to engage in that conduct in contravention of this chapter;

(22) The barring of the individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases;

(23) The general welfare, health and safety of the citizens of the city will be promoted by the enactment of this chapter;

(24) The community goals identified in the comprehensive plan of the city include encouraging orderly urban development, maintaining older neighborhoods with affordable homes to provide housing for low and moderate income families, encouraging residents to rehabilitate and repair existing housing units, providing zoning densities which will allow subsidized housing construction, conserving the values of buildings, and encouraging the most appropriate use of land throughout the community;

(25) The city has recently completed a main street renovation project. The goals of that project included improving the competitive position downtown in relation to other commercial centers, enhancing the attractiveness and enjoyment of the downtown for shoppers, visitors and tourists, and restoring as much of the downtown's historic or traditional character as possible;

(26) The city has frequently established a goal of maintaining and enhancing the business district as a primary retail and service center through a

comprehensive private/public sector approach to economic development leading to strengthening the economic base, encouraging business investment, providing needed consumer goods and services and generating the local tax base and employment opportunities;

(27) As expressed in M.S. § 617.291, as it may be amended from time to time, it is the declared policy of this state to prevent commercial exposure of minors to sexually provocative written, photographic, printed, sound or published materials as defined therein which are deemed harmful to minors;

(28) The city has had at times a downtown teen center which makes the downtown area a gathering place for teenage children;

(29) The city and the area have limited law enforcement officers on duty after the hour of 12:00 midnight;

(30) Adult entertainment uses have an impact on the neighborhoods surrounding them which is distinct from the impact caused by other commercial uses;

(31) Residential neighborhoods located within close proximity to adult theaters, bookstores and other adult entertainment uses experience increased crime rates (sex-related crimes in particular), lowered property values, increased transiency and decreased stability of ownership;

(32) The adverse impacts which an adult entertainment use has on surrounding areas diminish as the distance from the adult entertainment use increases;

(33) Studies of other cities have shown that among the crimes which tend to increase either within or in the near vicinity of adult entertainment uses are rapes, prostitution, child molestation, indecent exposure and other lewd and lascivious behavior;

(34) The City of Phoenix study confirmed that the sex crime rate was on an average six times higher in areas with at least one adult entertainment use as it was within comparable areas of their city without adult uses;

(35) The Tucson, Arizona, study found that police officers found a wide variety of illegal conduct at all adult entertainment businesses;

(36) The Garden Grove, California, study found that crime increased significantly with the opening of an adult business, the expansion of an existing business or the addition of a bar nearby. Homicide, rape, robbery, burglary, assault, theft and auto theft increased 300% in one year within 1000 feet following the opening of a bar less than 500 feet from an adult business;

(37) Studies of other cities have shown that the values of both commercial and residential properties either are diminished or fail to appreciate at the rate of other comparable properties when located in proximity to adult entertainment uses;

(38) The adverse impact of adult uses on commercial area is increased by the presence of more than one adult entertainment use in close proximity to another use;

(39) The number and rate of real estate listings increase in areas in which adult entertainment uses are located;

(40) The Indianapolis, Indiana study established that professional real estate appraisers believe that an adult bookstore would have a negative effect on the value of both residential and commercial properties within a one to three block area of the store;

(41) The Oklahoma City study concluded that sexually oriented businesses have a negative effect on property values, particularly residential properties. The concentration of sexually oriented businesses may mean large losses in property values;

(42) The Seattle, Washington study found that patrons of topless dance halls most often are not residents of nearby neighborhoods. Without community identity, behavior is less inhibited. Increased police calls to a business, sirens and traffic hazards from police and emergency vehicles are not conducive to healthy business and residential environments;

(43) Many members of the public perceive areas within which adult entertainment uses are located as less safe than other areas which do not have such uses;

(44) Sexually oriented businesses can exert a dehumanizing influence on persons attending churches, children attending licensed day-care centers and schools, and people using parks and libraries;

(45) The concern over sexually transmitted diseases is a legitimate health concern of the city which demands reasonable regulation of sexually oriented businesses to protect the health and well-being of the citizens; and

(46) Intoxication, particularly when combined with adult entertainment, leads to the increased likelihood of fights, disorderly conduct and other illegal activities.

(C) *Conclusions.* Based on the findings of the Council, the Council concludes:

(1) The impacts which adult entertainment uses have on surrounding areas should be addressed through a distinct set of land-use regulations directed specifically at such adult entertainment uses and through licensing;

(2) Adult entertainment land-uses should not be located in close proximity to buildings or facilities where children are the dominant clientele or patrons of the service, products or facility usage offered by the building or facility;

(3) The existing land-use regulations of the city inadequately address the unique impacts which adult entertainment uses have on surrounding neighborhoods and fail to adequately foster the community goals declared in the comprehensive plan, the central business district plan, and in state law;

(4) Adult entertainment uses should be located in areas of the city which are not in close proximity to churches, parks, schools, teen centers, licensed day-care centers and public libraries;

(5) Regardless of whether or to what extent adult entertainment uses have currently had an adverse impact on the areas surrounding them in this city, the experience of other cities, as documented in the numerous studies considered, confirms that regulation of adult entertainment uses is essential to prevent future deterioration of surrounding neighborhoods and adverse social impacts associated with such uses;

(6) The concerns which have prompted a public hearing in this city are similar to the concerns which motivated the communities of Indianapolis, Indiana; Tucson, Arizona; Garden Grove, California; Oklahoma City; Phoenix, Arizona; and Seattle, Washington. Consequently, the results of those studies are relevant to the existing or foreseeable impacts which the uses can have on the areas surrounding them in this city;

(7) The concentration of adult entertainment uses in commercial areas or the location of adult entertainment uses in close proximity to residential uses, churches, parks, licensed day-care centers, libraries and schools will result in devaluation of property values and decreases in commercial business sales, thereby reducing tax revenues to the city and adversely impacting the economic well-being of the citizens of the city;

(8) Location of adult entertainment uses in proximity to residential uses, churches, parks, licensed day-care centers, teen centers, libraries and school would lead to increased levels of criminal activities, including prostitution, rape, assaults and other sex-related crimes in the vicinity of adult entertainment uses;

(9) Regulation of the uses is essential to ensure that community values are protected;

(10) The City Council desires to prevent the adverse effects of adult entertainment and thereby protect the health, safety and welfare of the citizens, protect the citizens from increased crime, preserve the quality of life, preserve the property values and character of surrounding neighborhoods, and deter the spread of urban blight;

(11) Licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

(12) It is not the intent of the city in enacting any ordinance addressing these findings and conclusions to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of adult entertainment as well as the health problems associated with the businesses.

