

## **TITLE XI: BUSINESS REGULATIONS**

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## CHAPTER 110: GENERAL BUSINESS LICENSING

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### ***Cross-reference:***

*Additional regulations on kennels, see § 91.31*

### **§ 110.01 DEFINITIONS.**

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

***APPLICANT.*** Any person making an application for a license under this chapter.

***APPLICATION.*** A form with blanks or spaces thereon, to be filled in and completed by the applicant as his or her request for a license, furnished by the city and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

***BUSINESS.*** Any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both licensed and regulated, by the terms and conditions of this chapter.

***LICENSE.*** A document issued by the city to an applicant permitting him or her to carry on and transact a business.

***LICENSE FEE.*** The money paid to the city pursuant to an application and prior to issuance of a license to transact and carry on a business.

**LICENSEE.** An applicant who, pursuant to his or her application, holds a valid, current, unexpired, and unrevoked license from the city for carrying on a business.

**SALE, SELL, and SOLD.** All forms of barter and all manner or means of furnishing merchandise to persons. (Prior Code, § 5.01)

## **§ 110.02 APPLICATIONS.**

All applications shall be made as follows.

(A) All applications shall be made at the office of the City Clerk upon forms that have been adopted by resolution of the Council.

(B) All initial applications shall be accompanied by payment of a fee established by ordinance to cover the cost of investigation as herein provided for.

(C) All the applications must be subscribed, sworn to, and include, but not be limited to, the following:

- (1) Applicant's name, age, and citizenship;
- (2) Applicant's present address and length of time he or she has lived at that address;
- (3) Applicant's occupation and length of time so engaged;
- (4) Applicant's addresses and occupations for the 3 years next preceding the date of application;
- (5) Names and addresses of applicant's employers, if any, for the 3 years next preceding the date of application;
- (6) Whether or not applicant has ever been convicted of a felony, or misdemeanor, including violation of a municipal ordinance but excluding traffic violations, and if so, the date and place of conviction and the nature of the offense;
- (7) Type of license and location of premises for which application is made;
- (8) At least 4 character references if applicant has not resided in the city for 2 years next preceding the date of application; and
- (9) Any other information as the Council shall deem necessary considering the nature of the business for which license application is made.

(D) It is unlawful for any applicant to intentionally make a false statement or omission upon any

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

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

(F) Applications for renewal licenses may be made in the abbreviated form as the Council may by resolution adopt. (Prior Code, § 5.02)

### **§ 110.03 ACTION ON APPLICATION FOR LICENSE.**

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

(B) *Issuing.* If an application is granted, the Mayor and City Clerk shall forthwith issue a license pursuant thereto in the form adopted by resolution of the Council and upon payment of the license fee. Unless otherwise herein specified, license fees shall be pro rated on the basis of 1/12 for each calendar year, month, or the part thereof remaining in the then current license term. Licenses shall be valid only at one (1) location and on the premises therein described.

(C) *Transfer.* No license shall be transferable between persons. No license shall be transferable to a different location without prior consent of the Council and upon payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this division (C).

(D) *Termination.* Licenses shall terminate only by expiration or revocation.

(E) *Grounds for revocation.* Any licensee violating any provision of the City Code, or codes herein adopted, shall be subject to revocation of the license. After revocation it shall be within the discretion of the Council to determine whether or not it will reissue.

(F) *Refusal and revocation.* The Council may, in its sole discretion and for any reasonable cause, refuse to grant any application, or revoke any license. No license shall be granted to a person of questionable moral character or business reputation. Before revocation of any license, the Council shall give notice to the licensee and grant the licensee opportunity to be heard. Notice to be given and the exact time of hearing shall be stated in the resolution calling for the hearing.

(G) *Duplicate license.* Duplicates of all original licenses may be issued by the City Clerk, without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of a

fee of \$2 for issuance of the duplicate. All duplicate licenses shall be clearly marked DUPLICATE. (Prior Code, § 5.03) (Am. Ord. 2009-05, 3rd Series, passed 4-20-2009)

#### **§ 110.04 CARRYING OR POSTING.**

All transient merchants, peddlers, and solicitors shall at all times when so engaged, carry their license on their person. All other licensees shall post their licenses in their places of business near the licensed activity. All licensees shall display their licenses upon demand by any officer or citizen. (Prior Code, § 5.04) Penalty, see § 10.99

#### **§ 110.05 PENALTY FOR PROPERTY OWNERS.**

It is unlawful for any person to knowingly permit any real property owned or controlled by him or her to be used, without a license, for any business for which a license is required by this chapter. (Prior Code, § 5.05) Penalty, see § 10.99

#### **§ 110.06 RESPONSIBILITY OF LICENSEE.**

The conduct of agents and employees of a person to whom a license or permit is issued shall be deemed the conduct of the licensee himself or herself. (Prior Code, § 5.06)

#### **§ 110.07 POSTING AND DISTRIBUTING PRINTED MATTER.**

(A) *Posting.* It is unlawful for any person to attach any printed matter of any kind to any public or private building, bridge, fence, railing, utility pole, or any other public or private property in the city, or paint any advertising matter or sign upon any sidewalk without first having obtained a license therefore. The Council may from time to time designate the places within the city where billboards may be placed, and specify size, dimensions, and any restrictions that they deem necessary. Any person desiring to attach any printed matter to any billboard shall first obtain a license from the City Clerk. The fee for the license shall be \$5 per year and the license document shall specify the location of the billboards for which it is issued. Every billboard so licensed shall be kept in good repair by the licensee at his or her own expense so that its appearance will at all times be neat and clean. It is unlawful for any person to willfully deface or otherwise injure or destroy any billboards designated by the Council or any handbills or printed matter thereon.

(B) *Distribution.* It is unlawful for any person to distribute any printed matter door-to-door or place-to-place within the city without first having obtained a license therefore. The license fee for distribution of printed matter on an annual basis shall be \$10. The license for making a single distribution shall be \$5.

(C) *Prohibitions.* It is unlawful for any person to attach any printed matter to a vehicle not owned

or controlled by him or her without the permission of the owner, or insert printed matter in the vehicle without the permission.

(D) *Exceptions.* The provisions of this section shall not apply to posting notices required by law, or to the distribution of newspapers, periodicals, or local merchants or farmers distributing handbills, advertising their own goods or businesses; or to churches, lodges, schools and colleges distributing bills advertising meeting or athletic or other event, or to any fair association distributing its own advertising matter. (Prior Code, § 5.07) Penalty, see § 10.99

## **§ 110.09 BOWLING.**

(A) *License required.* It is unlawful for any person to keep or maintain any bowling alley (bowling lane), available for public use without first having obtained a license from the city.

(B) *License fees.* The annual fee for each bowling alley (lane) shall be established by ordinance.

(C) *Term.* All bowling alley (lane) licenses shall be for the period of one (1) year and shall expire on June 30 of each year, regardless of when the license was originally issued. Thereafter, all licenses eligible for renewal, will be renewed for one (1) year. (Prior Code, § 5.31) (Am. Ord. 2009-05, 3rd Series, passed 4-20-2009) Penalty, see § 10.99 (Ord. 2012-09, 3<sup>rd</sup> Series, passed 6-4-2012)

## **§ 110.10 DANCES.**

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

***PUBLIC DANCE.*** Any dance wherein the public may participate by payment, directly or indirectly, of an admission fee or price for dancing, which fee may be in the form of a club membership, or payment of money, directly or indirectly.

***PUBLIC DANCING PLACE.*** Any room, place, or space open to public patronage in which dancing, wherein the public may participate, is carried on and to which admission may be had by the public by payment, directly or indirectly, of an admission fee or price for dancing.

(B) *License required.* It is unlawful for any person to operate a public dancing place, or hold a public dance, without first having obtained a license therefore from the city. Provided that this section shall not be applicable to any dance sponsored by a local school, church, or the city and held on its property and no license shall be required for any such sponsored dance.

(C) *License fee.* The license fee for each public dance shall be established by ordinance .

(D) *Dance regulations.*

(1) *Sale of liquor prohibited.* It is unlawful for any person to sell or give away, directly or

indirectly, any intoxicating liquor or permit or suffer the same to be sold or given away in any public dancing place unless the premises are properly licensed therefore.

(2) *Obscenity and immorality prohibited.* It is unlawful for any person to dance, or for a licensee to permit or suffer any person to dance, at any public dance in an indecent or immodest manner. It is also unlawful for any person at a public dance to speak in a rude, boisterous, obscene, or indecent manner or for any licensee to suffer to permit any person so to act or speak in any public dancing place. (Prior Code, § 5.32) Penalty, see § 10.99

## § 110.11 PAWN BROKERS.

(A) *Purpose.* The City Council finds that services provided by pawn brokers provide an opportunity for the commission of crimes and their concealment because pawn businesses have the ability to easily and quickly receive and transfer property stolen by others. The City Council also finds that consumer protection regulation is warranted in transactions involving pawn brokers. The City Council further finds that the pawn industry has outgrown the city's current ability to effectively or efficiently identify criminal activity related to pawn shops. The purpose of this section is to prevent pawn businesses from being used as facilities for the commission of crimes and to assure that the businesses comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the citizens of the city. To help the Police Department better regulate current and future pawn businesses, decrease and stabilize costs associated with the regulation of the pawn industry, and increase identification of criminal activities in the pawn industry through the timely collection and sharing of pawn transaction information, this section also implements and establishes the required use of the automated pawn system.

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

***BILLABLE TRANSACTION.*** Every reportable transaction conducted by a pawn broker except renewals, redemptions, or extensions of existing pawns on items previously reported and continuously in the licensee's possession is a billable transaction.

***PAWN BROKER.*** Any natural person, partnership, or corporation, either as principal, or agent or employee thereof, who loans money on deposit or pledge of personal property, or other valuable thing, or who deals in the purchasing of personal property, or other valuable thing on condition of selling the same back again at a stipulated price, or who loans money secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged. To the extent that a pawn broker's business includes buying personal property previously used, rented or leased, or selling it on consignment, the provisions of this section shall be applicable.

***REPORTABLE TRANSACTION.*** Every transaction conducted by a pawn broker in which merchandise is received through a pawn, purchase, consignment, or trade, or in which a pawn is renewed, extended, or redeemed, is reportable except:

- (a) The bulk purchase or consignment of new or used merchandise from a merchant,

manufacturer, or wholesaler having an established permanent place of business, and the retail sale of the merchandise, provided the pawn broker must maintain a record of the purchase or consignment which describes each item, and must mark each item in a manner which relates it to that transaction record.

(b) Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

(C) *License required.* No person shall engage in the business of pawn broker at any location without a pawn broker license for that location. No pawn broker license may be transferred to a different location or a different person. Issuance of a license under this section shall not relieve the licensee from obtaining any other licenses required to conduct business at the same or any other locations.

(D) *License classifications.* Licenses renewed under provisions of this section shall be classified according to the number of billable transactions submitted annually to the Hastings Police Department during the 12-month period ending March 31 prior to renewal. The classifications shall be:

- (1) Class A - Licensees that submitted 400 or more transactions; and
- (2) Class B - Licensees that submitted fewer than 400 transactions.

(E) *License fees.*

(1) The annual license fees for each class of licenses issued under this section shall be established by ordinance. The annual license fee shall be payable semi-annually in accordance with procedures established by the City Council.

(2) The billable transaction fee shall be classified according to the medium by which daily reports required by division (I) below are submitted to the Hastings Police Department. These classifications shall be as follows:

- (a) Modem - Required of all Class A licensees, optional for Class B licensees; and
- (b) Manual - Required of all Class B licensees who do not fulfill Class A reporting requirements.

(3) The billable transaction fee shall reflect the cost of processing transactions from the respective classifications and other related regulatory expenses as determined by the City Council, and shall be reviewed and adjusted, if necessary, at least every 6 months. Licensees shall be notified in writing 30 days before any adjustment is implemented. The billable transaction fee for modem transactions shall not exceed the billable transaction fee for manual transactions.

(4) Billable transaction fees shall be billed monthly and are due and payable within 30 days. Failure to do so is a violation of this section.

(F) *Investigation fee.* An applicant for a new license under this section, or for the renewal of an existing license that is more than 6 months past due, shall deposit \$1,500 with the City Clerk at the time an original application is submitted to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this section. If the investigation process is conducted solely within the State of Minnesota, the fee shall be \$500 and the remainder of the deposit shall be returned to the applicant upon completion of the investigation. If the investigation is conducted outside the State of Minnesota, the city may recover the actual investigation costs not exceeding \$10,000.

(G) *Expiration of license.* All licenses shall expire on July 1.

(H) *Application required.*

(1) *Contents.* An application form provided by the City Clerk and consumer services must be completed by every applicant for a new license or for renewal of an existing license. Every new applicant must provide all the following information.

(a) If the applicant is a natural person:

1. The name, place and date of birth, street resident address, and phone number of applicant;
2. Whether the applicant is a citizen of the United States or resident alien;
3. Whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places used;
4. The name of the business if it is to be conducted under a designation, name, or style other than the name of the applicant and a certified copy of the certificate as required by M.S. § 333.01, as it may be amended from time to time;
5. The street address at which the applicant has lived during the preceding 5 years;
6. The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding 5 years and the name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding 5 years;
7. Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic offense. If so, the applicant must furnish information as to the time, place, and offense of all the convictions;
8. The physical description of the applicant;
9. Applicant's current personal financial statement and true copies of the applicant's federal and state tax returns for the 2 years prior to application; and

10. If the applicant does not manage the business, the name of the manager(s) or other person(s) in charge of the business and all information concerning each of them required in divisions (H)(1)(a)1. through (H)(1)(a)8. above.

(b) If the applicant is a partnership:

1. The name(s) and address(es) of all general and limited partners and all information concerning each general partner required in division (H)(1)(a) above;

2. The name(s) of the managing partner(s) and the interest of each partner in the licensed business;

3. A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to M.S. § 333.01, as it may be amended from time to time, a certified copy of the certificate must be attached to the application;

4. A true copy of the federal and state tax returns for partnership for the 2 years prior to application; and

5. If the applicant does not manage the business, the name of the manager(s) or other person(s) in charge of the business and all information concerning each of them required in divisions (H)(1)(a)1. through (H)(1)(a)8. above.

(c) If the applicant is a corporation or other organization:

1. The name of the corporation or business form, and if incorporated, the state of incorporation;

2. A true copy of the certificate of incorporation, articles of incorporation or association agreement, and bylaws shall be attached to the application. If the applicant is a foreign corporation, a certificate of authority as required by M.S. § 303.06, as it may be amended from time to time, must be attached;

3. The name of the manager(s) or other person(s) in charge of the business and all information concerning each manager, proprietor, or agent required in divisions (H)(1)(a)1. through (H)(1)(a)8. above;

4. A list of all persons who control or own an interest in excess of 5% in the organization or business form or who are officers of the corporation or business form and all information concerning the persons required in division (H)(1)(a) above. This division (H)(1)(c)4., however, shall not apply to a corporation whose stock is publicly traded on a stock exchange and is applying for a license to be owned and operated by it.

(d) For all applicants:

1. Whether the applicant holds a current pawn broker, precious metal dealer, or

secondhand goods dealer license from any other government unit;

2. Whether the applicant has previously been denied, or had revoked or suspended, a pawn broker, precious metal dealer, or secondhand dealer license from any other governmental unit;
3. The location of the business premises;
4. If the applicant does not own the business premises, a true and complete copy of the executed lease;
5. The legal description of the premises to be licensed;
6. Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid;
7. Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application must be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed; and
8. Any other information as the City Council may require.

