TITLE IV

BUSINESS LICENSES AND REGULATIONS

CHAPTERS:

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4-02. Business Licensing.
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CHAPTER 4-01

ALCOHOLIC BEVERAGES

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SEC. 4-0101. DEFINITIONS. As used in this Chapter, unless otherwise stated in specific sections, the following words and terms shall have the meanings stated:

1. "Alcoholic Beverage" means any beverage containing more than one-half of one percent alcohol by volume, including, but not limited to, beer, wine and liquor as defined in this Section.

2. "Applicant" means any person making an application for a license under this Chapter.

3. "Application" means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his/her request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

4. "Beer" means malt liquor containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight. (This definition includes so-called "malt coolers" with the alcoholic content limits stated herein.)

5. "Brewer" means a person who manufactures beer for sale.

6. "Club" means an incorporated organization organized under the laws of the State for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which: (1) has more than fifty members; (2) has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members; (3) is directed by a board of directors,
executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body. Such club or congressionally chartered veterans' organization must have been in existence for at least three years.

7. "Commissioner" means the Minnesota Commissioner of Public Safety.

8. "Exclusive Liquor Store" means an establishment used exclusively for the sale of liquor except for the incidental sale of ice, tobacco, beer, beverages for mixing with liquor, soft drinks, liqueur-filled candies, food products that contain more than one-half of 1% alcohol by volume, cork extraction devices, books and videos on the use of alcoholic beverages, magazines and other publications published primarily for information and education on alcoholic beverages, and the establishment may offer recorded or live entertainment.

9. "Hotel" means an establishment where food and lodging are regularly furnished to transients and which has: (1) a dining room serving the general public at tables and having facilities for seating at least thirty guests at one time; and (2) at least ten guest rooms.

10. "License" means a document, issued by the City, to an applicant permitting him/her to carry on and transact the business stated therein.

11. "Licensee" means an applicant who, pursuant to his/her approved application, holds a valid, current, unexpired license, which has neither been revoked nor is then under suspension, from the City for carrying on the business stated therein.

12. "License Fee" means the money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on the business stated therein.

13. "Licensed Premises" means the space or structure described in the issued license. In the case of a restaurant or a club licensed for on-sale of alcoholic beverages and located on a golf course, "licensed premises" means the entire golf course except for areas where motor vehicles are regularly parked or operated.

14. "Liquor" means ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight. (This definition includes so-called "wine coolers" and "malt coolers" with the alcoholic content limits stated herein.)

15. "Malt Liquor" means any beer, ale, or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.

16. "Manufacturer" means every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials, prepares or produces alcoholic beverages for sale.

17. "Minor" means any natural person who has not attained the age of 2l years.

18. "Off-Sale" means the sale of alcoholic beverages in original packages for consumption off the licensed premises only.

19. "On-Sale" means the sale of alcoholic beverages for consumption on the licensed premises only.

20. "Package" and "Original Package" mean any container or receptacle holding alcoholic beverages, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.

21. "Restaurant" means an establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises and served at tables to the general public, and having a minimum seating capacity for 30 guests.

22. "Sale", "Sell" and "Sold" mean all barters and all manners or means of furnishing alcoholic beverages to persons, including such furnishing in violation or evasion of law.

23. "Wholesaler" means any person engaged in the business of selling alcoholic beverages to a licensee from a stock maintained in a warehouse.

24. "Wine" means the product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from agricultural products other than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake. (This definition includes "wine coolers" with the alcoholic content limits stated herein.) For purposes of on-sale wine licenses, "wine" may contain up to 14 percent alcohol by volume for consumption with the sale of food. For all other purposes, "wine" is a product containing not less than one-half of one percent nor more than 24 percent alcohol by volume for nonindustrial use.

SEC. 4-0102. APPLICATIONS AND LICENSES UNDER THIS CHAPTER - PROCEDURE AND ADMINISTRATION.

Subd. 1. Application. All applications shall be made at the office of the City Administrator upon forms prescribed by the City, or if by the Commissioner, then together with such additional information as the Council may desire. Information required may vary with the

type of business organization making application. All questions asked or information required by the application forms shall be answered fully and completely by the applicant.

Subd. 2. False Statements. It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form shall, upon discovery of such falsehood, work an automatic refusal of license, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this Chapter, or any part thereof.

Subd. 3. Application and Investigation Fees. At the time the initial application is made, an applicant for a license under this Chapter shall accompany such application with payment of a fee to be considered an application and investigation fee, not refundable to the applicant, to cover the cost to the City of processing the application and the investigation of the applicant. No such fee shall be required of an applicant for a temporary beer license.

(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)

Subd. 4. Action.

A. Hearing. Prior to granting an initial liquor license, a public hearing shall be held by the Council after notice by at least one publication in the official newspaper at least ten (10) days prior to such hearing. Opportunity shall be given any person to be heard for or against granting the license. After such hearing, the Council may, in its discretion, grant or refuse such license. A public hearing may be held, but is not required, on renewal liquor licenses and other licenses under this Chapter.

B. Granting. The Council may approve any application for the period of the remainder of the then current license year or for the entire ensuing license year. All applications including proposed license periods must be consistent with this Chapter. Prior to consideration of any application for a license, the applicant shall pay the license fee, and if applicable, pay the investigation fee. Upon rejection of any application for a license, or upon withdrawal of an application before consideration by the Council, the license fee shall be refunded to the applicant. Failure to pay any portion of a fee when due shall be cause for revocation.

C. Issuing. If an application is approved, the City Administrator shall forthwith issue a license pursuant thereto in the form prescribed by the City or the Commissioner, as the case may be, and upon payment of the license fee. All licenses shall be on a calendar year basis unless otherwise specified herein. For licenses issued and which are to become effective other than on the first day of the licensed year, the fee to be paid with the application shall be 1/12th of the annual license fee multiplied by the number of remaining months in the calendar year, including any fractions thereof. Licenses shall be valid only at one location and on the premises therein described.

D. Transfer. No license shall be transferable between persons or to a different location without prior consent of the Council. Any change in individual ownership, incorporation, or substitution of partners is a transfer. It is unlawful to make any transfer in violation of this Subparagraph.

E. Refusal and Termination. The Council may, in its sole discretion and for any reasonable cause, refuse to grant any application. No license shall be granted to a

person of questionable moral character or business reputation. Licenses shall terminate only by expiration or revocation.

F. Public Interest. No license under this Chapter may be issued, transferred, or renewed if the results of any investigation show, to the satisfaction of the Council, that such issuance, transfer, or renewal would not be in the public interest.

G. Revocation or Suspension. For any license granted under the provisions of this Chapter, the Council may revoke, suspend for a period not to exceed sixty days, impose a civil fine not to exceed $2,000.00, or any combination of these sanctions, for each violation on a finding that the licensee has failed to comply with a statute, regulation or provision of the City Code relating to alcoholic beverages. The Council shall revoke the license upon conviction of any licensee or agent or employee of a licensee for violating any law relating to the sale or possession of beer, wine or liquor upon premises of the licensee, or if such revocation is mandatory by Statute. If it shall be made to appear at the hearing thereon that such violation was not willful, the Council may order suspension; provided that revocation shall be ordered upon the third such violation or offense. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing before the Council, a committee of the Council, or a hearing under the Administrative Procedures Act, as may be determined by the Council in action calling the hearing. Such hearing shall be called by the Council upon written notice to the licensee served in person or by certified mail not less than fifteen nor more than thirty days prior to the hearing date, stating the time, place and purpose thereof. As additional restrictions or regulations on licensees under this Chapter, and in addition to grounds for revocation or suspension stated in the City Code or Statute, the following shall also be grounds for such action: (1) that the licensee suffered or permitted illegal acts upon licensed premises unrelated to the sale of beer, wine or liquor; (2) that the licensee had knowledge of such illegal acts upon licensed premises, but failed to report the same to police; (3) that the licensee failed or refused to cooperate fully with police in investigating such alleged illegal acts upon licensed premises; or, (4) that the activities of the licensee created a serious danger to public health, safety, or welfare.

H. License Forfeiture. Any licensee who ceases to operate for more than 60 days except due to a revocation or suspension of license or because of destruction or damage to the premises, or death of the licensee, shall terminate and the license, together with all fees, shall revert to the City.