(Ord. 95-588, passed 3-20-1995)

## § 111.02 DEFINITIONS.

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

**ADULT ARCADE.** Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically or mechanically controlled still or motion picture machine, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

### **ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE.**

(1) A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of specified activities or specified anatomical areas; or

(b) Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

(2) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as **ADULT BOOKSTORE, ADULT NOVELTY STORE** or **ADULT VIDEO STORE**. Other business purposes will not serve to exempt commercial establishments from being categorized as an **ADULT BOOKSTORE, ADULT NOVELTY STORE** or **ADULT VIDEO STORE** so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT CABARET.** A nightclub, bar, restaurant or similar commercial establishment which regularly features:

(1) Persons who appear in a state of nudity or semi-nude;

(2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(3) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT MOTEL.** A motel, hotel or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

**ADULT MOTION PICTURE THEATER.** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT THEATER.** A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of

nudity or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

**EMPLOYEE.** A person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not the person is paid a salary, wage or other compensation by the operator of the business. **EMPLOYEE** does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

**ESCORT.** A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**ESCORT AGENCY.** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

**ESTABLISHMENT.** Any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The additions of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business.

**LICENSEE.** A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

**NUDE MODEL STUDIO.** Any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. **NUDE MODEL STUDIO** shall not include a proprietary school licensed by the State of Minnesota or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or in a structure:

(1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

(2) Where in order to participate in a class a student must enroll at least three days in advance of the class; and

(3) Where no more than one nude or semi-nude model is on the premises at any one time.

**NUDITY** or **STATE OF NUDITY.** The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.

**PERSON.** An individual, proprietorship, partnership, corporation, association or other legal entity.

**SEMI-NUDE** or **SEMI-NUDE CONDITION.** The showing of the female breast below a horizontal line across the top of the areola at its highest point or showing of the male or female rear of the body which lies between two imaginary lines running parallel to the ground when a person is standing, the first or top of such line drawn at the top of the cleavage of the nates and second or bottom line drawn at the lowest visible point of the cleavage or the lowest point of the curvature of the fleshy protuberance, whichever is lower, and between two imaginary lines on each side of the body, which lines are perpendicular to the ground and to the horizontal lines described above, and which perpendicular lines are drawn through the point at which each nate meets the outer side of each leg. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part.

**SEXUAL ENCOUNTER CENTER.** A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

**SEXUALLY ORIENTED BUSINESS.** An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio or sexual encounter center.

**SPECIFIED ANATOMICAL AREAS.**

(1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(2) Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

**SPECIFIED CRIMINAL ACTIVITY.** Any of the following offenses:

(1) Prostitution or promotion or prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other state or countries;

(2) For which:

(a) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(b) Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(c) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

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

(1) The fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation or sodomy; or

(3) Excretory functions as part of or in connection with any of the activities set forth in divisions (1) and (2) above.

**SUBSTANTIAL ENLARGEMENT.** Increase in floor areas occupied by the business by more than 25%, as the floor areas at the time of the original licensing of the business.

**TRANSFER OF OWNERSHIP OR CONTROL.**

Includes any of the following:

(1) The sale, lease or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or

(3) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 95-588, passed 3-20-1995)

(F) Adult theaters;

(G) Escort agencies;

(H) Nude model studios; and

(I) Sexual encounter centers.

(Ord. 95-588, passed 3-20-1995)

**§ 111.04 LICENSE REQUIRED; ISSUANCE OF FEES.**

(A) (1) It is unlawful:

(a) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the city pursuant to this chapter;

(b) For any person who operates a sexually oriented business to employ a person to work who is not licensed as a sexually oriented business employee by the city pursuant to this chapter; and/or

(c) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

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

(3) All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide the information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established in this chapter.

**§ 111.03 CLASSIFICATIONS.**

Sexually oriented businesses are classified as follows:

(A) Adult arcades;

(B) Adult bookstores, adult novelty stores or adult video stores;

(C) Adult cabarets;

(D) Adult motels;

(E) Adult motion picture theaters;

(4) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20% or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

(5) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

1. An individual, the individual shall state his or her legal name and any aliases and submit proof that he or she is 18 years of age;

2. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

3. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process;

(b) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state:

1. The sexually oriented business's fictitious name; and

2. Submit the required registration documents;

(c) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity, as defined in this chapter, and if so, the specified criminal activity involved, the date, place and jurisdiction of each;

(d) Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation;

(e) Whether the applicant or a person residing with the applicant holds any other licenses under this chapter or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of other licensed businesses;

(f) The single classification of license for which the applicant is filing;

(g) The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number(s), if any;

(h) The applicant's mailing address and residential address;

(i) A recent photograph of the applicant(s);

(j) The applicant's driver's permit number, Social Security number, and/or his or her state or federally issued tax identification number;

(k) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;

(l) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within feet of the property to be certified; the property lines of any established religious institution/synagogue, school, public park, library, teen center or recreation area within 400 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time as application is submitted; and

(m) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space,

films, video cassettes, other video reproductions or live entertainment which depict specified sexual activities of specified anatomical area, then the application shall comply with the application requirements set forth in § 111.10.

(6) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the city the following information:

(a) The applicant's name or any other name (including "stage" names) or aliases used by the individual;

(b) Age, date and place of birth;

(c) Height, weight, hair and eye color;

(d) Present business address and phone number;

(e) Present home address and phone number;

(f) Date, issuing state and number of driver's permit or other identification card information;

(g) Social Security number; and

(h) Proof that the individual is at least 18 years of age.

(7) Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

(a) A color photograph of the applicant clearly showing the applicant's face, and the

applicant's fingerprints on a form provided by the Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant;

(b) A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state or country has ever had a license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any denial, revocation or suspension, state the name, the name of the issuing or denying jurisdiction, and description in full of the reason for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application; and

(c) A statement whether the applicant has been convicted of a specified criminal activity as defined in this chapter and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

**(B) *Issuance of license.***

(1) Upon the filing of the application for a sexually oriented business employee license, the city shall issue a temporary license to the applicant. The application shall then be referred to the appropriate city departments for an investigation to be made on the information as is contained on the application. The application process shall be completed within 30 days from the date the completed application is filed. After the investigation, the city shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(a) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(b) The applicant is under the age of 18 years;

(c) The applicant has been convicted of a "specified criminal activity," as defined herein;

(d) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or

(e) The applicant has had a sexually oriented business employee license revoked by the city within two years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension or revocation of a license issued pursuant to this section shall be subject to appeal as set forth in § 111.06(C).

(2) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any specified criminal activity as defined in this chapter or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in division (C) below.