(2) *New manager.* When a licensee places a manager in charge of a business, or if the named manager(s) in charge of a licensed business changes, the licensee must complete and submit the appropriate application, on forms provided by the Hastings City Clerk, within 14 days. The application must include all appropriate information required in this division (H)(2). Upon completion of an investigation of a new manager, the licensee must pay an amount equal to the cost of the investigation to assure compliance with this section. If the investigation process is conducted solely within the State of Minnesota, the fee shall be \$500. If the investigation is conducted outside the State of Minnesota, the issuing authority may recover the actual investigation costs not exceeding \$10,000.

(3) *Application execution.* All applications for a license under this section must be signed and sworn to under oath or affirmation by the applicant. If the application is that of a natural person, it must be signed and sworn to by the person; if that of a corporation, by an officer thereof; if that of a partnership, by 1 of the general partners; and if that of an incorporated association, by the manager or managing officer thereof.

(4) *Investigation.* The Hastings Police Department must investigate the truthfulness of the statements set forth in the application and shall endorse the findings thereon. The applicant must furnish to the Police Department the evidence as the department may reasonably require in support of the statements set forth in the application.

(5) *Persons ineligible for a license.* No licenses under this section will be issued to an applicant who is a natural person, a partnership if the applicant has any general partner or managing partner, a corporation or other organization if the applicant has any manager, proprietor or agent in charge of the business to be licensed, if the applicant:

(a) Is a minor at the time that the application is filed; or

(b) Has been convicted of any crime directly related to the occupation licensed as prescribed by M.S. § 364.03, Subdivision 2, as it may be amended from time to time, and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensee under this section as prescribed by M.S. § 364.03, Subdivision 3, as it may be amended from time to time.

(I) *Records required; reportable transactions.* At the time of any reportable transaction other than renewals, extensions, or redemptions, every licensee must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the City Clerk. Every form or computerized record must be consecutively numbered. Any forms or computer records voided shall be reported as well:

(1) A complete and accurate description of each item including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item;

(2) The purchase price, amount of money loaned upon, or pledged therefore;

(3) The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges;

(4) Date, time, and place the item of property was received by the licensee, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records;

(5) Full name, residence address, residence telephone number, date of birth and accurate description of the person from whom the item of the property was received, including: sex, height, weight, race, color of eyes, and color of hair;

(6) The identification number and state of issue from any of the following forms of identification of the seller:

(a) Current valid Minnesota driver's license;

(b) Current valid Minnesota identification card; and

(c) Current valid photo driver's license or identification card issued by another state or province of Canada.

(7) The signature of the person identified in the transaction;

(8) Effective 90 days from the date of notification by the Hastings Police Department, the licensee must also take a color photograph or color video recording of each customer involved in a reportable

transaction and every item pawned or sold that does not have a unique serial or identification number permanently engraved or affixed. If a photograph is taken, it must be at least 2 inches in length by 2 inches in width and must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate. The photographs must be available to the Chief of Police, or the chief's designee, upon request. The major portion of the photograph must include an identifiable front facial close-up of the person who pawned or sold the item. Items photographed must be accurately depicted. The licensee must inform the person that he or she is being photographed by displaying a sign of sufficient size in a conspicuous place in the premises. If a video photograph is taken, the video camera must zoom in on the person pawning or selling the item so as to include an identifiable close-up of that person's face. Items photographed by video must be accurately depicted. Video photographs must be electronically referenced by time and date so that they can be readily matched and correlated with all other records of the transaction to which they relate. The licensee must inform the person that he or she is being videotaped orally and by displaying a sign of sufficient size in a conspicuous place on the premises. The licensee must keep the exposed videotape for 60 days;

(9) Effective 90 days from the date of notification by the Hastings Police Department, Class A licensees must and Class B licensees may, fulfill the color photograph requirements in division (I)(8) above by submitting them as digital images, in a format specified by the police department, electronically cross-referenced to the reportable transaction they are associated with. Notwithstanding the digital images may be captured from required video recordings, this provision does not alter or amend the requirements in division (I)(8) above;

(10) For renewals, extensions, and redemptions, the licensee shall provide the original transaction identifier, the date of the current transaction, and the type of transaction.

(11) The records must at all reasonable times be open to inspection by the Police Department. Data entries shall be retained for at least 3 years from the date of transaction. Entries of required digital images shall be retained a minimum of 90 days.

(J) *Records required; nonreportable transactions.* The following information must be kept for any property on the pawn shop premises which was obtained through any means other than a reportable transaction. This includes, but is not limited to, property which was obtained at auctions, property which was found, or property purchased at wholesale or retail:

(1) For property obtained at an auction, the date, place, name of auction company, price paid and a receipt for each item; and

(2) For property found or purchased at wholesale or retail, the date and location where the item was found or purchased; the name of the person obtaining the item and a detailed description of the item and a receipt for purchased items which also shows where the item was purchased.

(K) *Daily reports to police.*

(1) *Method.* Licensees must provide to the Police Department the information required in division (I) above, in writing, on forms approved by the business day following the date of the

transaction. The licensee must display a sign of sufficient size, and in a conspicuous place in the premises, so as to inform all patrons that all transactions are reported to the Police Department daily. Effective 90 days from the date of notification by the Police License Inspector, licensees must submit every reportable transaction to the Police Department daily in the following manner.

(a) Class A licensees must, and Class B licensees may, provide to the Police Department the information required in division (I) above, by transferring it from their computer to the Police Department via modem. All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the issuing authority using a dial-callback protocol or other procedures that address security concerns of the licensees and the issuing authority. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs all patrons that all transactions are reported to the Police Department daily.

(b) Class B licensees who do not fulfill requirements of division (K)(1)(a) above must provide to the Police Department the information required in division (I) above, in writing on forms approved by the Police Department, by 12:00 p.m. the first business day following the date of the transaction. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs all patrons that all transactions are reported to the Police Department daily.

(2) *Billable transaction fees.* Licensees, regardless of class, will be charged for billable transactions at the current rate for the medium by which they were reported to the Police Department except:

(a) If a Class A licensee, or a Class B licensee who has consistently reported via modem, is unable to successfully transfer the required reports by modem, the licensee must provide the Police Department printed copies of all reportable transactions along with the video tape(s) for that date, by 12:00 the next business day, and must be charged at the modem rate for billable transactions;

(b) If the problem is determined to be in the licensee's system and is not corrected by the close of the first business day following the failure, the licensee must provide the required reports as detailed in division (K)(2)(a) above, and must be charged at the modem rate for transactions through the close of the first business day following the failure, and at the manual rate for all subsequent billable transactions until the error is corrected; or

(c) If the problem is determined to be outside the licensee's system, the licensee must provide the required reports in detail in division (K)(2)(a) above, and will be billed at the modem rate for billable transactions until the error is corrected;

(d) If a Class A licensee, or a Class B licensee who has consistently reported via modem, is unable to capture, digitize or transmit the photographs required in division (I) above, the licensee must immediately take all required photographs with a still camera, immediately develop the pictures, cross-reference the photographs to the correct transaction, and deliver them to the Police Department by 12:00 p.m. the next business day. Billable transactions will be charged at the modem rate for transactions through the close of the first business day following the failure, and at the manual rate for all subsequent billable transactions until the error is corrected;

(e) Second and subsequent occurrences of circumstances detailed in division (K)(2)(a), (K)(2)(b), or (K)(2)(d) above, within any 6 consecutive months, will be charged at the manual rate for billable transactions until the error is corrected; and

(f) Division (K)(2)(a) through (K)(2)(e) above notwithstanding, the Police Chief or designee may, upon presentation of extenuating circumstances, extend the period that a qualifying licensee is billed at the modem rate for billable transactions.

(L) *Receipt required.* Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for 3 years. The receipt must include at least the following information:

- (1) The name, address, and telephone number of the license business;
- (2) The date and time the item was received by the licensee;
- (3) Whether the item was pawned or sold, or the nature of the transaction;
- (4) An accurate description of each item received including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item;
- (5) The signature or unique identifier of the licensee or employee that conducted the transaction;
- (6) The amount advanced or paid;
- (7) The monthly and annual interest rates, including all pawn fees and charges;
- (8) That last regular day of business by which the item must be redeemed by the pledger without risk that the item will be sold, and the amount necessary to redeem the pawned item on that date;
- (9) The full name, residence address, residence telephone number, and date of birth of the pledger or seller;
- (10) The identification number and state of issue from any of the following forms of identification of the seller:
  - (a) Current valid Minnesota driver's license;
  - (b) Current valid Minnesota identification card; and/or
  - (c) Current valid photo driver's license or identification card issued by another state or province of Canada.

(11) Description of the pledger or seller including approximate sex, height, weight, race, color of eyes and color of hair;

(12) The signature of the pledger or seller;

(13) The printed statements required by M.S. § 325J.04, Subdivision 2, as it may be amended from time to time, as follows:

(a) The statement that “Any personal property pledged to a pawn broker within this state is subject to sale or disposal when there has been no payment made on the account for a period of not less than 60 days past the date of the pawn transaction, renewal, or extension; no further notice is necessary. There is no obligation for the pledgor to redeem pledged goods.”;

(b) The statement that “The pledgor of this item attests that it is not stolen, it has no liens or encumbrances against it, and the pledgor has the right to sell or pawn the item.”;

(c) The statement that “This item is redeemable only by the pledgor to whom the receipt was issued, or any person identified in a written and notarized authorization to redeem the property identified in the receipt, or a person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor. Written authorization for release of property to persons other than the original pledgor must be maintained along with the original transaction record”; and

(d) A blank line for the pledgor’s signature.

(14) Licensee shall keep a receipt for every item on the premises regardless of how that item was obtained, i.e. by pawn, auction, purchase, or otherwise.

(M) *Redemption period.* Any person pledging, pawning, or depositing an item for security must have a minimum of 60 days from the date of that transaction to redeem the item before it may be forfeited and sold. During the 60-day holding period, items may not be removed from the licensed location except as provided in division (T) below. Licensees are prohibited from redeeming any item to anyone other than the person to whom the receipt was issued or, to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledger at the time of the initial transaction and signed by the pledger, or with approval of the Police License Inspector. Written authorization for release of property to persons other than original pledger must be maintained along with original transaction record in accordance with division (I) above.

(N) *Holding period.* Any item purchased by a licensee must not be sold or otherwise transferred for 30 days from the date of the transaction. An individual may redeem an item 72 hours after the item was received on deposit, excluding Sundays and legal holidays.

(O) *Police order to hold property.*

(1) *Investigative hold.* Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative

hold shall be confirmed in writing by the originating agency within 72 hours and will remain in effect for 15 days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, pursuant to division (O)(2) below, whichever comes first.

(2) *Order to hold.* Whenever the Chief of Police, or the chief's designee, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the Chief or the Chief's designee. The order to hold shall expire 90 days from the date it is placed unless the Chief of Police or the Chief's designee determines the hold is still necessary and notifies the licensee in writing.

(3) *Order to confiscate.* If an item is identified as stolen or evidence in a criminal case, the Chief or Chief's designee may physically confiscate and remove it from the shop, pursuant to a written order from the chief or the chief's designee, or place the item on hold or extend the hold as provided in division (O)(2) above, and leave it in the shop. When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation. When an order to hold/confiscate is no longer necessary, the chief of police or chief's designee shall so notify the licensee.

(P) *Inspection of items.* At all times during the terms of the license, the licensee must allow officers of the Hastings Police Department to enter the premises where the licensed business is located, including all off-site storage facilities as authorized in division (T) below, during normal business hours, except in an emergency, for the purpose of inspecting the premises and inspecting the items, ware and merchandise and records therein to verify compliance with this section or other applicable laws.

(Q) *Label required.* Licensees must attach a label to every item at the time it is pawned, purchased, or received in inventory from any reportable transaction or otherwise brought into the store by any means, i.e. auction, pawn, trade or purchase. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item and the description or the model and serial number of the item as reported to the Police Department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used.

(R) *Prohibited acts.*

(1) No person under the age of 18 years may pawn or sell or attempt to pawn or sell goods with any licensee, nor may any licensee receive any goods from a person under the age of 18 years.

(2) No licensee may receive goods from a person who is obviously intoxicated or obviously of an unsound mind.

(3) No licensee may receive any goods, unless the seller presents identification in the form of a valid driver's license, a valid State of Minnesota identification card, or current valid photo driver's license or identification card issued by the state or province of residency of the person from whom the

item was received.

(4) No licensee may receive any item of property that possesses an altered or obliterated serial number or operation identification number or any item of property that has had its serial number removed.

(5) No person shall provide any false information when pawning any item.

(6) No licensee shall knowingly provide any false information to the automated pawn system.

(7) No person shall pawn the property of another without the owner's written consent.

(S) *Denial, suspension, or revocation.* Any license under this section may be denied, suspended, or revoked for 1 or more of the following reasons.

(1) The proposed use does not comply with the Hastings zoning ordinances.

(2) The proposed use does not comply with any health, building, building maintenance, or other provisions of city code or state law.

(3) The applicant or licensee has failed to comply with 1 or more provisions of this section.

(4) The applicant is not a citizen of the United States or a resident alien, or upon whom it is impractical or impossible to conduct a background or financial investigation due to the unavailability of information.

(5) Fraud, misrepresentation, or bribery in securing or renewing a license.

(6) Fraud, misrepresentation, or false statements made in the application and investigation for, or in the course of, the applicant's business.

(7) Violation within the preceding 5 years, of any law relating to theft, damage, or trespass to property, sale of a controlled substance, or operation of a business.

(8) The owner of the premises licensed or to be licensed would not qualify for a license under the terms of this section.

(T) *Business at only 1 place.* A license under this section authorizes the licensee to carry on its business only at the permanent place of business designated in the license. However, upon written request, the City Council may approve an off-site locked and secured storage facility. The licensee shall permit inspection of the facility in accordance with division (P) above. All provisions of this section regarding record keeping and reporting apply to the facility and its contents. Property shall be stored in compliance with all provisions of the City Code. The licensee must either own the building in which the business is conducted, and any approved off-site storage facility, or have a lease on the business premises which extends for more than 6 months.

(U) *Violations.* A person who violates any provision of this section shall be guilty of a misdemeanor. (Prior Code, § 5.45) (Am. Ord. 2009-3, 3rd Series, passed 2-17-2009) Penalty, see § 10.99

## § 110.15 LODGING TAX.

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

**CITY.** The City of Hastings.

**LODGING.** The furnishing for consideration of lodging at a hotel, motel, rooming house, tourist court, bed and breakfast, or resort, other than the renting or leasing of lodging for a continuous period of 30 days or more.

**OPERATOR.** Any person or any officer, agent, or employee of the person, who provides lodging to another person.

**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.

(B) *Imposition of tax.* Pursuant to Minnesota state statutes, there is hereby a tax imposed on the rent charged by an operator for providing lodging to any person. A tax of 3% shall be imposed beginning on the effective date of this section. The tax collected by the operator shall be a debt owed by the operator to the city and shall be satisfied only by payment to the city. In no case shall the tax imposed upon any operator by this section, exceed the amount of tax which the operator is authorized and required by this section to collect from a lodger.