I. Corporate Applicants and Licensees. A corporate applicant, at the time of application, shall furnish the City with a list of all persons that have an interest in such corporation and the extent of such interest. The list shall name all shareholders and show the number of shares held by each, either individually or beneficially for others. It is the duty of each corporate licensee to notify the City Administrator in writing of any change in legal ownership, or beneficial interest in such corporation or in such shares. Any change in the ownership or beneficial interest in the shares entitled to be voted at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the shares therein, shall be deemed equivalent to a transfer of the license issued to the corporation, and any such license shall be revoked thirty days after any such change in ownership or beneficial interest of shares unless the Council has been notified of the change in writing and has approved it by appropriate action. The Council, or any officer of the City designated by it, may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify and identify the shareholders, and the Council or its designated officer may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of

ownership of shares in a corporate licensee or any change of ownership of any interest in the business of any other licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

Subd. 5. Duplicate Licenses. Duplicates of all original licenses under this Chapter may be issued by the City Administrator without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of the fee adopted by consolidated ordinance of the Council for issuance of the duplicate. All duplicate licenses shall be clearly marked "DUPLICATE."

(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)

Subd. 6. Posting. All licensees shall conspicuously post their licenses in their places of business.

Subd. 7. Resident Manager or Agent. Before a license is issued under this Chapter to an individual who is a non-resident of the City, to more than one individual whether or not they are residents of the City, or to a corporation, partnership, or association, the applicant or applicants shall appoint in writing a natural person who is a resident of the City as its manager or agent. Such resident manager or agent shall, by the terms of his/her written consent, (1) take full responsibility for the conduct of the licensed premises, and, (2) serve as agent for service of notices and other process relating to the license. Such manager or agent must be a person who, by reason of age, character, reputation, and other attributes, could qualify individually as a licensee. If such manager or agent ceases to be a resident of the City or ceases to act in such capacity for the licensee without appointment of a successor, the license issued pursuant to such appointment shall be subject to revocation or suspension.

Subd. 8. Persons Disqualified.

A. No license under this Chapter may be issued, or renewed, to: (1) a person who within five years of the license application has been convicted of any felony or a willful violation of a Federal or State law, or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution, of alcoholic beverages; (2) a person who has had an alcoholic beverage license revoked within five years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than five percent of the capital stock of a corporate licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested; (3) a person under the age of twenty-one years; (4) a person not of good moral character and repute; or, (5) a person not a citizen of the United States or a resident alien.

B. No person holding a license from the Commissioner as a manufacturer, brewer (except as provided by statute), wholesaler or importer, may have a direct or indirect interest, in whole or in part, in a business holding an alcoholic beverage license from the City.

SEC. 4-0103. RENEWAL LICENSE APPLICATIONS. Applications for renewal of all licenses under this Chapter shall be made at least sixty (60) days prior to the date of expiration of the license, and shall contain such information as is required by the City. This time requirement may be waived by the Council for good and sufficient cause.

SEC. 4-0104. DELINQUENT TAXES AND CHARGES.

Subd. 1. Premises. No license under this Chapter shall be granted for operation on any premises upon which taxes, assessments, or installments thereof, or other financial claims of the City, are owed and are delinquent and unpaid.

Subd. 2. Business. No license shall be granted, transferred, or renewed and shall be revoked if the Commissioner notifies the City that the licensee owes the State delinquent unemployment insurance contributions, reimbursements, or benefit overpayments.

SEC. 4-0105. CONDITIONAL LICENSES. Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefor, place such special conditions and restrictions, in addition to those stated in this Chapter, upon any license as it, in its discretion, may deem reasonable and justified.

SEC. 4-0106. PREMISES LICENSED. A license issued under the provisions of this Chapter shall be valid only for the premises described in the license, and all transactions relating to a sale under such license must take place within such space or structure.

SEC. 4-0107. UNLAWFUL ACTS.

Subd. 1. Consumption. It is unlawful for any person to consume, or any licensee to permit consumption of, alcoholic beverages on licensed premises more than thirty (30) minutes after the hour when a sale thereof can legally be made.

Subd. 2. Closing. It is unlawful for any person, other than a licensee or his/her bona fide employee actually engaged in the performance of his/her duties, to be on premises licensed under this Chapter more than thirty (30) minutes after the legal time for making licensed sales, unless the licensed establishment is open to the public for serving food.

SEC. 4-0108. CONDUCT ON LICENSED PREMISES. Except as herein provided, every licensee under this Chapter shall be responsible for the conduct of his place of business and shall maintain conditions of sobriety and order therein.

SEC. 4-0109. SALE BY EMPLOYEE. Any sale of an alcoholic beverage in or from any premises licensed under this Chapter by any employee authorized to make such sale in or from such place is the act of the employer as well as of the person actually making the sale; and every such employer is liable to all of the penalties, except criminal penalties, provided by law for such sale, equally with the person actually making the sale.

SEC. 4-0110. LICENSE CONDITION AND UNLAWFUL ACT.

Subd. 1. All premises licensed under this Chapter shall at all times be open to inspection by any police officer to determine whether or not this Chapter and all other laws are being observed. All persons, as a condition to being issued such license, consent to such inspection by such officers and without a warrant for searches or seizures.

Subd. 2. It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer from making such inspection.

SEC. 4-0111. FIXING RATES AND FEES BY CONSOLIDATED ORDINANCE.

Subd. 1. Fixing Fees and Rates. Except as otherwise specifically provided, all fees for licenses provided for in this Chapter, including, but not by way of limitation, license fees, investigation and administration fees, shall be fixed and determined by the Council, adopted by consolidated ordinance, and uniformly enforced. Such fees may, from time to time, be amended by the Council. Provided, however, that before any such license fee shall be increased, a 30-day notice shall be mailed to all affected licensees and a hearing held thereon. A copy of the consolidated ordinance shall be kept on file in the office of the City Administrator and open to inspection during regular business hours. For the purpose of fixing such fees, the Council may categorize and classify, provided, that such categorization and classification shall be included in the ordinance authorized by this Section.

Subd. 2. Refundment. A pro-rata share of an annual license fee shall be refunded to the licensee, or to his estate, if: (1) the business ceases to operate because of destruction or damage; (2) the licensee dies; or, (3) the business ceases to be lawful for a reason other than a license revocation or suspension. This provision shall apply where the refund exceeds $100.00.

(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)

SEC. 4-0112. FINANCIAL RESPONSIBILITY OF LICENSEES.

Subd. 1. Proof. No alcoholic beverage license shall be issued or renewed unless and until the applicant has provided proof of financial responsibility, imposed by Statute, by filing with the City:

A. A certificate that there is in effect an insurance policy or pool providing minimum coverages of (1) $50,000.00 because of bodily injury to any one person in any one occurrence, and, subject to the limit for one person, in the amount of $100,000.00 because of bodily injury to two or more persons in any one occurrence, and in the amount of $10,000.00 because of injury to or destruction of property of others in any one occurrence, and (2) $50,000.00 for loss of means of support of any one person in any one occurrence, and, subject to the limit for one person, $100,000.00 for loss of means of support of two or more persons in any one occurrence; an annual aggregate of $300,000.00 may be included in the insurance coverage; or,

B. A bond of a surety company with minimum coverages as provided in Subparagraph A of this Subdivision; or,

C. A certificate of the State Treasurer that the licensee has deposited with him $100,000.00 in cash or securities which may legally be purchased by savings banks or for trust funds having a market value of $100,000.00.

Subd. 2. Exception. This Section does not apply to on-sale beer licensees with sales of beer of less than $25,000.00 for the preceding year, nor to off-sale beer licensees with sales of beer of less than $50,000.00 for the preceding year, nor does it apply to holders of on-sale wine licenses with sales of wine of less than $25,000.00 for the preceding year. An affidavit of the licensee shall be required to establish the exemption under this Subdivision.

Subd. 3. Documents Submitted to Commissioner. All proofs of financial responsibility and exemption affidavits filed with the City under this Section shall be submitted by the City to the Commissioner.

SEC. 4-0113. INSURANCE CERTIFICATE REQUIREMENTS. Whenever an insurance certificate is required by this Chapter the applicant shall file with the City Administrator a certificate of insurance showing (1) that the limits are at least as high as required, (2) that coverage is effective for at least the license term approved, and (3) that such insurance will not be cancelled or terminated without thirty days' written notice served upon the City Administrator. Cancellation or termination of such coverage shall be grounds for license revocation. The term "certificate of insurance" as used in this Section means the contract between carrier and insured embodying all the terms of their agreement as distinguished from a writing which simply outlines the coverage.

SEC. 4-0114. MINORS AS DEFINED IN SECTION 4-0107 - UNLAWFUL ACTS.

Subd. 1. Consumption. It is unlawful for any:

A. Licensee to permit any minor to consume alcoholic beverages on licensed premises.

B. Minor to consume alcoholic beverages except in the household of the minor's parent or guardian, and then only with the consent of such parent or guardian.

