

## **TITLE XI: BUSINESS REGULATIONS**

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## CHAPTER 110: GENERAL PROVISIONS

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## ***LODGING TAX***

### **§ 110.01 DEFINITIONS.**

For the purpose of §§ 110.01 *et seq.*, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ADMINISTRATOR.*** The City Administrator for the City of Olivia.

***CITY.*** The City of Olivia.

***LODGER.*** The person obtaining lodging from an operator.

***LODGING.*** The furnishing for consideration of lodging by a hotel, motel, or rooming house, except where the lodging shall be for a continuous period of 30 days or more to the same lodger(s). The furnishing of rooms by religious, educational, or nonprofit organizations shall not constitute ***LODGING*** for purpose of §§ 110.01 *et seq.*

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

***SHALL.*** Is always mandatory.  
(Ord. 237, passed 3-7-1994)

### **§ 110.02 IMPOSITION OF TAX.**

The tax on the rent charged by an operator for providing lodging will be set by city resolution, effective 1-1-1995. (See Appendix A).  
(Ord. 237, passed 3-7-1994; Am. Ord. 243, passed 12-19-1994)

### **§ 110.03 COLLECTIONS.**

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

(Ord. 237, passed 3-7-1994) Penalty, see § 10.99

### **§ 110.04 ADVERTISING NO TAX.**

(A) It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded.

(B) In computing the tax to be collected, amounts of tax less than 1% shall be considered an additional cent.

(Ord. 237, passed 3-7-1994) Penalty, see § 10.99

### **§ 110.05 PAYMENT AND RETURNS.**

(A) The taxes imposed by §§ 110.01 *et seq.* shall be paid by the operator to the city monthly, not later than 15 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon the forms and containing the information as the Administrator may require. The return shall contain the following minimum information:

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

(B) The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by §§ 110.01 *et seq.* previously paid as a result of any transaction the consideration for which became uncollectible during the reporting period.

(Ord. 237, passed 3-7-1994) Penalty, see § 10.99

**§ 110.06 EXAMINATION OF RETURN; ADJUSTMENTS; NOTICES AND DEMANDS.**

(A) The Administrator shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of the examination shall be the tax to be paid.

(B) If the tax due is found to be greater than that paid, the excess shall be paid to the city within 10 days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the city within 10 days after determination of the refund.

(Ord. 237, passed 3-7-1994)

**§ 110.07 REFUNDS.**

Any person may apply to the Administrator for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within 1 year after the tax was paid or within 1 year from the filing of the return, whichever period is longer. The Administrator shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to the person at the address stated upon the return. If the claim is allowed in whole or in part, the taxes due under §§ 110.01 *et seq.* from the claimant and the balance of the allowance, if any, shall be paid by the Administrator to the claimant.

(Ord. 237, passed 3-7-1994)

**§ 110.08 FAILURE TO FILE A RETURN.**

(A) If any operator required by §§ 110.01 *et seq.* to file a return shall fail to do so within the time prescribed, or shall make willfully or otherwise an incorrect, false, or fraudulent return, the operator shall, upon written notice and demand, file the return or corrected return within 5 days of receipt of the written notice and shall at the same time pay any tax due on the basis thereof. If the person shall fail to file the return or corrected return, the Administrator shall make a return or corrected return for the person from the knowledge and information as the Administrator can obtain, and assess a tax on the basis thereof, which tax (less any payments covered by the return) shall be paid within 5 days of the receipt of written notice and demand for the payment. The return filed by the Administrator will be presumed to be prima facie correct and valid and the person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

(B) If any portion of a tax imposed by §§ 110.01 *et seq.* including penalties thereon is not paid within 30 days after it is required to be paid, the City Attorney may institute the legal action as may be necessary to recover the amount due plus interest, penalties, and the costs and disbursements of any action.

(C) Upon a showing a good cause, the Administrator may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by §§ 110.01 *et seq.* provided that interest during the period of extension shall be added to the taxes due at the rate of 10% per annum. (Ord. 237, passed 3-7-1994)

### **§ 110.09 TAX PENALTIES.**

(A) If any tax imposed by §§ 110.01 *et seq.* is not paid within the time herein specified for the payment, or an extension thereof, there shall be added thereto a specific penalty equal to 10% of the amount remaining unpaid.

(B) In case of any failure to make and file and return within the time prescribed by §§ 110.01 *et seq.*, unless it is shown that the failure is not due to willful neglect, there shall be added to the tax, in addition to the 10% specific penalty provided in division (A) above, 10% if the failure is for not more than 30 days with an additional 5% for each additional 30 days or fraction thereof during which the failure continues, not exceeding 25% in the aggregate. If the penalty as computed does not exceed \$10, a minimum penalty in an amount set by Council from time to time shall be assessed. The amount so added to any tax shall be collected at the same time and the same manner as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax. (See Appendix A).

(C) If any person willfully fails to file any return or make any payment required by §§ 110.01 *et seq.*, or willfully files a false or fraudulent return, or willfully attempts in any manner to evade or defeat the tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50% of any tax (less amounts paid on the basis of the false or fraudulent return) found due for the period to which the return related. The penalty imposed by this division (C) shall be collected as part of the tax, and shall be in addition to any other penalties provided by this section.

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

(E) The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the rate of 8% per annum from the time the tax should have been paid until paid. Any interest and penalty shall be added to the tax collected as part thereof.

(F) In addition to any other penalties provided for hereunder, the City Council may, subject to the provisions set forth in §§ 110.01 *et seq.*, suspend or revoke any license or permit issued by the city to the operator of the facility. (Ord. 237, passed 3-7-1994)

### **§ 110.10 ADMINISTRATOR OF TAX.**

The Administrator shall administer and enforce the assessment collection of the taxes imposed by

§§ 110.01 *et seq.* The Administrator shall cause to be prepared blank forms for the returns and other documents required by §§ 110.01 *et seq.* and shall distribute the same throughout the city and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation under §§ 110.01 *et seq.*

(Ord. 237, passed 3-7-1994)

### **§ 110.11 EXAMINE RECORDS.**

(A) The Administrator, and those persons acting on behalf of the Administrator and authorized in writing by the Administrator, may examine the books, papers, and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in §§ 110.01 *et seq.*

(B) Every operator is directed and required to give to the Administrator or to his or her duly authorized agent or employee the means, facilities, and opportunity for the examinations and investigations as are hereby authorized.

(Ord. 237, passed 3-7-1994) Penalty, see § 10.99

### **§ 110.12 CONTRACT WITH STATE.**

(A) The Administrator is authorized to confer with the Minnesota Commissioner of Taxation in order that an agreement between the city and the Commissioner of Taxation may be entered into for the purpose of providing for the administration and collection of the taxes imposed by §§ 110.01 *et seq.*

(B) The agreement shall not become effective until presented to the Council for its approval and, when so approved, the tax imposed by §§ 110.01 *et seq.* shall be collected and administered by §§ 110.01 *et seq.* pursuant to the terms of the agreement.

(Ord. 237, passed 3-7-1994)

### **§ 110.13 VIOLATIONS.**

Any person who shall willfully fail to make a return by §§ 110.01 *et seq.*, or who shall fail to pay the tax after written demand for payment, or who shall fail to remit the taxes collected or any penalty or interest imposed by §§ 110.01 *et seq.* after written demand for the payment, or who shall refuse to permit the Administrator or any duly authorized agents or employees to examine the books, records, and papers under his or her control, or who shall willfully fail to make a return by §§ 110.01 *et seq.*, or who shall fail to pay the tax after written demand for payment, or who shall fail to remit the taxes collected or any penalty or interest imposed by §§ 110.01 *et seq.* after written demand for the payment, or who shall refuse to permit the Administrator or any duly authorized agents or employees to examine the books, records, and papers under his or her control, or who shall willfully make any incomplete, false, or fraudulent return shall be guilty of a misdemeanor.



(Ord. 237, passed 3-7-1994) Penalty, see § 10.99

#### **§ 110.14 USE OF PROCEEDS.**

(A) The City shall use at least 95% of the proceeds obtained from the collection of taxes pursuant to §§ 110.01 *et seq.* and in accordance with state law, to fund a local convention or tourism bureau for the purpose of marketing and promoting the City as a tourist or convention center. The city may use up to 5% of the proceeds obtained hereunder to defray the costs and expenses of collection and administration of the tax.

(B) The City hereby creates a Convention and Tourism Bureau (“CTB” or “Bureau”). The Bureau is established to promote convention, visitor, and tourism activities benefitting the City.

(C) The Bureau shall have all powers, rights, duties, and obligations set forth in Minn. Stat. § 469.190, as amended from time to time.

(D) The Bureau shall be governed by a board of directors. The board of directors shall be composed of seven voting members. The voting members shall include two representatives each from the City Council (“City”) and the Olivia Economic Development Authority (“EDA”), and three at-large representatives who have non-profit, commercial, or industrial interests within the City. The City and EDA may appoint an alternate representative who may participate and vote in the absence of one of the two respective regular representatives. The chief executive staff or another delegated staff of the City and EDA shall jointly serve as the support staff for the board, with the duties of secretary handled by either or both staff members as determined by the CTB Board of Directors. The support staff shall not have a vote on the board, but shall serve as advisors to the process. The City shall serve as the fiscal agent for the lodging tax and any other CTB funds, and provide an annual audit of the Bureau’s financial records. The City’s finance director shall serve as the Bureau’s treasurer.

(E) Representatives and designated alternates from the City Council and EDA shall be appointed on an annual basis by vote of their respective boards. The terms of service by City and EDA representatives on the CTB Board shall not exceed their length of service with their respective City and EDA positions. From a list of qualified applications received, the Mayor shall appoint open or vacant at-large seats subject to City Council approval. The terms for at-large members shall be three (3) years in length. An at-large member may apply for and serve consecutive terms on the Board, subject to separate nomination and approval processes.

(F) For purposes of establishing an initial rotation of at-large positions, the first appointee shall serve a partial term ending on December 31, 2018; the second appointee shall serve a partial term ending on December 31, 2019; and the third appointee shall serve an initial term ending on December 31, 2020. For purposes of continuity of process and maintaining a working quorum of the board only, all representatives may temporarily continue to serve beyond their scheduled terms until their successors are appointed and seated.

(G) Minutes shall be kept for all Bureau meetings. The minutes shall include all important facts pertaining to each meeting, which will include, but not be limited to, the date, time and location of the meeting; the names of all members present and absent; names of all persons in attendance; motions and votes taken (including notation of any members abstaining or failing to vote); and the time the meeting adjourned or otherwise was recessed. These records shall be filed with the City Office upon Board approval and copies provided to the entities whose representatives comprise the board of directors.

(H) A member of the board may be removed from office for neglect of duty (failure to attend two or more consecutive meetings), misconduct in office or violation of the law. Prior to declaring a vacancy, the Board must give the member written notice of the reason(s) for removal. The member is entitled to a hearing before the Board prior to formal consideration of a member's removal. The member may be removed after the hearing and upon a majority vote of the remaining board members.

(I) At its first meeting of each calendar year the Board of Directors shall elect from its membership a chairperson and vice-chair to serve for that year, determine the rotation schedule for secretarial duties by support staff, and create and fill such other offices as the Board may determine is needed.

(J) The Board of Directors shall meet as necessary, but shall at a minimum meet bi-annually. Meetings of the Bureau shall be public. Written notice of the date, time, place, and agenda of the meeting must be posted in the same manner as other public meetings at least three days before the meeting. In addition to posting notice, the Bureau must also provide advance notice to each person who has filed a written request for notice of special meetings with the Bureau. The Chair or two concurring board members may call special meetings of the board, subject to the same public notice requirements as regular meetings.

(K) The Bureau shall annually present the City Council at a scheduled Council meeting the final proposed budget prior to adoption. The Bureau's board of directors shall have final authority over how allocated lodging tax proceeds and other sources of revenue are expended, subject to the limitations of State law, and applicable City finance policies.

(L) The Bureau shall have the authority to seek, secure and expend additional funds beyond lodging tax proceeds provided annually by the City for marketing and promotion of the City, subject to all laws regarding segregation and proper use of such funds.

(M) The Bureau may request the City to employ additional support staff to assist with operations and initiatives of the CTB, however, because the Bureau is established under the authority of the City, the hiring of any employees shall be subject to City Council approval. Any employees hired to serve the interests of the CTB shall operate under the City's personnel policies, and the general day-to-day oversight of the City Administrator.

(N) The Bureau shall annually present to the City Council at a scheduled council meeting a report illustrating the expenditures and activities of the Bureau for the previous fiscal year.

(O) The City Council must authorize the official office location of the Bureau for purposes of day to

day operations by a majority approval at a regularly scheduled meeting.

(P) Notwithstanding any City ordinances establishing general policies and bylaws pertaining to other established City boards and commissions, the Bureau may formally adopt bylaws and other written policies and procedures as it shall determine necessary and appropriate, subject to City Council approval. Such bylaws, policies, and procedures must be consistent with this section and State law, and shall be public data. Copies of any adopted bylaws and other written policies and procedures shall be kept on file at the City Office.

(Q) The Bureau shall make available bylaws, policies, procedures, financial records, payroll records, documents and other relevant information to the City upon request to ensure appropriate disposition of public tax proceeds.