(3) Within 30 days after receipt of a completed sexually oriented business application, the

city shall approve or deny the issuance of the license to an applicant. The city shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(a) An applicant is under 18 years of age;

(b) An applicant or a person with whom applicant is residing is overdue in payment to the city of taxes, fees, fines or penalties assessed against or imposed upon him or her in relation to any business;

(c) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(d) An applicant or a person with whom the applicant is residing has been denied a license by the city to operate a sexually oriented business within the preceding 12 months or whose license to operate a sexually oriented business has been revoked within the preceding 12 months;

(e) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this chapter;

(f) The premises to be used for the sexually oriented business have not been approved by the Health Department, Fire Department and the Building Official as being in compliance with applicable laws and ordinances;

(g) The license fee required by this chapter has not been paid; and/or

(h) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

(4) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to § 111.03. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time. The Health Department, Fire Department and the Building Official shall complete their certification that the premise is in compliance or not in compliance within 20 days of receipt of the application by the city.

(5) A sexually oriented business license shall issue for only the classification as found in § 111.03.

*(C) Fees.*

(1) Every application for a sexually oriented business license, whether for new license or for renewal, shall be accompanied by a non-refundable application and investigation fee.

(2) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the city an annual non-refundable license fee within 30 days of license issuance or renewal.

(3) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual non-refundable application, investigation and license fee.

(4) The application and investigation fee and the annual sexually oriented business license fee and the annual application, investigation and sexually oriented business employer license fee shall be as set by resolution of the City Council which fees shall not be set arbitrarily, but shall be determined in relation to the Council's best estimate of actual costs of administration, planning, legal, inspection and police investigation related to the application and the ongoing operation of this business.

(5) All license applications and fees shall be submitted to the City Clerk/Administrator.

(Ord. 95-588, passed 3-20-1995) Penalty, see § 10.99

#### **§ 111.05 INSPECTION OF PREMISES.**

(A) An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department or other city departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(B) A person who operates a sexually oriented business or his or her agent or employee commits a misdemeanor if he or she refuses to permit lawful inspection of the premises at any time it is occupied or open for business.

(Ord. 95-588, passed 3-20-1995) Penalty, see § 10.99

#### **§ 111.06 EXPIRATION, SUSPENSION OR REVOCATION.**

(A) (1) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 111.05(A). Application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.

(2) When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(B) The city shall suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

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

(2) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter; or

(3) Knowingly permitted gambling by any person on the sexually oriented business premises.

(C) (1) The city shall revoke a license if a cause of suspension in division (B) above occurs and the license has been suspended within the preceding 12 months.

(2) The city shall revoke a license if it determines that:

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

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

(c) A licensee has knowingly allowed prostitution on the premises;

(d) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(e) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the licensed premises; or

(f) A licensee is delinquent in payment to the city, county or state for any taxes or fees past due.

(3) (a) When the city revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented license for one year from the date the revocation became effective.

(b) If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.

(4) After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

(Ord. 95-588, passed 3-20-1995)

### **§ 111.07 TRANSFER OF LICENSE.**

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(Ord. 95-588, passed 3-20-1995) Penalty, see § 10.99

### **§ 111.08 LOCATION REQUIREMENTS.**

(A) A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than as defined and described in the zoning code.

(B) A person commits an offense if the person operates or causes to be operated a sexually oriented business within 400 feet of:

(1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

(2) A public or private educational facility including, but not limited to libraries, child day-care facilities, nursery schools, preschools, kindergartens,

elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities; school includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school;

(3) A boundary of a residential district as defined in the zoning code, a public park or recreational area which has been designated for park or recreational activities including, but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land within the city which is under the control, operation or management of the city park and recreation authorities;

(4) The property line of a lot devoted to a residential use as defined in the zoning chapter;

(5) An entertainment business which is oriented primarily toward children or family entertainment; or

(6) A licensed premise, licensed pursuant to the alcoholic beverage control regulations of the state.

(C) A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within 400 feet of another sexually oriented business.

(D) A person commits a misdemeanor if that person causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.

(E) For the purpose of division (B) above, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in division (B) above. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

(F) For purposes of division (C) above, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

(G) Any sexually oriented business lawfully operating, that is in violation of divisions (A) through (F) above shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are

within 400 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.

(H) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in division (B) above within 400 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

(Ord. 95-588, passed 3-20-1995)

#### **§ 111.09 ADULT MOTELS.**

(A) Evidence that a sleeping room in a hotel, motel or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(B) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented license, he or she rents or subrents a sleeping room to a person and, within ten hours from the time is rented, he or she rents or subrents the same sleeping room again.

(C) For purposes of division (B) above, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(Ord. 95-588, passed 3-20-1995)

#### **§ 111.10 LIVE ENTERTAINMENT; THEATERS.**

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premise in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of interior of the premises to an accuracy of plus or minus six inches. The city may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared;

(2) The application shall be sworn to be true and correct by the applicant;

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the city;

(4) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises;

(5) The interior of the premises shall be configured in a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premise has two or more manager's stations designated, then the interior of the premises shall be configured in a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this section must be by direct line of sight from the manager's station;

(6) It shall be the duty of the licensees to ensure that the view area specified in subsection (5) above remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premise which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) above;

(7) No viewing room may be occupied by more than one person at any time;

(8) The viewing areas or booths shall be maintained at all times in a clean and sanitary manner;

(9) All entrances to the premises, with the exception of emergency fire exits not usable to enter the business, shall be visible from a public right-of-way. In, addition, all windows and doors shall be so blocked or covered to prohibit viewing of the interior of the premises from outside of the premises;

(10) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot candle as measured at the floor level;

(11) It shall be the duty of the licensees to ensure that the illumination described above is maintained at all times that any patron is present in the premises;

(12) No licensee shall allow openings of any kind to exist between viewing rooms or booths;

(13) No person shall make or attempt to make an opening of any kind between viewing booths or rooms;

(14) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist;

(15) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting; and

(16) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

(B) A person having a duty under divisions (A)(1) through (A)(14) above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

(Ord. 95-588, passed 3-20-1995) Penalty, see § 10.99

(D) A nude model studio shall not place or permit a bed, sofa or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. 95-588, passed 3-20-1995) Penalty, see § 10.99

### **§ 111.11 ESCORT AGENCIES.**

(A) An escort agency shall not employ any person under the age of 18 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. 95-588, passed 3-20-1995) Penalty, see § 10.99

### **§ 111.13 PUBLIC NUDITY.**

(A) It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

(B) It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet from any patron or customer and on a stage raised from the surrounding floor by at least two feet. It shall be a misdemeanor for any person not an employee to be on the stage or within ten feet of the stage at any time during any performance.