Subd. 2. Purchasing. It is unlawful for any:

A. Person to sell, barter, furnish, or give alcoholic beverages to a minor unless such person is the parent or guardian of the minor, and then only for consumption in the household of such parent or guardian.

B. Minor to purchase or attempt to purchase any alcoholic beverage.

C. Person to induce a minor to purchase or procure any alcoholic beverage.

Subd. 3. Possession. It is unlawful for a minor to possess any alcoholic beverage with the intent to consume it at a place other than the household of the minor's parent or guardian. Possession of an alcoholic beverage by a minor at a place other than the household of the parent or guardian is prima facie evidence of intent to consume it at a place other than the household of his parent or guardian.

Subd. 4. Entering Licensed Premises. It is unlawful for any minor, as defined in this Chapter, to enter licensed premises or the municipal liquor store for the purpose of purchasing or consuming any alcoholic beverage. It is not unlawful for any person who has attained the age of eighteen years to enter licensed premises for the following purposes: (1) to perform work for the establishment, including the serving of alcoholic beverages, unless otherwise prohibited by statute; (2) to consume meals; and (3) to attend social functions that are held in a portion of the establishment where liquor is not sold. It is unlawful for a licensee to permit a person under the age of eighteen years to enter licensed premises unless attending a social event at which alcoholic beverages are not served, or for a meal in a designated area.

Subd. 5. Misrepresentation of Age. It is unlawful for a minor to misrepresent his/her age for the purpose of purchasing an alcoholic beverage.

Subd. 6. Proof of Age. Proof of age for purchasing or consuming alcoholic beverages may be established only by a valid driver's license or identification card issued by Minnesota, another State, or a province of Canada, and including the photograph and date of birth of the licensed person; or by a valid military identification card issued by the United States Department of Defense; or, in the case of a foreign national, from a nation other than Canada, by a valid passport.

SEC. 4-0115. GAMBLING PROHIBITED. It is unlawful for any licensee to keep, possess, or operate, or permit the keeping, possession, or operation on licensed premises of dice or any other gambling device, or permit raffles to be conducted, except such as are authorized by Statute or the City Code.

SEC. 4-0116. CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON STREETS, PUBLIC PROPERTY, AND PRIVATE PARKING LOTS TO WHICH THE PUBLIC HAS ACCESS. It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage on any (1) City park, (2) street, (3) public property, or (4) private parking lot to which the public has access, except on such premises when and where permission has been specifically granted or licensed by the Council. An application for permission to consume or possess alcoholic beverages on any (1) City park, (2) street, (3) public property, or (4) private parking lot shall be made to the Barnesville Police Department. The Barnesville Police Department shall make recommendations regarding the application and submit said recommendation to the City Council prior to the City Council voting on such application. Provided, that this Section shall not apply to the possession of an unsealed container in a motor vehicle when the container is kept in the trunk of such vehicle if it is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. For the purpose of this Section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers. Provided, further, that this Section shall not apply to a bus operated under a charter, or to a limousine, both as defined by statute.

SEC. 4-0117. ALCOHOLIC BEVERAGES IN CERTAIN BUILDINGS AND GROUNDS. It is unlawful for any person to introduce upon, or have in his/her possession upon, or in, any public elementary or secondary school ground, or any public elementary or secondary school building, any alcoholic beverage, except for experiments in laboratories and except for those organizations who have been issued temporary licenses to sell alcoholic beverages, and for any person to possess alcoholic beverages as a result of a purchase from those organizations holding temporary licenses.

SEC. 4-0118. ALCOHOLIC BEVERAGES - CERTAIN UNLAWFUL ACTS. It is unlawful for any:

Subd. 1. Person to knowingly induce another to make an illegal sale or purchase of an alcoholic beverage.

Subd. 2. Licensee to sell or serve an alcoholic beverage to any person who is obviously intoxicated.

Subd. 3. Licensee to fail, where doubt could exist, to require adequate proof of age of a person upon licensed premises.

Subd. 4. Licensee to sell an alcoholic beverage on any day, or during any hour, when such sales are not permitted by law.

Subd. 5. Licensee to allow consumption of an alcoholic beverage on licensed premises on any day, or during any hour, when such consumption is not permitted by law.

Subd. 6. Person to purchase an alcoholic beverage on any day, or during any hour, when such sales are not permitted by law.

SEC. 4-0119. WORKER'S COMPENSATION. No license to operate a business shall be issued by the City until the applicant presents his employer's tax identification number and acceptable evidence of compliance with the worker's compensation insurance coverage requirement of Minnesota Statutes by providing the name of the insurance company, the policy number, and dates of coverage, or the permit to self-insure.

SEC. 4-0120. NOTICE POSTING.

Subd. 1. A premises licensed for the retail sale of alcoholic beverages and a municipal liquor store must post and maintain in a conspicuous place within the licensed premises clearly visible to consumers: one sign 14½ inches wide by 8 inches high as designed by the Commissioners of Health and Public Safety, which incorporates the following information:

A. The penalties of driving while under the influence of alcohol;

B. Penalties for serving alcoholic beverages to a person who is obviously intoxicated or under 21 years of age; and

C. A warning statement regarding drinking alcohol when pregnant.

Subd. 2. A retail licensee or municipal liquor store may not modify the sign design, but may modify the color.

SEC. 4-0121. BEER LICENSE REQUIRED. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, charge for possession, or otherwise dispose of beer, as part of a commercial transaction, without a license therefor from the City. This Section shall not apply to sales by manufacturers to wholesalers or to sales by wholesalers to persons holding beer licenses from the City. Annual on-sale beer licenses may be issued only to drug stores, restaurants, hotels, bowling centers, clubs, and establishments used exclusively for the sale of beer with the incidental sale of tobacco and soft drinks. Any person licensed to sell liquor on-sale shall not be required to obtain an on-sale beer license, and may sell beer on-sale without an additional license.

SEC. 4-0122. TEMPORARY BEER LICENSE.

Subd. 1. Applicant. A club or charitable, religious, or non-profit organization shall qualify for a temporary on-sale beer license. Such license may authorize the sale of beer in any school or school buildings.

Subd. 2. Conditions.

A. An application for a temporary license shall state the exact dates and place of proposed temporary sale.

B. The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary beer license on premises owned or controlled by the City. Any such license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the City, the applicant shall file with the City, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of $100,000.00 for injury to any one person and $300,000.00 for injury to more than one person, and $50,000.00 for property damage, naming the City as an insured during the license period. Such license shall be issued only on the condition that the applicant will not sell in excess of $10,000.00 (retail value) worth of beer in any calendar year, and thereupon shall be exempt from proof of financial responsibility as provided for herein.

C. The applicant shall comply with all other restrictions, limitations and regulations for the sale of beer under the City Code and Statutes.

SEC. 4-0123. HOURS AND DAYS OF BEER SALES. No sale of beer shall be made between the hours of 1:00 a.m. and 8:00 a.m. on the days of Tuesday through Saturday, nor between the hours of 1:00 a.m. and 12:00 noon on Sunday, nor between the hours of 10:00 p.m. on Sunday and 8:00 a.m. on Monday. Provided, however, that in any year that December 31 falls on a Sunday, license holders may stay open on that Sunday until 1:00 a.m. on Monday, January 1 of the next year.

SEC. 4-0124. LIQUOR LICENSE REQUIRED. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, charge for possession, or otherwise dispose of liquor, as part of a commercial transaction, without a license therefor from the City. This Section shall not apply (1) to such potable liquors as are intended for therapeutic purposes and not as a beverage, (2) to industrial alcohol and its compounds not prepared or used for beverage purposes, (3) to wine in the possession of a person duly licensed under this Chapter as an on-sale wine licensee, (4) to sales by manufacturers to wholesalers duly licensed as such by the Commissioner, (5) to sales by wholesalers to persons holding liquor licenses from the City, or (6) to the municipal liquor store. The voters of the City having authorized such issuance at a special election called for that purpose, the City may issue on-sale liquor licenses to hotels, restaurants, and clubs (with the permission of the Commissioner), provided that liquor sales will be made only to members and bona fide guests. Any person licensed to sell liquor on-sale shall not be required to obtain an on-sale beer license, and may sell beer on-sale without an additional license.

SEC. 4-0125. SUNDAY SALES.

Subd. 1. License Required. The electorate of the City having heretofore authorized the same at a general or special election, a Sunday on-sale liquor license may be issued to hotels, restaurants, clubs, or bowling centers, in conjunction with the sale of food, which have on-sale liquor licenses and which also have seating capacity for not less than thirty guests at one time. Prior to issuance of such license, the applicant shall provide the City with proof of financial responsibility for Sunday sales.