(Ord. 2015-01, passed April 6, 2015; Amended by Ord. 2018-06, passed May 7, 2018)

#### **§ 110.15 APPEALS.**

(A) Any operator aggrieved by any notice, order, or determination made by the Administrator under §§ 110.01 *et seq.* may file a petition for review of the notice, order, or determination. The petition shall contain the name of the petitioner, the petitioner's address, the location of the lodging subject to the order, notice or determination, and the grounds for review.

(B) The petition for review shall be filed with the Administrator within 10 days after the notice, order, or determination for which review is sought has been mailed or served upon the person requesting review.

(C) Upon the receipt of the petition, the Administrator, or his or her designee, shall set a date for a hearing and give the petitioner at least 5-days' prior written notice of the date, time, and place of the hearing.

(D) At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order, or determination should be modified or withdrawn. The petitioner may be represented by counsel of petitioner's choosing at petitioner's own expense.

(E) The hearing shall be conducted by the Administrator, or his or her designee, provided only that the person conducting the hearing shall not have participated in the drafting of the order, notice, or determination for which review is sought.

(F) The person conducting the hearing shall make written findings of fact and conclusions based upon the applicable section and the evidence presented. The person conducting the hearing may affirm, reverse, or modify the notice, order, or determination made by the Administrator.

(G) Any decision rendered by the Administrator pursuant to this section may be appealed to the City Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the Administrator within 10 days after the decision has been mailed to the petitioner. The matter will

thereupon be placed on the Council agenda as soon as is practical. The Council shall then review the findings of facts and conclusions to determine whether they are correct. Upon a determination by the Council that the findings and conclusions were incorrect, the Council may modify, reverse, or affirm the decision of the Administrator or his or her designee upon the same standards as set forth in §§ 110.01 *et seq.*  
(Ord. 237, passed 3-7-1994)

### **TAXICABS**

#### **§ 110.50 LICENSE REQUIRED.**

No person, firm, or corporation shall engage in the business of operating auto liveries or taxicabs on the streets of the City of Olivia, Renville County, Minnesota, without first paying the license and obtaining a license therefore as herein provided.  
(1957 Code, § 900:01) Penalty, see § 10.99

#### **§ 110.51 APPLICATION.**

Every person desiring to operate the business shall make application in writing, stating the place of business, the type, make, body style, and year of each car proposed to be operated upon the streets of the city as a taxicab or auto livery.  
(1957 Code, § 900:02)

#### **§ 110.52 FEES.**

The fee for the license to operate the business shall be as follows: An amount set by Council from time to time on the first car proposed to be operated, and for each car after the first car proposed to be operated. (See Appendix A). The City Council shall have the power to limit the number of franchises, and also limit the number of cars to be used under each franchise.  
(1957 Code, § 900:03)

#### **§ 110.53 INSURANCE OR BOND REQUIRED.**

No license shall be issued until the applicant files with the City Administrator, a good and sufficient surety bond or policy of insurance, whereby each car shall be covered against loss or injury for each passenger at least the maximum coverage for each accident, and also against loss or damage to property, that will provide at a minimum that coverage required by Minnesota Statutes section 65B.48 entitled "Reparation Security Compulsory" as it may be amended from time to time. Minnesota Statutes 65B.48 and other sections of the Minnesota Statutes referenced therein is hereby incorporated into this ordinance by reference the same as if it were fully set forth. Such insurance policy will be filed for each and every motor vehicle for which a license is applied. Such policy of insurance will contain a provision for a continuing liability thereunder to the full amount thereof, notwithstanding any recovery thereon.

The bond or insurance shall provide for the giving of notice to the city of the termination or cancellation of the bond or policy, and every license issued hereunder shall terminate upon the termination of the bond or policy.

(1957 Code, § 900:04)

#### **§ 110.54 TERM; REVOCATION.**

All licenses so issued shall terminate on December 31 in each year after the issuance thereof, and license fees shall be for the proportion which the remaining license bears to the license fee for the entire year. Each license so issued shall be subject to revocation by the City Council upon not less than 10 days notice to the licensee to show cause why his or her license should not be revoked.

(1957 Code, § 900:05)

#### **§ 110.55 DRIVER'S LICENSE; MECHANIC'S CERTIFICATE.**

(A) No person shall operate a taxicab or auto livery unless he or she possesses the appropriate license duly issued by the State of Minnesota, and unless he or she submits to the City Council, within 2 months after the adoption of §§ 110.50 *et seq.*, and also at the other and further times as the City Council may direct, a certificate of approval on inspection of the brakes and principal mechanical operating parts of each taxicab or auto livery operated by him or her, which certificates shall be obtained from a reputable mechanic established in the business of automobile maintenance and repair.

(B) Upon request of this Council, succeeding certificates shall be issued preceding certificates, or by inspectors designated by the City Council.

(1957 Code, § 900:06) Penalty, see § 10.99

#### **§ 110.56 PASSENGERS; RATES.**

No more than one passenger shall be carried in the front seat of any taxicab or auto livery. Each taxicab or auto livery shall charge the rates as shall be approved by the Council from time to time.

(1957 Code, § 900:07)

## CHAPTER 111: PEDDLERS AND SOLICITORS

### Section

- 111.01 Definitions
- 111.02 Exceptions to definitions
- 111.03 Licensing; exemptions
- 111.04 License ineligibility
- 111.05 License suspension and revocation
- 111.06 License transferability
- 111.07 Registration
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### § 111.01 DEFINITIONS.

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

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

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

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

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

**TRANSIENT MERCHANT.** A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise, or other personal property and who does not remain or intend to remain in any 1 location for more than 14 consecutive days.

## § 111.02 EXCEPTIONS TO DEFINITIONS.

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

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

## § 111.03 LICENSING; EXEMPTIONS.

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

(B) *City license required.* Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to § 111.07.

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

- (1) Applicant's full legal name;
- (2) All other names under which the applicant conducts business or to which applicant officially answers;

- (3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, and the like);
- (4) Full address of applicant's permanent residence;
- (5) Telephone number of applicant's permanent residence;
- (6) Full legal name of any and all business operations owned, managed, or operated by applicant, or for which the applicant is an employee or agent;
- (7) Full address of applicant's regular place of business (if any);
- (8) Any and all business related telephone numbers of the applicant;
- (9) The type of business for which the applicant is applying for a license;
- (10) Whether the applicant is applying for an annual or daily license;
- (11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days);
- (12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business;
- (13) A statement as to whether or not the applicant has been convicted within the last 5 years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses;
- (14) A list of the 3 most recent locations where the applicant has conducted business as a peddler or transient merchant;
- (15) Proof of any requested county license;
- (16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant;
- (17) A general description of the items to be sold or services to be provided;
- (18) All additional information deemed necessary by the City Council;
- (19) The applicant's driver's license number or other acceptable form of identification; and



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

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the license fee, as established by the City Council. (See Appendix A).

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Administrator, within 2 regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the City Administrator determines that the application is incomplete, the City Administrator must inform the applicant of the required necessary information that is missing. If the application is complete, the City Administrator must order any investigation, including background checks, necessary to verify the information provided with the application. Within 10 regular business days of receiving a complete application, the City Administrator must issue the license unless there exist grounds for denying the license under § 111.04, in which case the Administrator must deny the license. If the City Administrator denies the license, the applicant must be notified in writing of the decision, the reason for denial, and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request. The decision of the City Council following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

(F) *Duration.* An annual license granted under this chapter shall be valid for 1 calendar year from the date of issue. All other licenses granted under this chapter shall be valid only during the time period indicated on the license.

(G) *License exemptions.*

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

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

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

#### **§ 111.04 LICENSE INELIGIBILITY.**

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

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

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

(C) The conviction of the applicant within the past 5 years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner. Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person;

(D) The revocation within the past 5 years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant; and/or

(E) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than 3 complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding 12 months, or 3 complaints filed against the applicant within the preceding 5 years.

#### **§ 111.05 LICENSE SUSPENSION AND REVOCATION.**

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

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

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

(3) Conviction of any offense for which granting of a license could have been denied under § 111.04; and/or

(4) Violation of any provision of this chapter.

(B) *Multiple persons under 1 license.* The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee shall serve as a suspension or revocation of each authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

(C) *Notice.* Prior to revoking or suspending any license issued under this chapter, the city shall

provide the license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

(D) *Public hearing.* Upon receiving the notice provided in division (C) of this section, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Administrator within 10 regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request. Within 3 regular business days of the hearing, the City Council shall notify the licensee of its decision.

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

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

Penalty, see § 10.99

#### **§ 111.06 LICENSE TRANSFERABILITY.**

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

Penalty, see § 10.99

#### **§ 111.07 REGISTRATION.**

All solicitors, and any person exempt from the licensing requirements of this chapter under § 111.03, shall be required to register with the city. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Administrator shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be nontransferable.

Penalty, see § 10.99

#### **§ 111.08 PROHIBITED ACTIVITIES.**

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

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

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

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

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

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

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

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

Penalty, see § 10.99

#### **§ 111.09 EXCLUSION BY PLACARD.**

No peddler, solicitor, or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor, or transient merchant when the property is marked with a sign or placard at least 4 inches long and 4 inches wide with print of at least 48 point in size stating "No Peddlers, Solicitors, or Transient Merchants," or "Peddlers, Solicitors, and Transient Merchants Prohibited," or other comparable statement. No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

Penalty, see § 10.99

## CHAPTER 112: ADULT USE LICENSING

### Section

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- 112.090 General conditions

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***GENERAL PROVISIONS***

**§ 112.001 FINDINGS.**

(A) The concerns which have prompted this city are similar to the concerns which motivated other communities to undertake their studies of adult entertainment uses; consequently, the results of those studies are relevant to the existing or foreseeable impacts which the uses can have on the areas surrounding them in this city and the studies have determined that adult uses have adverse secondary effects, generally, as follows: increased criminal activity (including public intoxication and prostitution); detriment to public health, safety, and welfare, including an increased risk of sexually-transmitted diseases; and areas surrounding adult uses suffer decreased property values, increased vandalism, and neighborhood blight and disinvestment.

(B) Regardless of whether or to what extent adult entertainment uses have currently had an adverse impact on the city, the experience of other cities, as documented in the numerous studies considered, confirms that regulation of adult entertainment uses is essential to prevent adverse social impacts associated with the uses.

(C) In City of Renton v. Playtime Theatres, Inc., 475 US 41 (1986), the United States Supreme Court found that a city may rely on the experiences of other cities to determine whether certain businesses have adverse secondary effects.

(D) The City of Olivia is a community of approximately 2,700 residents situated in the center of Renville County, Minnesota, and it is, in virtually all respects, a traditional small town in rural Minnesota.

(E) All of the cities in Renville County, as well as neighboring Cities of Willmar, Redwood Falls, and Granite Falls, have adopted regulations or are considering adopting the regulations on adult uses which may lead to the disproportionate dispersion of adult uses in the City of Olivia.

(F) The City of Olivia is situated in the BOLD Independent School District No. 2534. Presently, the District maintains its High School campus and an elementary campus (the Olivia site) in the southerly portion of Olivia. The campus presently serves children grades K-4 from Olivia and grades 9-12 from Olivia and neighboring communities of Bird Island and Lake Lillian. Downtown Olivia and adjacent areas are used as a gathering place for all children.

(G) The policy of the State of Minnesota, as established by M.S. § 617.291, as it may be amended from time to time, to prevent commercial exposure of minors to sexually provocative written, photographic, printed, sound, or published materials as defined therein which are deemed harmful to minors, reflects the prevailing sentiment of the residents and City of Olivia.

(H) Residential neighborhoods located within close proximity to adult theaters, bookstores, and other adult entertainment uses experience increased crime rates (sex-related crimes in particular).

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

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

(K) The City of Olivia relies on its Police Department and the Renville County Sheriffs Department for law enforcement and the City Council believes that licensing of Adult Uses-Primary to ensure the responsibility of their management would aid law enforcement.

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

(M) Provisions for licensing Adult Use-Primary businesses, as defined in Olivia ordinance(s), will help to ensure compliance with all Olivia ordinances and applicable Minnesota laws.

(N) Provisions for licensing Adult Use-Primary managers will help to ensure compliance with all Olivia ordinances and applicable Minnesota laws, and serve to reduce the risks of the adverse impacts of adult use businesses.

(O) Regulation of adult entertainment uses is essential to ensure that family values and youth values in the community are protected and provided a physical environment in which to develop in a health and wholesome manner.

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

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

(R) On 3-18-2004, the Olivia City Council enacted the Adult Use Zoning Ordinance, whereby it established zoning regulations for adult uses and the City Council has determined that business regulations, including licensing, can be coordinated with zoning regulations to afford better protection of the public health, safety, and welfare.

(Ord. 278, passed 3-18-2004)

## **§ 112.002 SHORT TITLE.**

This Ordinance shall be known, cited, and referred to as the Adult Use Licensing Ordinance except as referred to herein, where it shall be known as this chapter.

(Ord. 278, passed 3-18-2004)

## **§ 112.003 DEFINITIONS.**

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

***ADULT BOOKSTORE.*** A building or portion of a building used for the barter, rental, or sale of items consisting of adult media if the building or portion of a building is not open to the public generally but only to 1 or more classes of the public excluding any minor by reason of age or if a substantial or significant portion of the items are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.



***ADULT CABARET.*** A building or portion of a building used for providing dancing or other live entertainment, if the building or portion of a building excludes minors by virtue of age or if the dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction, or description of specified sexual activities or specified anatomical areas.