(C) It shall be a misdemeanor for any employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while the employee is semi-nude in a sexually oriented business.

(Ord. 95-588, passed 3-20-1995) Penalty, see § 10.99

### **§ 111.12 NUDE MODELING STUDIOS.**

(A) A nude model studio shall not employ any person under the age of 18 years.

(B) A person under the age of 18 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this section if the person under 18 years was in a restroom not open to public view or visible to any other person.

(C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

**§ 111.14 CHILDREN PROHIBITED IN A SEXUALLY ORIENTED BUSINESS.**

A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

(Ord. 95-588, passed 3-20-1995) Penalty, see § 10.99

**§ 111.15 HOURS OF OPERATION.**

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 a.m. and 6:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and 10:00 a.m. on Sundays. (Ord. 95-588, passed 3-20-1995) Penalty, see § 10.99

**§ 111.16 EXEMPTIONS.**

It is a defense to prosecution under § 111.13 that a person appearing in a state of nudity did so in a modeling class operated:

(A) By a proprietary school, licensed by the state, a college, junior college or university supported entirely or partly by taxation;

(B) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

(C) In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;

(2) Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and

(3) Where no more than one nude model is on the premises at any one time.

(Ord. 95-588, passed 3-20-1995)

**§ 111.17 INJUNCTION.**

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of § 111.09 is subject to a suit for injunction, as well as prosecution for criminal violations. Violations shall be a misdemeanor. Each day a sexually oriented business so operates is a separate offense or violation.

(Ord. 95-588, passed 3-20-1995)

## CHAPTER 112: CABLE TELEVISION

### Section

- 112.01 Purpose
- 112.02 Authority
- 112.03 Rate submittal
- 112.04 Procedure for review

#### *Cross-reference:*

*Franchise Agreements, see T.S.O. Table II*

### § 112.01 PURPOSE.

(A) The purpose and intent of this chapter is to enable the Council to meet the FCC's requirements for regulating cable television basic service and equipment rates to the fullest extent allowed by the Act and the FCC's regulations, and this chapter shall be interpreted pursuant to that purpose and intent.

(B) The city hereby adopts a rule that it will follow the regulations established by the FCC regarding regulation by the franchising authority of cable television basic service and equipment rates, as contained in 47 CFR Part 76, Subpart N.

(Ord. 560, passed 10-4-1993)

### § 112.02 AUTHORITY.

The City Council is hereby deemed to be the franchising authority for purposes of regulation pursuant to this chapter.

(Ord. 560, passed 10-4-1993)

### § 112.03 RATE SUBMITTAL.

(A) Whenever the cable operator (or operators) providing basic service within and subject to regulation by the city submits for review its existing rates for basic service and associated equipment costs, or a proposed increase in these rates, the Council shall issue public notice of the rate submittal by posting a notice in the place used for public notices in the municipal building, and interested parties shall be allowed to submit their views in writing or in person according to the time schedule and procedures specified in § 112.04, which is hereby incorporated herein. The cable operator and all interested parties must follow the schedule and procedures of § 112.04 or the Council may not give due consideration to their submittals.

(B) The Council shall have the right to conduct public hearings and receive testimony regarding any rate proposal submitted by a cable operator and may by motion delegate to any specified city official the right to oversee the proceeding or to undertake any of the ministerial duties of the Council (for example, issuing notices) regarding the review and regulation of rates under this chapter.

(Ord. 560, passed 10-4-1993)

**§ 112.04 PROCEDURE FOR REVIEW.**

(A) Upon assumption of rate regulation authority, the Council will notify the cable operator and require the cable operator to file its basic rate schedule with the Council within 30 days.

(B) Basic service and equipment rate schedule filings for existing rates or proposed rate increases (including increases in the baseline channel change that results from reductions in the number of channels in a tier) must use the appropriate FCC forms. Cable operators with existing or proposed rates above the permitted tier rate must submit a cost-of-service showing sufficient to support a finding that the rates are reasonable.

(C) Filings proposing annual adjustments or rates within the FCC's benchmark rate regulation standards in 47 CFR 76.922 and 76.923 must be made 30 days prior to the proposed effective date and can become effective on the proposed effective date unless the Council issues an order deferring the effective date or denying the rate proposal. Petitions opposing such filings must be filed within 15 days of public notice of the filing by the cable operator and be accompanied by a certificate that service was made on the cable operator and the Council. The cable operator or other interested party may file an opposition within five days of filing of the petition, certifying to service on both the petitioner and the Council.

(D) (1) If the Council issues a notice granting an additional 90 or 120 days for further consideration of a rate filing, (see 47 CFR 76.933), then the following time limits for written comments shall apply:

(a) If an additional 90 days has been granted, and unless the notice granting the additional time specifies otherwise, then petitions opposing the filing must be made within 30 days of the notice. The cable operator or other interested party may file an opposition within ten days of the filing of the petition; and

(b) If an additional 120 days has been granted and unless the notice granting the additional time specifies otherwise, then petitions opposing the filing must be made within 45 days of the notice. The cable operator or other interested party may file an opposition within 15 days of the filing of the petition.

(2) All petitions or filings must certify to service on the Council and on all parties to which the petition responds.

(E) All written submittals must be addressed to the City Clerk/Administrator, must be received by the City Clerk/Administrator by the time established above, and must include an original, plus eight copies. Upon receipt, the City Clerk/Administrator shall note the date and time of each submittal and shall make one copy of each submittal available for public inspection during the normal hours of business.

(F) Oral comments may be presented at any regularly scheduled meeting of the Council held following the date the notice is posted through the twenty-fifth day following the date of posting, provided that if no Council meeting is regularly scheduled during this time period, then the public notice shall specify a time and place during this period when oral comments may be presented.

(Ord. 560, passed 10-4-1993)

## CHAPTER 113: ALCOHOLIC BEVERAGES

### Section

#### *General Provisions*

113.01 Consumption and possession

##### *3.2% Malt Liquor*

113.15 License required  
113.16 Application procedure  
113.17 Proof of financial responsibility  
113.18 Revocation or suspension  
113.19 Transfer or sharing prohibited  
113.20 Unobstructed windows required  
113.21 Sale to minors prohibited

##### *Intoxicating Liquor*

113.40 State law adopted  
113.41 License required  
113.42 Application procedure; fees  
113.43 Granting of licenses  
113.44 Ineligibilities  
113.45 Conditions of license  
113.46 Suspension or revocation  
113.47 Nudity on the premises of licensed establishments prohibited.