(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)

Subd. 2. Hours of Sale. The hours of Sunday on-sale liquor sales shall not commence before 12:00 noon and shall not continue past 10:00 p.m., provided that the licensee is in conformance with the Minnesota Clean Air Act.

Subd. 3. Unlawful Acts. It is unlawful to sell liquor on Sunday unless such sales are (1) licensed in accordance with this Section, (2) in conjunction with the sale of food, and, (3) during hours of permitted sales.

SEC. 4-0126. SPORTS, CONVENTION OR CULTURAL FACILITIES LICENSE. The Council may authorize any holder of an on-sale liquor license issued by the City or by an adjacent municipality to sell liquor at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports, convention or cultural facility owned by the City, or instrumentality thereof having independent policy-making and appropriating authority and located within the City. The licensee must be engaged to sell liquor at such an event by the person or organization permitted to use the premises, and may sell liquor only to persons attending the event. The licensee shall not sell liquor to any person attending or participating in any amateur athletic event. Such sales may be limited to designated areas of the facility. All such sales shall be subject to all laws relating thereto. The licensee shall provide proof of the extension of financial responsibility coverage to the premises on which such sales are to be made.

SEC. 4-0127. TEMPORARY LIQUOR LICENSE.

Subd. 1. License Authorized. Notwithstanding any provision of the City Code to the contrary, the Council may issue a license for the temporary on-sale of liquor in connection with a social event sponsored by the licensee. Such license may provide that the licensee may contract with the holder of a full-year on-sale license, issued by the City, for liquor catering services.

Subd. 2. Applicant. The applicant for a license under this Section must be a club or charitable, religious, or other non-profit organization in existence for at least three years, or a political committee registered under Section 10A.14 of Minnesota Statutes.

Subd. 3. Terms and Conditions of License.

A. No license is valid until approved by the Commissioner.

B. No license shall be issued for more than four consecutive days.

C. No license shall issue until the City is furnished with written proof that the licensee has dram shop coverage in the amount provided for in this Chapter, and that such coverage is in force on the premises where liquor is to be served.

D. All licenses and licensees are subject to all provisions of statutes and the City Code relating to liquor sale and licensing. The licensee shall provide proof of financial responsibility coverage and, in the case of catering by a full-year on-sale licensee, such caterer shall provide proof of the extension of such coverage to the licensed premises.

E. Licenses may authorize sales on premises other than those owned or permanently occupied by the licensee.

F. No more than three four-day, four three-day or six two-day licenses in any combination not to exceed 12 days per year may be issued to any one organization or registered political committee, or for any one location within a 12-month period.

G. No more than one temporary license may be issued to any one organization or registered political committee or for any one location within any 30-day period.

Subd. 4. Insurance Required. The Council may, but at no time shall it be under any obligation whatsoever to, grant a temporary liquor license on premises owned or controlled by the City. Any such license may be conditioned, qualified or restricted as the Council sees fit. If the premises to be licensed are owned or under the control of the City, the applicant shall file with the City, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of $100,000.00 for injury to any one person, $300,000.00 for injury to more than one person, and $50,000.00 for property damage, naming the City as an insured during the license period.

SEC. 4-0128. HOURS AND DAYS OF LIQUOR SALES. No sale of liquor shall be made between the hours of 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor on Sunday between 1:00 a.m. and 12:00 noon, nor between the hours of 8:00 p.m. on December 24 and 12:00 p.m. on December 25. When December 31 falls on a Sunday, licensees may operate from 10:00 a.m. on December 31 to 1:00 a.m. on January 1. (NOTE: This Section does not prohibit sales during hours when on-sale is permitted on Sunday as stated in the Section of this Chapter entitled "Sunday Sales".)

SEC. 4-0129. ON-SALE WINE LICENSE REQUIRED. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, charge for possession, or otherwise dispose of wine on-sale, as part of a commercial transaction, without a license therefor from the City. This Section shall not apply (1) to sales by manufacturers to wholesalers duly licensed as such by the Commissioner, (2) to sales by wholesalers to persons holding on-sale or off-sale liquor licenses from the City, (3) to sales by wholesalers to persons holding on-sale wine licenses from the City, or (4) to sales by on-sale liquor licensees on days and during hours when on-sale liquor sales are permitted.

SEC. 4-0130. HOURS AND DAYS OF SALES BY ON-SALE WINE LICENSEES. No on-sale of wine shall be made between the hours of 1:00 a.m. and 8:00 a.m. on the days of Tuesday through Saturday, nor on Sunday between the hours of 1:00 a.m. and 12:00 noon and between the hours of 10:00 p.m. on Sunday and 8:00 a.m. on Monday,, nor between the hours of 8:00 p.m. on December 24 and 8:00 a.m. on December 25. Provided, however, that in any year that December 31 falls on a Sunday, license holders may stay open on that Sunday until 1:00 a.m. on Monday, January 1 of the next year.

SEC. 4-0131. LIQUOR AND ON-SALE WINE LICENSE RESTRICTIONS, REGULATIONS AND UNLAWFUL ACTS.

Subd. 1. Licenses in Connection With Premises of Another. A license may not be issued to a person in connection with the premises of another to whom a license could not be issued under the provisions of this Chapter. This Subdivision does not prevent the granting of a license to a proper lessee because the person has leased the premises of a minor, a non-citizen who is not a resident alien, or a person who has been convicted of a crime other than a violation of this Chapter.

Subd. 2. Employment of Minors. No person under eighteen (18) years of age may sell or serve liquor or wine on licensed premises.

Subd. 3. Premises Eligible. On-sale wine licenses shall be granted only to restaurants as defined in this Chapter. Provided, however, for purposes of this Subdivision, such restaurant shall have appropriate facilities for seating not less than 30 guests at one time.

Subd. 4. Removal of Wine From Restaurant. An establishment licensed to sell liquor or wine at on-sale under this Chapter may permit a person purchasing a full bottle of wine in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises provided that the bottle has been opened and the contents partially consumed. A removal of a bottle under the conditions described in this provision is not an off-sale of liquor and may be permitted without additional license.

Subd. 5. Church and School Restriction. No license shall be granted for any building within 100 feet of any public elementary or secondary school structure or within 100 feet of any church structure.

Subd. 6. Number of Licenses. The Council may issue the number of licenses authorized by statute or restrict such number from time to time as it may, in its discretion, deem proper.

Subd. 7. Intoxicating Malt Liquor Sale Without License. The holder of an on-sale wine license issued pursuant to this Chapter who is also licensed to sell beer at on-sale, and whose gross receipts are at least 60% attributable to the sale of food, is authorized to sell intoxicating malt liquor at on-sale without an additional license.

SEC. 4-0132. MUNICIPAL DISPENSARY.

Subd. 1. Establishment. A Municipal Dispensary is hereby established to be operated within the City for the sale of alcoholic beverages. Such Dispensary shall be at such place or places as the Council shall determine and may be either leased or owned by the City. It shall be in the charge of a person known as the Manager who shall have such assistants as may be necessary. All employees, including the Manager, shall hold their positions at the pleasure of the Council.

Subd. 2. Dispensary Fund. A Liquor Dispensary Fund is hereby created into which all revenues received from the operation of the Dispensary shall be paid, and from which all operating expenses shall be paid. Any surplus accumulating in this Fund may, from time to time, be transferred to the General Fund by resolution of the Council, and expended for any municipal purpose.

SEC. 4-0133. NUDITY OR OBSCENITY PROHIBITED.

Subd. 1. Definitions. As used in this Section, the following words and terms shall have the meanings stated:

A. "Nudity" means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

B. "Obscene performance" means a play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sado-masochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

C. "Obscenities" means those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

D. "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

E. "Sexual conduct" means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

F. "Sexual excitement" means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Subd. 2. Unlawful Act. It is unlawful for any person issued a license provided for in this Chapter to permit upon licensed premises any nudity, obscene performance, or continued use of obscenities by any agent, employee, patron or other person.

CHAPTER 4-02

BUSINESS LICENSING

SECTIONS:

4-0201. Definitions.
4-0202. Applications.
4-0203. Action on Application, Transfer, Termination and Duplicate License.
4-0204. Fixing License Fees.
4-0205. Carrying or Posting.
4-0206. Penalty for Property Owner.
4-0207. Responsibility of Licensee.
4-0208. Conditional Licenses.
4-0209. Renewal of Licenses.
4-0210. Insurance Requirements.
4-0211. License Denial and Fixing Rates - Hearing.
4-0212. Worker's Compensation.
4-0213. Tobacco.
4-0214. Gambling
4-0215. Solicitors.
4-0216. Garbage and Refuse Haulers.