(C) *Collection.* Each operator shall collect the tax imposed by this section at the time rent is paid. The tax collected shall 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.

(D) *Advertising no tax.* It shall be unlawful for any operator to advertise 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 rent, or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than \$.01 shall be rounded up to the next cent.

(E) *Payments and return.* The taxes imposed by this section shall be paid by the operator to the city, not later than 25 days after the end of the month in which the taxes were collected.

(1) At the time of payment, the operator shall submit a return upon the forms and containing the information as the city may require. The form shall contain the following minimum information:

- (a) The total amount of rent collected for lodging during the period covered by the return;
- (b) The amount of tax required to be collected and due for the period;
- (c) The signature of the person filing the return or that of their agent duly authorized in writing;
- (d) The period covered by the return; and
- (e) The amount of uncollectible rental charges subject to the lodging tax.

(2) The operator may offset against the taxes payable in any reporting period, the amount of taxes imposed by this section previously paid as a result of any transaction, the consideration for which became uncollectible during the reporting period, but only in proportion to the portion of the consideration which became uncollectible.

(F) *Examination of return.* After a return is filed, the city shall examine it 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. 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 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 determining the need for such a refund.

(G) *Refunds.* Any operator may apply to the city for a refund of taxes paid in excess of the amount legally due for a prescribed period. Provided that no application for a refund shall be considered unless it is filed within 1 year after the tax was paid to the operator, or within 1 year from the filing of the return, whichever period is longer. The city shall examine the claim and make and file written findings thereon, denying or allowing the claim in whole or in part, and shall mail notice thereof, by registered mail, to the operator at the address stated in the return. If the claim is allowed in whole or in part, the city shall credit the amount of the refund against any taxes due under this section from the operator, and the balance of the refund, if any, shall be paid by the city to the operator.

(H) *Failure to file a return.* If any operator fails to file a return within the time prescribed or shall make 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. If the operator fails to file the return or corrected return, the city shall make a return or corrected return for the operator from the knowledge and information as the city can obtain and assess a tax on the basis thereof, which tax (less any payments therefore made on account of the tax for the taxable period covered by the return) shall be paid upon within 5 days of the receipt of written notice and demand for the payment. Any such tax assessment made by the city shall be deemed 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. If any portion of a tax imposed by this section, 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 cover the amount due, plus interest, penalties, and

the costs and disbursements of any action. Upon a showing of good cause, the city may grant an operator one 30-day extension in which to file a return and make payment of taxes, as required by this section, provided that interest during the period of extension shall be added to the taxes due at the rate of 10% per annum.

(I) *Penalties.* If any tax imposed by this section is not paid within the time required by this section, there shall be added thereto a penalty equal to 10% of the amount remaining unpaid. The amount of the tax not timely paid, together with any penalty provided by this section, shall accrue interest at the rate of 8% per annum from the time the tax should have been paid. Any interest and penalty shall be added to the tax and collected as part thereof.

(J) *Use of proceeds.* Ninety-five percent of the proceeds obtained from the collection of taxes pursuant to this section shall be used in accordance with the M.S. § 469.190, as it may be amended from time to time, and the Tourism Bureau Agreement between the city and the Hastings Chamber of Commerce, as both may be amended from time to time, to fund a local Tourism Bureau for the purpose of marketing and promoting the City of Hastings as tourist destination. The remaining 5% shall be retained by the city to cover its administrative expenses.

(K) *Appeals.* Any operator aggrieved by any notice, order, or determination made by the city under this section may file a petition for review of the notice, order, or determination detailing the operator's reason for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order, notice, or determination. The petition for review shall be filed with the City Clerk within 10 days after the notice, order, or determination for which review is sought has been mailed or served upon the person requesting review. Upon receipt of the petition, the City Clerk or the City Clerk's 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. At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order, or determination shall be modified or withdrawn. The petitioner may be represented by counsel of petitioner's choosing at petitioner's own expense. The hearing shall be conducted by the City Council. The City Council, in consultation with the City Attorney, shall make written findings of fact and conclusions based upon the application sections of this section and the evidence presented. The City Council may affirm, reverse, or modify the notice, order, or determination made by the city.

(L) *Violations.* Any operator who willfully fails to make a return required by this section or who shall fail to pay the tax, penalty, or interest imposed by this section, or after written demand for payment, or who shall refuse to permit the city to examine the books, records, and papers under the operator's control, or who shall willfully make an incomplete, false, or fraudulent return, shall be guilty of a misdemeanor. (Prior Code, § 5.64) Penalty, see § 10.99

## **§ 110.16 KENNEL; ANIMAL SHELTER.**

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

**ANIMAL.** Any live creature, domestic or wild.

**ANIMAL SHELTER.** Any facility operated for the purpose of impounding or caring for animals.

**KENNEL.** Any premises wherein any person is engaged in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling animals.

**OWNER.** Any person, partnership, or corporation owning or operating a kennel/animal shelter.

**PERSONNEL.** Any person employed or active within a kennel/animal shelter organization.

(B) *Licenses for kennel/animal shelters.*

(1) No person, partnership, or corporation shall operate a kennel/animal shelter without first obtaining a license from the city.

(2) The annual license fee for a kennel will be established by ordinance.

(C) *Kennel/animal shelter license issuance and revocation.* The city may revoke any kennel/animal shelter license if the licensee refuses or fails to comply with applicable provisions of city code, state laws and rules, or federal laws and regulations governing the protection and keeping or animals.

(D) *Regulations governing kennels/animal shelters.*

(1) Kennels/animal shelters must comply with all applicable law and rules, including, but not limited to, all applicable rules of the Minnesota Department of Health, Minnesota Board of Animal Health, and Minnesota Pollution Control Agency.

(2) Animal carcasses must be properly disposed of in a manner not utilizing on site garbage facilities, on site burying or incineration, and carcasses must be properly refrigerated during periods prior to disposal.

(3) No kennel or animal shelter shall be constructed or operated within 500 feet of any residential dwelling.

(4) No kennel or animal shelter shall permit any animal to create any incessant noise by barking, howling, or screeching, nor create any disturbance or nuisance of any kind whatsoever which disrupts the quiet and peaceable enjoyment of the surrounding area by other residents or property owners.

(5) Any building or room within a building in which animals are housed shall be adequately soundproofed to minimize problems of noise on adjoining properties.

(6) No kennel/animal shelter shall allow any animal to run unrestrained on any street or

public property or any private property not owned by the licensee.

(7) The city shall be permitted to inspect all animals, and the premises where animals are kept, at any time.

(8) All animals with, or are suspected of having infectious diseases, must be individually caged to prevent the spread of disease to healthy animals.

(E) *Kennel/animal shelter design.*

(1) All kennel and animal shelter floors and walls shall be constructed out of impervious and easily cleanable materials and all structures, areas, and appurtenances shall be designed to facilitate frequent and easy cleaning. All areas shall be adequately and properly ventilated. Every kennel shall be suitably enclosed or fenced in such a manner as to prevent the running at large or escape of animals confined therein. The premises shall be provided with adequate and safe sewer and water connections, plumbing, and plumbing fixtures.

(2) The premises shall be fenced on the perimeter of the site with fencing that is at least 8 feet high and must be of such a quality as to contain dogs and/or cats.

(F) *Kennel/animal shelter operation.*

(1) Every kennel and animal shelter shall be maintained in a clean, healthful, sanitary, and safe condition and so as not to create a health hazard or public nuisance. The places shall be operated in a humane manner, and the owner and personnel shall not deprive the animals of necessary food, water, or shelter, or perform any act of cruelty to the animals, or in any way further any acts of cruelty toward them, or any act tending to produce the cruelty.

(2) All cages, pens, benches, boxes, or receptacles in which the animals are confined shall be kept clean, sanitary, and in good repair and shall be properly sized for the humane confinement of the animals. All show or display cases, windows, counters, and shelves used in handling the animals shall be kept clean, sanitary, free from dust and dirt, and in good repair. All plumbing fixtures and other appurtenances shall be kept in a clean and sanitary condition and in good repair.

(3) All refuse and animal wastes shall be removed frequently and stored in rodent free and fly-tight containers that do not emit foul and disagreeable odors.

(4) There shall be no dumping of any effluent garbage, rubbish, wastewater, excrement, or other noxious substance upon any public or private property. (Prior Code, § 5.75) Penalty, see § 10.99

## **§ 110.17 LAWFUL GAMBLING.**

(A) *Purpose.* The purpose of this section is to regulate and control the conduct of lawful gambling (gambling) in the City of Hastings and to insure that profits derived therefrom in the City of Hastings

(City) are devoted to worthy public and private projects which benefit the community.

(B) *Prohibition of gambling.* No person shall conduct gambling within the city except those organizations which have obtained a premises permit from the Gambling Control Board of Minnesota and have complied with this section.

(C) *Lawful gambling permitted.*

(1) Lawful gambling is permitted in the city if the organization conducting the gambling meets the following criteria:

(a) Is licensed by the Minnesota Gambling Control Board;

(b) Is a tax-exempt organization pursuant to 501(c) of the Internal Revenue Code or has a 501(c) application pending with the Internal Revenue Service; and/or

(c) Has been in continuous existence holding meetings as a non-profit corporation or as a 501(c) tax-exempt organization for at least 3 or more consecutive years prior to the approval of the license.

(2) The maximum number of locations where lawful gambling may be conducted within the city is 18. Council shall, by resolution, establish the maximum number of locations in the city where one organization can conduct lawful gambling. Non-local organizations that are conducting lawful gambling in the city on the effective date of this section, may continue to do so. Once a non-local organization, however, stops conducting lawful gambling in the city, it must thereafter, comply with the requirements of this section.

(D) *Approval of premises permit.*

(1) Any organization applying to the City Council for a premises permit, renewal of a premises permit, bingo hall license or renewal of a bingo hall license shall file the following information with the City Clerk at the time of the application:

(a) A duplicate copy of the application submitted to the Minnesota Gambling Control Board, along with all supporting documents;

(b) A copy of the articles of incorporation and bylaws of the organization;

(c) The names and addresses of all officers and directors of the organization and the gambling manager;

(d) A copy of the organization's written procedures and/or criteria for distribution of funds derived from lawful gambling, its standardized application form, and its written fiscal control procedures;

- (e) A copy of the Internal Revenue Service's tax-exempt letter;
- (f) The applicant's federal and state employer identification numbers; and
- (g) Other information the city deems necessary to carry out the purposes of this section.

(2) Upon receipt of the materials required by division (D)(1)(a) above, city staff shall investigate the applicant and make a recommendation for approval or denial of the application. The City Council shall approve or disapprove an application for a premises permit or bingo hall license by resolution. Copies of any other reports or documents which are required to be subsequently filed by the organization with the Gambling Control Board, including monthly financial statements, shall be filed simultaneously with the City Clerk. An organization holding a Premises Permit must notify the City Clerk in writing within 10 days whenever any material change is made in the information required by division (D)(1) above.

(E) *Investigation fee.* Organizations applying for or renewing a license to conduct lawful gambling in the City of Hastings shall pay an investigation fee as established by ordinance. This fee shall be paid at the time the application is submitted to the City Clerk.

(F) *Lawful expenditure requirement.*

(1) Pursuant to the authority granted by M.S. § 349.213, as it may be amended from time to time, any organization conducting lawful gambling within the city must spend at least 50% of its expenditures for lawful purposes conducted or located within the city's trade area. The city's trade area is defined to be all areas within the city's corporate boundaries and the boundaries of all cities and townships contiguous to the city at the time of expenditure.

(2) The requirements imposed by this subdivision shall be effective for all expenditures for lawful purposes made after 3-1-2008.

(G) *Exemptions.*

(1) The following bingo and raffle activities are exempt from the lawful gambling requirements of this section.

(a) Bingo may be conducted without a premises permit if it is in connection with a civic celebration and if it is not conducted for more than four consecutive days in a calendar year. A civic celebration is an event that celebrates a recognized national holiday or occasion celebrating an event proclaimed by the Hastings City Council.

(b) Bingo may be conducted without a premises permit if it is conducted by an organization that conducts 4 or fewer bingo occasions in a calendar year.

(c) Bingo may be conducted without a premises permit within a nursing home, senior citizens home, or by a senior citizen organization if the prizes for a single game do not exceed \$10, total prizes awarded at a single occasion do not exceed \$200, no more than 2 occasions are held each week, only members or residents are allowed to play, no compensation is paid for persons conducting the bingo, and a manager is appointed who is registered with the Gambling Control Board.

(d) Raffle may be conducted without a premises permit if it is conducted by an organization and if the value of all raffle prizes awarded in a calendar year does not exceed \$750; or if the raffle is conducted by a tax-exempt health or social service organization under contract to the state or a political subdivision and the prizes awarded are real or personal property donated by an individual, firm, or other organization.

(e) Lawful gambling may be conducted within the city without a premises permit if the organization conducts a gambling on five or fewer days in a calendar year, does not award more than \$50,000 in prizes in a calendar year, receives prior City Council approval and receives an exemption from the Gambling Control Board.

(2) An application for an exemption from the provisions of this section, together with a fee established by ordinance, shall be submitted to the City Clerk at least 30 days prior to the date that an exempt gambling activity is to be conducted. The application shall contain the following information:

- (a) The name and address of the organization;
- (b) The place where the gambling will occur;
- (c) The total value of prizes to be awarded; and
- (d) The dates the proposed exempt gambling will occur.

(3) Within 30 days of filing any reports with the Gambling Control Board, the organization shall file a copy of the same reports with the City Clerk.

(H) *Video games of chance.* Video games of chance as defined by Minnesota Statutes are prohibited in the city. (Prior Code, § 5.80) (Am. Ord. 2008-04, 3rd Series, passed 2-19-2008) Penalty, see § 10.99

## **§ 110.19 LATE PAYMENTS.**

(A) *Purpose.* The purpose of this section is to establish penalties for failure to pay annual license fees or failure to submit required license documents within the time required by the City of Hastings.

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

**LICENSE FEES.** Those fees which are imposed by the city for a variety of licenses,

including, but not limited to, liquor, gambling, tobacco, amusement, and rental property licenses.

**PENALTY.** The fee charged by the City of Hastings to those individuals or entities that do not deliver **REQUIRED LICENSE DOCUMENTS** to the city by the applicable due date, or do not pay the invoiced **LICENSE FEES** by the due date noted on the invoice sent to the licensee.

**REQUIRED LICENSE DOCUMENTS.** All documents a license applicant is required by the City Code or other applicable law to submit to the city for application and issuance of a new or renewal license. **REQUIRED LICENSE DOCUMENTS** include, but are not limited to: complete license applications, insurance and bond certificates, and approvals from other government bodies or agencies.

(C) *Penalty established.* A penalty in the amount of 10% of the license fee invoiced or \$30, whichever amount is greater, is established for any license applicant or licensee that does either or both of the following:

- (1) Fails to deliver required license documents to the city by the applicable due date; or
- (2) Fails to pay the invoiced license fees by the date noted on the invoice sent to the licensee.

(D) *Failure to pay penalty.* Failure to pay any penalty imposed by this section shall be grounds for the suspension or termination of any license issued by the city.