#### *Cross reference:*

*Public dances, see § 114.02*

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

##### **§ 113.01 CONSUMPTION AND POSSESSION.**

(A) It shall be unlawful for any person to consume "intoxicating liquor" or "3.2% malt liquor," hereinafter referred to as "intoxicating beverages," or to possess any bottle or receptacle containing an intoxicating beverage which has been opened, or the seal broken or the contents of which have been partially removed, in or upon all parking lots and other public areas and in or upon all public right-of-way and alleys within the city and in or upon all parks and recreation areas now owned or hereinafter acquired by the city; subject, however, to the following exceptions, terms and conditions:

(1) The possession and consumption of intoxicating beverages shall be permitted in or upon the city parks now known and commonly referred to as Lake Side Park, Riverside Park and Northside Park.

(2) The possession and consumption of intoxicating beverages shall be permitted in or upon other city parks for special community events or special athletic tournaments, but only after first obtaining the approval of the Council, authorizing the

possession and consumption of intoxicating beverages in or upon the parks or recreation areas for special events or special athletic tournaments, and that the City Council may impose limitations and conditions upon the possession and consumption of intoxicating beverages for each of the events as the City Council deems necessary; but each special approval shall not exceed ten consecutive days for any special event or special athletic tournament.

(B) The provisions of this section shall not apply to the area within the limits of the fire hall.

(C) The words "intoxicating liquor" and "3.2% malt liquor," as used herein, shall be defined in the same manner as they are defined under the laws of the state as they relate to the control and use of the beverages.

(Ord. 470, passed 6-5-1983; Am. Ord. 94-576, passed 5-2-1994; Am. Ord. 23-02, passed 5-1-2023  
Penalty, see § 10.99

(1) "On-sale" licenses shall permit the licensee to sell 3.2% malt liquors for consumption on the premises only; and

(2) "Off-sale" licenses shall permit the licensee to sell 3.2% malt liquors in original packages for consumption off the premises only.

(Ord. 468, passed 3-7-1983) Penalty, see § 10.99

### **§ 113.16 APPLICATION PROCEDURE.**

(A) Any person desiring either of the licenses as hereinbefore described shall make written application therefor to the City Council upon a blank to be furnished by the city, and file the same in the office of the City Clerk/Administrator. The application shall set forth the name of the applicant, age and place of residence and the kind of business in which the applicant is engaged, including address of same. It shall also set forth the location, including street number and floor, of the place at which the applicant proposes to carry on the business. The applicant shall also state that the applicant is a citizen of the United States and a person of good moral character and repute.

(B) At the time of filing the application, the applicant shall deposit with the City Clerk/Administrator the sum of \$50 or a higher fee as the City Council may from time to time fix by resolution if the application is for "on-sale" license, and the sum of \$15 if the application is for "off-sale" license. The two aforesaid sums are hereby fixed as and for the annual license fees for the respective licenses to be paid to the city. At the next meeting of the City Council following the receipt of the

### ***3.2% MALT LIQUOR***

#### **§ 113.15 LICENSE REQUIRED.**

(A) It shall be unlawful to sell 3.2% malt liquors at retail or wholesale in the city, except when licensed as hereinafter provided.

(B) There shall be two types of licenses issued for the sale of 3.2% malt liquors, classified and defined as follows:

application, the City Clerk/Administrator shall present the same to the City Council for its consideration and the Council shall hear all persons interested in the granting of the application and consider the appropriateness of the location applied for in the application. All licenses granted and issued under the provisions of this subchapter shall be at the discretion of the City Council and shall expire on the first Monday of July in each year following the date of its issuance.

(Ord. 468, passed 3-7-1983)

### **§ 113.17 PROOF OF FINANCIAL RESPONSIBILITY.**

(A) Each application for a license shall be accompanied by a proof of financial responsibility.

(B) Financial responsibility can be shown by filing with the City Clerk/Administrator one of the following:

(1) A certificate that there is in effect an insurance policy or pool providing coverage of at least:

(a) Fifty-thousand dollars because of bodily injury to any one person in any one occurrence, and subject to the limit of one person; in the amount of \$100,000 because of bodily injury to two or more persons in any one occurrence; and in the amount of \$10,000 because of injury to or destruction of property of others in any one occurrence; and

(b) Fifty-thousand dollars for loss of means of support of any one person in any one occurrence, and subject to the limit for one person; \$100,000 for loss of means of support of two or more persons in any one occurrence;

(2) A bond of a surety company with the minimum coverages as provided in subsection (1) above; and

(3) A certification of the State Treasurer that the licensee has deposited with him or her \$100,000 in cash or securities which may legally be purchased by savings banks, or for trust funds having market value of \$100,000.

(C) Applicants for licenses for the sale of 3.2% malt liquor of sales of less than \$10,000 for the beverage, are exempted from the requirements of this section.

(D) Applicants seeking exemption under division (C) above shall provide a verified statement of sales of 3.2% malt liquor during the preceding license period or, if none, shall submit a verified statement setting forth the projected sales of the licensee.

(Ord. 468, passed 3-7-1983)

### **§ 113.18 REVOCATION OR SUSPENSION.**

(A) Any license granted hereunder may be revoked by the Council without notice to the grantee or hearing may first be held by Council and revocation then made for cause. Any violation of any provision or condition of this subchapter or any falsification of any statement in the application shall be grounds for revocation. No portion of the license fees paid in to the City Treasury shall be returned upon revocation.

(B) (1) Loss of insurance or other proof of financial responsibility shall be grounds for automatic revocation of the license, except for those licensees exempted under the provisions of § 113.17 hereof.

Notice of cancellation of a current liquor liability policy shall serve as notice on the licensee of the impending revocation of license.

(2) Unless evidence of compliance with § 113.17 is presented to the City Clerk/Administrator, the license will be instantly revoked upon the lapse.  
(Ord. 468, passed 3-7-1983)

#### **§ 113.19 TRANSFER OR SHARING PROHIBITED.**

(A) All licenses granted under this subchapter shall be issued to the applicant only, and shall be issued for the premises described in the application.

(B) The licenses shall not be transferred to another place without the approval of the City Council.

(Ord. 468, passed 3-7-1983)

#### **§ 113.20 UNOBSTRUCTED WINDOWS REQUIRED.**

No premises licensed hereunder shall at any time have the view thereof in any manner obstructed by screens or curtains and shall be open to inspection by the Health and Police departments of the city during all hours.

(Ord. 468, passed 3-7-1983) Penalty, see § 10.99

#### **§ 113.21 SALE TO MINORS PROHIBITED.**

It shall be unlawful for any person or his or her agents, servants or employees, to sell 3.2% malt liquors to any person under the age of 21 years, habitual drunkard or intemperate person.