SEC. 4-0201. DEFINITIONS. As used in this Chapter, the following words and terms shall have the meanings stated:

1. "Applicant" means any person making an application for a license under this Chapter.

2. "Application" means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his/her request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

3. "Bond" means a corporate surety document in the form and with the provisions acceptable and specifically approved by the City Attorney.

4. "Business" means any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both licensed and regulated, by the terms and conditions of this Chapter.

5. "License" means a document issued by the City to an applicant permitting him/her to carry on and transact a business.

6. "Licensee" means an applicant who, pursuant to his/her application, holds a valid, current, unexpired and unrevoked license from the City for carrying on a business.

7. "License fee" means the money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on a business.

8. "Person" includes all firms, partnerships, associations, limited liability companies, corporations and natural persons.

9. "Sale", "Sell" and "Sold" mean all forms of barter and all manner or means of furnishing merchandise to persons.

SEC. 4-0202. APPLICATIONS. All applications shall be made as follows:

Subd. 1. All applications shall be made at the office of the City Administrator upon forms that have been furnished by the City for such purposes.

Subd. 2. Unless otherwise provided for in this Chapter, all such applications must be subscribed, sworn to, and include such information as the Council deems necessary considering the nature of the business for which license application is made.

Subd. 3. It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form, shall, upon discovery of such falsehood work an automatic refusal of license, or if already issued, shall render any license or permit issued pursuant thereto, void, and of no effect to protect the applicant from prosecution for violation of this Chapter, or any part hereof.

Subd. 4. The City Administrator shall, upon receipt of each application completed in accordance herewith, forthwith investigate the truth of statements made therein and the moral character and business reputation of each applicant for license to such extent as he/she deems necessary. For such investigation the City Administrator may enlist the aid of the Chief of Police. The Council shall not consider an application before such investigation has been completed.

Subd. 5. Applications for renewal licenses may be made in such abbreviated form as the Council may by resolution adopt.

SEC. 4-0203. ACTION ON APPLICATION, TRANSFER, TERMINATION AND DUPLICATE LICENSE.

Subd. 1. Granting. The Council may grant any application for the period of the remainder of the then current calendar year or for the entire ensuing license year. All applications, including proposed license periods, must be consistent with this Chapter.

Subd. 2. Issuing. If an application is approved, the City Administrator shall forthwith issue a license pursuant thereto in the form prescribed by the Council, payment of the appropriate license fee, and approval of the bond or insurance as to form and surety or carrier, if required. All licenses shall be on a calendar year basis unless otherwise specified herein as to particular businesses. Unless otherwise herein specified, license fees shall be pro-rated on the basis of 1/12th for each calendar month or part thereof remaining in the then current license year. Provided, that for licenses where the fee is less than $100.00 a minimum license fee equal to one-half of the annual license fee shall be charged. Except as to licenses which are specifically City-wide, licenses shall be valid only at one location and on the premises therein described.

(**SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

Subd. 3. Unemployment Clearance Required. No license shall be granted, transferred or renewed and shall be revoked if the Commissioner notifies the City that the licensee

owes the State delinquent unemployment insurance contributions, reimbursements, or benefit overpayments.

Subd. 4. Transfer. A license shall be transferable between persons upon consent of the Council and payment of the investigation fee, if any. No license shall be transferable to a different location without prior consent of the Council and upon payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this Subdivision.

Subd. 5. Termination. Licenses shall terminate only by expiration or revocation.

Subd. 6. Refusal and Revocation. The Council may, for any reasonable cause, refuse to grant any application, or revoke any license. No license shall be granted to a person of questionable moral character or business reputation. Before revocation of any license, the Council shall give notice to the licensee and grant such licensee opportunity to be heard. Notice to be given and the exact time of hearing shall be stated in the resolution calling for such hearing. Grounds for revocation may be, but are not limited to, any of the following: (1) that the licensee suffered or permitted illegal acts upon licensed premises; (2) that the licensee had knowledge of such illegal acts but failed to report the same to police; (3) that the licensee failed or refused to cooperate fully with police in investigating such alleged illegal acts; or, (4) that the activities of the licensee created a serious danger to public health, safety, or welfare.

Subd. 7. Duplicate License. Duplicates of all original licenses may be issued by the City Administrator, without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of a fee in an amount adopted by consolidated ordinance of the Council for issuance of the duplicate. All duplicate licenses shall be clearly marked "DUPLICATE."

(**SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

SEC. 4-0204. FIXING LICENSE FEES. Except as otherwise herein provided, all fees for licenses, late fee penalties, and investigation of applicants under this Chapter shall be fixed and determined by the Council, adopted consolidated ordinance, and uniformly enforced. Such license fees may, from time to time, be amended by the Council by ordinance. A copy of the ordinance setting forth currently effective license fees shall be kept on file in the office of the City Administrator, and open to inspection during regular business hours. For the purpose of fixing such fees, the Council may subdivide and categorize licenses under a specific license requirement, provided, that any such subdivision or categorization shall be included in the ordinance authorized by this Section.

(**SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

SEC. 4-0205. CARRYING OR POSTING. All solicitors shall at all times when so engaged, carry their license on their person. All other licensees shall post their licenses in their place of business near the licensed activity. Provided, however, that in the case of machine or other device licensing, the City may provide a sticker for the current license year which shall be affixed to each machine or device requiring such sticker. All licensees shall display their licenses upon demand by any officer or citizen.

SEC. 4-0206. PENALTY FOR PROPERTY OWNER. It is unlawful for any person to knowingly permit any real property owned or controlled by him/her to be used, without a license, for any business for which a license is required by this Chapter.

SEC. 4-0207. RESPONSIBILITY OF LICENSEE. The conduct of agents or employees of a licensee, while engaged in performance of their duties for their principal or employer under such license, except as to criminal liability therefor, shall be deemed the conduct of the licensee.

SEC. 4-0208. CONDITIONAL LICENSES. Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefor, place such conditions and restrictions upon a license as it, in its discretion, may deem reasonable and justified.

SEC. 4-0209. RENEWAL OF LICENSES. Applications for renewal of an existing license shall be made at least thirty (30) days prior to the date of expiration of the license, and shall contain such information as is required by the City. This time requirement may be waived by the Council for good and sufficient cause.

SEC. 4-0210. INSURANCE REQUIREMENTS. Whenever insurance is required by a Section of this Chapter, after approval by the Council, but before the license shall issue, the applicant shall file with the City Administrator a policy or certificate of public liability insurance showing (1) that the limits are at least as high as stated in individual Sections of this Chapter, (2) that coverage is effective for at least the license term approved, and (3) that such insurance will not be cancelled or terminated without thirty days' written notice served upon the City Administrator. Cancellation or termination of such coverage shall be grounds for license revocation.

SEC. 4-0211. LICENSE DENIAL AND FIXING RATES - HEARING.

Subd. 1. Right to Deny. The Council reserves to itself the right to deny any application for a license to operate any business licensed or regulated under this Chapter where such business involves service to the public, rates charged for service, use of public streets or other public property by the applicant or the public, or the public health, safety and convenience. The Council may also consider the location of such business in making such determination. Provided, however,
that before making such determination, the Council shall hold a public hearing thereon pursuant to such notice to interested parties and the public as it may deem necessary or proper in action calling for such hearing.

Subd. 2. Rates. Where, under specific provisions of this Chapter, the Council has reserved to itself the right to fix or approve fees, rates or charges of a licensed or regulated business, such rates shall be uniform for each category or class of service, and no licensee or proprietor of a regulated business shall claim or demand payment in excess thereof.

Subd. 3. Hearing. Any applicant or licensee under this Chapter who challenges denial of a license or rates fixed or approved by the Council shall have a right to a hearing before the Council upon written request therefor. Notice of time, place and purpose of such hearing shall be given to such persons and by such means as the Council may determine in calling the hearing.

SEC. 4-0212. WORKER'S COMPENSATION. No license to operate a business shall be issued by the City until the applicant presents acceptable evidence of compliance with the worker's compensation insurance coverage requirement of Minnesota Statutes by providing the name of the insurance company, the policy number, and dates of coverage, or the permit to self-insure.

SEC. 4-0213. TOBACCO. **(Source: Ord. 2016-02, Sec. 1)**

Subd. 1. Definitions. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

1. "Child-Resistant Packaging" means packaging that meets the definition set forth in Code of Federal Regulations, Title 16, Section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, Title 16, Section 1700.20.