(E) *Violation a misdemeanor.* Every person who violates a section, subdivision, paragraph, or provision of this section when they perform an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor. (Ord. 492, passed 4-21-2003; Am. Ord. 2008-2, 3rd Series, passed 2-4-2008) Penalty, see § 10.99

## CHAPTER 111: ALCOHOLIC BEVERAGES

### Section

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- 111.25 Consumption of beer or liquor on streets and public property
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## **GENERAL PROVISIONS**

### **§ 111.01 PROVISIONS OF STATE LAW ADOPTED.**

Except to the extent the provisions of this chapter are more restrictive, the provisions of M.S. Chapter 340A, now in effect and as it may be amended from time to time, relating to the definition of terms, licensing, consumption, sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor, 3.2% malt liquor, and wine, are adopted and made a part of this chapter as if set out here in full. (Prior Code, § 3.1) (Am. Ord. 488, passed 5-20-2002)

### **§ 111.02 DEFINITIONS.**

The terms in this chapter shall have the same definitions given in M.S. Chapter 340A, now in effect, as it may be amended from time to time. (Prior Code, § 3.2) (Am. Ord. 488, passed 5-20-2002)

### **§ 111.03 LICENSE REQUIRED.**

No person, except wholesalers or manufacturers to the extent authorized under state law, shall directly or indirectly deal in, sell, keep for sale, or deliver any intoxicating liquor, 3.2% malt liquor, or wine, whether on-sale or off-sale, without first having received a license to do so, as provided in this chapter. Furthermore, no private club or public place shall directly or indirectly allow the consumption or display of intoxicating liquor, 3.2% malt liquor, or wine, or serve any liquid for the purpose of mixing with intoxicating liquor, 3.2% malt liquor, or wine, without first obtaining a license from the city as provided in this chapter. (Prior Code, § 3.3) (Am. Ord. 488, passed 5-20-2002) Penalty, see § 10.99

### **§ 111.04 TYPES OF LICENSES.**

(A) *Generally.* The following licenses may be issued after compliance with this chapter and state law.

(B) *Specifically.*

(1) *On-sale intoxicating liquor license.* On-sale intoxicating liquor licenses shall be issued only to restaurants, brew pubs, and hotels where food is prepared and served for consumption on the premises and shall permit the on-sale of intoxicating liquor or wine, if approved by the City Council.

(2) *On-sale 3.2% malt liquor license.* On-sale 3.2% malt liquor licenses may be issued only to clubs, restaurants, and hotels where food is prepared and served for consumption on the premises. On-sale 3.2% malt liquor licenses shall only permit the sale for consumption on the premises.

(3) *On-sale wine license.*

(a) On-sale wine licenses may be issued for the sale of wine not exceeding 14% alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. An on-sale wine license may be issued only to a restaurant having facilities for seating at least 25 guests at one time.

(b) The city may issue an on-sale wine license to a state-licensed bed and breakfast facility for sale only to registered guests of the facility.

(c) On-sale wine licensees who also hold an on-sale 3.2% malt liquor license, and whose gross receipts are at least 60% attributable to the sale of food, are authorized to also sell intoxicating malt liquor at on-sale. The license holders, as a further condition of their license, must provide to the city, upon demand, the documentation that the city deems to be necessary to demonstrate the amount of annual sales related to food. License holders who sell intoxicating malt liquor must further comply with all insurance requirements imposed by city code and state statute for the on-sale of intoxicating liquor. (Ord. 489, passed 4-21-2003)

(4) *Club license.* Club on-sale intoxicating liquor licenses shall be issued only to clubs which have been in existence for 3 years or more and which meet requirements of M.S. Chapter 340A, as it may be amended from time to time; or to congressionally chartered veterans' organizations which have been in existence for 3 years or more, and which meet the requirements of M.S. Chapter 340A, as it may be amended from time to time.

(5) *Sunday liquor license.* On-sale Sunday liquor licenses shall be issued only to hotels, restaurants, microdistilleries, or clubs which have facilities for serving food to not less than 30 guests at one time and which have been issued an on-sale intoxicating liquor license, on-sale brew pub license, or on-sale cocktail room license. On-sale Sunday liquor licenses may be issued to brewery taprooms which have been issued an on-sale brewery taproom license. Brew pubs holding a valid off-sale brew pub license may sell off-sale on Sundays malt liquor produced on-site and shall be subject to all conditions and restrictions contained in M.S. § 340A.24. Small brewers holding a valid off-sale brewery taproom license may sell off-sale on Sundays malt liquor produced on-site and shall be subject to all conditions and restrictions contained in M.S. § 340A.28 and M.S. § 340A.285.

(6) *Bottle club license.* Bottle club licenses may be issued to establishments as allowed by M.S. Chapter 340A, as it may be amended from time to time, for the consumption or display of intoxicating liquor or the serving of any liquid for the purpose of mixing with intoxicating liquor. This provision shall not apply to any person or premises otherwise licensed by the city for the sale of intoxicating liquor.

(7) *Off-sale intoxicating liquor license.* Off-sale intoxicating liquor licenses may be granted for the off-sale of intoxicating liquor.

(8) *Off-sale 3.2% malt liquor license.* Off-sale 3.2% malt liquor licenses shall permit only the sale of 3.2% malt liquor at retail, in the original package, for consumption off the premises.

(9) *Temporary on-sale intoxicating liquor license.* A temporary on-sale intoxicating liquor license may be granted as provided herein.

(a) *Applicant.* A club or charitable, religious, or nonprofit organization, duly incorporated as a nonprofit or religious corporation under the laws of Minnesota, and having its registered office and principal place of activity within the city, may qualify for a temporary on-sale intoxicating liquor license in connection with a social event within the city, sponsored by the applicant.

(b) *Term.* The city may authorize the on-sale of intoxicating liquor for not more than 3 consecutive days, and may authorize sales on premises other than premises the applicant owns or permanently occupies.

(c) *Insurance.* No temporary on-sale intoxicating liquor license shall be issued for the sale of liquor until the applicant provides the city with proof of liability insurance in the minimum amounts required by M.S. Chapter 340A, as it may be amended from time to time, now in effect. An applicant for a temporary on-sale liquor license for the sale of wine only shall not be required to provide the city with proof of liability insurance.

(d) *Other restrictions.* Any temporary license issued under this chapter is subject to all state laws and rules, and city ordinances governing the sale of intoxicating liquor. All temporary licenses issued by the city under this chapter shall not be valid until approved by the Commissioner of Public Safety of the State of Minnesota.

(10) *Temporary on-sale 3.2% malt liquor license.*

(a) *Applicant.* A club or charitable, religious, or nonprofit organization, duly incorporated as a nonprofit or religious corporation under the laws of Minnesota, and having its registered office and principal place of activity within the city, may qualify for a temporary on-sale 3.2% malt liquor license.

(b) *Other restrictions.* The applicant for a temporary on-sale 3.2% malt liquor license shall comply with all other state laws and rules and city ordinances governing the sale of 3.2% malt liquor within the city.

(c) *Certificate of insurance.* A certificate of insurance evidencing liquor liability (dram shop) coverage as outlined in § 111.09. (Prior Code, § 3.4) (Am. Ord. 488, passed 5-20-2002) Penalty, see § 10.99

(11) *On-sale brew pub license.* On-sale brew pub licenses may be issued for a restaurant operated in the place of manufacture and shall be subject to all conditions and restrictions contained in M.S. § 340A.24. A brew pub holding a valid on-sale intoxicating liquor license need not also obtain an on-sale brew pub license for on-sale of malt liquor produced on-site provided all such sales and operations shall be subject to all conditions and restrictions contained in M.S. § 340A.24.

(12) *Off-sale brew pub license.* Off-sale brew pub licenses may be issued to brew pubs holding a valid on-sale brew pub license and shall be subject to all conditions and restrictions contained in M.S. § 340A.24 and M.S. § 340A.285.

(13) *On-sale brewery taproom license.* On-sale brewery taproom licenses may be issued for the on-sale of malt liquor produced by the brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer and shall be subject to all conditions and restrictions contained in M.S. § 340A.26.

(14) *Off-sale brewery taproom license.* Off-sale brewery taproom licenses may be issued to small brewers subject to all conditions and restrictions contained in M.S. § 340A.28 and M.S. § 340A.285.

(15) *Off-sale microdistillery license.* Off-sale microdistillery licenses may be issued to microdistilleries for the off-sale of one 375 milliliter bottle per customer per day of product manufactured on-site and shall be subject to all conditions and restrictions contained in M.S. § 340A.22.

(16) *On-sale cocktail room license.* On-sale cocktail room licenses may be issued to microdistilleries for the on-sale of distilled liquor produced by the distiller for consumption on the premises of or adjacent to one distillery location owned by the distiller and shall be subject to all conditions and restrictions contained in M.S. § 340A.22.

(2015-14, 3<sup>rd</sup> Series passed 12-21-15)

## **§ 111.05 LICENSE APPLICATIONS.**

(A) *Forms.* All applications shall be filed with the office of the City Clerk, upon forms required by the Commissioner of Public Safety, together with the additional application forms as approved by resolution of the City Council.

(B) *Investigation fee.*

(1) At the time of filing an original application for any license that can be issued under this chapter, except a temporary intoxicating liquor license or a temporary 3.2% malt liquor license, the applicant shall pay the city an investigation fee in the amount established by ordinance of the City Council.

(2) This investigation fee shall be a non-refundable fee and shall be used to cover the city's cost in processing the application and investigation of the applicant.

(3) At the time of filing an application for a temporary intoxicating liquor license or a temporary 3.2% malt liquor license, the applicant shall pay the city an investigation fee in an amount established by resolution of the City Council. Any investigation fee shall be a non-refundable fee and shall be used to cover the city's cost in processing the application and investigation of the applicant, up

to the maximum amounts as established by law, if applicable.

(4) At the time of a renewal of a liquor license, the investigation will be included in the renewal license fee, which will be established by ordinance of the City Council.

(C) *False statements or omitted information.* Any false statements or information omitted from an application for any type of license under this chapter shall be grounds for rejection of the application by the city. Any false statement or omitted information discovered after a license has been issued shall be grounds for termination of the license.

(D) *Renewal applications.* Applications for the renewal of an existing license shall be made in a timely fashion and shall be made on the forms required by the Commissioner of Public Safety, together with the additional forms as approved by resolution of the City Council and shall state whether everything in the prior, original, master application remains true and correct, except as otherwise indicated. If, in the judgement of the City Council, good and sufficient cause is shown by any applicant for its failure to file for a renewal within the time provided, the Council may, if the other provisions of this section are complied with, accept the application.

(E) *Expiration of license.* Every license issued under this chapter, except temporary licenses, shall expire on June 30 of each year, regardless of when the license was issued. Temporary licenses shall expire according to their terms. Any bottle club license issued under this chapter shall expire on March 31 of each year, as per Minnesota state statute, as may be amended.

(F) *Background investigation.*

(1) At the time of making an initial application, renewal application, or request for a new operating officer, the applicant shall file a completed application form with the City Clerk. The applicant shall authorize the Hastings Police Department and other city departments, as deemed necessary by the City Clerk, to investigate all information in the application and to conduct a thorough background and criminal record investigation on the applicant. The applicant shall authorize the police to release information received from the investigation to the City Council.

(2) Upon completion of the background investigation, the Hastings Police Department shall file with the City Clerk a written report of its investigation.

(3) Upon receipt of the investigation results, the City Clerk shall forward a recommendation to the City Council for approval or denial.

(4) No license will be issued or renewed if the results of the background investigation show to the satisfaction of the City Council that issuance of a license would not be in the public interest.

(G) *Premises under construction.* When a license is granted for a premise where the building is under construction or otherwise not ready for occupancy, the Clerk shall not issue the license until notified by the Department of Building Safety, or applicable department responsible for the duties, that the building is ready for occupancy.

(H) *Criteria for issuance, transfer, or renewal.* No license may be issued, transferred, or renewed if the results of the investigation or other evidence given to the Council through any means, shows to the satisfaction of the Council, that the issuance, transfer, or renewal would not be in the public's interest.

(I) *Applications for 2:00 a.m. closing time license.*

(1) The City of Hastings allows for the sale of alcohol until 2:00 a.m. by licensed establishments.

(2) Licensees desiring to apply for a liquor license to be allowed to sell alcoholic beverages until 2:00 a.m. on all days of the week must apply for a special 2:00 a.m. license from the State Alcohol and Gambling Enforcement Division and pay a fee as established. The 2:00 a.m. special license will run 12 months from the date of approval by the Alcohol and Gambling Enforcement Division.

(4) Licensees desiring to apply for a liquor license to be allowed to sell alcoholic beverages until 2:00 a.m. on all days of the week must also notify the City Clerk of the City of Hastings of submission of application to the State of Minnesota. (Ord. 504, passed 10-6-2003) (Prior Code, § 3.5) (Am. Ord. 488, passed 5-20-2002)

(J) *Applications for sidewalk cafés.*

(1) Any restaurant issued a license under this chapter may also apply for a sidewalk café license pursuant to Chapter 110 to expand the operation of that restaurant onto a part, and only that part, of the public sidewalk that is compact and contiguous with the licensed premises in the manner authorized by and subject to the restrictions of this chapter and Chapter 110 for sidewalk cafés.

(2) An application for a sidewalk café may be submitted at the time of making an initial application or renewal application for a license under this chapter, or at any other time.

(3) An applicant for a sidewalk café license shall file a sidewalk café application pursuant to Chapter 110 on forms provided by the City Clerk which shall include, in addition to other information required by the City, all additional information required of applicants who intend to serve alcohol within the sidewalk café.

(4) While a licensee under this chapter also holds a valid and unsuspended sidewalk café license under Chapter 110 for the same licensed premises, the licensee's license to serve liquor, wine or beer shall extend to the compact and contiguous space licensed under the sidewalk café license. No licensee shall serve, or allow to be served, liquor, wine or beer within any sidewalk café while the applicable sidewalk café license or license issued under this chapter is expired, suspended or revoked. (Ord. 2015-07, 3<sup>rd</sup> Series, passed 6-1-15)

## § 111.06 LICENSE FEES.

(A) *Annual fees.* The annual fees for licenses issued under this chapter are as follows.

(1) *On-sale intoxicating liquor license.* The annual fee for an on-sale intoxicating liquor license will be established by ordinance. As determined by Council resolution, the annual fee for an on-sale intoxicating liquor license may be paid in 2 equal semi-annual installments.

(2) *On-sale 3.2% malt liquor license.* The annual fee for an on-sale 3.2% malt liquor license will be established by ordinance and will be payable in full at the time of issuance or renewal of the license.

(3) *On-sale wine license.* The annual fee for an on-sale wine license will be established by ordinance.

(4) *Club license.* The annual fee for a club license shall be set by state law.

(5) *Club membership fee.*

(a) Two hundred members or less - \$300;

(b) Two hundred and one members to 500 - \$500;

(c) Five hundred and one members to 1,000 - \$650; and

(d) One thousand and one members to 2,000 - \$800.

(6) *Sunday liquor license.* The annual fee for a Sunday liquor license will be established by ordinance.

(7) *Bottle club.* The annual fee for a bottle club license will be established by ordinance.

(8) *Off-sale 3.2% malt liquor license.* The annual fee for an off-sale 3.2% malt liquor license will be established by ordinance.

(9) *Off-sale of intoxicating liquor.* The annual fee for an off-sale intoxicating liquor license will be established by ordinance.

(9) *Off-sale of intoxicating liquor.* The annual fee for an off-sale intoxicating liquor license will be established by ordinance.