(Ord. 468, passed 3-7-1983) Penalty, see § 10.99

### ***INTOXICATING LIQUOR***

#### **§ 113.40 STATE LAW ADOPTED.**

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, financial responsibility, 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 subchapter as if set out in full.  
(Ord. 539, passed 12-2-1991)

#### **§ 113.41 LICENSE REQUIRED.**

(A) 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 subchapter.

(B) Licenses shall be of four kinds: "on-sale," "on-sale wine," "club" and "Sunday sales" licenses.

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

(2) "On-sale wine" licenses shall be issued only to restaurants meeting the qualifications of M.S. § 340A.404 (5), as it may be amended from time to time, and shall permit only the sale of wine not exceeding 24% alcohol by volume, for consumption on the licensed premises, only in conjunction with the sale of food.

(3) Special club licenses shall be issued to incorporated clubs or congressionally chartered veterans' organizations in existence for three years.

(4) A special license authorizing sales on Sunday in conjunction with the serving of food may be issued to any hotel, restaurant or club which has facilities for serving at least 30 guests at one time, and which has an on-sale license.

(Ord. 539, passed 12-2-1991)

#### **§ 113.42 APPLICATION PROCEDURE; FEES.**

(A) *Form.* Every application for a license to sell liquor shall state the name of the applicant, age, representations as to character, with the references as the Council may require, citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location, whether the applicant is owner and operator of the business, how long she or he has been in that business at that place, and other information as the Council may require from time to time. Every application shall also include a copy of each notice received by the applicant under M.S. § 340A.802, as it may be amended from time to time, during the preceding year. In addition to containing information, the application shall be in the form prescribed by the Commissioner of Public Safety and shall be verified and filed with the City Clerk/Administrator. No person shall make a false statement in an application.

(B) *Financial responsibility.*

(1) No liquor license may be issued, maintained or renewed unless the applicant demonstrates proof of financial responsibility as defined in M.S. § 340A.409, as it may be amended from time to time, with regard to liability under M.S. § 340A.801, as it may be amended from time to time. Proof shall be filed with the Commissioner of Public Safety.

(2) Any liability insurance policy filed as proof of financial responsibility under this division shall conform to M.S. § 340A.409, as it may be amended from time to time. Financial responsibility can be shown by filing with the City Clerk/Administrator one of the following:

(a) A certificate that there is in effect an insurance policy or pool providing the following minimum coverages for each occurrence:

1. Fifty-thousand dollars for bodily injury to any one person and \$100,000 for injuries to two or more persons, and \$10,000 for property damage; and

2. Fifty-thousand dollars for loss of means of support of any one person; \$100,000 for loss of means of support of two or more persons;

(b) A bond of a surety company with the minimum coverages as provided in subsection (a) above;

(c) A certificate of the State Treasurer that the licensee has deposited with him or her \$100,000 in cash or securities eligible for purchase by savings banks or for trust funds worth that amount;

(d) Applicants for licenses for the sale of wine with sales of less than \$10,000 for the beverages are exempted from the requirements of this section; or

(e) Applicants seeking exemption under subsection (d) above shall provide a verified statement of sales of wine during the preceding license period or, if none, shall submit a verified statement setting forth the projected sales of the licensee.

(3) The security offered under subsection (2) above shall be approved by the City Council and in the case of applicants for on-sale wine licenses by the State Commissioner of Public Safety. Operation of a licensed business without having on file with the city at all times effective security, as required, is a cause for revocation of the license.

(C) *License fees.*

(1) *Fees.* The annual fee for an on-sale license shall be \$500; for an on-sale wine license, \$200; \$300 to \$500 for a special club license as permitted by the laws of the state; and \$200 for a special license for Sunday sales, or fees as the Council may from time to time set by resolution. Fees for VFW shall be \$500. Fees for Moose shall be \$300.

(2) *Payment.* Each application for a license shall be accompanied by a receipt from the City Treasurer for payment in full of the license fee and the fixed investigation fee required under § 113.43, if any. All fees shall be paid to the city. If an application for a license is rejected, the Treasurer shall refund the amount paid as the license fee.

(3) *Term; pro rata fee.* 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. Every license shall expire on the last day of June.

(4) *Refunds.* No refund of any fee shall be made except as authorized by statute.

(Ord. 539, passed 12-2-1991) Penalty, see § 10.99

**§ 113.43 GRANTING OF LICENSES.**

(A) *Preliminary investigation.*

(1) On an initial application for an on-sale license and on application for transfer of an existing on-sale license, the applicant shall pay with his or her application an investigation fee in an amount equivalent to the amount expended by the city, not to exceed \$500, with a minimum charge of \$50 and the city shall conduct a preliminary background and financial investigation of the applicant. The application in such case shall be made on a form prescribed by the Commissioner of Public Safety and with 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 of an on-sale license, it shall so determine. In any case, if the Council determines that a comprehensive background and financial investigation of the applicant is necessary, it may conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation.

(2) 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 cost, which shall be paid by the applicant after deducting any initial investigation fee already paid. 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) above. 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 on-sale wine license shall become effective until it, together with the security furnished by the applicant, has been approved by the Commissioner of Public Safety.

(C) *Person and premises license; transfer.* 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 Council approval is a ground for revocation of the license.

(Ord. 539, passed 12-2-1991)

#### **§ 113.44 INELIGIBILITIES.**

(A) No license shall be granted to any person made ineligible for a license by state law. No license shall be issued to an individual who is not a resident of the city.

(B) (1) No license shall be issued for any place or business ineligible for a license under state law.

(2) 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.

(Ord. 539, passed 12-2-1991)

#### **§ 113.45 CONDITIONS OF LICENSE.**

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

(B) *Licensee's responsibility.* It shall be unlawful for any club or individual owner, agents or employees thereof, to sell intoxicating liquor to any minor, a habitual drunkard or an intemperate person. Every licensee is responsible for the conduct in the licensed establishment, and any sale of alcoholic beverages by any employee authorized to sell the beverages in the establishment is the act of the licensee.

(C) *Hours and days of sale.*

(1) The hours of operation and days of sale shall be those set by M.S. § 340A.504, as it may be amended from time to time.

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

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

(4) 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.

(5) Any violation of these provisions may be grounds for revocation or suspension of the license.

be granted within ten days or a longer period as may be requested. Any suspension under this section shall continue until the City Council determines that the financial responsibility requirements of this subchapter have again been met.

(Ord. 539, passed 12-2-1991)

#### **§ 113.46 SUSPENSION OR REVOCATION.**

(A) The Council shall either suspend for up to 60 days or revoke any liquor license, or impose a civil fine not to exceed \$2,000, for each violation upon a finding that the licensee has failed to comply with any applicable statute, regulation or ordinance relating to alcoholic beverages. Except in cases of failure of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to M.S. §§ 14.57 to 14.70 of the Administrative Procedure Act, as they may be amended from time to time.