2. "Compliance Checks" means the system the City uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this Section. Compliance checks shall involve the use of minors as authorized by this Section. Compliance checks shall also mean the use of minors who attempt to purchase licensed products for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to licensed products.

3 "Electronic Delivery Devices" shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol or vapor from the product. Electronic delivery devices include any component part of a product, whether or not marketed or sold separately. Electronic delivery devices do not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose. The term includes any such devices, whether they are manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, or under any other product name or descriptor.

4. "Individually Packaged" means the practice of selling any licensed product wrapped individually for sale. Individually packaged products shall include, but are not limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other containers as described in this Subdivision shall not be considered individually packaged.

5. "Indoor Area" means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A standard (0.011 gauge with an 18 by 16 mesh count) window screen is not considered a wall.

6. "Licensed Products" means the term that collectively refers to tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

7. "Loosies" means the common term used to refer to a single or individually packaged cigar or cigarette or any other licensed product that has been removed from its intended retail packaging and sold individually. Loosies does not include individual

cigars with a retail price, after any discounts or before any sales taxes are imposed, of more than $2.00 per cigar.

8. "Minor" means any natural person who has not yet reached the age of eighteen (18) years.

9. "Movable Place of Business" refers to any form of business operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

10. "Nicotine or Lobelia Delivery Products" means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such product, that is not tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery products do not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

11. "Retail Establishment" means any place of business where licensed products are available for sale to the general public. The phrase shall include, but not be limited to, grocery stores, convenience stores, gasoline service stations, bars, and restaurants.

12. "Sale" means any transfer of goods for money, trade, barter, or other consideration.

13. "Self-Service Merchandising" means open displays of licensed products in any manner where any person shall have access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed product between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange between the clerk and the customer.

14. "Smoking" means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product, or inhaling or exhaling aerosol or vapor from an electronic delivery device. Smoking includes being in possession of a lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product intended for inhalation, or any electronic delivery device that is turned on or otherwise activated.

15. "Tobacco" means any product containing, made or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including but not limited to, cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flower; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

16. "Tobacco Related Devices" means any pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

17. "Use" means the inhaling or exhaling of aerosol or vapor from any electronic delivery device. Use shall also mean being in possession of an electronic delivery device that is turned on or otherwise activated.

18. "Vending Machine" means any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

Subd. 2. License. No person shall sell or offer to sell any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the City.

Subd. 3. Fees. No license shall be issued under this Section until the appropriate license fee shall be paid in full.

(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)

Subd. 4. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this Section; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section.

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

B. The applicant has been convicted within the past five years of any violation of a 247 (12-01-04) Federal, State or local law or City Code provision, or other regulation relating to tobacco or tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.

C. The applicant has had a license to sell tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product revoked within the preceding twelve months of the date of application.

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

E. The applicant is prohibited by Federal, State, or local law, City Code provision or other regulation from holding such a license.

F. No License shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed.

G. All licenses issued shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid.

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

I. Issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

J. No license shall be granted to any person for any location that is within 2,000 feet of a school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been licensed to sell such licensed products in that location for at least one year before the date this section was enacted into law. For the purpose of this section, a youth-oriented facility is defined to include any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

K. No license shall be granted to any person for any location that is within 2,000 feet of any other establishment holding a license to sell licensed products, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless that person has been in the business of selling such products in that location for at least one year before the date this section was enacted into law.

Subd. 5. Prohibition. Smoking, including the use of any electronic delivery device, shall not be permitted and no person shall smoke within the indoor area of any establishment licensed under this ordinance or where prohibited by the Minnesota Clean Indoor Air Act, as it may be amended from time to time. Smoking for the purposes of sampling licensed products is prohibited.

Subd. 6. Prohibited Sales. It is a violation of this Section for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:

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

B. By means of any type of vending machine.

C. By means of self-service methods whereby the customer does not need to make verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product, and whereby there is not a physical exchange of the tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product between the licensee or the licensee's employee and the customer.

D. By means of loosies as defined herein.

E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other projects subject to this ordinance.

F. By any other means, or to any other person, or in any other manner or form prohibited by Federal, State or other local law, City Code provision, or other regulations.

Subd. 7. Vending Machines. It is unlawful for any person licensed under this Section to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Subd. 8. Self-Service Sales. It is unlawful for a licensee under this Section to allow the sale of tobacco, tobacco products, or tobacco related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers or in a case or other storage unit not left open and accessible to the general public. Licensees which prohibit individuals less than 18 years of age from entering the premises and which derive at least 90 percent of their revenue from tobacco and tobacco-related products are exempt from this subdivision.

Subd. 9. Liquid packaging. It shall be a violation of this ordinance for any person to sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Subd. 10. Responsibility. All licensees under this Section shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices on the licensed premise, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this Section shall be construed as prohibiting the City from also subjecting the clerk to whatever penalties are appropriate under this Section, State or Federal law, or other applicable law or regulation.

Subd. 11. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the City police or other authorized City official during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained as part of the compliance check. No minor used in compliance checks shall attempt to use a false identification or theatrical makeup misrepresenting the minor's age. All minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee and shall produce any identification for which he or she is asked. The minor shall be accompanied by the City police or an authorized City official to the location of the compliance check. Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

Subd. 12. Violations.

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

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

C. Hearing Officer. The Council or a person or persons designated by the Council shall serve as the hearing officer.

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

E. Appeals. Appeals of any decision made by the hearing officer shall be filed in the District Court for the City in which the alleged violation occurred.

F. Misdemeanor Prosecution; No Administrative Penalty. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Section. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

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

Subd. 13. Penalties.

A. Licensees. Any licensee found to have violated this Section, or whose employee shall have violated this Section, shall be charged an administrative penalty of $250.00 and a written violation warning from the City for a first violation of this Section. For a second violation, an administrative penalty of $500.00 shall be imposed and the licensee's authority to sell tobacco products or tobacco related devices shall be suspended for not less than three (3) days. For a third violation, an administrative penalty of $750.00 shall be imposed and the licensee's authority to sell tobacco products or tobacco related devices shall be suspended for not less than ten (10) days. For a fourth violation, the licensee's authority to sell tobacco products or tobacco related devices shall be revoked.

B. Other Individuals. An individual who sells tobacco products or tobacco related devices to a person under the age of eighteen (18) years shall be charged an administrative fee of $250.00. Upon a juvenile violating this Section, the penalty shall be in accordance with Minnesota Statutes, Section 260.195.

C. Misdemeanor. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this Section.

Subd. 14. Exceptions and Defenses. Nothing in this Section shall prevent the providing of tobacco products or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this Section for a person to have reasonably, and in good faith, relied upon representations of proof of age as described by State law.

(CODIFIER'S NOTE: See Chapter 6-07 for Tobacco Regulations Relating to Minors)

SEC. 4-0214. GAMBLING.

Subd. 1. Definitions. The following definitions shall apply to this Section:

A. "Lawful Gambling" - The operation, conduct or sale of bingo, raffles, paddlewheels, tipboards and pull-tabs for a lawful purpose.

B. "Organization" - Any fraternal, religious, veterans, or other non-profit organization which has been in existence for at least three years and has at least 15 active members.

C. "Minnesota Statutes" - Refers to Minnesota Statutes, and the Rules and Regulations of the State Gambling Control Board, promulgated thereunder.

Subd. 2. Permit Required. It is unlawful for any organization, exempt from licensing under Minnesota Statutes, to conduct lawful gambling without the payment of a fee and obtaining a permit from the City.

(SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)

Subd. 3. Bingo.

A. Bingo conducted in a nursing home or a senior citizen housing project, or by a senior citizen organization, conducted as provided and exempted by statute, shall not require a permit.

B. Bingo may be conducted without a permit in connection with a civic celebration if not conducted for more than 12 consecutive days in a calendar year; or

C. It is conducted by an organization which conducts four or fewer bingo events of not more than two (2) days' duration.

Subd. 4. Raffle. A raffle may be conducted without a permit by a qualifying organization if the value of all raffle prizes awarded by the organization in a calendar year does not exceed $1,500.00, or if the raffle is conducted by a tax-exempt health or social service organization under contract to the State or a political subdivision if the prizes awarded are real or personal property donated by an individual, firm or other organization.

Subd. 5. Video Games of Chance; Limitations. No location may have more than two video games of chance, and the games may be operated only at licensed on-sale intoxicating liquor establishments and private clubs holding club on-sale licenses issued under Minnesota Statutes, Section 230.11, Subdivision 11.