***ADULT MEDIA.*** Includes printed matter, magazines, newspapers, books, pictures, slides, records, audio tape, videotape, motion picture film, compact discs, digital video discs, floppy discs, and other communicative materials which are distinguished or characterized by their emphasis on the presentation, display, depiction, or description of specified sexual activities or specified anatomical areas.

***ADULT MINI-MOTION PICTURE THEATER.*** A building or portion of a building with a capacity for less than 50 persons used for presenting material if the building or portion of a building as a prevailing practice excludes minors by virtue of age, or if the material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

***ADULT MOTION PICTURE ARCADE.*** Any place to which the public is permitted or invited wherein coin- or slug-operated or electronically, electrically, or mechanically controlled or operated still or motor picture machines, projectors, or other image-producing devices are maintained to show images to 5 or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

***ADULT MOTION PICTURE THEATER.*** A building or portion of a building with a capacity of 50 or more persons used for presenting material if the building or portion of a building as a prevailing practice excludes minors by virtue of age or if the material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

***ADULT NOVELTY BUSINESS.*** A business which has as its principal activity the sale of devices which stimulate human genitals or devices which are designated for sexual stimulation.

***ADULT USES.*** Include enterprises, establishments, businesses, or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction, or description of specified sexual activities or specified anatomical areas which are capable of being seen by members of the public. Licensed or accredited veterinary, medical, or educational establishments shall not be considered adult uses.

**ADULT USE-PRIMARY.** An adult bookstore, adult cabaret, adult mini-motion picture theater, adult motion picture arcade, adult motion picture theater, adult novelty business, or any other use, business, or establishment meeting any of the following:

(1) Advertising, or otherwise holding itself out, in any forum as featuring adult, hardcore, XXX, sex or otherwise as an adult use, despite having 10% or less of its stock in trade or floor area allocated to, or 20% or less of its gross receipts derived from adult media rentals or sales for the customer's private use off-premises;

(2) Having more than 10% of its stock in trade or floor area allocated to, or more than 20% of its gross receipts derived from adult media rentals or sales;

(3) Providing any form of on-premises entertainment with an emphasis on the presentation, display, depiction, or description of specified sexual activities or specified anatomical areas; and/or

(4) An adult use not meeting the definition of adult use-incidental or adult use-nonprotected in the Adult Use Zoning Ordinance.

**LIVE ENTERTAINMENT.** An employee, agent, or independent contractor of an Adult Use-Primary, whether or not paid a salary, wages, or other compensation, who performs a dance routine, exhibition, or other live performance distinguished or characterized by an emphasis on the presentation, display, depiction, or description of specified sexual activities or specified anatomical areas during the course of the routine, exhibition, or performance.

**PATRON.** Any spectator, customer, club-member, invitee, or member of the public invited or allowed to attend, whether or not an admission charge or dues is levied, an Adult Use-Primary for the purpose of viewing, purchasing, or renting an exhibition, performance, presentation, display, depiction, or description of specified sexual activities or specified anatomical areas.

**PREMISES.** The real property upon which the Adult Use-Primary is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the licensed establishment, the grounds, sidewalks, and walkways not in the public right-of-way and parking lots or garages under the ownership, control, or supervision of the Adult Use-Primary.

**PRINCIPAL OWNER(S).** Sole proprietor if the business is a sole proprietorship, all individual partners in a partnership who hold more than a 5% interest in the partnership, the general and/or limited partners in a limited liability partnership if the partner or limited partner holds more than a 5% interest in the limited liability partnership, all members of a limited liability company who hold more than a 5% interest in the limited liability company, principal stockholders of a corporation (having ownership of more than 5% of outstanding issued shares). In the event no **PRINCIPAL OWNER** for the business entity is identified pursuant to the foregoing criteria, the **PRINCIPAL OWNER** shall be determined to be the individual or individuals with managerial decision making power, i.e., the right to hire, fire, and enter into contracts on behalf of the Adult Use-Primary.

***SPECIFIED ANATOMICAL AREAS.***

- (1) Less than completely and opaquely covered human genitalia, pubic region, perineum anal region, natal cleft, or the nipple and/or areola of the female breast(s).
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

***SPECIFIED CRIMINAL ACTIVITY.***

- (1) Prostitution or promotion of prostitution; dissemination of obscenity of a sexual nature; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries.
- (2) For which:
  - (a) Less than 3 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense, or offense with a maximum penalty of 1 year or less imprisonment; or
  - (b) Less than 10 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense, or offense with a maximum penalty of greater than 1-year imprisonment.
- (3) Whether or not a conviction is being appealed shall not be considered in the implementation of this chapter.

***SPECIFIED SEXUAL ACTIVITIES.***

- (1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty, pygmalionism, urolagia;
- (2) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;
- (4) Fondling or touching of nude human genitals, pubic region, buttocks, or female breast;

(5) Situations involving a person or persons, any of whom are in a state of nudity, or clad in undergarments or in sexually-revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint of those persons;

(6) Erotic or lewd touching, fondling, or other sexually-oriented contact with an animal by a human being; or

(7) Human erection, urination, menstruation, vaginal or anal irrigation.

***STATE OF NUDITY.***

(1) The showing of the human male or female genitalia, pubic hair, perineum anal region, or natal cleft with less than a fully opaque covering;

(2) The showing of the female breast with less than a fully opaque covering of any part of the nipple and/or areola;

(3) The exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region, or pubic hair region; or

(4) The exposure of any device worn as a cover over the nipple and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.  
(Ord. 278, passed 3-18-2004)

**§ 112.004 VIOLATIONS; EFFECTIVE DATE.**

*(A) Violations.*

(1) Any person violating the provisions of this chapter is guilty of a misdemeanor.

(2) The City Council shall impose a civil penalty of up to \$2,000 for each violation of this chapter as provided by the minimum schedule of presumptive civil penalties. These civil penalties shall be in addition to any criminal penalties imposed under division (A) or any suspension or revocation imposed under this chapter. Conviction of a violation in a court of law is not required for the City Council to impose the civil penalty. A hearing under the Administrative Procedures Act, M.S. §§ 14.57 through 14.69, as they may be amended from time to time, is not required before the penalty is imposed, but the City Council shall hold a hearing on the proposed violation and the proposed penalty and hear

any person who wishes to speak. Nonpayment of the penalty is grounds for suspension or revocation of the manager license. The following is the minimum schedule of presumptive civil penalties in addition to any suspensions which must be imposed for each violation unless the manager license is revoked:

- (a) For the first violation within any 3-year period. (See Appendix A);
- (b) For the second violation within any 3-year period. (See Appendix A); and
- (c) For the third and subsequent violations within any 3-year period. (See Appendix A).

(B) *Effective date.*

(1) A. This chapter shall be in full force and effect immediately upon its passage and execution.

(2) (a) The Council hereby determines that the text of the summary of this chapter entitled, “Official Title and Summary”, Code section 112.005, clearly informs the public of the intent and effect of this chapter.

(b) The Council further determines that publication of the title and this summary will clearly inform the public of the intent and effect of this chapter.  
(Ord. 278, passed 3-18-2004) Penalty, see § 10.99

**§ 112.005 OFFICIAL TITLE AND SUMMARY.**

(A) *Title.* An Ordinance Regulating the Operation and Management of Adult Uses-Primary Within the City of Olivia.

(B) *Summary.* The City Council of the City of Olivia does hereby ordain as follows:

The Ordinance incorporates findings made by the Olivia City Council following a Public Hearing. The Ordinance also defines adult uses. The ordinance also provides that any adult use business must obtain a Business License; provides for fees incident to the application for such License; the procedures and fees for applications for such Licenses; conditions and restrictions surrounding the issuance of such License; establishes the term, and procedures for renewal and transfer, of a Business License; facility requirements; and penalties for violations of the License. The Ordinance also requires the Manager of any adult business to have a Manager License; provides for fees incident to the application for such License; provides for the investigation of Applicants; establishes the term, and procedures for renewal and transfer, of a Manager License; and restrictions and conditions of issuance and penalties for violations of the Manager License.

(C) *Notice.* This Title and Summary have been published to clearly inform the Public of the intent and effect of the City of Olivia’s Ordinance Regulating the Operation and Management of Adult Uses-Primary

within the City of Olivia. A copy of the Ordinance, in its entirety, is available for inspection by any person during regular office hours at the offices of the City Administrator of the City of Olivia, 1009 West Lincoln Avenue, Olivia, Minnesota 56277.  
(Ord. 278, passed 3-18-2004)

## ***BUSINESS LICENSE***

### **§ 112.015 BUSINESS LICENSE REQUIRED.**

It shall be unlawful for any person or entity to operate an Adult Use(s)-Primary at any premises without a valid Adult Use-Primary business license issued by the City Administrator pursuant to this chapter. An Adult Use(s)-Primary operating without a valid Adult Use-Primary business license shall be considered a public nuisance under Chapter 92. The applicant or licensee has an affirmative duty to supplement an application with new information received subsequent to the date the application was completed or business license was issued.

(Ord. 278, passed 3-18-2004) Penalty, see § 10.99

### **§ 112.016 BUSINESS LICENSE FEES.**

(A) The fee for an Adult Use-Primary business shall be as set and amended by the City Council from time to time. The business license fee may not exceed the cost of issuing the business license and other costs directly related to the enforcement of this chapter; no business license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected business licenses at least 45 days before the hearing.

(B) All business license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the business license fee shall be returned to the applicant.

(Ord. 278, passed 3-18-2004)

### **§ 112.017 TERM AND EXPIRATION OF LICENSE.**

Each business license shall be issued for a maximum period of 1 year from the date of issuance by the City Administrator.

(Ord. 278, passed 3-18-2004)

### **§ 112.018 APPLICATION FOR BUSINESS LICENSE.**

(A) Every application for a business license issued under this chapter shall be on a form provided by the city and shall be substantially the same as that application located in the Appendix to this Code and entitled Adult Use-Primary Business License Application Form. The application shall be verified, filed

with the city, and accompanied by the documents and materials described on the application. No person shall make a false statement in an application. In the event the applicant is an entity, the principal owner(s) shall be considered the applicant.

(B) Every application for a business license shall contain a statement under oath that:

(1) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is complete, true, and correct; and

(2) The applicant has personal knowledge of the provisions of this chapter, the Adult Use Zoning Ordinance, and the zoning code of the City of Olivia.  
(Ord. 278, passed 3-18-2004) Penalty, see § 10.99

### **§ 112.019 MANAGERIAL RESPONSIBILITY.**

Prior to the issuance of an Adult Use-Primary business license, the applicant shall demonstrate proof of managerial responsibility. Proof of managerial responsibility shall consist of one or more licensed manager(s) with valid Adult Use-Primary manager business license(s), or complete application for the business license(s). Proof of managerial responsibility is a continuing condition of the business license.  
(Ord. 278, passed 3-18-2004)

### **§ 112.020 INVESTIGATION.**

(A) *Preliminary background investigation.* On an initial application for a business license or transfer of a business license, the City Council shall cause to be conducted a preliminary background investigation. The applicant shall pay with the application a preliminary investigation fee which shall be in addition to any business license fee. If the actual cost of the preliminary investigation is less than the preliminary investigation fee, the unused portion shall be returned to the applicant.

(B) *Comprehensive background investigation.* If the results of a preliminary investigation warrant a comprehensive background investigation, then the city may conduct or cause to be conducted a comprehensive background investigation. The applicant shall pay a fee for a comprehensive background investigation. The fee for a comprehensive background investigation is the amount established by the City Council and listed in the fee schedule. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied.  
(Ord. 278, passed 3-18-2004)

### **§ 112.021 COUNCIL APPROVAL OF BUSINESS LICENSE.**

Pursuant to this chapter, the City Council may either grant or deny the initial application, including

transfer, for any business license. The City Council shall complete any investigation and make its decision consistent with the time periods and procedures provided by M.S. § 15.99, as it may be amended from time to time. No applicant has a right to a business license under this chapter.

(Ord. 278, passed 3-18-2004)

#### **§ 112.022 APPLICATIONS FOR RENEWAL.**

Any application for renewal shall be filed with the City Administrator at least 15, and not more than 30, days before the expiration of a business license issued under this chapter. If there have been no violations of the license, no background investigation pursuant to § 112.020 is required. The decision whether or not to renew a business license will be based upon compliance with this chapter and standards set forth herein. The City Council shall make its decision within 15 days of the city's receipt of a completed application. No licensee has a right to have the business license renewed.

(Ord. 278, passed 3-18-2004)

#### **§ 112.023 TRANSFER OF BUSINESS LICENSE.**

No business license issued under this chapter may be transferred without the approval of the City Council. Any transfer of stock of a corporate licensee resulting in a change in the principal owners is deemed to be a transfer of the business license, and a transfer of stock without prior City Council approval is a ground for revocation of the business license. An application to transfer a business license shall be treated the same as an application for a new business license, and all of the provisions of this chapter applying to applications for a business license shall apply.

(Ord. 278, passed 3-18-2004) Penalty, see § 10.99

#### **§ 112.024 RESTRICTIONS ON ISSUANCE.**

(A) Each Adult Use-Primary business license shall be issued only to the applicant for only the premises described in the application.

(B) No Adult Use-Primary business license shall be granted to an individual or entity in the event a principal owner is under the age of 18.

(C) No Adult Use-Primary business license shall be granted or renewed for operation on any premises without evidence of the legally enforceable right of the owner or proposed owner of the Adult Use-Primary to have or obtain the use and possession of the tract.