(B) Lapse of required dram shop insurance or bond, or withdrawal of a required deposit of cash or securities shall affect an immediate suspension of any license issued pursuant to this subchapter without further action of the City Council. Notice of cancellation, lapse of a current liquor liability policy or bond, or withdraw of deposited cash or securities 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 bond or withdrawal of a required deposit, or of suspension or revocation of a license, may request a hearing thereon and if a request is made in writing to the City Clerk/Administrator a hearing shall

#### **§ 113.47 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.**

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

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

(C) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2% malt liquor license or the imposition of a civil penalty under the provisions of § 10.99.

Penalty, see § 10.99



## CHAPTER 114: AMUSEMENTS

### Section

- 114.01 Bingo
- 114.02 Circuses, carnivals, shows and other entertainment

### § 114.01 BINGO.

(A) *Statute incorporated.* 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 section as if set out in full. In addition, the regulations of this section apply to the conduct of bingo within the city.

(B) *License required.* The unlicensed conduct of bingo within the city is prohibited. Any organization authorized by law to conduct bingo occasions may do so only after applying for and receiving a license from the Council.

(C) *Application.* 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.

(D) *License fee.* The annual license fee shall be \$10 per year.

(E) *Fidelity 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 cancellable except upon 30 days written notice to the city. The Council may, by unanimous vote, agree to waive the fidelity bond requirement. If a waiver is granted, the license must be endorsed to indicate the action.

(F) *Revocation.* No licensee shall have a vested right in any bingo license and the licenses may be suspended or revoked by the Council at any time upon a showing that:

(1) Any misrepresentation has been made in the license application or any report required of the licensee; or

(2) The licensee has violated or caused to be violated any provisions of this section or the state bingo law.

(Ord. 448, passed 5-18-1981) Penalty, see § 10.99

**§ 114.02 CIRCUSES, CARNIVALS, SHOWS  
AND OTHER ENTERTAINMENT.**

(A) (1) Each person, desiring to conduct, stage or give a circus, carnival, theatrical exhibition, public show, athletic game or other entertainment, for which there is a charge for admission, shall first obtain a license and pay the license fee or fees as established by Council ordinance, as may be amended from time to time.

(2) Local school entertainment, charitable organizations, lecture courses, and lectures on historic, literary or scientific subjects are not subject to the provisions of this section; provided, that the entertainment is not for profit.

(B) In addition to any other requirements, the applicant for a license shall give at least one week's notice in writing to the City Clerk/Administrator or other authorized official, stating the dates of the performances and the location at which the performances are to be presented. The City Clerk/Administrator shall give his or her consent to the issuance of the license if he or she deems that the location is suitable for the purpose; that it will properly accommodate the patrons; that the nature of the performance or exhibition does not pose a threat to the health, safety or general welfare of the public; and that the use of the location will not create too great a burden upon the Police Department or the Fire Department.

(C) No circus, carnival, theatrical exhibition, public show, athletic game or other entertainment shall be given for more than two consecutive days, except in cases where the City Council by resolution allows a longer period, or where the exhibition is to be conducted on municipal property and the use thereof for a longer period shall have been approved by the City Council.

Penalty, see § 10.99

[Text continues on p. 43]

## CHAPTER 115: LODGING TAX

### Section

- 115.01 Authority and purpose
- 115.02 Definitions
- 115.03 Local lodging tax imposed; amount of tax; coordination with state sales and use tax laws and rules
- 115.04 Advertising no tax
- 115.05 Use of proceeds
- 115.06 Agreement with the Commissioner

### § 115.01 AUTHORITY AND PURPOSE.

(A) *Authority.* In accordance with the City of Ortonville Resolution No. 23-90 adopted by the City of Ortonville, Minnesota, on September 5, 2023 the City of Ortonville is authorized to impose a tax of up to 3% on gross receipts subject to the lodging tax under M.S. § 469.190, as it may be amended from time to time.

(B) *Purpose.* The purpose of this chapter is to raise revenue to fund a local tourism bureau for the purpose of marketing and promoting the City of Ortonville as a tourist center.

(Ord. 23-07, passed 9-5-2023)

### § 115.02 DEFINITIONS.

The following words, terms, and phrases have the meanings given them in this section unless the language or context clearly indicates a different meaning is intended. M.S. § 270C.171 is incorporated for definitions in this section. In any potential conflict between the statute and this section, the statute shall take precedence.

**ACCOMMODATIONS INTERMEDIARY.** Any person or entity, other than an accommodations provider, that facilitates the sale of lodging as defined in this section, and that charges a room charge to a customer. The term “facilitates the sale” includes brokering, coordinating, or in any way arranging for the purchase of or the right to use accommodations by a customer.

**ACCOMMODATIONS PROVIDER.** Any person or entity that furnishes lodging and related services, as defined in this section, to the general public for compensation. The term “furnishes” includes the sale of use or possession, or the sale of the right to use or possess.

**CITY.** The City of Ortonville, Minnesota.

**COMMISSIONER.** The Commissioner of Revenue of the State of Minnesota or a person to whom the Commissioner has delegated functions.

**LODGING AND RELATED SERVICES.** Lodging and related services by a hotel, rooming house, resort, campground, vacation rental, motel, or trailer camp, including furnishing the guest of the facility with access to telecommunication services, and the granting of any similar license to use real property in a specific facility, other than the renting or leasing of it for a continuous period of 30 days or more under an enforceable written agreement that may not be terminated without prior notice.

**STATE SALES AND USE TAX LAWS AND RULES.** Those provisions of the state revenue laws applicable to state sales and use tax imposition,

administration, collection, and enforcement, including M.S. Chapters 270C, 289A, 297A, and 469A, as amended from time to time, and Minnesota Rules, Chapter 8130, as amended from time to time.

(Ord. 23-07, passed 9-5-2023)

**§ 115.03 LOCAL LODGING TAX IMPOSED; AMOUNT OF TAX; COORDINATION WITH STATE SALES AND USE TAX LAWS AND RULES.**

A local lodging tax is imposed in the amount of 3% on the gross receipts from sales of lodging and related services, as defined in § 115.02, sourced within city limits which are taxable under the state sales and use tax laws and rules. All of the provisions of the state sales and use tax laws and rules apply to the local sales and use tax imposed by this section. The local lodging tax imposed by this section shall be collected and remitted to the Commissioner by the accommodations provider on any sale when the state sales tax must be collected and remitted to the Commissioner under the state sales and use tax laws and rules and is in addition to the state sales and use tax.