(10) *Temporary on-sale intoxicating liquor license.* The annual fee for a temporary on-sale intoxicating liquor license will be established by ordinance.

(11) *Temporary on-sale 3.2% malt liquor license.* The annual fee for a temporary on-sale

3.2% malt liquor license will be established by ordinance.

(12) *Sidewalk café license.* The annual fee for a sidewalk café license will be established by ordinance. (Ord. 2015-07, 3<sup>rd</sup> Series passed on 6-1-15)

(13) *On-sale brew pub license.* The annual fee for an on-sale brew pub license will be established by ordinance.

(14) *Off-sale brew pub license.* The annual fee for an off-sale brew pub license will be established by ordinance.

(15) *On-sale brewery taproom license.* The annual fee for an on-sale brewery taproom license will be established by ordinance.

(16) *Off-sale brewery taproom license.* The annual fee for an off-sale brewery taproom license will be established by ordinance.

(17) *Off-sale microdistillery license.* The annual fee for an off-sale microdistillery license will be established by ordinance.

(18) *On-sale cocktail room license.* The annual fee for an on-sale cocktail room license will be established by ordinance.  
(Ord. 2015-07, 3<sup>rd</sup> Series passed on 6-1-15) (Ord. 2015-14, 3<sup>rd</sup> Series passed on 12-21-15)

(B) *Payment of fees.*

(1) *Initial application.* All licenses issued under this chapter, except bottle club licenses, shall be from July 1 through June 30. For licenses issued and which are to become effective other than on the first day of the license year, the license fee shall be a pro rata share of the annual license fee. Provided, however, the pro rata share shall not be less than ½ of the annual license fee. The fee for a bottle club license shall be set by state law. All license fees must be paid before the license will be issued by the city.

(2) *Annual fees.* When renewing any existing license, except an on-sale intoxicating liquor license, the entire annual fee shall be paid when filing the application for renewal. When renewing an on-sale intoxicating liquor license, ½ of the annual fee shall be paid when filing for renewal. The second half shall be paid on or before January 1 of the year following renewal of the license. All license fees shall be paid into the general fund of the city.

(3) *Refund.* No part of the fee paid for any license issued under this chapter shall be refunded, except as authorized under M.S. Chapter 340A.408, as it may be amended from time to time, now in effect.

(4) *Duplicate licenses.* Duplicates of all original licenses may be issued by the City Clerk, without action by the City Council, upon the licensee's affidavit that the original has been lost and upon payment of a fee set by ordinance for the issuance of the duplicate license. All duplicate licenses shall

be clearly marked, DUPLICATE. (Prior Code, § 3.6) (Am. Ord. 488, passed 5-20-2002) (Ord. 2015-07, 3<sup>rd</sup> Series, passed 6-1-15)

**§ 111.07 PERSONS INELIGIBLE FOR LICENSE.**

No license may be granted to or held by any person:

(A) Who is not a citizen of the United States or a resident alien;

(B) Who is under 21 years of age;

(C) Who is not of good moral character and repute;

(D) Who has a direct or indirect interest in a manufacturer, brewer, or wholesaler;

(E) Who has had an intoxicating liquor license or 3.2% malt liquor license revoked within 5 years of the license application, or to any person, who at the time of the violation, owns any interest, whether as a holder of more than 5% of the capital stock of a corporation licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business, or firm in which any person is in any manner interested;

(F) No new retail license may be issued to, and the governing body of a municipality may refuse to renew the license of, a person who, within 5 years of the license application, has been convicted of a felony or a willful violation of a federal or state law or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution of an alcoholic beverage;

(G) Who, if a corporation, does not have a manager who is eligible pursuant to the provisions of this section;

(H) Who is not the real party-in-interest or beneficial owner of the business operated, or to be operated, under the license;

(I) Who, at the time of the application for a license or renewal of a license, owns delinquent real estate or personal property taxes on the premises, fixtures, or equipment associated with the use of the license;

(J) Who is not the proprietor of the establishment for which the license is sought;

(K) Who has been convicted of any crime for illegal acts of ill repute, including but not limited to gambling, prostitution, and/or sale of illegal narcotics, deemed by the Hastings Police Department as being related to the type of license being sought;

(L) Who has been convicted of a violent felony within the last 15 years; or

(M) Who has been convicted of a felony within the last 10 years. (Prior Code, § 3.7) (Am. Ord.

488, passed 5-20-2002)

### **§ 111.08 PREMISES INELIGIBLE.**

No license authorized by this subchapter shall be granted or renewed for operation on any premises on which any real estate taxes, assessments, or other financial claims of the city are delinquent or unpaid. (Prior Code, § 3.8) (Am. Ord. 488, passed 5-20-2002)

### **§ 111.09 LIABILITY INSURANCE.**

(A) Every applicant for any type of license authorized to be issued under this chapter must, as a condition to the issuance of the license, provide proof of liability insurance in the form and amounts as required by M.S. Chapter 340A, now in effect, and as it may be amended from time to time. Where the licensed premise includes area within a sidewalk café, the required liability insurance shall also cover the sidewalk café area and shall name the city as an additional insured. Applicants for an annual on-sale wine license or an annual 3.2% malt liquor license who, by affidavit, establish that they have had sales of less than \$25,000 of wine or 3.2% malt liquor for the preceding year, will not be required to provide proof of liability insurance, as required by this section and M.S. Chapter 340A, as it may be amended from time to time. Applicants for an annual off-sale 3.2% malt liquor license who, by affidavit, establish that they have had sales of less than \$50,000 of wine or 3.2% malt liquor for the preceding year, will not be required to provide proof of liability insurance, as required by this section and M.S. Chapter 340A, as it may be amended from time to time. Applicants for any temporary license issued under this chapter must provide proof of liability insurance in the form and amounts as required by M.S. Chapter 340A, now in effect and as may be amended from time to time, regardless of the amount of sales in the preceding year.

(B) Proof of the required liability insurance shall be in the form of a certificate of insurance or some other form acceptable to the City Attorney and City Clerk. All liability and insurance policies required herein shall provide that there shall be no cancellation of the policy for any cause, by the insured or by the insurance company, without first giving 10-days' written notice to the city, addressed to the City Clerk. Liquor sales by a licensee without required liability insurance coverage, shall be grounds for immediate suspension or revocation of the license. (Prior Code, § 3.9) (Am. Ord. 488, passed 5-20-2002) (Ord. 2015-07, 3<sup>rd</sup> Series, passed 6-1-15)

### **§ 111.10 SUSPENSION OR REVOCATION OF LICENSE.**

(A) *Suspending license.* The City Council may suspend any retail license for up to 60 days or revoke any retail license for the sale of alcoholic beverages upon the violation of any provision or condition of this chapter or of any state or federal law regulating the sale of alcoholic beverages. The City Council shall revoke the license for any willful violation, which under the laws of this state, is grounds for mandatory revocation.

(B) *Notice to suspend.* Before the Council shall suspend or revoke any license issued under this chapter, the licensee shall be given at least 10-days' notice stating the time and place of the hearing and the charges against the licensee. The notice shall also state that the licensee may have a hearing conducted under M.S. §§ 14.57 through 14.69 of the Minnesota Administrative Procedures Act, as they may be amended from time to time.

(C) *Presumptive civil penalties.* The following process and presumptive penalties shall apply only to liquor license violations involving failure of routine alcohol sales, compliance checks or sales of alcohol to underage persons. There shall be no presumptive penalties for liquor license violations of other types and the City Council may impose any penalties allowed by law for those violations after the notice and opportunity for hearing provided in division (B) above.

(1) *Purpose.* The purpose of this section is to establish a standard by which the City Council determines the length of license suspensions and the propriety of revocations, and shall apply to all on-sale and off-sale licensed premises. These penalties are presumed to be appropriate for every case; however, the Council may deviate in an individual case where the Council finds that there exist substantial reasons making it more appropriate to deviate. When deviating from these standards, the Council shall provide written findings that support the penalty imposed.

(2) *Best Practices Program.* The Best Practices Program (BPP) is a program offered by the City with the intent to eliminate sales of alcohol to youth. Participation in the BPP is voluntary, it is offered to both off-sale and on-sale liquor establishments and offers incentives to participating licensees to undertake certain practices with the objective of avoiding sales to minors. The City will assist participating businesses with training and a different set of presumptive penalties will apply to those who choose to participate, should an illegal sale to a minor occur. Licensees may enroll at any time during their license period, and will be offered an opportunity at the time of annual license renewal. Interested licensees will provide written intent to participate, and will be categorized as a Best Practices Business once they have successfully completed the requirements of the program. It is the licensee's responsibility to ensure continued compliance with the program; the City may conduct random verification checks, and recertification will be required during annual renewal of a liquor license. If a Best Practices Business has two (2) or more violations within a three (3) year period, the City Council may choose to disregard a business' participation in the program and apply penalties different than the BPP presumptive penalties.

	<i>Required Items</i>
	A minimum of 75% of alcohol selling employees (at any one time) have attended alcohol training conducted by Hastings Police Department (or other training pre-approved by the City)
	Business has an internal program in place for providing ongoing training of both new and current alcohol selling employees (copy of program and tracking must be provided)

	Business has an internal policy requiring identification checks for anyone appearing to be 40 years old or under (copy of program and tracking must be provided)
<b><i>Electives (Must Have 40 Points)</i></b>	
10	Business has an internal employee reward/recognition program for employees who catch any underage customer attempting to purchase alcohol
10	Business uses an automated ID card scanner system or
20	Business uses an automated ID card scanner system that is integrated into register system*
10	Business has an internal policy setting a minimum age of 21 for employees to sell alcohol products
10	Business agrees to meet immediately with city staff following a violation (instead of waiting for criminal court proceedings)
_____	Total electives selected
* Cannot elect both automated ID systems	

(3) *Underage sales and compliance check failures.* The following presumptive penalties apply to liquor license violations involving failure of routine alcohol sales compliance checks or sale of alcoholic beverages to an underage person(s).

<b><i>Violation</i></b>	<b><i>Best Practices Business</i></b>	<b><i>Non-Best Practices Business</i></b>
1st	\$500 civil penalty	\$1,000 civil penalty and 3 day license suspension
2nd (within 24 months of first violation)	\$750 civil penalty and 3 day license suspension	\$1,500 civil penalty and 6 day license suspension
3rd (within 24 months of first violation)	\$1,000 civil penalty and 6 day license suspension	\$2,000 civil penalty and 9 day license suspension
4th (within 24 months of first violation)	Revocation	Revocation
“Best Practices” designation applies to those license holders who at the time of the violation are registered with the city to participate and are in compliance with its alcohol “Best Practices Program”.		

(a) *Multiple violations.* At a licensee’s first appearance before the City Council, the Council shall act upon all of the violations that have been alleged in the notice sent to the licensee. The Council in that case shall consider the presumptive penalty for each violation under the 1st Violation column in division (3) above. The occurrence of multiple violations shall be a basis for deviation from the presumptive penalties in the Council’s discretion.

(b) *Subsequent violation.* Violations occurring after the notice of hearing has been sent to the licensee, but prior to the hearing, shall be treated as a separate violation and treated as a subsequent violation before the City Council, unless the City Administrator and licensee agree in writing to add the violation to the appearance and hearing on the initial violation for which notice was sent. The same procedure shall apply to a second, third or fourth violation considered before the Council.

(c) *Subsequent appearances.* Upon a second, third or fourth appearance before the City Council by the same licensee, the Council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, the Council may consider the amount of time elapsed between appearances as a basis for deviation from the presumptive penalties imposed by this section.

(d) *Computation of violations.* Multiple violations are computed by reviewing the time period of the two (2) years immediately prior to the date of the most current violation.

(e) *Stipulations in lieu of hearing.* When a liquor license violation involves a licensee's failure of a routine alcohol sales compliance check or sale of alcohol to an underage person or persons to which these presumptive penalties apply, documentation of the illegal sale shall be sent to the City Council by either the Chief of Police or the City Administrator, together with notice of the applicable presumptive penalty. If no Council member objects to application of the presumptive penalty or otherwise requests that the matter be brought before the Council within 7 days, the City Administrator or City Attorney may enter into a written stipulation with the licensee which shall include a waiver of further notice and hearing by the licensee, a recitation of stipulated facts describing the alleged violation, and setting forth the applicable presumptive penalty to be imposed, provided that all such stipulations shall be subject to the approval of the City Council and if the approval is not granted, the licensee shall have the right to withdraw its waiver of hearing and to demand a hearing before the Council.

(f) *Other penalties.* Nothing in this section shall restrict or limit the authority of the City Council to suspend a liquor license up to 60 days, to revoke the license, to impose a civil fee not to exceed \$2,000 to impose conditions, or to take any other action in accordance with law; provided that the license holder has been afforded an opportunity for a hearing in the manner provided by this chapter.

(D) *Costs.* Once a notice of intent to revoke or suspend a license has been mailed to the licensee, the licensee becomes responsible for all reasonable costs of investigation, administration and hearings associated with the action as a condition of reinstatement, termination of suspension or dismissal of the allegations prior to a hearing. (Prior Code, § 3.10) (Am. Ord. 488, passed 5-20-2002; Am. Ord. 509, passed 4-5-2004; Am. Ord. 2009-07, 3rd Series, passed 7-6-2009)

## § 111.11 HOURS AND DAYS OF SALE.

(A) *Generally.* Liquor licenses issued under this chapter are subject to the hours and days of sale as outlined in M.S. § 340A.504, as applicable, and as it may be amended from time to time. Hours and days not specified in state statute will be set by Council resolution. The closing hours listed below are assuming the licensee has obtained the necessary approvals from the state for a 2:00 a.m. closing. If required approvals are not received, then the closing shall be at 1:00 a.m. for closing times listed in divisions (B), (C)(1), and (C)(2) below. (Am. Ord. 504, passed 10-6-2003)

(B) *On-sale or off-sale of 3.2% malt liquor.* No on-sale or off-sale of 3.2% malt liquor may be made:

- (1) Between 2:00 a.m. and 8:00 a.m. on Monday through Saturday; or
- (2) Between 2:00 a.m. and 12:00 p.m. on Sunday. (Am. Ord. 504, passed 10-6-2003)

(C) *On-sale of intoxicating liquor.* No on-sale of intoxicating liquor may be made:

- (1) Between 2:00 a.m. and 8:00 a.m. on Monday through Saturday; or
- (2) Between 2:00 a.m. and 10:00 a.m. on Sunday.

(Am. Ord. 504, passed 10-6-2003; Am. Ord. 2010-03, 3rd Series, passed 3-1-2010)

(D) *Off-sale of intoxicating liquor.* No off-sale of intoxicating liquor may be made:

(1) On Sundays except that off-sale of malt liquor may be made by brew pubs holding a valid off-sale brew pub license and small brewers holding a valid off-sale brewery taproom license between the hours of 8:00 a.m. and 10:00 p.m. subject to all conditions and restrictions contained in M.S. § 340A.24 and M.S. § 340A.28;

- (2) Before 8:00 a.m. on Monday through Saturday;
- (3) After 10:00 p.m. on Monday through Saturday;
- (4) On Thanksgiving Day;
- (5) On December 25; or
- (6) After 8:00 p.m. on December 24.