(D) No Adult Use-Primary business license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid.



(E) No Adult Use-Primary business license shall be granted or renewed for operation on any premises located in a zone other than a commercial or industrial zone.

(F) No Adult Use-Primary business license shall be granted or renewed for operation on any premises located on property within 300 feet of any R-1 or R-2 Districts or otherwise in violation of the Olivia Adult Use Zoning. The distance is to be measured in a direct line from property line to property line without regard for intervening properties or structures.

(G) No Adult Use-Primary business license shall be granted to an individual or an entity in the event 1 or more principal owner(s) has been convicted of a specified criminal activity which is a felony.

(H) No Adult Use-Primary business license shall be granted to an individual or an entity in the event 1 or more principal owner(s) has been convicted of specified criminal activities or had similar adult use business licenses, at 1 or more locations, suspended, denied, or revoked, whereby the violations would exceed 10 accumulated points under § 112.055.

(I) No Adult Use-Primary business license shall be granted or renewed to an individual or an entity in the event 1 or more principal owner(s) has had an Adult Use-Primary business license revoked under the provisions of this chapter within the past 5 years.  
(Ord. 278, passed 3-18-2004)

#### **§ 112.025 APPEAL OF DENIED BUSINESS LICENSE.**

If the applicant alleges that a business license was denied in error, the status quo will remain in effect pending the outcome of a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 through 14.69, as they may be amended from time to time. The City Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.  
(Ord. 278, passed 3-18-2004)

### ***BUSINESS LICENSE CONDITIONS***

#### **§ 112.040 GENERAL CONDITIONS.**

(A) The failure of a licensee to meet any 1 of the following conditions of the business license specified below shall result in a suspension or revocation of the business license.

(B) (1) Every licensee is responsible for the conduct within the place of business. The act of any employee, while on the premises, is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.

(2) The licensee is responsible for having the issued Adult Use-Primary business license posted and clearly visible and readable to the public in a prominent location.

(3) The licensee is responsible for having posted and clearly visible and readable to the public in a prominent location a sign indicating the following information.

- (a) The Adult Use-Primary is licensed by the City of Olivia.
- (b) No patron is allowed on a stage, if applicable, or in any area posted as nonpublic.
- (c) No person shall interfere with a peace officer.
- (d) All patrons must leave the premises within 30 minutes after the close of hours of operation.
- (e) Use and possession of controlled substances is prohibited.
- (f) Sale and consumption of alcohol is prohibited, if applicable.
- (g) State of nudity is prohibited in public areas, excluding restrooms.
- (h) Prostitution and solicitation are prohibited.
- (i) Intercourse, masturbation, and other directly physical sexual stimulation are prohibited.
- (j) If applicable, touching between patrons and live entertainment is prohibited.

(4) The licensee is responsible for having entrances to nonpublic areas clearly posted or marked as nonpublic or otherwise held out as off-limits to patrons.

(5) The licensee is responsible for having the issued Adult Use-Primary manager business license(s) for the on-duty manager(s) posted and clearly visible and readable to the public. The posted business license is deemed evidence that the manager is on duty and responsible for conduct on the premises.

(6) Every licensee shall allow, without a warrant, any peace officer, health officer, city employee, or any other person designated by the City Council to conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours during the time when patrons remain on the premises.

(7) One or more manager stations are required to maintain visibility of all public areas within the Adult Use-Primary.

- (a) 1. The interior of the Adult Use-Primary shall be configured in a manner so that there is

an unobstructed view from the manager station(s) of the entire area of the Adult Use-Primary to which any patron is permitted access for any purpose excluding restrooms.

2. If the Adult Use-Primary has 2 or more manager stations designated, then the interior shall be configured in a manner so that there is an unobstructed view of the every area of the Adult Use-Primary to which any patron is permitted access for any purpose from at least 1 of the manager stations. The view required in this division (B)(7)(a) must be by direct line of sight from the manager station.

(b) A manager station may not exceed 32 square feet in a compact and contiguous area.

(c) It is the duty of the licensee of the Adult Use-Primary to ensure that at least 1 licensed manager is on duty and situated in each manager station at all times that any patron is present inside the Adult Use-Primary.

(d) It shall be the duty of the licensee, and it shall also be the duty of any licensed manager present in the Adult Use-Primary, to ensure that the view area specified in division (B)(7)(a) above remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times.

(e) It shall be the duty of the licensee, and it shall also be the duty of any licensed manager present in the Adult Use-Primary, to ensure that no patron is permitted access to any area of the premises that has been designated as a nonpublic area.

(8) The Adult Use-Primary shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 5.0 foot-candle as measured at 3 feet above floor level. It shall be the duty of the operator, and it shall also be the duty of any licensed manager present in the Adult Use-Primary, to ensure that the illumination described above is maintained at all times that any patron is present in the Adult Use-Primary.

(9) The exterior of the premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every parking area, driving lanes, sidewalks, and an area 20 feet in front of all doors at an illumination of not less than 1.5 foot-candle as measured at the ground. It shall be the duty of the operator, and it shall also be the duty of any licensed manager present at the premises, to ensure that the illumination described above is maintained at all times that any patron is present at the premises.

(10) Hours of operation, open to patrons, are limited to between 8:00 a.m. and 12:30 a.m. of the subsequent calendar day on Sundays through Thursdays.

(11) Hours of operation, open to patrons, are limited to between 1:00 p.m. and 12:30 a.m. of the subsequent calendar day, except that operation is prohibited after 12:30 a.m. on Sundays.

(12) No patron shall remain on the premises, including parking and other exterior areas, more than 30 minutes after the close of hours of operation.

(13) The possession or use of a controlled substance as defined under M.S. Ch. 152, as it may be amended from time to time, is prohibited on the premises.

(14) The sale or consumption of intoxicating liquor or 3.2% malt liquor in violation of Chapter 116 of this Code is prohibited at the Adult Use-Primary.

(15) Prostitution, solicitation, inducement, or promotion of prostitution, or coercion of prostitution as defined under M.S. §§ 609.321 through 609.322 and 611A.80, as they may be amended from time to time, is prohibited on the premises.

(16) No person shall be in a state of nudity in any area of the premises to which any patron is permitted access for any purpose, excluding restrooms.

(17) Engaging in sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, masturbation, bestiality; direct physical stimulation of the male or female genitalia, pubic hair, perineum anal region or natal cleft or the female breast, whether clothed or unclothed; flagellation or torture in the context of a sexual relationship; use of human or animal ejaculation, or the use of excretory functions in the context of a sexual relationship; and any of the following sexual-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty, pygmalionism, urolagia is prohibited on the premises.

(18) The licensee is responsible for maintaining the cleanliness and sanitary condition of the premises.

(Ord. 278, passed 3-18-2004) Penalty, see § 10.99

#### **§ 112.041 CONDITIONS ON PHYSICAL DESIGN.**

(A) No openings of greater than 1 square inch or less than 4 square feet shall be permitted in any wall or partition adjoining between rooms, booths, or other enclosed or semi-enclosed areas of under 150 square feet.

(B) All surfaces within 48 inches of the floor in all rooms, booths, or other enclosed or semi-enclosed areas of under 150 square feet shall be constructed of, or permanently covered by, nonporous, easily cleanable material.

(C) Restrooms may not contain video transmission or reproduction equipment.

(D) Exterior windows shall be opaque, screened, or otherwise maintained to prevent viewing of merchandise or entertainment from outside the Adult Use-Primary.

(E) Exterior signage shall not include any photograph, drawing, silhouette, or other caricature depicting specified anatomical areas or specified sexual activities.

(F) An Adult Use-Primary offering live entertainment must have a stage or surface at least 18 inches above floor level. The stage must have a bar, railing, fence, or similar barrier, with a height between 42 inches and 54 inches, at least 60 inches away from the stage or a solid, floor-to-ceiling wall, window or similar barrier. The stage and the area between stage and railing shall be designated a nonpublic area. (Ord. 278, passed 3-18-2004) Penalty, see § 10.99

**§ 112.042 CONDITIONS ON LIVE ENTERTAINMENT.**

(A) Live entertainment, whether in a state of nudity or clothed, shall not touch any patron.

(B) No patron shall touch any live entertainment, whether in a state of nudity or clothed.

(C) Live entertainment, whether in a state of nudity or clothed, shall be performed only upon a stage or surface at least 18 inches above floor level. No patron shall be allowed on the stage.

(D) Live entertainment, whether in a state of nudity or clothed, shall be performed behind 1 of the following.

(1) A bar, railing, fence, or other similar barrier to keep patrons at least 60 inches away from all parts of the stage. The bar, railing, fence, or other similar barrier shall be at least 42 inches and not more than 54 inches above floor level.

(2) A solid, floor-to-ceiling wall, window, or other similar barrier to prevent physical contact between patrons and live entertainment. No opening in the barrier is permitted.

(E) Live entertainment, in a state of nudity, is prohibited at a licensed liquor establishment.

(F) The licensee shall keep on file the full name, any aliases, including stage names, addresses, and proof of age of all live entertainment. The records shall be maintained for a period of at least 3 years. (Ord. 278, passed 3-18-2004) Penalty, see § 10.99

***VIOLATIONS OF BUSINESS LICENSE***

**§ 112.055 SUSPENSION AND REVOCATION.**

(A) The City Council shall either suspend or revoke any business license upon finding that the licensee has failed to comply with any provision of this chapter. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 through 14.69, as they may be amended from time to time. The City Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

(B) Points are to be assigned according to the following schedule.

(1) Violations meriting 5 points include commission by the licensee, or principal owner, of a specified criminal activity that is a misdemeanor, whether on or off the premises; commission by the licensee, or principal owner, of use or possession of a controlled substance while on the premises; revocation of an adult use business license issued by another municipality or county; operation of an Adult Use-Primary without a valid Adult Use-Primary business license.

(2) Violations meriting 3 points include false statement or omission in the business license application or failure to provide subsequent information that would not have resulted in the revocation or denial of the business license; nonpayment of civil fines imposed under this chapter; interference with inspections or enforcement; commission by licensed manager of a specified criminal activity that is a felony while on the premises; allowing live entertainment under age 18; occurrence of prostitution, solicitation, inducement, or promotion of prostitution or coercion for prostitution on the premises.

(3) Violations meriting 2 points include commission by any person other than the licensee, or principal owner, or a licensed manager of a specified criminal activity that is a felony while on the premises; commission by a licensed manager of a specified criminal activity that is a misdemeanor while on the premises; failure to have a licensed manager on duty; allowing a minor to patronize the Adult Use-Primary; allowing live entertainment in a prohibited area; allowing the patrons into a nonpublic area, including remaining on the premises after hours; allowing prohibited touching between patron and live entertainment; allowing on the premises sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, masturbation, bestiality, direct physical stimulation of the male or female genitalia, pubic hair, perineum anal region or natal cleft or the female breast, whether clothed or unclothed, flagellation or torture in the context of a sexual relationship, use of human or animal ejaculation, or the use of excretory functions in the context of a sexual relationship; failure to maintain visibility or lighting requirements.

(4) Violations meriting 1 point include suspension of an adult use business license issued by another municipality or county; failure to post business license; failure to post any required signs; failure to maintain required live entertainment records; failure to maintain physical design requirements; allowing prohibited sale or consumption of intoxicating liquor or 3.2% malt liquor on the premises; failure to maintain cleanliness; commission by any person other than the licensee, or principal owner, or a licensed manager of a specified criminal activity that is a misdemeanor while on the premises.

(C) (1) Points are cumulative and remain on business license, including a renewed business license, for 3 years.

(2) Occurrences continuing for more than 1 day shall be considered separate occurrences for each day.

(3) Each occurrence of a violation shall be considered a separate violation; where the occurrence of a single violation may be assigned more than 1 point classification under division (B) above, the greater value shall be assigned.

(4) Violations will be cited in writing with opportunity for appeal.

(5) Failure to appeal shall be deemed to indicate no contest to the charge.

(D) The business license shall be suspended by the City Council after a finding under division (A) above that the licensee has failed to comply with any provision of this chapter for at least the minimum periods below. The City Council shall select the day or days during which the business license will be suspended:

(1) For 1 point, a 1-day suspension in addition to any criminal or civil penalties which may be imposed;

(2) For 2 points accumulated within any 3-year period; a 3-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(3) For 3 points accumulated within any 3-year period, a 4-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(4) For 4 points accumulated within any 3-year period, a 7-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(5) For 5 points accumulated within any 3-year period, a 10-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(6) For 6 points accumulated within any 3-year period, a 14-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(7) For 7 points accumulated within any 3-year period, a 21-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(8) For 8 points accumulated within any 3-year period, a 28-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(9) For 9 points accumulated within any 3-year period, a 35-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed; and

(10) For 10 points accumulated within any 3-year period, a 42-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

(E) The following are cause for revocation which shall be imposed by the City Council for violations of the provisions of this chapter. Revocations shall occur within 60 days following a violation for which the revocation is imposed:

(1) For over 10 points, violation within any 3-year period;

(2) For discovery of a false statement or omission in the business license application or failure to provide subsequent information that would have resulted in the denial or revocation of the business license; and

(3) For commission by the licensee, or a principal owner, of a specified criminal activity that is a felony, whether on or off the premises.