(Ord. 23-07, passed 9-5-2023)

**§ 115.04 ADVERTISING NO TAX.**

It shall be unlawful for any accommodations intermediary or accommodations provider 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 accommodations intermediary or accommodations provider, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded.

(Ord. 23-07, passed 9-5-2023)

**§ 115.05 USE OF PROCEEDS.**

All of the revenues, interest, and penalties derived from the lodging tax imposed by this chapter collected by the Commissioner and remitted to the city shall be deposited in the city treasury and shall be credited to the fund established to pay the costs of collecting the lodging tax imposed by this chapter and to fund a local tourism bureau for the purpose of marketing and promoting the City of Ortonville as a tourist center.

(Ord. 23-07, passed 9-5-2023)

**§ 115.06 AGREEMENT WITH THE COMMISSIONER.**

The city may enter into an agreement with the Commissioner regarding each party's respective roles and responsibilities related to the imposition, administration, collection, enforcement, and termination of the lodging tax imposed by this chapter. Any such agreement shall not abrogate, alter, or otherwise conflict with the state sales and use tax laws and rules.

(Ord. 23-07, passed 9-5-2023)

## **CHAPTER 116: MISCELLANEOUS BUSINESS REGULATIONS**

### Section

#### 116.01 Sale and display of lawn fertilizer

### **§ 116.01 SALE AND DISPLAY OF LAWN FERTILIZER.**

No person, firm, corporation, franchise, or commercial establishment shall sell or display for sale any lawn fertilizer, liquid or granular, within the City of Ortonville that contains any amount of phosphorous or other compound containing phosphorous, such as phosphate, unless:

- (A) Phosphorous-free fertilizer is also available for sale;
- (B) Phosphorous-free fertilizer and fertilizer with phosphorous are separately displayed with each display being clearly marked as to whether or not the fertilizer contains phosphorous;
- (C) Displays of phosphorous-free fertilizer are of equal or greater size and prominence;
- (D) A sign or brochure is on prominent display next to any fertilizer display containing the City of Ortonville's regulations concerning the use of fertilizer with phosphorous.

(Ord. 02-04, passed 7-15-02) Penalty, see § 10.99



## CHAPTER 117: MOBILE FOOD TRUCKS/VENDORS

### Section

- 117.01 Purpose
- 117.02 General regulations
- 117.03 Enforcement

referred to herein as “unit.” “Mobile” means the wheels must remain on the food truck/trailer and cannot be jacked up from the ground.

### § 117.01 PURPOSE.

The purpose of this chapter is to protect the public health, safety, and general welfare of the community through the establishment of standards to ensure that mobile food trucks/vendors as defined herein are appropriately located, licensed, and inspected, do not impede vehicular access, traffic flow or other circulation, or create public safety hazards.

(Ord. 22-05, passed 6-20-2022)

### § 117.02 GENERAL REGULATIONS.

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

**COMMISSARY.** A permanent state-licensed location which services food trucks, including, but not limited to, the provision of food storage, paper goods, and supplies, waste and grease disposal, and food preparation.

**MOBILE FOOD TRUCK and MOBILE FOOD TRUCK/VENDOR.** Any self-propelled vehicle or fully contained trailer licensed by the state to operate on public streets and roadways which vends food (either prepackaged, prepared in the unit or at a commissary) at retail for immediate consumption by the customer. Said vehicle and/or trailer may also be

**VEND or VENDING.** The process of the transfer of food product from the unit operator to a customer. Vending begins when the unit initially stops in a location at which the customers can access the unit and continues until the unit leaves the location.

(B) *Applicability.* Notwithstanding any contrary provision of city ordinances, mobile food trucks/vendors shall be licensed and located as provided in this chapter.

(1) *Inspections.* Applicants must provide evidence of current inspection of the unit by Minnesota Department of Agriculture, by the Minnesota Department of Health and/or Public Health Office.

(2) *Insurance.* Applicants must provide evidence of liability insurance and must have an indemnification on the application to the city. Written notice of cancellation of such insurance must be given to the city not less than 30 days prior to actual cancellation.

(3) *Restrictions on vending activity.*

(a) Mobile food trucks/vendors may vend from a vacate lot in a business district as long as they are the legal owners of the lot otherwise they must vend on a public street.

(b) Mobile food trucks/vendors are allowed to vend on public streets between the hours of 6:00 a.m. and 10:00 p.m.

(c) Mobile food trucks/vendors are prohibited from vending activities within 300 feet of a community event for which the city has issued a special event permit unless they are specifically authorized by the event sponsor to participate in the event.

(d) No unit shall occupy more than two parking spaces.

(e) The unit shall vend only from the side of the vehicle away from moving traffic and shall be as close as possible to the curb or side of street.

(f) On public streets, no unit shall vend within 60 feet of the intersection of two or more public streets, nor within 30 feet of a driveway which enters onto a public street.

(g) There shall be no overnight parking of food trucks on the public right-of-way. The food truck must return to its home base after each day of operation.

(h) Connection of the unit to public utilities is not permitted.

(i) Vending on private property is not permitted in R-2- and R-3-zoned areas. Vending is permitted on public roadways in R-2- and R-3-zoned areas, with the written permission of the operator of property owned by the city or public school located in the R-2- and R-3-zoned areas. Temporary vending is allowed from parking lots. Vendors are required to leave the area at any time if requested by the property owner. No overnight parking is allowed.

(4) *Dimensions.* No mobile food truck shall exceed 32 feet in length (overall length for a self-propelled vehicle, trailer length including the towing vehicle for self-contained trailers), or ten feet in height.

(5) *Signs and appurtenances.*

(a) Mobile food trucks/vendors shall not employ or utilize any signs that are not attached directly to vehicle/trailer. Signs may not project above the unit, nor more than six inches from the side of the unit. No flashing, strobing or intermittent lighting is allowed.

(b) External seating may be provided by the vendor. Vending in an area where external seating is already in existence (such as Lakeside Park) is permitted.

(c) Any generator used by the unit must be self-contained within or on the unit, screened from view, and operate at no more than 70 decibels.

(d) Vending operator may not call attention to the unit by crying out, blowing a horn, ringing a bell, or playing music discernable beyond the unit. Amplified sound is not permitted.

(e) Waste receptacle(s) must be provided by the unit operator and the vending site must be cleaned of all litter and garbage generated by the unit and customers before the unit leaves the location.

(Ord. 22-05, passed 6-20-2022; Am. Ord. 24-02, passed 4-1-2024)

**§ 117.03 ENFORCEMENT.**

Any violation of this chapter, including, but not limited to, the vending operation of a mobile food truck within the city without a license issued pursuant to this section, shall be a misdemeanor punishable by fine or jail.

(Ord. 22-05, passed 6-20-2022)