(E) *Closure of premises.* All on-sale licensed establishments, clubs, and bottle clubs shall be closed to the public or to members not later than ½ hour after the required time for stopping sales as provided in this chapter, and shall remain closed until the commencement of sales is permitted under this chapter. It is unlawful for any person other than the licensee and employees of the licensee to be in the licensed premises during the closed periods. (Prior Code, § 3.11) (Am. Ord. 488, passed 5-20-

2002) Penalty, see § 10.99 (2015-14, 3<sup>rd</sup> Series, passed 12-21-15)

## **§ 111.12 NUDITY PROHIBITED.**

(A) *Purpose.* The City of Hastings does hereby ordain that it is in the best interest of the public health, safety, and general welfare of the people of the City of Hastings that nudity, as hereinafter defined, be prohibited upon the premises of establishments holding an intoxicating liquor license, a 3.2% malt liquor license, a wine license, a club license, or a bottle club license, so as to best protect and assist the owners and operators and employees thereof, as well as the patrons thereof, and the public in general. Further, the city does ordain that the particular combination of alcoholic beverages and nudity constitutes a specific threat to the interest of the city in protecting order and morality, while promoting the public degradation and debasement of the individual, and promoting the commercial exploitation of sex. The city does ordain that the standards set herein are reflective of the prevailing community standards in the City of Hastings.

(B) *Nudity defined for purposes of this section.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**NUDITY.** The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breasts with less than fully opaque covering of any portion thereof below the top of the areola, or the depiction of covered male genitals in a discernibly turgid state.

(C) *Licensee prohibitions.* It shall be unlawful for the holder of any intoxicating liquor license, a 3.2% malt liquor license, a wine license, a club license, or a bottle club license, within the City of Hastings, to permit or to allow nudity in the licensed premises. (Prior Code, § 3.12) (Am. Ord. 488, passed 5-20-2002) Penalty, see § 10.99

## **§ 111.13 CONDITIONS OF LICENSE.**

(A) *Generally.* Every license issued pursuant to this chapter shall be subject to the conditions of this section and all other sections of this chapter and any other applicable ordinance of the city, state law, or federal law.

(B) *Specifically.*

(1) *Posting.* The license shall be posted in a conspicuous place in the licensed establishment at all times.

(2) *Additional conditions.* The Council may, upon a finding of necessity, place the conditions and restrictions upon the license as it, at its discretion, may deem reasonable and justified to protect the public interest.

(3) *Licenses limited to certain areas.* No on-sale or off-sale license of any type shall be

effective beyond the compact and contiguous space described on the license.

(4) *License nontransferable.* No license shall be transferable between persons or to a different location, without the prior consent of the Council.

(5) *Gambling prohibited.* No gambling or gambling devices shall be permitted on any licensed premises, except those allowed by state law.

(6) *Inspection by peace officers or health officers.* No licensee or employee of a licensee shall hinder or prevent a peace officer, health officer, building official, fire official, or any other employee so designated by the City Council or City Administrator from entering upon and inspecting the licensed premises during business hours, without a search warrant, and the officer may seize all illegal intoxicating liquor and 3.2% malt liquor on the licensed premises.

(7) *Responsibility of licensee.* Every licensee, whether actually present on the licensed premises or not, shall be responsible for the conduct of the licensed premises and shall maintain conditions of sobriety and order on the licensed premises.

(8) *Illegal sales.* No intoxicating liquor or 3.2% malt liquor shall be sold, furnished, delivered, or provided to any obviously intoxicated person, to any underage person, or to any person to whom the sale of intoxicating liquor or 3.2% malt liquor is prohibited by state law.

(9) *Restriction on employment of minors.* No person under 18 years of age shall be employed to sell or serve intoxicating liquor or 3.2% malt liquor in any on-sale license premises. Provided, however, that a person who has attained the age of 17 years may be employed in any restaurant licensed to sell intoxicating liquor or 3.2% malt liquor, in which the principal part of the business is serving food.

(10) *Minors prohibited on premises.* Except as otherwise provided by this chapter, it is unlawful for a licensee to permit any person under the age of 21 to be in or upon a licensed premises, unless accompanied by at least 1 parent or guardian.

(11) *Restriction on licenses.* No licensee shall apply or possess a federal wholesale liquor dealer's special tax stamp or a federal gambling stamp.

(12) *Changes of ownership of licensee.* Changes in the corporate or association officers, corporate charter or articles of incorporation, or any change in ownership of 10% or more of the stock of the corporation, bylaws, or partnership agreement, as the case may be, shall be submitted to the City Clerk, in writing, within 10 days after the changes are made. Any change of beneficial interest in stock entitled to vote which results in a change in voting control of the licensee will be deemed equivalent to a transfer of the license to the corporation and any such license shall be revoked 30 days after any such change of ownership or beneficial interest of shares unless the City Clerk has been notified of the change in writing and the City Council has approved the change. (Prior Code, § 3.13) (Am. Ord. 488, passed 5-20-2002) Penalty, see § 10.99

## **§ 111.25 CONSUMPTION OF BEER OR LIQUOR ON STREETS AND PUBLIC PROPERTY.**

Except as hereinafter provided, it is unlawful for any person to consume or to possess in an unsealed container, beer or liquor, as those terms as defined in this code, on any street or other public property except within licensed sidewalk cafés or city parks during the hours when the parks are open to the public or except when specifically prohibited by other ordinance of the City of Hastings as to particular parks. Provided, that this section shall not apply to the possession of an unsealed container in a motor vehicle on streets or public property when the container is kept in the trunk of the vehicle if it is equipped with trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor is not equipped with a trunk. For the purpose of this section, a utility or glove compartment shall be deemed to be within the same area occupied by the driver or passengers. Provided, further, that the City Council may grant, at its sole discretion, permits for the conduct of single occasions of variance from the terms of this section to bona fide, nonprofit civic organizations having their principal place of business within the City of Hastings for the sole purpose of allowing community civic festivals and celebrations and entertainment in connection therewith. The permits shall be issued only for a particularly designated street or public way and shall be valid for the activities only within the area so limited by the terms of the permit. The permit shall be issued only upon due application to the City Council, through its clerk, no less than 30 days prior to the anticipated date of use of the permit by the organization, and shall be accompanied by the information and material concerning the proposed use of the permit from the organization as the City Council, through its Clerk, shall deem appropriate. The Council may, at its sole and exclusive discretion, impose the conditions the limitations upon the uses allowed under the permit for the protection of the public health, safety, and welfare. (Prior Code, § 9.72) Penalty, see § 10.99 (Ord. 2015-07, 3<sup>rd</sup> Series, passed 6-1-15)

## **§ 111.26 CONSUMPTION OF BEER OR LIQUOR ON PRIVATE PARKING LOTS.**

It is unlawful for any person to consume or possess in an unsealed container, beer or liquor, as those terms are defined in this code, on any privately-owned parking lot which is clearly sign posted prohibiting the possession and consumption. Provided, that this section shall not apply to the possession of an unsealed container in a motor vehicle on privately-owned parking lots when the container is kept in the trunk of the vehicle if it is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. For the purpose of this section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers. (Prior Code, § 9.73) Penalty, see § 10.99

## **§ 111.98 VIOLATIONS.**

Every person violates a section, division, paragraph, or provision of this chapter when they perform an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor. (Prior Code, § 3.99) (Am. Ord. 488, passed 5-20-2002) Penalty, see § 10.99

## CHAPTER 112: TOBACCO REGULATIONS

### Section

- 112.01 Purpose
- 112.02 Definitions and interpretations
- 112.03 License
- 112.04 Fees
- 112.05 Basis for denial of a license
- 112.06 Prohibited sales
- 112.07 Vending machines
- 112.08 Self-service sales
- 112.09 Responsibility
- 112.10 Compliance checks and inspections
- 112.11 Illegal acts
- 112.12 Civil enforcement
- 112.13 Hearings and appeals
- 112.14 Exceptions and defenses

### **§ 112.01 PURPOSE.**

To further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time, this chapter regulates the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws. (Prior Code, § 5.34)

### **§ 112.02 DEFINITIONS AND INTERPRETATIONS.**

Except as otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and the neuter, and vice versa. The term “shall” means mandatory and the terms “may” means permissive. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**COMPLIANCE CHECKS.** The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** may involve the use of minors as authorized by this chapter. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices for education, research and training purposes as authorized by state and federal laws.

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

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

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

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

**RETAIL ESTABLISHMENT.** Any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail establishments shall include, but to be limited to, grocery stores, convenience stores, and restaurants.

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

**SELF-SERVICE MERCHANDISING.** Open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without the assistance or intervention of the licensee or the licensee's employees. The assistance or intervention shall involve the actual physical exchange of the tobacco, tobacco products, or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines, nor any case or storage unit secured and inaccessible to the general public.

**TOBACCO OR TOBACCO PRODUCTS.** Means any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigarettes; cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco or tobacco products

excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose. Ord. No. 2011-12, 3<sup>rd</sup> Series, passed 06-06-11

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

***VENDING MACHINE.*** Any mechanical, electrical or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco products, or tobacco related device and includes vending machines equipped manual, electric, or electronic locking devices. (Prior Code, § 5.34)

***INDOOR AREA.*** All space between a floor and a ceiling that is bounded by walls, doorways, or windows; whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. (Ord. 2014-01, 3<sup>rd</sup> Series passed on 1-06-14)

***SMOKING.*** Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation. (Ord. 2014-01, 3<sup>rd</sup> Series passed on 1-06-14)

### **§ 112.03 LICENSE.**

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

(B) *Application.* An application for a license to sell tobacco, tobacco products, or tobacco related devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, a copy of the educational materials the applicant intends to use to educate employees and any additional information the city deems necessary. Upon receipt of completed application, the City Clerk shall forward the application to the Council for action at a City Council meeting. If the Clerk determines an application is incomplete, the Clerk shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* A background check on the applicant is required before an application will be forwarded to the Council. The Clerk shall forward the application to the Police Department within a reasonable period of time. The application and investigation results will be forwarded to the Council for action. If the Council approves the license, the Clerk shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with notice of the

applicant's right to appeal the Council's decision.

(D) *Term.* All tobacco licenses shall be for a period of one (1) year and shall expire on June 30 of each year, regardless of when the license was originally issued. Thereafter, all licenses eligible for renewal, will be renewed for one (1) year. All tobacco licensees, despite when the license is issued, will be subject to an annual compliance check.

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

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

(G) *Movable place of business.* No license shall be issued to a movable place of business. Only fixed-location business shall be eligible to be licensed under this chapter.

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

(I) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license. The issuance of a license under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license. (Prior Code, § 5.34) (Am. Ord. 2009-05, 3rd Series, passed 4-20-2009) Penalty, see § 10.99

(J) *Smoking.* Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related produces is prohibited. (Ord. 2014-01, 3<sup>rd</sup> Series, passed 01-06-2014)

#### **§ 112.04 FEES.**

No license shall be issued under this chapter until the appropriate fee shall be paid in full. The fee for a license under this chapter shall be set by ordinance. (Prior Code, § 5.34)

#### **§ 112.05 BASIS FOR DENIAL OF A LICENSE.**

(A) *Generally.* The following shall be grounds for denying issuance or a renewal of a license under this chapter. Except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the issuance or renewal of the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon discovery the person was ineligible for the license under this section.

(B) *Specifically.*

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

(2) The applicant has been convicted within the past 5 years of any violation of a federal, state, or other law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco-related devices.

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

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

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

(6) The applicant or license holder has outstanding fines, penalties, or property taxes owed to the city. (Prior Code, § 5.34)

## **§ 112.06 PROHIBITED SALES.**

It shall be a violation of this chapter for any person to sell, offer for sale, give away, furnish, or otherwise deliver any tobacco, tobacco products, or tobacco related devices:

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

(B) By means of any type of vending machine, except as may otherwise be provided in this chapter;

(C) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco related device between the licensee or the licensee's employee unless 90% of the licensee's total annual sales volume consists of tobacco, tobacco products, or tobacco related services.

(D) By means of loosies as defined in § 112.02;

(E) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process; or

(F) By any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation. (Prior Code, § 5.34) (Am. Ord. 2010-04, 3rd Series, passed 3-15-2010) Penalty, see § 10.99

### **§ 112.07 VENDING MACHINES.**

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment. (Prior Code, § 5.34) Penalty, see § 10.99

### **§ 112.08 SELF-SERVICE SALES.**

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, or tobacco related devices by any means whereby the customer may have access to the items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco products, or tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling, tobacco, tobacco products, or tobacco related devices at the time this chapter is adopted shall comply with this section within 60 days following the effective date of this chapter. This section shall not apply to any licensee whose total annual sales volume of tobacco, tobacco product, or tobacco-related devices is 90% or more. (Prior Code, § 5.34) (Am. Ord. 2010-04, 3rd Series, passed 3-15-10) Penalty, see § 10.99

### **§ 112.09 RESPONSIBILITY.**

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

under this chapter, state or federal law, or other applicable law or regulation. (Prior Code, § 5.34)

## **§ 112.10 COMPLIANCE CHECKS AND INSPECTIONS.**

All licensed premises shall be open to inspection to the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct unannounced compliance checks to ensure compliance with the provisions of this chapter. The compliance checks shall utilize, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products or tobacco-related devices. Minors used for the purpose of compliance checks shall be approved and supervised by city designated law enforcement officers or other designed city personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempt to purchase tobacco, unlawful possession of tobacco, tobacco products, or tobacco-related devices when the items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if it exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law. (Prior Code, § 5.34)

## **§ 112.11 ILLEGAL ACTS.**

(A) *Generally.* Unless otherwise provided, the following acts shall be a violation of this chapter.

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

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

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

(E) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain the items on behalf of a minor. It shall further be a violation to coerce or attempt to coerce a minor to illegally purchase or

otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This division (E) shall not apply to minors lawfully involved in a compliance check.

(F) *Use of false identification.* It shall be a violation of this chapter for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person. (Prior Code, § 5.34) Penalty, see § 10.99

## **§ 112.12 CIVIL ENFORCEMENT.**

The license holder shall be responsible for the conduct of its agents or employees while they are on the licensed premises. Any violation of this chapter shall be considered an act of the license holder for purposes of imposing a civil penalty, license suspension, or revocation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.(Prior Code, § 5.34)

## **§ 112.13 HEARINGS AND APPEALS.**

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

(B) *Generally.* Following receipt of a notice of denial issued under this chapter or notice of violation and penalty issued under this section, or a notice of revocation, an applicant or license holder may request a hearing before the City Council. A request for a hearing shall be made by the applicant or license holder in writing and filed with the City Clerk within 10 days of the mailing of the notice of denial or alleged violation. Following receipt of a written request for hearing, the applicant or license holder shall be afforded an opportunity for a hearing before the City Council.

(C) *Findings.* If after the hearing, the applicant is found ineligible for a license or is found to have violated this chapter, the City Council may affirm the denial, impose a fine, issue a suspension or revocation, or impose any combination thereof. The decision shall be in writing and shall set forth the reasons for the findings of the City Council. Copies shall be provided to the applicant or license holder. Likewise, if the City Council finds that no violation occurred or finds grounds for not imposing any penalty, the findings shall be recorded and a copy provided to the applicant or license holder.

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

(E) *Default.* If the applicant or license holder has been provided written notice of the denial or violation and if no request for a hearing is filed within the 10-day period, then the denial, penalty,

suspension, or revocation imposed pursuant to this section shall take effect immediately by default. The City Clerk shall mail the notice of the denial, fine, suspension, or revocation to the applicant or license holder.