(Ord. 278, passed 3-18-2004)

### ***MANAGER LICENSE***

#### **§ 112.070 MANAGER LICENSE REQUIRED.**

It shall be unlawful for any person to manage an Adult Use-Primary without a valid Adult Use-Primary manager license issued by the City Administrator pursuant to this chapter. The applicant or licensee has an affirmative duty to supplement an application with new information received subsequent to the date the application was completed or manager license was issued.

(Ord. 278, passed 3-18-2004) Penalty, see § 10.99

#### **§ 112.071 MANAGER LICENSE FEES.**

(A) The fee for an Adult Use-Primary manager license shall be established by the City Council. (See Appendix A). The City Council may amend from time to time by resolution the manager license fee. The manager license fee may not exceed the cost of issuing the manager license and other costs directly related to the enforcement of this chapter; no manager license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected manager licenses at least 45 days before the hearing.

(B) All manager license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the manager license fee shall be returned to the applicant.

(Ord. 278, passed 3-18-2004)



**§ 112.072 TERM AND EXPIRATION OF MANAGER LICENSE.**

A manager license shall be valid only at a specific licensed Adult Use-Primary. Each manager license shall coincide with the expiration date of the Adult Use-Primary business manager license for which it is issued.

(Ord. 278, passed 3-18-2004)

**§ 112.073 APPLICATION FOR MANAGER LICENSE.**

(A) Every application for a manager license issued under this chapter shall be on a form provided by the city and shall be substantially the same as that application located in the Appendix to this Code and entitled Adult Use-Primary Manager License Application Form. The application shall be verified, filed with the city, and accompanied by the documents and materials described on the application. No person shall make a false statement in an application.

(B) Every application for a manager license shall contain a statement under oath that:

(1) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is complete, true, and correct;

(2) The applicant has personal knowledge of the provisions of this chapter, the Adult Use Zoning Ordinance, and the zoning code of the City of Olivia; and

(3) The applicant acknowledges the responsibility of management provisions of this chapter.  
(Ord. 278, passed 3-18-2004) Penalty, see § 10.99

**§ 112.074 INVESTIGATION.**

(A) *Preliminary background investigation.* On an initial application for a manager license, the City Council shall cause to be conducted a preliminary background investigation. The applicant shall pay with the application an investigation fee, which shall be in addition to any manager license fee. (See Appendix A). If the actual cost of the preliminary investigation is less than the investigation fee, the unused portion shall be returned to the applicant.

(B) *Comprehensive background investigation.* If the results of a preliminary investigation warrant, in the sound discretion of the City Council, a comprehensive background investigation, the city may cause to be conducted a comprehensive background investigation. The applicant shall pay a fee for a comprehensive background investigation. The fee for a comprehensive background investigation is the amount established by the City Council and listed in the fee schedule. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable.

(Ord. 278, passed 3-18-2004)

**§ 112.075 COUNCIL APPROVAL OF MANAGER LICENSE.**

Pursuant to § 112.078 of this chapter, the City Council may either grant or deny the initial application, including transfer, for any manager license. The City Council shall complete any investigation and make its decision consistent with the time periods and procedures provided by M.S. § 15.99, as it may be amended from time to time. No applicant has a right to a manager license under this chapter.  
(Ord. 278, passed 3-18-2004)

**§ 112.076 APPLICATIONS FOR RENEWAL.**

(A) At least 15 days, and not more than 30 days, before the expiration of a manager license issued under this chapter, an application for renewal of the license, if one is desired, shall be filed with the City Administrator.

(B) No background investigation pursuant to this chapter is required with an application for renewal of a manager license.

(C) Pursuant to this chapter, the decision whether or not to renew a manager license rests within the sound discretion of the City Council.

(D) The City Council shall make its decision within 15 days of the city's receipt of a completed application. No licensee has a right to have the manager license renewed.  
(Ord. 278, passed 3-18-2004)

**§ 112.077 TRANSFER OF MANAGER LICENSE.**

No manager license issued under this chapter may be transferred to another individual, premises, or licensed Adult Use-Primary.  
(Ord. 278, passed 3-18-2004) Penalty, see § 10.99

**§ 112.078 RESTRICTIONS ON ISSUANCE.**

(A) Each Adult Use-Primary manager license shall be issued only to the applicant for the Adult Use-Primary described in the application.

(B) No Adult Use-Primary manager license shall be granted or renewed for operation on any Adult Use-Primary which does not hold a valid business license.

(C) No Adult Use-Primary manager license shall be issued to an individual under the age of 18.

(D) No Adult Use-Primary manager license shall be issued to an individual who has been convicted of, or pleaded guilty to a specified criminal activity which is a felony.

(E) No Adult Use-Primary manager license shall be granted to an individual who has been convicted of, or pleaded guilty to specified criminal activities or had similar adult use manager licenses, at 1 or more locations, suspended, denied, or revoked, whereby the violations would exceed 10 accumulated points under § 112.105.

(F) No Adult Use-Primary manager license shall be granted or renewed to an individual who has had an Adult Use-Primary business license or Adult Use-Primary manager license revoked under the provisions of this chapter within the past 5 years.  
(Ord. 278, passed 3-18-2004)

**§ 112.079 APPEAL OF DENIED MANAGER LICENSE.**

(A) If the applicant alleges that a manager license was denied in error, the status quo will remain in effect pending the outcome of a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 through 14.69, as they may be amended from time to time.

(B) The City Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.  
(Ord. 278, passed 3-18-2004)

***MANAGER LICENSE CONDITIONS***

**§ 112.090 GENERAL CONDITIONS.**

(A) The failure of a licensee to meet any 1 of the following conditions of the manager license specified below shall result in a suspension or revocation of the manager license.

(B) (1) When the licensee is managing the Adult Use-Primary, he or she is responsible for the conduct on the premises.

(2) When the licensee is managing the Adult Use-Primary, he or she is responsible for ensuring that his or her Adult Use-Primary manager license is posted and clearly visible and readable to the public. The posted manager license is deemed evidence that the manager is on duty and responsible for conduct on the premises.

(3) When the licensee is managing the Adult Use-Primary, he or she is responsible for maintaining his or her position in the designated manager station.

(4) When the licensee is managing the Adult Use-Primary, he or she shall not be in a state of nudity.

(5) When the licensee is managing the Adult Use-Primary, he or she shall not have a blood alcohol content exceeding 0.04 or be in the possession or use of a controlled substance.  
(Ord. 278, passed 3-18-2004) Penalty, see § 10.99

### ***MANAGER LICENSE VIOLATIONS***

#### **§ 112.105 SUSPENSION AND REVOCATION.**

(A) The City Council shall either suspend or revoke any license upon finding that the licensee has failed to comply with any provision of this chapter. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 through 14.69, as they may be amended from time to time. The City Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

(B) Points are to be assigned according to the following schedule:

(1) Violations meriting 5 points include commission by the licensee of a specified criminal activity that is a misdemeanor, whether on or off the premises; commission by the licensee of use or possession of a controlled substance while on the premises; revocation of an adult use license issued by another municipality or county; managing without a valid Adult Use-Primary manager license;

(2) Violations meriting 3 points include false statement or omission in the manager license application or failure to provide subsequent information that would not have resulted in the revocation or denial of the manager license; nonpayment of civil fines imposed under this chapter interference with inspections or enforcement; failure to post manager license or maintain position at manager station while on duty; allowing performance by live entertainment underage 18; occurrence of prostitution, solicitation, inducement, or promotion of prostitution or coercion for prostitution on the premises;

(3) Violations meriting 2 points include allowing a minor to patronize the Adult Use-Primary; allowing live entertainment in a prohibited area; allowing prohibited touching between patron and live entertainment; allowing the patrons into a nonpublic area, including remaining on the premises after hours; allowing on the premises sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, masturbation, bestiality, direct physical stimulation of the male or female genitalia, pubic

hair, perineum anal region or natal cleft or the female breast, whether clothed or unclothed, flagellation or torture in the context of a sexual relationship, use of human or animal ejaculation, or the use of excretory functions in the context of a sexual relationship; failing to maintain visibility or lighting requirements; allowing prohibited sale or consumption of intoxicating liquor or 3.2% malt liquor on the premises; and

(4) Violations meriting 1 point include suspension of an adult use license issued by another municipality or county; having blood alcohol content exceeding 0.04; failure to maintain cleanliness, failure to maintain physical design requirements.

(C) Points are cumulative and remain on manager license, including a renewed manager license, for 3 years. Occurrences continuing for more than 1 day shall be considered separate occurrences for each day when the licensee was on duty; each occurrence shall be considered a separate violation. Where the occurrence of a single violation may be assigned more than 1 point classification under division (B) above, the greater value shall be assigned. Violations will be cited in writing with opportunity for appeal. Failure to appeal shall be deemed to indicate no contest to the charge.

(D) The manager license shall be suspended by the City Council after a finding under division (A) above that the licensee has failed to comply with any provision of this chapter for at least the minimum periods below. The City Council shall select the day or days during which the manager license will be suspended:

(1) For 1 point, a 1-day suspension in addition to any criminal or civil penalties which may be imposed;

(2) For 2 points accumulated within any 3-year period, a 3-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(3) For 3 points accumulated within any 3-year period, a 4-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(4) For 4 points accumulated within any 3-year period, a 7-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(5) For 5 points accumulated within any 3-year period, a 10-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(6) For 6 points accumulated within any 3-year period, a 14-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(7) For 7 points accumulated within any 3-year period, a 21-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(8) For 8 points accumulated within any 3-year period, a 28-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(9) For 9 points accumulated within any 3-year period, a 35-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed; and

(10) For 10 points accumulated within any 3-year period, a 42-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed;

(E) The following are cause for revocation which shall be imposed by the City Council for violations of the provisions of this chapter. Revocations shall occur within 60 days following a violation for which the revocation is imposed:

(1) For over 10 points, violation within any 3-year period;

(2) For discovery of a false statement or omission in the manager license application or failure to provide subsequent information that would have resulted in the denial or revocation of the manager license; and

(3) For commission by the licensee of a specified criminal activity that is a felony, whether on or off the premises.

(Ord. 278, passed 3-18-2004)

## CHAPTER 113: TELECOMMUNICATIONS

### Section

- 113.01 Definitions
- 113.02 Permit procedure
- 113.03 Restoration and relocation
- 113.04 Company default
- 113.05 Public grounds use permitting regulations

### § 113.01 DEFINITIONS.

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

**CITY ADMINISTRATOR.** The City Administrator or designated representative.

**COMPANY.** A natural or corporate person, business association, political subdivision, public or private agency of any kind, its successors and assigns, who or which seeks or is required to construct, install, operate, repair, maintain, remove, or relocate facilities in the city.

**FACILITIES.** Telecommunications equipment of any kind, including but not limited to audio, video, paging, facsimile, or similar service, not governed by M.S. Ch. 238, as it may be amended from time to time, including all trunks, lines, circuits, physical connections, switching equipment, wireless communication equipment of all kinds, and any necessary appurtenances owned, leased, or operated by a company on, over, in, under, across, or along public ground.

**PUBLIC GROUND.** Highways, roads, streets, alleys, public ways, utility easements, and public grounds in the city.  
(Ord. 245, passed 9-5-1995)

### § 113.02 PERMIT PROCEDURE.

A company may not construct, install, repair, remove, or relocate facilities, or any part thereof, in, on, over, under, or along public ground without first obtaining a permit from the city.  
(Ord. 245, passed 9-5-1995) Penalty, see § 10.99

### § 113.03 RESTORATION AND RELOCATION.

(A) *Restoration.*

(1) Upon completion of the work, the company must restore the general area of the work, including paving and its foundations, to the same condition that existed prior to commencement of the work and must exercise reasonable care to maintain the same condition for 2 years thereafter. The work must be completed as promptly as weather permits.

(2) If the company does not promptly perform and complete the work, remove all dirt, rubbish, equipment, and material, and restore the public ground to the same condition, the city may put it in the same condition at the expense of the company. The company must, upon demand, pay to the city the direct and indirect cost of the work done for or performed by the city, including but not limited to the city's administrative costs. To recover its costs, the city will first draw on the security posted by the company and then recover the balance of the costs incurred from the company directly by written demand. This remedy is in addition to any other remedies available to the city.

(B) *Company initiated relocation.* The company must give the city written notice prior to a company initiated relocation of facilities. A company initiated relocation must be at the company's expense and must be approved by the city, the approval not to be unreasonably withheld.

(C) *City required relocation.* The company must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facilities whenever the city requires the relocation.

(D) *Relocation where public ground vacated.* The vacation of public ground does not deprive the company of the right to operate and maintain its facilities in the city. If the vacation proceedings are initiated by the company, the company must pay the relocation costs. If the vacation proceedings are initiated by the city or other persons, the company must pay the relocation costs unless otherwise agreed to by the city, company, and other persons.

(Ord. 245, passed 9-5-1995) Penalty, see § 10.99

#### **§ 113.04 COMPANY DEFAULT.**

(A) *Notice.* If the company is in default in the performance of the work authorized by the permit, including but not limited to restoration requirements, for more than 30 days after receiving written notice from the city of the default, the city may terminate the rights of the company under the permit. The notice of default must be in writing and specify the provisions of the permit under which the default is claimed and state the grounds of the claim. The notice must be served on the company by personally and other state and the federal law, including prompt compliance with the requirements of the Gopher State One Call program, M.S. Ch. 216D, as it may be amended from time to time.

(B) *Location.*

(1) The facilities must be placed in a location agreed to by the city. The company shall give the city 45-days' advanced written notice of the company's proposed location of facilities within the public ground.