Subd. 6. Expenditure of Profits. The Council may require of every licensed gambling establishment that a percentage of the profits therefrom shall be paid to a charity, government-supervised fund or non-profit purpose. For gambling licensed under this Section which is exempt from State regulation, the designated portion of profits shall not exceed 40% paid to approved recipients located within 30 miles of the City. The Council may designate by resolution the payee(s) and percentage of profits required hereunder.

Subd. 7. Penalty. Violation of this Section constitutes a gross misdemeanor.

SEC. 4-0215. SOLICITORS.

Subd. 1. Purpose. This Section is not intended to in any way hinder, delay or interfere with legitimate business or organizational activities. The Council finds, however, that solicitors have used public streets and their direct contact with residents of the City for the illegitimate solicitation practices of harassment, nuisance, theft, deceit, or menacing, troublesome or unlawful activities. This Section is intended to ferret out and control: (1) businesses and organizations using solicitation as a means of concealing unlawful activities; and, (2) businesses and organizations which, though its activities be lawful or even commendable, use such illegitimate practices in solicitation; and, (3) persons who, though they represent lawful businesses and organizations, use such illegitimate solicitation practices. The Council further finds that a large number of the residents of the City are employed as their livelihood and means of support by manufacturing plants and other businesses on shifts rotating between night and day, and to disturb them during their sleeping hours for the purpose of solicitation is a source of nuisance or even harassment and should be subject to control.

Subd. 2. Definitions. The following terms, as used in this Section, shall have the meanings stated:

A. "Solicitor" means any person making the solicitation, including such common terms as "peddler", "transient merchant" and "canvasser".

B. "Solicitee" means the person solicited.

C. "Goods" means any tangible thing of value including money if the selling price exceeds the face value thereof. The term includes such chattels as are furnished or used at the time of sale or subsequently in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom.

D. "Services" means work, labor, or services of any kind.

E. "Established place" means real estate in the City owned, leased on a month-to-month or term-certain longer than thirty (30) days. The term includes a booth, compartment, or area leased or assigned during and for the length of an event or occasion.

F. "Business solicitation" means an attempt by a solicitor, engaging in transactions of the same kind, to sell or distribute for a consideration any goods or services primarily for personal, family, or household purposes, when either the solicitor or person acting for him/her contacts the solicitee by telephone or in person, other than at the established place of business of solicitor, except: (1) an attempted solicitation in which the solicitee personally knows the identity of the solicitor, the name of the business firm or organization he/she represents, and the identity or kinds of goods, services or things of value offered; or, (2) an attempted solicitation in which the solicitee has first initiated the contact with the solicitor; or, (3) an attempted solicitation of a newspaper subscription in which the solicitor is a minor child engaged in both the delivery and sale of the newspaper; or, (4) an attempted solicitation for the sale of products of a farm or garden occupied or cultivated by the solicitor, when facts of such occupancy or cultivation are proven by the solicitor.

G. "Contribution solicitation" means an attempt by a solicitor to obtain money from a solicitee for any cause or purpose, when either the solicitor or person acting for him/her contacts the solicitee by telephone or in person other than at the established place of meeting, business, service, or activity of the organization represented by the solicitor, except: (1) an attempted solicitation in which the solicitee personally knows the identity of the solicitor, the

name of the organization he/she represents, and the identity of the services performed or offered by the organization, or, (2) an attempted solicitation in which the solicitee has first initiated the contact with the solicitor or the organization represented by him/her.

Subd. 3. Prohibited Solicitation Practices.

A. It is unlawful for any solicitor to engage in solicitation for any unlawful business or organizational purpose or activity.

B. It is unlawful for any solicitor to practice harassment, nuisance, theft, deceit, or menacing, troublesome or otherwise unlawful activities during the course of solicitation.

C. It is unlawful for any solicitor to enter, or attempt to gain entrance, to residential premises displaying at such entrance a sign at least 3-3/4 inches long and 3-3/4 inches high with the words "Peddlers and Solicitors Prohibited" or "Solicitors Prohibited" in type not smaller than 48 point.

D. It is unlawful for any solicitor to refuse to leave business premises when requested by the owner, lessee, or person in charge thereof.

E. It is unlawful for any person to engage in contribution solicitation without completion of licensing or registration as herein provided.

F. It is unlawful for any person to engage in business solicitation without a license as herein provided.

G. It is unlawful for any solicitor except for an authorized manufacturer's representative to offer for sale any of the following items:

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

2. Over-the-counter drugs, medical devices and cosmetics.

Subd. 4. Application. Applications for licensing or registration shall contain the name and address of the solicitor, the name and address of the business or organization for which solicitations are sought and such other information as may reasonably be required by the Council as a condition to registration or licensing or to permit investigation into the applicant's background and past solicitation practices.

Subd. 5. Investigation, Approval or Disapproval.

A. All applications for licensing or registration shall be immediately referred to the Chief of Police, and by him/her or other person acting in his/her stead, investigated as to the truth thereof. The Chief of Police shall have five (5) business days within which to investigate and make a recommendation thereon.

B. If he/she finds no past history of the applicant indicating violations similar to those declared unlawful in this Section he/she shall recommend issuing a license or approving registration, as the case may be, and the City Administrator shall forthwith advise the applicant. The City Administrator shall issue a license, upon payment of the fee therefor, to the approved applicant for business solicitation, and shall approve the completion of registration by the applicant for a contribution solicitor.

(**SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

C. If the Chief of Police finds a past history of the applicant indicating violations similar to those declared unlawful in this Section, he/she shall recommend denial of the license or registration. In all matters of recommended denial the applicant shall be forthwith advised thereof, and the application shall be referred to the Council and considered by it at its next regular or special meeting occurring more than ten (10) days thereafter. The applicant shall be afforded an opportunity to be heard at such meeting.

Subd. 6. Duration of Contribution Solicitation Registration. Registration of contribution solicitation shall expire sixty (60) days after registration is approved.

Subd. 7. Exemptions. The provisions of this Section shall not apply to any sale under Court order; to any bona fide auction sale; to news boys or news girls; to a sale at wholesale to a retail dealer on the article sold; to the sale of farm or garden products by the person producing the same; to door-to-door home solicitations for school or educational causes, or philanthropic, religious, or charitable causes; to any City-wide or City-sponsored celebration; nor shall it apply to annual County Fair.

SEC. 4-0216. GARBAGE AND REFUSE HAULERS.

Subd. 1. Definitions. The following terms, as used in this Section, shall have the meanings stated:

A. "Garbage" means organic refuse resulting from the preparation of food, decayed and spoiled food from any source, animal excretion and carcasses of dead animals of not more than 10 pounds in weight each, and glass and tin cans in which foods are customarily purchased, but excluding human excretion, sewage and other water-carried wastes.

B. "Refuse" means all drained organic material resulting from the preparation of food and spoiled or decayed food from any source, bottles, cans, glassware, paper or paper products, crockery, ashes, rags, and discarded clothing, but not including sand, earth, brick, stone, concrete, trees, tree branches, wood, construction material or debris.

C. "Rubbish" consists of wood, leaves, chips, shavings, printed matter, paper, paste board, boxes, grass, rags, straw, discarded wearing apparel, and all other combustible matter not included in the term "Garbage".

Subd. 2. Contract Required. It is unlawful for any person to haul garbage or other refuse for hire without a contract with the City, or to haul garbage or other refuse from his/her own residence or business property other than as herein excepted. Personnel of the City, or other County, State or Federal government personnel, may collect garbage and rubbish in the City as needed and when required.

Subd. 3. Exception. Nothing in this Section shall prevent persons from hauling garbage or other refuse from their own residences or business properties provided the following rules are observed: (1) that all garbage is hauled in containers that are water-tight on all sides and the bottom and with tight-fitting covers on top, (2) that all other refuse is hauled in vehicles with leak-proof bodies and completely covered or enclosed by canvas or other means or material so as to completely eliminate the possibility of loss of cargo, and, (3) that all garbage and other refuse shall be dumped or unloaded only at a designated sanitary landfill.

Subd. 4. Hauler Contract Requirements.

A. Hauler contracts shall be granted only upon the condition that the hauler provide, at hauler's expense, labor and water-tight, packer-type vehicles in good condition to prevent loss in transit of liquid or solid cargo, that the vehicle be kept clean and as free from offensive odors as possible and not allowed to stand in any street longer than reasonably necessary to collect garbage or refuse, and that the same be dumped or unloaded only at a designated sanitary land-fill, and strictly in accordance with regulations relating thereto.

B. Before a contract becomes effective, the applicant shall file with the City Administrator evidence that he/she has provided public liability insurance on all vehicles in at least the sum of $1,000,000.00 for the injury of one person, $2,000,000.00 for the injury of two or more persons in the same accident, and $100,000.00 for property damages.