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

(G) *Hearing officer.* The hearing shall be held before the City Council and shall be open to the public.

(H) *Appeals.* Any appeal of the decision of the City Council must be filed with the District Court within 10 days of the mailing of the City Council's decision.

(I) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter. If the city elects to seek misdemeanor prosecution, no administrative monetary penalty shall be imposed. If the city elects to seek misdemeanor prosecution, the city is not precluded from suspending or revoking the license of a licensee as provided by this chapter.

(J) *Continued violation.* Each violation, and every day in a violation occurs or continues, shall constitute a separate offense. (Prior Code, § 5.34) Penalty, see § 10.99

## **§ 112.14 EXCEPTIONS AND DEFENSES.**

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, or tobacco related devices as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law. (Prior Code, § 5.34)

## CHAPTER 113: FIREWORKS

### Section

- 113.01 Purpose
- 113.02 Definition
- 113.03 License required
- 113.04 License application
- 113.05 Sales and storage of fireworks
- 113.06 Processing application
- 113.07 Terms and conditions of fireworks license
- 113.08 Discharge rules and regulations
- 113.09 Citations and fines
- 113.10 Right of hearing
- 113.11 License term and fee
- 113.12 Application
  
- 113.98 Violations

### § 113.01 PURPOSE.

(A) The purpose of this chapter is to regulate the sale, storage, display, and possession of permitted consumer fireworks in order to protect the health, safety, and welfare of the general public.

(B) The City Council makes the following findings regarding the need to license and regulate the sale, distribution, storage, and display of fireworks permitted under state law:

(1) Consumer fireworks contain pyrotechnic chemical compositions that are combustible; accordingly, the unregulated accumulation, storage, display, use, and sale of these items present a fire safety hazard;

(2) The improper disposal of consumer fireworks presents environmental hazards; and

(3) Due to their short-term and mobile nature, it is more difficult and demanding of city staff and public safety resources to enforce compliance with city ordinances and state law for temporary and transient sales of consumer fireworks than it is for established, permanent businesses. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003)

## § 113.02 DEFINITION.

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

**CONSUMER FIREWORKS.** Will have the same definition as contained in M.S. § 624.20, Subdivision 1(c), as it may be amended from time to time. Wire or wood sparklers of not more than 100 grams of mixture per item, other sparkling items which are non-explosive and non-aerial and contain 75 grams or less of chemical mixture per tube or a total of 500 grams or less for multiple tubes, these include:

- (1) *Cylindrical fountain.* Upon ignition, a shower of colored sparks or smoke and sometimes a whistling effect is produced.
- (2) *Cone fountain.* The effect is the same as that of a cylindrical fountain. When more than 1 cone is mounted on a common base, total pyrotechnic composition may not exceed 500 grams.
- (3) *Illuminating torch.*
- (4) *Wheel.* Pyrotechnic device intended to be attached to a post or tree by means of a nail or string. Upon ignition, the wheel revolves, producing a shower of color and sparks and sometimes, a whistling effect.
- (5) *Ground spinner.* Small device venting out an orifice usually on the side of the tube. Similar in operation to a wheel but intended to be placed flat on the ground and ignited. The rapidly spinning device produces a shower of sparks and color.
- (6) *Flutter sparkler.* Narrow paper tube attached to a stick or wire that produces color and sparks upon ignition. The paper at one end of the tube is ignited to make the device function.
- (7) *Flash/strobe.* Emit a bright light.
- (8) Novelty items such as snakes and glow worms, smoke devices, or trick noisemakers which include paper streamers, party poppers, string poppers snappers, and drop pops, each consisting of not more than 25 hundredths grains of explosive mixture. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003; Am. Ord. 2008-9, 3rd Series, 8-18-2008)

### **§ 113.03 LICENSE REQUIRED.**

No person shall sell or possess for sale or store consumer fireworks, as defined in this chapter, without first having obtained a license from the City of Hastings. It is unlawful to sell fireworks in the City of Hastings in violation of M.S. §§ 624.20 through 624.25, as they may be amended from time to time, inclusive, which are adopted by reference (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003) Penalty, see § 10.99

### **§ 113.04 LICENSE APPLICATION.**

The application for a license for the storage and sale of fireworks shall be made to the City Clerk on the form(s) approved by the City of Hastings and shall include:

(A) The name, address, and phone number of the applicant;

(B) The address of the proposed location where the fireworks are to be sold or stored, if different locations;

(C) If the applicant does not own the business premises, a true and correct copy of the current, executed lease, as well as the written authorization of the property owner for the applicant's use of the property for the sale of permitted fireworks;

(D) A sketch of the sales location showing where the fireworks are proposed to be displayed, the proposed amount of fireworks to be on the premises at any one time (including but not limiting a list documenting the name, weight, and quantity of fireworks, accompanied by applicable Material Safety Data Sheets), and any other information deemed relevant by the City's Fire Marshal regarding fire safety on the premises. This information shall also be made available to all employees and produced immediately upon request from any public safety official;

(E) Completion of applicable release forms which authorizes the City of Hastings of conduct a background criminal record check on the applicant(s); and

(F) The Fire Marshal will perform a fire code compliance inspection of the entire property prior to issuance of license. The Fire Marshal shall have 30-days' notice to perform inspections. If 30-days' notice is not given, an application may not be approved. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003)

### **§ 113.05 SALES AND STORAGE OF FIREWORKS.**

(A) No person shall sell or store fireworks within 100 feet of any fuel dispensing apparatus.

(B) It shall be unlawful for any seller of any fireworks to permit smoking at any site containing

fireworks. At least 2 “No Smoking” signs must be conspicuously posted and approved fire extinguishers must be readily available and operational.

(C) There shall be at least 2 fully accessible exits from all buildings from which fireworks are stored or sold.

(D) The proposed premises must be in compliance with the State Building Code and the State Fire Code.

(E) The sale of consumer fireworks is only permitted in the C-1, C-2, C-3, and C-4 zoning districts.

(F) There shall be no storage or sale of consumer fireworks from structures of mixed occupancy when one of the occupancies is an ‘R’ (residential).

(G) Transient sales of consumer fireworks are prohibited unless the applicant is able to comply with National Fire Protection Association (NFPA) Standard 1124.

(H) Where consumer fireworks storage is located in a building containing other tenants, the consumer fireworks storage area shall be separated from the other tenants by fire barriers having a fire resistance rating of not less than 2 hours (NFPA 1124 sect. 6.4.3.1).

(I) Openings in the fire barriers shall not be permitted (NFPA 1124 sect. 6.4.3.1.1).

(J) Doors in the means of egress shall be at least 36 inches wide and kept free of obstructions (NFPA 1124 sect. 6.8.3.2).

(K) Exit doors shall be equipped with panic hardware (NFPA 1124 sect. 6.8.3.3).

(L) Exit doors shall be unlocked when the building is occupied (NFPA 1124 sect. 6.8.3.4).

(M) The operator of each consumer fireworks storage or work building shall prepare a written emergency response plan that provides specific directions to be followed in the event of a fire (NFPA 1124 sect. 6.11.7).

(N) Consumer fireworks retail sales and storage areas shall not be located within 300 feet of any aboveground bulk storage or bulk dispensing area for the following:

- (1) Flammable or combustible liquid;
- (2) Flammable gas; and/or
- (3) Flammable liquefied gas (NFPA 1124 sect. 7.7.3.2).

(O) Cooking equipment of any type shall not be permitted within 20 feet of tents, canopies, or

membrane structures used for the storage or sale of consumer fireworks (NFPA 1124 sect. 7.11.4.1).

(P) Open flame cooking equipment of any type shall not be allowed within 50 feet of tents, canopies, or membrane structures used for the storage or sale of consumer fireworks (NFPA 1124 sect. 7.11.4.2).

(Q) Sale displays of consumer fireworks shall not be placed near business exits.

(R) When approved by the Fire Marshal, continuous storage of consumer fireworks over 100 lbs. net of pyrotechnic composition or 400 lbs. gross weight shall be allowed in an approved structure within the Hastings Industrial Park. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003)

### **§ 113.06 PROCESSING APPLICATION.**

The application must be filed, together with the full license fee and any other applicable fees, with the City Clerk. Following an inspection of the premises proposed to be licensed, the application shall be forwarded to the City Council of the City of Hastings for approval or denial. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003)

### **§ 113.07 TERMS AND CONDITIONS OF FIREWORKS LICENSE.**

A license for the storage or retail sale of consumer fireworks will be issued upon the applicant meeting the following terms and subject to the following conditions.

(A) Neither the applicant nor the responsible party for the license shall have been convicted of a felony, unless the conviction was discharged pursuant to; and/or the applicant or responsible party shall not have had a license to sell fireworks revoked within the last 3 years.

(B) The license is non-transferable, either to a different party or a different location.

(C) The license must be clearly and publicly displayed on the licensed premises.

(D) The applicant must be at least 18 years of age when application is made.

(E) Consumer fireworks must not be sold to persons under the age of 18. Photo identification must be checked with each sale.

(F) All sales must take place in a building which meets all applicable provisions of the State Building Code and the State Fire Code.

(G) In buildings without an approved, automatic fire sprinkler system throughout, consumer fireworks will be limited to 125 lbs. net pyrotechnic composition or 25% of gross package weights if pyrotechnic mixture weight is not known.

(H) In buildings with an approved automatic fire sprinkler system throughout, consumer fireworks will be limited to 250 lbs. net pyrotechnic composition of 25% of gross package weight if pyrotechnic mixture weight is not known or 25% of retail floor space or 600 square feet, whichever is less and the authority having jurisdiction approves the increase.

(I) All licensees shall be responsible for the actions of their employees with regards to the sale of consumer fireworks on the licensed premises, and for purposes of this chapter, the sale of consumer fireworks by an employee will be considered a sale by the license holder.

(Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003; Am. Ord. 2008-9, 3rd Series, 8-18-2008)  
Penalty, see § 10.99

### **§ 113.08 DISCHARGE RULES AND REGULATIONS.**

(A) It is unlawful to throw or toss any consumer fireworks at any person, animal, vehicle, thing, or object.

(B) It is unlawful to throw or toss any consumer fireworks from a moving vehicle.

(C) Juveniles may not possess consumer fireworks unless under the direct supervision of a responsible adult.

(D) The Fire Chief or Fire Marshal may ban consumer fireworks displays and use of consumer fireworks if it is deemed that safety conditions exist.

(E) It is unlawful to use or discharge any consumer fireworks along the route of and during any parade or at any place of public assembly or in any commercial/industrial district.

(F) It is unlawful to use or discharge any consumer fireworks on public property without prior written consent of the Fire Marshal.

(G) It is unlawful to use or discharge consumer fireworks of any kind inside of any structure.

(H) It is unlawful to use or discharge consumer fireworks of any kind between the hours of 11:00 p.m. and 8:00 a.m. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003) Penalty, see § 10.99

### **§ 113.09 CITATIONS AND FINES.**

(A) Upon discovery of a violation of this chapter, or pursuant to a compliance check, the licensee will be issued an administrative citation. Each violation, and every day in which a violation occurs or continues, will constitute a separate offense.

(B) For purposes of determining the number of occurrences of violations, the City Council shall consider a violation as a second occurrence if it occurred within 18 months of the first violation and

shall consider a violation a third violation if it occurred within 30 months of the second violation. The City Council shall consider a violation a fourth violation if it occurred within 30 months of the third violation.

(1) First violation - the licensee shall pay a civil fine established by ordinance.

(2) Second violation - the licensee shall pay a civil fine established by ordinance.

(3) Third violation - the licensee shall pay a civil fine of established by ordinance and shall have its license suspended for 3 consecutive days.

(4) Fourth violation - the licensee's license shall be revoked.

(C) All administrative fees imposed by this chapter are to be paid within 60 days of the date of citation or not later than 30 days after the date of any written decision following the appeal process. Failure to pay any fee imposed herein within the time limits established will result in a license suspension until the date of payment.

(D) Nothing in this chapter prevents the City Council from imposing a harsher penalty than those established by ordinance or resolution herein.

(E) In addition to any administrative citation and penalty imposed herein, the city reserves the right to also issue a criminal citation to any person who violates a provision of this city code section or any state law regarding the storage, display, or sale of consumer fireworks. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003)

### **§ 113.10 RIGHT OF HEARING.**

Within 20 calendar days of the date of the written notice of violation, any cited party may request an opportunity to appeal the violation. The request for appeal must be in writing and must be submitted to the City Clerk. The City Clerk will place the item on the agenda of the next regularly scheduled City Council meeting. Upon review, the City Council may affirm, modify, or overrule the initial determination of penalty. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003)

### **§ 113.11 LICENSE TERM AND FEE.**

(A) Licenses shall be issued on a calendar year basis.

(B) License fees will not be prorated.

(C) License fees will be established by ordinance. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003; Am. Ord. 2009-3, 3rd Series, passed 2-17-2009)

## **§ 113.12 APPLICATION.**

The provisions of this chapter shall apply to all applications of any nature to sell consumer fireworks which are pending on the effective date of this chapter, as well as those applications which may have been granted prior to the effective date of the chapter. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003)

## **§ 113.98 VIOLATIONS.**

Every person who violates a provision of this chapter when they perform an act thereby prohibited or declared unlawful, or fails to act when that failure is thereby prohibited or declared unlawful, and upon conviction thereof shall be punished as for a misdemeanor. (Prior Code, § 5.53) (Am. Ord. 510, passed 3-15-2003) Penalty, see § 10.99

## CHAPTER 114: ADULT USES

### Section

#### *Adult Uses*

- 114.20 Authority, purpose and intent
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**§ 114.20 AUTHORITY, PURPOSE AND INTENT.**

(A) *Authority.* The United States Supreme Court has ruled that sexually-explicit speech, including nude dancing, is entitled to some level of protection under the First Amendment to the United States Constitution. As a result, municipalities may not ban adult establishments. However, the Supreme Court has ruled that cities may adopt content-neutral zoning and licensing provisions to regulate and control the adverse secondary effects of adult establishments on the community.

(B) *Findings of the City Council.* The Minnesota Attorney General's Office and the cities of St. Paul, Alexandria, and Rochester, Minnesota, as well as St. Croix County, Wisconsin have conducted studies of the impact of adult establishments on their respective communities. These studies have concluded that adult establishments have an adverse impact on the surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. The City Council of the City of Hastings is relying on the studies, many of which were conducted in larger cities, recognizing that the same or similar adverse impacts could occur in a smaller city such as the City of Hastings. The findings are based on the experiences of other cities where such businesses have located. Based on these studies, the City Council makes the following findings regarding the need to regulate adult establishments:

- (1) Adult establishments have adverse secondary impacts of the types set forth above.
- (2) The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by location and licensing requirements.
- (3) The City may adopt regulations to promote the public health, safety, morals and general welfare.
- (4) The public health, safety, morals and general welfare will be promoted by regulations governing adult establishments.
- (5) Adult establishments can contribute to increased criminal activity and police calls in the area in which they are located, taxing law enforcement services.
- (6) Adult establishments can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of such businesses can, however, minimize this risk.
- (7) Adult establishments can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises.
- (8) Many members of the public perceive areas within which adult establishments are located as less safe than other areas that do not have such uses.
- (9) The adverse impact that adult establishments have on the surrounding area diminishes as the distance from the adult establishments increases.
- (10) A reasonable licensing procedure is an appropriate mechanism to place the burden of reasonable regulation on the owners, operators, employees and performers of the adult establishment. A licensing procedure will place an incentive on the operators to see that the adult establishment is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually-oriented business, fully in possession and control of the premises and activities occurring therein.