(2) No later than 45 days after the city's receipt of the company's written notice, the city will notify the company in writing of the city's acceptance or rejection of the proposed location. If the city rejects the company's proposed location, the city shall propose alternative locations. The city does not waive or forfeit its right to reject the location of facilities by failure to respond within the 45 days.

(C) *Emergency work.* A company may open and disturb the surface of public ground without a permit where an emergency exists requiring the immediate repair of its facilities. In that event, the company must request a permit not later than the second working day thereafter and comply with the applicable conditions of the permit. In no event may the company undertake an activity which will result in the closing of a street or alley without prior notification to the city.

(D) *Street improvements, paving, or resurfacing.* The city will give the company written notice of plans for street improvements where permanent paving or resurfacing is involved. The notice must contain:

- (1) The nature and character of the improvements;
- (2) The streets upon which the improvements are to be made;
- (3) The extent of the improvements and the time when the city will start the work; and
- (4) If more than 1 street is involved, the sequence in which the work is to proceed.

(E) *Company protection of facilities.* The company must take reasonable measures to prevent the facilities from causing damage to persons or property. The company must take reasonable measures to protect its facilities from damage that could be inflicted on the facilities by persons, property, or the elements. The company must take specific protective measures when the city performs work near the facilities.

(F) *Prior service connections.* In cases where the city is undertaking the paving or resurfacing of streets and the facilities are located under the street, the company may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the 5-year period following the paving or resurfacing.

(Ord. 245, passed 9-5-1995)

## **§ 113.05 PUBLIC GROUNDS USE PERMITTING REGULATIONS.**

(A) *Application for permit.* Any person desiring to so use public property shall apply for a permit or renewal of a permit a minimum of 2 working days before starting work and must submit detailed plans for street or sidewalk use and pedestrian safety on major projects. This provision or portions thereof may be waived by the City Administrator in the event of an emergency.

(B) *Guarding of obstructions, fences.* Any permittee obstructing any street, alley, sidewalk, or other public property shall keep the obstruction or obstructions properly guarded at all times. From sunset to

sunrise, all obstructions must be guarded by a sufficient number of warning lights placed in a manner so that they will give proper warning of the obstruction. The City Administrator may require any permittee obstructing a sidewalk to build adjacent to the obstruction a tight board fence at least 6 feet high, except at street intersections where a 6-foot open board fence shall be built and maintained, and adjacent to each fence shall be built and maintained a temporary walk at least 4 feet in width for the use of the public with a railing along the outside edge of the walk at least 36 inches high. The City Administrator may waive the requirement for a temporary walk when it is determined that a temporary walk is not necessary and that pedestrians can more properly be protected by rerouting them to a walk across the street.

(C) *Derricks and hoists prohibited.* No person shall place or use derricks or hoists of any kind or any portion thereof, including outriggers and pads, upon any sidewalks unless the permit specifically permits the action.

(D) *Lifting.* Whenever any person applies for a permit for the use of a street or sidewalk or portion thereof for the purpose of hoisting or lifting equipment or material over, across, and above the street or sidewalk, he or she shall provide for closing off those portions of the street and/or sidewalk encompassed within the lifting area with suitable barricades, signs, and warning lights and shall provide a 4-foot pedestrian walkway around the lifting area, the walkway to be suitably enclosed on the street side with barricades and warning lights.

(E) *Flaggers.* The City Administrator may direct that flaggers, as described in the Manual on Uniform Traffic Control Devices for Streets and Highways, State of Minnesota, be used to control traffic.

(F) *Notice of traffic closure.* The permittee shall notify the City Administrator when the permit area is closed to pedestrian and vehicular traffic and again when it is open to the traffic.

(G) *Permit revocation.* Any permit issued under this chapter may be revoked at any time by the City Administrator when he or she finds it in the best interest of the City of Olivia.

(H) *Insurance.* The permittee shall obtain liability insurance for both personal injury and property damage in an amount not less than \$1,000,000. The city shall be named as an additional insured under that insurance for the services provided under the permit. The permittee's insurance will be the primary insurance for the city. Permittee shall provide a certificate of insurance on city's approved form which verifies the existence of the required liability insurance coverage as well as worker's compensation coverage.

(I) *Parking prohibited.*

(1) The parking of private vehicles within or adjacent to the permit area is prohibited.

(2) The loading or unloading of truck adjacent to the permit area is prohibited unless specifically authorized by the permit.

(J) *Double fee.* Should any person or persons begin work of any kind without having first secured the

necessary permit therefore, they shall be required to pay double the fee provided for the permit.

(K) *Display of permits.* Permits issued under this chapter by the City Administrator shall be conspicuously displayed at all times for ease of inspection on the indicated work site.  
(Ord. 245, passed 9-5-1995) Penalty, see § 10.99

## CHAPTER 115: GAMBLING

### Section

- 115.01 Adoption of state law by reference
- 115.02 City may be more restrictive than state law
- 115.03 Purpose
- 115.04 Definitions
- 115.05 Applicability
- 115.06 Lawful gambling permitted
- 115.07 Council approval
- 115.08 Application and local approval of premises permits
- 115.09 Local permits
- 115.10 Revocation and suspension of local permit
- 115.11 License and permit display
- 115.12 Notification of material changes to application
- 115.13 Contribution of net profits to fund administered by city
- 115.14 Designated trade area
- 115.15 Records and reporting
- 115.16 Hours of operation
- 115.17 Severability
  
- 115.99 Penalty

### **§ 115.01 ADOPTION OF STATE LAW BY REFERENCE.**

The provisions of M.S. Ch. 349, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, provisions relating to sales, and all other matters pertaining to lawful gambling, are hereby adopted by reference and are made a part of this chapter as if set out in full. It is the intention of the Council that all future amendments of M.S. Ch. 349 are hereby adopted by reference or referenced as if they had been in existence at the time this chapter was adopted.

**§ 115.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.**

The Council is authorized by the provisions of M.S. § 349.213, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on gambling within its limits beyond those contained in M.S. Ch. 349, as it may be amended from time to time.

**§ 115.03 PURPOSE.**

The purpose of this chapter is to regulate lawful gambling within the city, to prevent its commercialization, to ensure the integrity of operations, and to provide for the use of net profits only for lawful purposes.

**§ 115.04 DEFINITIONS.**

In addition to the definitions contained in M.S. § 349.12, as it may be amended from time to time, the following terms are defined for purposes of this chapter:

***BOARD.*** The State of Minnesota Gambling Control Board.

***LICENSED ORGANIZATION.*** An organization licensed by the Board.

***LOCAL PERMIT.*** A permit issued by the city.

***TRADE AREA.*** This city and each city and township contiguous to this city.

**§ 115.05 APPLICABILITY.**

This chapter shall be construed to regulate all forms of lawful gambling within the city except:

(A) Bingo conducted within a nursing home or a senior citizen housing project or by a senior citizen organization if: the prizes for a single bingo game do not exceed \$10; total prizes awarded at a single bingo occasion do not exceed \$200; no more than 2 bingo occasions are held by the organization or at the facility each week; only members of the organization or residents of the nursing home or housing project are allowed to play in a bingo game; no compensation is paid for any persons who conduct the bingo; and a manager is appointed to supervise the bingo.

(B) Raffles, if the value of all prizes awarded by the organization in a calendar year does not exceed \$750.

**§ 115.06 LAWFUL GAMBLING PERMITTED.**

Lawful gambling is permitted within the city if the Council, by resolution adopted by a majority of its members authorizes lawful gambling to occur, provided it is conducted in accordance with M.S. §§ 609.75 to 609.763, inclusive, as they may be amended from time to time; M.S. §§ 349.11 to 349.23, inclusive, as they may be amended from time to time, and this chapter.

**§ 115.07 COUNCIL APPROVAL.**

Lawful gambling authorized by M.S. §§ 349.11 to 349.23, inclusive, as they may be amended from time to time, shall not be conducted unless approved by the Council, subject to the provisions of this chapter and state law.

Penalty, see § 115.99

**§ 115.08 APPLICATION AND LOCAL APPROVAL OF PREMISES PERMITS.**

(A) Any organization seeking to obtain a premises permit or bingo hall license or renewal of a premises permit or bingo hall license from the Board shall file with the City Administrator an executed, complete duplicate application together with all exhibits and documents accompanying the application as filed with the Board. The application and accompanying exhibits and documents shall be filed not later than 3 days after they have been filed with the Board.

(B) Upon receipt of an application for issuance or renewal of a premises permit or bingo hall license, the City Administrator shall transmit the application to the Chief of Police, or the Sheriff of the county in which this city is located, for review and recommendation.

(C) The Chief of Police or Sheriff shall investigate the matter and make a review and recommendation to the City Council as soon as possible, but in no event later than 45 days following receipt of the notification by the city.

(D) Organizations or bingo halls applying for a state-issued premises permit or bingo hall license shall pay the city an investigation fee. (See Appendix A). This fee shall be refunded if the application is withdrawn before the investigation is commenced.

(E) The applicant shall be notified in writing of the date on which the Council will consider the recommendation.

(F) The Council shall receive the Police Chief's or Sheriff's report and consider the application within 45 days of the date the application was submitted to the City Administrator.

(G) The Council shall, by resolution, approve or disapprove the application within 60 days of receipt of the application.

(H) The Council shall disapprove an application for issuance or renewal of a premises permit for any of the following reasons:

(1) Violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling within the last 3 years.

(2) Violation by the on-sale establishment or organization leasing its premises for gambling of any state statute, state rule or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to alcoholic beverages, gambling, controlled substances, suppression of vice, and protection of public safety within the last 3 years.

(3) Lawful gambling would be conducted at premises other than those for which an on-sale liquor license has been issued.

(4) Lawful gambling would be conducted at more than 1 premises within the city. The city may limit the number of premises where lawful gambling may be conducted.

(5) An organization would be permitted to conduct lawful gambling activities at more than 1 premises in the city.

(6) More than 1 licensed organization would be permitted to conduct lawful gambling activities at 1 premises.

(7) Failure of the applicant to pay any investigation fee provided by division (D) of this section within the prescribed time limit.

(8) Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.

(I) If the Council does not disapprove the application, the Council shall pass a resolution approving the application.

### **§ 115.09 LOCAL PERMITS.**

(A) No organization shall conduct lawful gambling excluded or exempted from state licensure requirements by M.S. § 349.166, as it may be amended from time to time, without a valid local permit. This section shall not apply to lawful gambling exempted from local regulation by § 115.05.

(B) Applications for issuance or renewal of a local permit shall be on a form prescribed by the city. The application shall contain the following information:

(1) Name and address of the organization requesting the permit.

(2) Name and address of the officers and person accounting for receipts, expenses, and profits for the event.

(3) Dates of gambling occasion for which permit is requested.

(4) Address of premises where event will occur.

(5) Copy of rental or leasing arrangement, if any, connected with the event, including rental to be charged to organization.

(6) Estimated value of prizes to be awarded.

(C) The fee for a local permit shall be as established by the City Council from time to time. (See Appendix A). The fee shall be submitted with the application for a local permit. This fee shall be refunded if the application is withdrawn before the investigation is commenced.

(D) Upon receipt of an application for issuance or renewal of a local permit, the City Administrator shall transmit the notification to the Chief of Police or Sheriff for review and recommendation.

(E) The Chief of Police or Sheriff shall investigate the matter and make review and recommendation to the City Council as soon as possible, but in no event later than 45 days following receipt of the notification by the city.

(F) The applicant shall be notified in writing of the date on which the Council will consider the recommendation.

(G) The Council shall receive the Police Chief's or Sheriff's report and consider the application within 45 days of the date the application was submitted to the City Administrator.

(H) The Council shall disapprove an application for issuance or renewal of a premises permit for any of the following reasons:

(1) Violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling within the last 3 years.

(2) Violation by the on-sale establishment or organization leasing its premises for gambling of any state statute, state rule or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to the operation of the establishment, laws relating to alcoholic beverages, gambling, controlled substances, suppression of vice, and protection of public safety within the last 3 years.

(3) The organization has not been in existence in the city for at least 3 consecutive years prior to the date of application.



(4) The organization does not have at least 30 active members.

(5) Exempted or excluded lawful gambling will not take place at a premises the organization owns or rents.

(6) Exempted or excluded lawful gambling will not be limited to a premises for which an on-sale liquor license has been issued.

(7) An organization will have a permit to conduct exempted or excluded lawful gambling activities on more than 1 premises in the city.

(8) More than 1 licensed, qualified organization will be conducting exempted or excluded lawful gambling activities at any 1 premises.

(9) Failure of the applicant to pay permit fee provided by division (C) of this section within the prescribed time limit.

(10) Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.

Otherwise the council shall approve the application.

(I) Local permits shall be valid for 1 year after the date of issuance unless suspended or revoked. Penalty, see § 115.99

#### **§ 115.10 REVOCATION AND SUSPENSION OF LOCAL PERMIT.**

(A) A local permit may be revoked or temporarily suspended for a violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling.

(B) A license shall not be revoked or suspended until notice and an opportunity for a hearing have first been given to the permitted person. The notice shall be personally served and shall state the provision reasonably believed to be violated. The notice shall also state that the permitted person may demand a hearing on the matter, in which case the permit will not be suspended until after the hearing is held. If the permitted person requests a hearing, the Council shall hold a hearing on the matter at least 1 week after the date on which the request is made. If, as a result of the hearing, the Council finds that an ordinance violation exists, then the Council may suspend or revoke the permit.