C. The Council, in the interest of maintaining healthful and sanitary conditions in the City, hereby reserves the right to specify and assign certain areas to all contracts, and to limit the number of contracts issued.

CHAPTER 4-03

MASSAGE THERAPISTS

SECTIONS:

4-0301. Sauna Parlor and Massage Parlor.
4-0302. Massage Therapist License.

SEC. 4-0301. SAUNA PARLOR AND MASSAGE PARLOR.

Subd. 1. Definitions. As used in this Section, the following words and terms shall have the meanings stated:

A. "Sauna" means a steam bath used for the purpose of bathing, relaxing, or weight reduction, utilizing steam as the agent therefor.

B. "Sauna parlor" means any room or rooms wherein persons may, for a fee or other consideration paid either directly or indirectly, receive a sauna.

C. "Massage" means the practice of rubbing, stroking, kneading, tamping, or rolling of the body with the hands, for the exclusive purposes of relaxation, physical fitness, or beautification, and for no other purpose, by a person not licensed as a medical doctor, chiropractor, osteopath, podiatrist, nurse who works solely under the direction of such person, physical therapist, athletic director and trainer, or beautician and barber who confine their treatment to the scalp, face and neck.

D. "Massage parlor" means any room or rooms wherein persons may, for a fee or other consideration paid either directly or indirectly, receive a massage.

E. "Masseur" means a male person who, for compensation, practices massage.

F. "Masseuse" means a female person who, for compensation, practices massage.

Subd. 2. License Required. It is unlawful for any person to operate a sauna parlor or a massage parlor without a license therefor from the City. It is unlawful for any person to practice massage in any place except upon licensed premises.

Subd. 3. License Application. All initial applications for licenses to operate sauna parlors or massage parlors shall be accompanied by a non-returnable investigation fee. Applications shall contain the names and addresses of the owners, lessees and operators of the applicant, together with a description and location of the premises. The application shall also include information as to any convictions of any crime or offense committed by the applicant, together with such other information as the Council may require before consideration of the application. All applications by corporations shall include the names and addresses of all persons having a beneficial interest therein. An investigation by the Building Inspector shall be conducted of all premises proposed to be licensed before consideration by the Council. The Police Department shall conduct an investigation of all persons proposed to be licensed before consideration by the Council. All applications shall thereafter be considered by the Council.

(**SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

Subd. 4. Restrictions and Regulations.

A. Licenses shall be granted only for operation upon fixed premises which must be located in a commercial or industrial district as established by the zoning laws of the City.

B. Licenses shall be granted only upon a showing of compliance with all laws of sanitation.

C. No beer, liquor, narcotic drug or controlled substances, as such terms are defined by State Statutes or the City Code, shall be permitted on licensed premises.

D. Violation of any law or regulation relating to building, safety or health, shall be grounds for revocation of any license.

E. Only masseurs and masseuses who are licensed by the City shall practice massage.

F. There shall be no locks on doors of massage rooms.

G. No sauna or massage parlor shall discriminate between persons on the basis of race, color, creed, sex or national origin or ancestry.

Subd. 5. Construction and Maintenance Requirements.

A. All sauna rooms and restrooms and bathrooms used in connection therewith shall be constructed of materials which are impervious to moisture, bacteria, mold, and fungus growth. The floor-to-wall and wall-to-wall joists shall be constructed to provide a sanitary cove with a minimum radius of one inch. There shall be no locks on doors of sauna rooms or massage rooms nor on any other room in the licensed premises except on one business office, closets for the storage of supplies, and toilet rooms.

B. All toilet rooms used in connection with saunas shall be provided with mechanical ventilation with 2cfm per square foot of floor area, a minimum of 30 foot candles of illumination, a hand washing sink or sinks equipped with hot and cold running water under pressure, sanitary towels and soap dispenser.

C. Each sauna shall have a janitor's closet which shall be provided for the storage of cleaning supplies. Such closet shall have mechanical ventilation with 2cfm per square

foot of floor area and a minimum of 30 foot candles of illumination. Such closet shall include a mop sink.

D. Floors, walls, and equipment in sauna rooms, in restrooms, and in bathrooms used in connection therewith must be kept in a state of good repair and clean at all times. Linens and other materials shall be stored at least twelve inches off the floor. Clean towels and wash cloths must be made available to each customer.

E. Individual lockers shall be made available for use by patrons. Such lockers shall have separate keys for locking.

F. The premises shall contain adequate refuse receptacles, which shall be emptied at least daily.

Subd. 6. Unlawful Acts.

A. It is unlawful for any licensee to fail to at all times observe all restrictions, regulations and maintenance requirements contained in this Section.

B. It is unlawful for any licensee to be open for business between the hours of 1:00 a.m. and 8:00 a.m. of any day, or to permit any patron to be present upon licensed premises after 2:00 a.m. and before 8:00 a.m. of any day.

Subd. 7. License Condition and Unlawful Act.

A. All premises licensed under this Section shall at all times be open to inspection by any health or police officer to determine whether or not this Section and all other laws are being observed. All persons, as a condition to being issued such license, consent to such inspection by such officers and without a warrant for searches and seizures.

B. It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police or health officer from making such inspection.

Subd. 8. Exception. This Section shall not apply to a health care facility (1) owned by a municipal corporation organized under the laws of the State of Minnesota, or (2) owned by the State of Minnesota or any of its agencies, or (3) licensed by the State of Minnesota.

Subd. 9. Resident Manager or Agent. Before a license is issued under this Section to an individual who is a non-resident of the City, to more than one individual whether or not they are residents of the City, or to a corporation, partnership, or association, the applicant or applicants shall appoint in writing a natural person who is a resident of the City as its manager or agent. Such resident manager or agent shall, by the terms of his/her written consent, (1) take full responsibility for the conduct of the licensed premises, and, (2) serve as agent for service of notices and other process relating to the license. Such manager or agent must be a person who, by reason of age, character, reputation, and other attributes, could qualify individually as a licensee. If such manager or agent ceases to be a resident of the City or ceases to act in such capacity for the licensee without appointment of a successor, the license issued pursuant to such appointment shall be subject to revocation or suspension.

SEC. 4-0302. MASSAGE THERAPIST LICENSE.

Subd. 1. Definitions. As used in this Section, the following words and terms shall have the meanings stated:

A. "Massage therapy" means the practice of rubbing, stroking, kneading, tamping, or rolling of the body with the hands, for the exclusive purposes of relaxation, physical fitness, or beautification, and for no other purpose, by a person not licensed as a medical doctor, chiropractor, osteopath, podiatrist, licensed nurse, physical therapist, athletic director and trainer, or beautician and barber who confine their treatments to the scalp, face and neck.

B. "Massage therapist" means a person who, for compensation, practices massage.

Subd. 2. License Required. It is unlawful for any person to practice massage therapy without a license therefor from the City.

Subd. 3. Licensing Requirements.

A. License Application. All applications for a license to practice as a massage therapist shall be accompanied by a medical certificate from a physician duly licensed to practice medicine in the State of Minnesota stating that the applicant has no communicable disease. All initial applications shall be accompanied by a non-returnable investigation fee. All initial applications shall also be accompanied by front and side view photographs. Applications shall contain such other information as the Council may, from time to time, require. All applicants shall be at least eighteen (18) years of age.

(**SEE SEC. 1-0904, FEES, RATES AND CHARGES SCHEDULE)**

B. Educational Requirements.

1. Each applicant for a massage therapist license shall furnish with the application proof of the following:

(a) A diploma or certificate of graduation from a school approved by the American Massage Therapist Association or other similar reputable massage association; or,

(b) A diploma or certificate of graduation from a school which is either accredited by a recognized educational accrediting association or agency, or is licensed by the State or local government agency having jurisdiction over the school.

2. Each applicant shall also furnish proof at the time of application of a minimum of 100 hours of successfully completed course work in the following areas:

(a) The theory and practice of massage, including, but not limited to, Swedish, Esalen, Shiatsu, and/or Foot Reflexology techniques; and,

(b) Anatomy, including, but not limited to, skeletal and muscular structure and organ placement; and,

(c) Hygiene.

Subd. 4. Restrictions and Regulations.

A. Whenever a massage is given it shall be required by the massage therapist that the person who is receiving the massage shall have his/her buttocks, anus and genitals covered with an appropriate non-transparent covering.

B. Any massage therapists performing any massages shall at all times have their anus, buttocks, breasts and genitals covered with a non-transparent material.

C. All massage therapist licenses shall comply with any and all amendments to this Section. Failure to do so shall be grounds for revocation of any license.