**§ 115.11 LICENSE AND PERMIT DISPLAY.**

All permits issued under state law or this chapter shall be prominently displayed during the permit year at the premises where gambling is conducted.

Penalty, see § 115.99

**§ 115.12 NOTIFICATION OF MATERIAL CHANGES TO APPLICATION.**

An organization holding a state-issued premises permit or a local permit shall notify the city in writing whenever any material change in the information submitted in the application occurs within 10 days of the change.

Penalty, see § 115.99

**§ 115.13 CONTRIBUTION OF NET PROFITS TO FUND ADMINISTERED BY CITY.**

(A) Each organization licensed to conduct lawful gambling within the city pursuant to M.S. § 349.16, as it may be amended from time to time, shall contribute 10% of its net profits derived from lawful gambling in the city to a fund administered and regulated by the city without cost to the fund. The city shall disburse the funds for lawful purposes as defined by M.S. § 349.12, Subd. 25, as it may be amended from time to time.

(B) Payment under this section shall be made on the last day of each month.

(C) The city's use of these funds shall be determined at the time of adoption of the city's annual budget or when the budget is amended.

Penalty, see § 115.99

**§ 115.14 DESIGNATED TRADE AREA.**

(A) Each organization licensed to conduct gambling within the city shall expend 100% of its lawful purpose expenditures on lawful purposes conducted within the city's trade area.

(B) This section applies only to lawful purpose expenditures of gross profits derived from gambling conducted at a premises within the city's jurisdiction.

Penalty, see § 115.99

**§ 115.15 RECORDS AND REPORTING.**

(A) Organizations conducting lawful gambling shall file with the City Administrator 1 copy of all records and reports required to be filed with the Board, pursuant to M.S. Ch. 349, as it may be amended from time to time, and rules adopted pursuant thereto, as they may be amended from time to time. The records and reports shall be filed on or before the day they are required to be filed with the Board.

(B) Organizations licensed by the Board shall file a report with the city proving compliance with the trade area spending requirements imposed by § 115.14. Such report shall be made on a form prescribed by the city and shall be submitted annually and in advance of application for renewal.  
Penalty, see § 115.99

**§ 115.16 HOURS OF OPERATION.**

Lawful gambling shall not be conducted between 1:00 a.m. and 8:00 a.m. on any day of the week.  
Penalty, see § 115.99

**§ 115.17 SEVERABILITY.**

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

**§ 115.99 PENALTY.**

Any person who violates:

(A) Any provision of this chapter;

(B) M.S. §§ 609.75 to 609.763, inclusive, as they may be amended from time to time; or

(C) M.S. §§ 349.11 to 349.21, as they may be amended from time to time, or any rules promulgated under those sections, as they may be amended from time to time shall be guilty of a misdemeanor and shall be punished as provided in § 10.99.

## CHAPTER 116: ALCOHOLIC BEVERAGES

### Section

#### *General Provisions*

- 116.01 Adoption of state law by reference
- 116.02 City may be more restrictive than state law
- 116.03 Definitions
- 116.04 Nudity on the premises of licensed establishments prohibited
- 116.05 Consumption in public places

#### *Licensing*

- 116.20 Number of licenses which may be issued
- 116.21 Term and expiration of licenses
- 116.22 Kinds of liquor licenses
- 116.23 License fees; pro rata
- 116.24 Council discretion to grant or deny a license
- 116.25 Application for license
- 116.26 Description of premises
- 116.27 Applications for renewal
- 116.28 Transfer of license
- 116.29 Investigation
- 116.30 Hearing and issuance
- 116.31 Restrictions on issuance
- 116.32 Conditions of license
- 116.33 Hours and days of sale
- 116.34 Minors on premises; Employment of minors
- 116.35 Restrictions on purchase and consumption
- 116.36 Suspension and revocation

#### *Municipal Liquor Stores*

- 116.50 Application of this subchapter
- 116.51 Existing municipal stores continued
- 116.52 Location
- 116.53 Operation
- 116.54 Proof of financial responsibility
- 116.55 Issuance of other licenses

***GENERAL PROVISIONS***

**§116.01 ADOPTION OF STATE LAW BY REFERENCE.**

The provisions of M.S. Ch. 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2% malt liquor are hereby adopted by reference and are made a part of this Chapter as if set out in full. It is the intention of the City Council that all future amendments to M.S. Ch. 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter is adopted.

**§116.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.**

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

**§ 116.03 DEFINITIONS.**

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

**LIQUOR.** As used in this chapter, without modification by the words intoxicating or 3.2% malt, includes both intoxicating liquor and 3.2% malt liquor.

**RESTAURANT.** An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a “restaurant” as defined by this section, an establishment shall have a license from the state as required by M.S. § 157.16, as it may be amended from time to time, and meet the definition of either a “Category 2 establishment,” or a “Category 3 establishment” as defined in M.S. § 157.16, subd. 3(d), as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package

or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this chapter unless it meets the criteria for licensure as a “Category 2 establishment,” or “Category 3 establishment.”

**§ 116.04 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.**

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

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

(C) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2% malt liquor license or the imposition of a civil penalty under the provisions of § 116.99(B).

Penalty, see § 116.99

**§ 116.05 CONSUMPTION IN PUBLIC PLACES.**

No person shall consume intoxicating liquor or 3.2% malt liquor in a public park, unless allowed by permit, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this chapter, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted.

Penalty, see § 116.99

**§116.20 NUMBER OF LICENSES WHICH MAY BE ISSUED.**

State law establishes the number of liquor licenses that a city may issue. However, the number of licenses which may be granted under this chapter is limited to the number of license which were issued as of the effective date of this chapter, even if a larger number of licenses are authorized by law or election. The Council in its sound discretion may provide by ordinance that a larger number of licenses

may be issued up to the number of licenses authorized by M.S. Ch. 340A, as it may be amended from time to time. If a larger number of licenses in a particular category has been authorized by a referendum held under the provisions of M.S. § 340A.413, subd. 3, as it may be amended from time to time, but not all of them have been issued, the larger number of licenses is no longer in effect until the Council by ordinance determines that any or all of the licenses may be issued. The Council is not required to issue the full number of licenses that it has available.

#### **§ 116.21 TERM AND EXPIRATION OF LICENSES.**

Each license shall be issued for a maximum period of 1 year. All licenses, except temporary licenses, shall expire on December 31 of each year unless another date is provided by ordinance. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying city consent to the permit, shall expire on March 31 of each year.

#### **§ 116.22 KINDS OF LIQUOR LICENSES.**

The Council of a city that does not have a municipal liquor store is authorized to issue the following licenses and permits, up to the number specified in § 116.20. The Council of a city which has a municipal liquor store is authorized to issue only those licenses specified in § 116.55.

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

(B) 3.2% malt liquor off-sale license. A license may be issued to permit the sale of 3.2 percent malt liquor at retail establishment, in the original package, for consumption off the premises only. Off-sale of 3.2 percent malt liquor shall be limited to the legal hours for off-sale as established by Minn. Stat. §340A.504.

(C) Temporary 3.2% malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization for no more than 12 days per year.

(D) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994. The fee for an off-sale intoxicating liquor license established by the Council under § 116.23 shall not exceed the amount which may be permitted by M.S. § 340A.408, subd. 3, as it may be amended from time to time.

(E) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M.S. § 340A.101, as it may be amended from time to time, and this chapter: hotels, restaurants, bowling centers, theaters, clubs or congressionally chartered veterans' organizations, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of

Public Safety. The fee for club licenses established by the Council under § 116.23 shall not exceed the amounts provided for in M.S. § 340A.408, subd. 2b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of M.S. § 340A.404, subd. 4b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of M.S. § 340A.404, subd. 4(a), as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

(F) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M.S. § 340A.504, subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in § 116.03, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food.

(G) Combination on-sale/off-sale intoxicating liquor licenses if the city has a population less than 10,000.

(H) Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least 3 years. No license shall be for longer than 4 consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any 1 organization in 1 calendar year.

(I) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: theaters, restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S. § 340A.404, subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in § 116.03; and to licensed bed and breakfast facilities which meet the criteria in M.S. § 340A.4011, as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of § 116.23 shall not exceed 1/2 of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2% malt liquor license is authorized to sell malt liquor with a content over 3.2% (strong beer) without an additional license.

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

(K) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of § 116.23 shall not exceed the maximum amount permitted by M.S. § 340A.414, subd. 6, as it may be amended from time



to time. Consumption and display permits shall expire on March 31 of each year.

(L) A Brew Pub on-sale intoxicating liquor or on-sale 3.2 percent malt liquor licenses, may be issued to brewers who operate a restaurant in their place of manufacture as allowed by Minn. Stat. §340A.24, as it may be amended from time to time.

(M) A Brewer off-sale intoxicating liquor licenses, with the approval of the commissioner of Public Safety, may be issued to a brewer that is a licensee under Section (L) of this Chapter as allowed by Minn. Stat. §340A.24 subd. 2, as it may be amended from time to time.

(N) A Brewer taproom on-sale intoxicating liquor license may be issued as allowed by Minn. Stat. §340A.26, as it may be amended from time to time.

(O) A Brewer taproom off-sale intoxicating liquor license, with the approval of the Commissioner of Public Safety, may be issued as allowed by Minn. Stat. §340A.28, as it may be amended from time to time.

(P) A Micro-distillery cocktail room license may be issued as permitted in Minn. Stat. §340A.22, as it may be amended from time to time.

(Q) Micro-distillery off-sale license may be issued to a distillery producing distilled spirits as permitted in Minn. Stat. §340A.22 as it may be amended from time to time. This license allows the sale of one 375 milliliter bottle per customer per day of the product manufactured on-site as per the hours for retail off-sale licenses in the licensing municipality and only for brands available for distribution by wholesalers.

(R) Small Brewer Off-sale License. In accordance with Minn. Stat. 340A.285, the City may issue a Small Brewer Off-sale License for the sale of malt liquor that has been produced and packaged by the brewer to be consumer off the licensed premises. The license must be approved by the AGE. Off-sale of the malt liquor may only be made during the hours as stipulated in Minn. Stat. 340A.504. The malt liquor shall be packaged in sixty-four (64) ounce containers commonly known as “growlers” or in seven hundred fifty (750) milliliter bottles. The containing or bottle must be sealed in the manner as described in Minn. Stat. The malt sold at off-sale must be removed from the premises by the latest time that “off-sale” of liquor may be made pursuant to Minn. Stat. 340A.504.

(S) Culinary Classes On-sale License. In accordance with Minn. Stat. 340A.4041, as amended, the city may issue a limited on-sale intoxicating liquor license to a business establishment (1) not otherwise eligible for an on-sale intoxicating liquor license; and (2) that, as part of its business, conducts culinary or cooking classes for which payment is made by each participant or advance reservation is required. The license authorizes the license to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or 12 ounces of intoxicating malt liquor, during and part of the class, for consumption on the licensed premises only.

(T) Caterer’s Permit. The AGE Commission is responsible for issuing Caterer’s Permits to a restaurant that holds an on-sale intoxicating liquor license issued by the City. The holder of the Caterer’s Permit may sell intoxicating liquor as an incidental part of a food service that serves prepared

meals at a place other than the premises for which the holder's on-sale intoxicating license is issued.

(U) Wine or Malt Liquor Tastings. Wine or malt liquor tasting events are permitted in accordance with Minn. Stat. §340A.418, as it may be amended from time to time.

Penalty, see§ 116.99

### **§ 116.23 LICENSE FEES; PRO RATA.**

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

(B) The Council may establish from time to time the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this chapter. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

(C) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a monthly basis.

(D) All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.

(E) A refund of a pro rata share of an annual license fee may occur only if authorized by M.S. § 340A.408, subd. 5, as it may be amended from time to time.

Penalty, see§ 116.99

### **§ 116.24 COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.**

The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this chapter.

### **§ 116.25 APPLICATION FOR LICENSE.**

(A) Form. Every application for a license issued under this chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time.

An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.

(B) Financial responsibility. Prior to the issuance of any license under this chapter, the applicant shall demonstrate proof of financial responsibility as defined in M.S. § 340A.409, as it may be amended from time to time, with regard to liability under M.S. § 340A.801, as it may be amended from time to time. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to M.S. § 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this chapter without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

Penalty, see § 116.99

#### **§116.26 DESCRIPTION OF PREMISES.**

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot or sidewalk.

#### **§ 116.27 APPLICATIONS FOR RENEWAL.**

At least 60 days before a license issued under this chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

#### **§ 116.28 TRANSFER OF LICENSE.**

No license issued under this chapter may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply.

Penalty, see § 116.99

#### **§ 116.29 INVESTIGATION.**

(A) Preliminary background and financial investigation. On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary

background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee, which shall be in addition to any license fee. (See Appendix A). If the cost of the preliminary investigation is less than amount paid, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

(B) Comprehensive background and financial investigation. If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be as established by the Council from time to time (See Appendix A), less any amount paid for the initial investigation if the investigation is to be conducted within the state, and amount established by the Council from time to time (See Appendix A) for out of state investigations, less any amount paid for the initial investigation, if the investigation is required outside Minnesota. The unused balance of the investigation fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

(C) Referral to Chief of Police for recommendation. All applications for a license shall be referred to the Chief of Police and to such other city departments as the City Administrator shall deem necessary, for verification and investigation of the facts set forth in the application. The Chief of Police shall cause to be made such investigation for the information required by this Chapter as shall be necessary and shall make a written recommendation and report to the Council which shall include a list of violations of federal or state law or municipal regulations.

(D) Health Department Regulations. Each applicant shall abide by all regulations of the Minnesota Department of Health, Food and Beverage licensing. A copy of a current licensure shall be submitted to the City Council that an establishment meets the requirements of law and in the case of an on-sale intoxicating liquor establishment, has the proper facilities to qualify and be licensed as a restaurant. When a restaurant, licensed for the sale of intoxicating liquor, is hereafter constructed or remodeled, or when an existing structure is converted for use as a restaurant, properly prepared plans and specifications for such construction, remodeling or alteration shall be approved by the Minnesota Department of Health in insurance that the establishment will meet local and state standards for restaurants.

### **§ 116.30 HEARING AND ISSUANCE.**

The Council shall investigate, or cause to be investigated, all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation

and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

### **§ 116.31 RESTRICTIONS ON ISSUANCE.**

- (A) Each license shall be issued only to the applicant for the premises described in the application.
- (B) Not more than 1 license shall be directly or indirectly issued within the city to any one (1) person.
- (C) No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid.
- (D) No license shall be issued for any place or any business ineligible for a license under state law.
- (E) No license shall be issued to any person who is not a resident of the State of Minnesota. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing on the effective date of this chapter or to the renewal of an existing license.
- (F) No license shall be granted for a premises that is within 100 feet of any school or church. The distance is to be measured from the closest side of the school or church to the closest side of the structure on the premises within which liquor is to be sold.

Penalty, see § 116.99

### **§116.32 CONDITIONS OF LICENSE.**

The failure of a licensee to meet any 1 of the conditions of the license specified below shall result in a suspension of the license until the condition is met.

- (A) Within 90 days after employment, every person selling or serving liquor in an establishment which has an on-sale license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.
- (B) Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.
- (C) Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect, and search the

premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.

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

(E) Compliance with financial responsibility requirements of state law and of this chapter is a continuing condition of any license.

Penalty, see § 116.99

### **§ 116.33 HOURS AND DAYS OF SALE.**

(A) The hours of operation and days of sale shall be those set by M.S. § 340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows. The City does not further restrict on-sale or off-sale hours or limit off-sale hours to those of the municipal liquor store than the hours set by Minn. Stat. §340A.504, as it may be amended from time to time.

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

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

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

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

Penalty, see § 116.99

### **§ 116.34 MINORS ON PREMISES; EMPLOYMENT OF MINORS.**

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

(B) No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the

premises where liquor is not sold.  
Penalty, see § 116.99

(C) No person under 18 years of age may serve or sell intoxicating liquor in a retail intoxicating liquor establishment under the provisions of Minn. Stat. §340A.412, subd. 10, as it may be amended from time to time.

Penalty, see § 116.99

### **§ 116.35 RESTRICTIONS ON PURCHASE AND CONSUMPTION.**

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. § 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.

Penalty, see § 116.99

### **§ 116.36 SUSPENSION AND REVOCATION.**

(A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 to 14.69, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

(B) The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:

- (1) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2% malt liquor, or violation of § 116.04, the license shall be revoked.
- 2) The license shall be suspended by the Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:
  - (a) For the first violation within any 3-year period, at least 1-day suspension in addition to any criminal or civil penalties which may be imposed.
  - (b) For a second violation within any 3-year period, at least 3-consecutive days' suspension in addition

to any criminal or civil penalties which may be imposed.

(c) For the third violation within any 3-year period, at least 7-consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

(d) For a fourth violation within any 3-year period, the license shall be revoked within 60 days following a violation for which revocation is imposed.

(3) The Council shall select the day or days during which the license will be suspended or revoked, which shall occur within 60 days following a violation for which revocation is imposed.

(C) Lapse of required proof of financial responsibility shall affect an immediate suspension of any license issued pursuant to this chapter or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Administrator, a hearing before the Council shall be granted within 10 days. Any suspension under this division (B) shall continue until the Council determines that the financial responsibility requirements of state law and this chapter have again been met.

(D) The provisions of§ 116.99 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.

Penalty, see § 116.99

## ***MUNICIPAL LIQUOR STORES***

### **§ 116.50 APPLICATION OF THIS SUBCHAPTER.**

This subchapter, consisting of§§ 116.50 through 116.55, applies only the city if it has in existence on the effective date of this chapter a municipal liquor store.

### **§ 116.51 EXISTING MUNICIPAL STORES CONTINUED.**

If the city has in existence on the effective date of this chapter a municipal liquor store for the sale of intoxicating liquor, the store is continued. Except as provided in§ 116.55, no intoxicating liquor may be sold at retail elsewhere in the city.



Penalty, see § 116.99

### **§ 116.52 LOCATION.**

The municipal liquor store shall be located at a suitable place in the city as the Council determines by motion. However, no premises upon which taxes, assessments, or other public charges are delinquent shall be leased for municipal liquor store purposes. The Council shall have the right to establish additional off-sale and on-sale stores at other locations as it may, from time to time, by motion, determine.

### **§ 116.53 OPERATION.**

(A) Manager. The municipal liquor store shall be in the immediate charge of a Liquor Store Manager selected by the Council and paid compensation as is fixed by the Council. The Manager shall not be a person who would be prohibited by law or any provision of this chapter from being eligible for an intoxicating liquor license. The Manager shall operate the municipal liquor store under the Council's direction and shall perform those duties in connection with the store as may be established by the Council. The Manager shall be responsible to the Council for the conduct of the store in full compliance with this chapter and with the laws relating to the sale of intoxicating liquor and 3.2% malt liquor.

(B) Other employees. The Council may also appoint additional employees as may be required and shall fix their compensation. All employees, including the Manager, shall hold their positions at the pleasure of the Council. No person under the age of 18 shall be employed in the store.

(C) Municipal liquor store fund. All of the revenues received from the operation of a municipal liquor store shall be deposited in a municipal liquor store fund from which all ordinary operating expenses, including compensation of the Manager and employees, shall be paid. Surpluses accumulating in the fund may be transferred to the general fund of the city or to any other appropriate fund of the city by resolution of the Council, and may be expended for any municipal purpose. The handling of municipal liquor store receipts and disbursements shall comply with the procedure prescribed by law and charter for the receipts and disbursements of city funds generally.

(D) Financial statement. The Council shall provide within 90 days following the end of the calendar year for publication a balance sheet using generally accepted accounting procedures and a statement of operations of the municipal liquor store for that year. The balance sheet and statement shall be published in accordance with the provisions of M.S. § 471.6985, as it may be amended from time to time.

(E) Hours of operation. The hours during which the sale of intoxicating liquor may be sold shall be within the provisions of Minn. Stat. § 340A.504 or as provided in § 116.33. No person, other than the Manager or a store employee, may remain in the municipal liquor store longer than 1/2 hour after the

time when the sale of intoxicating liquor must cease.  
Penalty, see § 116.99

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

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

### **§ 116.55 ISSUANCE OF OTHER LICENSES.**

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

(B) On- and off-sale 3.2 percent malt liquor licenses. The Council may issue in its sound discretion on- and off-sale 3.2 percent malt liquor licenses, as limited by the provisions of this Chapter and the provisions of Minn. Stat. § 340A.403, as it may be amended from time to time.

(C) On- and off-sale brew pub, taproom and micro-distillery licenses. The Council may issue in its sound discretion on- and off-sale brew pub, taproom and micro-distillery licenses, as limited by the provisions of this Chapter and the provisions of Minn. Stat. § 340A.22 to 340A.28, as it may be amended from time to time.

### **§116.99 PENALTIES**

(A) Any person violating the provisions of this Chapter or Minn. Stat. Ch. 340A as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(B) The Council shall impose a civil penalty of up to \$2,000 for each violation of Minn. Stat. Ch. 340A, as it may be amended from time to time, and of this Chapter (See Appendix A). Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, Minn. Stat. § 14.57 to 14.69, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the

license is revoked:

- (1) For the first violation within any three-year period, \$500.
- (2) For the second violation within any three-year period, \$1,000.
- (3) For the third and subsequent violations within any three-year period, \$2,000.

(C) The term "violation" as used in the Chapter includes any and all violations of the provisions in this Chapter, or of Minn. Stat. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period.

(D) The provisions of Section 116.36 pertaining to suspension or revocation may be imposed in addition to of any administrative, or criminal penalties under this Chapter or State law.

(Amended by Ord. 2018-02, passed 01-16-2018)

## CHAPTER 117: AMUSEMENTS

### Section

- 117.01 Bowling; billiards and pool
- 117.02 Circuses, carnivals, shows and other entertainment
- 117.03 Amusement devices
- 117.04 Deposit required
- 117.05 License fee for public entertainment or exhibition
- 117.06 Public dance permits

### **§ 117.01 BOWLING; BILLIARDS AND POOL.**

Each proprietor of a billiard, pool hall, or of a bowling alley, or a combination of both, shall pay an annual license fee in an amount established in the Ch. 34, as it may be amended from time to time. Penalty, see § 10.99

### **§ 117.02 CIRCUSES, CARNIVALS, SHOWS AND OTHER ENTERTAINMENT.**

(A) (1) Each person, desiring to conduct, stage or give a circus, carnival, theatrical exhibition, public show, athletic game or other entertainment, for which there is a charge for admission, shall first obtain a license and pay the license fee or fees as established by Ch. 34, as that ordinance may be amended from time to time.

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

(B) In addition to any other requirements, the applicant for a license shall give to the City Administrator or other authorized official written notice at least 1 week in advance of the first day of the event, the stating the dates of the performances and the location at which the performances are to be presented. The City Administrator shall give his or her consent to the issuance of the license if he or she deems that the location is suitable for the purpose; that it will properly accommodate the patrons; that the nature of the performance or exhibition does not pose a threat to the health, safety or general welfare of the public; and that the use of the location will not create too great a burden upon the Police Department or the Fire Department.

(C) No circus, carnival, theatrical exhibition, public show, athletic game or other entertainment shall be given for more than 2 consecutive days, except in cases where the City Council, by resolution, allows a longer period, or where the exhibition is to be conducted on municipal property and the use thereof for a longer period shall have been approved by the City Council.

Penalty, see § 10.99

### **§ 117.03 AMUSEMENT DEVICES.**

(A) The term “coin-operated mechanical amusement device” means any machine, which upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score. It includes such devices as marble machines, pinball machines, skill ball, mechanical grab machines, mechanical rides intended for use by children, such as merry-go-rounds, horses, Ferris wheels, and the like; carnival, fair, and/or festival rides, and all similar games, operations or transactions under whatever name they may be indicated.

(B) A person, firm, corporation or association must not display for public use any coin-operated mechanical amusement device without obtaining a license for it and paying the fee established Ch. 34, as that ordinance may be amended from time to time. Applications for a license must be made to the City Administrator.

(C) The license or licenses obtained must be posted permanently and conspicuously at the location of the machine in the premises where the machine is to be operated.

Penalty, see § 10.99

### **§ 117.04 DEPOSIT REQUIRED.**

(A) At the time application for a license is made, where use of municipal grounds is contemplated, the applicant shall deposit with the City Administrator or other designated municipal official a cash bond in an amount to be determined by the City Council, conditioned upon the restoration and cleaning up of the grounds in a manner satisfactory to the Mayor. In the event the grounds are restored and cleaned up properly following the exhibition, the deposit shall be returned; otherwise the same shall be forfeited to the city to the extent of actual costs to the city for restoration and cleaning up of the grounds.

(B) No licensee shall fail to restore or clean up the grounds upon which the circus, carnival or other entertainment has taken place.

Penalty, see § 10.99

**§ 117.05 LICENSE FEE FOR PUBLIC ENTERTAINMENT OR EXHIBITION.**

The license fee for public entertainment or exhibition shall be in an amount as established in the Ch. 34, as it may be amended from time to time.

**§ 117.06 PUBLIC DANCE PERMITS.**

(A) *Permit required.* It shall be unlawful for any person to give, hold or conduct a public dance, as defined herein, unless the owner or the proprietor of the place where the dance is held, or the person giving the same or in charge thereof, shall first have procured a permit to hold, give and conduct the public dance from the Council. A public dance shall mean any dance wherein the public may participate by payment, directly or indirectly, of an admission fee or price for dancing, or a fee for a membership in a club, and shall include any manner of holding a dance which may be participated in by the public through the payment of money directly or indirectly.

(B) *Permits; single, annual.* A permit issued under this chapter may be a single dance permit or an annual permit. A single dance permit allows the permittee to give, hold or conduct a public dance, or allows the owner or lessee of a premises to permit such premises to be used for the purpose of holding a public dance, on a single occasion. An annual dance permit allows the permittee to give, hold or conduct a public dance, or the owner or lessee of a premises to permit such premises to be used for the purpose of holding a public dance on an unlimited number of occasions during a calendar year.

(C) *Fees.*

(1) *Single dance permit.* The fee for issuance of a single dance permit shall be as established by the Council from time to time. (See Appendix A).

(2) *Annual dance permit.* The fee for issuance of an annual dance permit shall be as established by the Council from time to time. (See Appendix A). Provided that, if an annual permit is first obtained after January 31 of any calendar year, the annual fee shall be reduced on a monthly pro rata basis for the balance of the calendar year.