(11) The fact that an applicant for an adult use license has been convicted of a sexually-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Ordinance.

(12) The barring of individuals with sexually-related criminal convictions from the management and operation of adult establishments for a period of years serves as a deterrent to and prevents conduct which may lead to the transmission of sexually-transmitted diseases.

(13) The general health, safety, and welfare of the community is promoted by prohibiting nudity in adult establishments. This prohibition is based on concerns of potential adverse effects such as prostitution, the transmission of sexually-transmitted diseases, exposure to minors, obscenity and unsanitary conditions in public areas.

(14) Small cities experience many of the same adverse impacts of adult establishments present in larger communities.

(C) *Purpose.* It is the purpose of this Ordinance to regulate adult establishments to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to:

(1) Prevent criminal activity within the City;

(2) Allow for efficient and effective law enforcement services in the City;

(3) Prevent deterioration of neighborhoods and its consequences adverse effect on real estate values of properties within the neighborhood;

(4) Locate adult establishments away from residential areas, schools, parks and places of worship;

(5) Provide a content-neutral, objective, licensing scheme that allows the City to monitor adult establishments for violations of building and health codes; and

(6) Prevent ownership of adult establishments by persons with prior, relevant criminal convictions.

(D) *Reasonable Opportunity.* The provisions of this Ordinance do not prohibit adult establishments from having a reasonable opportunity to locate in the City. This Ordinance is not for the purpose of, nor is it intended to, impose a limitation or restriction on the content of any communicative materials, including adult-oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to adult-oriented materials protected by the First Amendment or to deny access by distributors or exhibitors of adult-oriented entertainment to their intended market. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

## § 114.21 DEFINITIONS.

For the purposes of this Ordinance the terms defined in this section have the meanings given them.

### ***ADULT ESTABLISHMENT.***

(1) Any business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly-displayed merchandise, or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas; or

(2) Any business that engages in any adult use as defined in this section 114.21 (B).

***ADULT USE.*** Any of the activities and businesses described below:

(1) ***ADULT BODY PAINTING STUDIO.*** An establishment or business that provides the service of applying paint, ink, or other substance, whether transparent or non-transparent, to the body of a patron when the person is nude.

(2) ***ADULT BOOKSTORE.*** An establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, movies, or motion picture film if a substantial or significant portion of its inventory, stock in trade, or publicly-displayed merchandise consists of, or if a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) is devoted to, or if a substantial or significant portion of its gross revenues is derived from items, merchandise, devices or materials that are distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.

(3) ***ADULT CABARET.*** A business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on: (a) the depiction of nudity, Specified Sexual Activities or Specified Anatomical Areas; or (b) the presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.

(4) ***ADULT COMPANIONSHIP ESTABLISHMENT.*** A business or establishment that provides the service of engaging or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

(5) ***ADULT CONVERSATION/RAP PARLOR.*** A business or establishment that provides the services of engaging or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

(6) **ADULT HEALTH/SPORT CLUB.** A health/sport club that is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

(7) **ADULT HOTEL or MOTEL.** A hotel or motel that presents material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.

(8) **ADULT MASSAGE PARLOR/HEALTH CLUB.** A massage parlor or health club that provides massage services distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

(9) **ADULT MODELING STUDIO.** A business or establishment that provides live models who, with the intent of providing sexual stimulation or sexual gratification, engage in Specified Sexual Activities or display Specified Anatomical Areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted.

(10) **ADULT MOTION PICTURE ARCADE.** Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are used to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing Specified Sexual Activities or Specified Anatomical Areas.

(11) **ADULT MOTION PICTURE THEATER.** A motion picture theater that as a prevailing practice presents material distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas for observation by patrons.

(12) **ADULT NOVELTY BUSINESS.** An establishment or business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly-displayed merchandise or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from items, merchandise, or devices that are distinguished or characterized by an emphasis of material depicting or describing Specified Sexual Activities or Specified Anatomical Areas, or items of merchandise or devices that simulate Specified Sexual Activities or Specified Anatomical Areas, or are designed for sexual stimulation.

(13) **ADULT SAUNA.** A sauna that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, if the service provided by the sauna is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

(14) **ADULT STEAM ROOM/BATHHOUSE FACILITY.** A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

***NUDE or SPECIFIED ANATOMICAL AREAS*** means;

- (1) Less than completely and opaquely covered human genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely opaquely covered.

***SPECIFIED SEXUAL ACTIVITIES*** means;

- (1) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal;
- (2) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed;
- (3) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ clothed or unclothed; and
- (4) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or breasts of a female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

***SUBSTANTIAL OR SIGNIFICANT PORTION*** means; 10% or more of floor area or 350 square feet, whichever is less, or 20% of gross receipts.

***PREMISES*** means; the real property and all building and structures located on the real property.

***ACCESSORY ADULT ESTABLISHMENT;*** Any business which maintains any inventory, stock in trade, or publicly-displayed merchandise, or devotes any portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives any portion of its gross revenues from items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to specified sexual activities or specified anatomical areas, and which is not an adult establishment as defined 114.21 (A) above. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

## **§ 114.22 APPLICATIONS.**

(A) *Other laws.* No Adult Establishment or Accessory Adult Establishment shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in the establishment that is prohibited by an ordinance of the City of Hastings, the laws of the State of Minnesota, or the laws of the United States of America. Nothing in this Ordinance shall be construed as authorizing or permitting conduct that is prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale, or distribution of specified materials to minors.

(B) *Existing adult establishments.* Except as otherwise provided in this Ordinance, existing Adult Establishments and Accessory Adult Establishments must comply with all requirements of this Ordinance immediately upon its effective date. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

## **§ 114.23 HOURS OF OPERATION.**

No Adult Establishment shall be open to the public from the hours of 1:00 a.m. until 8:00 a.m. weekdays and Saturdays, and from the hours of 1:00 a.m. to 12:00 p.m. (noon) on Sundays. (Ord. 2008-11, 3rd Series, passed 9-15-2008) Penalty, see § 114.99

## **§ 114.24 OPERATION.**

Adult Establishments and Accessory Adult Establishments are subject to the following business regulations.

(A) *Off-site viewing.* An Adult Establishment or Accessory Adult Establishment must prevent off-site viewing of its merchandise or any materials depicting, describing or relating to “Specified Sexual Activities” or “Specified Anatomical Areas” by any visual or auditory media, including display, decoration, sign, show window, sound transmission or other means.

### **(B) *Prohibition on liquor.***

(1) Adult Establishments shall not sell or dispense intoxicating liquor or 3.2% malt liquor nor shall the Adult Establishment be located in a building or on a premises that contains a business that sells or dispenses intoxicating liquor or 3.2% malt liquor.

(2) The sale and consumption of alcohol is prohibited on the premises of an Adult Establishment, including, but not limited to, any parking areas or lots that are owned or leased by the Adult Establishment or its owner, or used by patrons when they are at the Adult Establishment.

(3) No Adult Establishments may be operated in a building or structure lying immediately adjacent to, or having a common wall with, a business that sells or dispenses intoxicating liquor or 3.2% malt liquor.

(C) **Entrances.** All entrances to an adult establishment, with the exception of emergency fire exits that are not useable by patrons to enter the business, shall be visible from a public right-of-way.

(D) **Layout.** The layout of any display areas shall be designed so that the management of the Adult Establishment and any law enforcement personnel inside the store can observe all patrons while they have access to any merchandise offered for sale or viewing including but not limited to books, magazines, photographs, video tapes, or any other materials, or any live dancers or entertainers. Booths, partitions and curtains which interfere with such observations are prohibited. Accessory Adult Establishments must maintain all inventories of items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas in a separate room in clear view of management personnel to prevent access by minors.

(E) **Illumination.** Illumination of the premises exterior of Adult Establishments shall be adequate to observe the location and activities of all persons on the exterior premises.

(F) **Signs.** Signs for Adult Establishments shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the operation. Interior and exterior advertising of Accessory Adult Establishments is prohibited. An Adult Establishment must prominently display at the entrance of the business, or no more than two feet from the door-opening device of the establishment, a sign that states “This business sells or displays materials containing adult themes. Persons under eighteen (18) years of age shall not enter.” The sign must contain letters between three-eighths inch and two inches in height.

(G) **Access by minors.** No minor shall be permitted on the premises of an Adult Establishment. Adult goods or materials may not be offered, sold, transferred, conveyed, given or bartered to a minor, or displayed in a fashion that allows them to be viewed by a minor, whether or not the minor is on the licensed premises.

(H) **Additional conditions for adult cabarets.** The following additional conditions apply to adult cabarets:

- (1) No dancer, live entertainer or performer shall be under 18 years old.
- (2) All dancers, live entertainers and performers must be licensed pursuant to this Ordinance.
- (3) All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least 2 feet from the level of the floor and which provides at least 10 feet of separation between the patrons and all dancers, live entertainers and performers.
- (4) No dancer or performer shall fondle, caress, or touch any patron or other dancer or performer and no patron shall fondle, caress, or touch any dancer or performer.
- (5) All soliciting, payment and exchange of gratuity, exchange of money or any other items between performers, patrons, or others involved in live entertainment is prohibited.

(I) **No nudity.** No person may be nude on the premises of any Adult Establishment or Accessory Adult Establishment. (Ord. 2008-11, 3rd Series, passed 9-15-2008) Penalty, see § 114.99

## § 114.25 LICENSE REQUIRED.

(A) **License required - Adult Establishment or Accessory Adult Establishment.** It is unlawful for any person or entity to own, lease, rent, manage or operate an Adult Establishment or Accessory Adult Establishment without a valid license issued by the city pursuant to this Ordinance.

(B) **License required - Dancer, Live Entertainer or Performer.** It is unlawful for any person to perform as a dancer or live entertainer within an Adult Establishment without a valid license issued by the city pursuant to this Ordinance.

(C) **Existing Businesses.** Within ten (10) working days of the effective date of this Ordinance, any existing Adult Establishment or Accessory Adult Establishment must apply for a license from the City. Failure to apply for a license is a violation of this Ordinance and is subject to penalty under § 114.36. An existing Adult Establishment or Accessory Adult Establishment may continue to operate pending review of the license application by the City. (Ord. 2008-11, 3rd Series, passed 9-15-2008) Penalty, see § 114.99

## § 114.26 LICENSE APPLICATIONS.

An application for an Adult Establishment or Accessory Adult Establishment license must be made on a form provided by the City. The completed application must contain the information in (A) to (E) below:

(A) **All applicants.** For all applicants:

(1) Whether the applicant is a natural person, corporation, partnership, or other form of organization.

(2) The legal description of the premises to be licensed, along with a sketch or diagram showing the floor plan of the premises. The floor plan of the premises shall detail all internal operations and activities, including a statement of the total floor space occupied by the business. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(3) The name and street of the business. If the business is to be conducted under a designated name, or style other than the name of the applicant, a certified copy of the certificate required by M.S. § 333.01 shall be submitted.

(4) Whether the applicant has had a previous Adult Establishment or Accessory Adult Establishment license suspended or revoked.

**(B) Applicants who are natural persons.** If the applicant is a natural person:

- (1) The name, place, and date of birth, street, city and mailing address, and phone number of the applicant.
- (2) Whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places where used.
- (3) The street and city addresses at which the applicant has lived during the preceding two years.
- (4) The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding two years and name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding two years.
- (5) Whether the applicant has ever been convicted of a gross misdemeanor or felony or any crime relating to sex offenses, obscenity offenses, or Adult Establishments.

**(C) Applicants that are partnerships.** If the applicant is a partnership:

- (1) The name(s) and address(es) of the partnership, the name(s) and address(es) of all partners and all of the information concerning each partner that is required of applicants in paragraph(B) of this section.
- (2) Whether the partnership is general or limited.
- (3) A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to M.S. § 333.01, a certified copy of the certificate shall be attached to the application.

**(D) Corporate or other applicants.** If the applicant is a corporation or other organization:

- (1) The name of the corporation or business form, and if incorporated, the date and state of incorporation.
- (2) A true copy of the Certificate of Incorporation, Articles of Incorporation or Association Agreement and Bylaws shall be attached to the application. If the applicant is a foreign corporation, a Certificate of Authority as required by M.S. § 303.06, shall be attached. If the entity is a limited liability company, then true and accurate copies of the Articles of Organization and any Membership Agreements shall be attached to the application.

(3) The name of the manager(s), proprietor(s), or other agent(s) in charge of the business and all of the information concerning each manager, proprietor or agent that is required of the applicants in paragraph(B) of this section.

(4) Accurate and complete business records showing the names, addresses, and dates of birth of all officers, directors and controlling stockholders for the business.

(5) The name of the registered corporate agent and the address of the registered office for service of process.

**(E) Changes in information provided on the application.** Changes in the information provided on the application or provided during the investigation must be brought to the attention of the City by the applicant or licensee. If such a change takes place during the investigation, it must be reported to the city clerk in writing. A failure by an applicant or licensee to report such a change may result in denial or revocation of a licensee.

**(F) License Application - Dancer, Live Entertainer or Performer.** An application for a Dancer, Live Entertainer or Performer license must be made on a form provided by the City. The completed application must contain the following information:

(1) Proof of the applicant's age.

(2) The name, place, and date of birth, street, city and mailing address, and phone number of the applicant.

(3) Whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places where used.

(4) The street and city addresses at which the applicant has lived during the preceding two years.

(5) Whether the applicant has ever been convicted of a gross misdemeanor or felony or any crime relating sex offenses, obscenity offenses, or Adult Establishments. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

## **§ 114.27 DISQUALIFICATIONS AND RE-QUALIFICATIONS.**

(A) The City will issue an Adult Establishment or Accessory Adult Establishment license to an applicant within 30 days of the application unless one or more of the following conditions exist:

(1) The applicant is under age 21;

(2) The applicant failed to supply all of the information requested on the license application;

(3) The applicant gives false, fraudulent, or untruthful information on the license application;

(4) The applicant has been convicted of a misdemeanor relating to sex offenses, obscenity offenses, or Adult Establishments, a gross misdemeanor relating to sex offenses, obscenity offenses, or Adult Establishments, or a felony relating to sex offenses, obscenity offenses, Adult Establishments.

(5) The Adult Establishment or Accessory Adult Establishment is not in full compliance with the Hastings City Code and all provisions of state and federal law;

(6) The applicant has not paid the required license fee;

(7) The applicant has been denied a license by the City or any other Minnesota municipal corporation to operate an Adult Establishment, or such license has been suspended or revoked, within the preceding 12 months;

(8) The applicant is not the proprietor of the establishment for which the license is issued; or

(9) The Adult Establishment premises holds an intoxicating liquor, beer or wine license, or a license as a tanning, tattoo, pawn shop or therapeutic massage premises.

(B) An Adult Establishment or Accessory Adult Establishment license applicant may qualify for a license:

(1) After one year has elapsed in the case of a previous license revocation;

(2) After two years have elapsed since the date of conviction or the date of release from confinement in the case of a misdemeanor or gross misdemeanor offense;

(3) After five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is later, in the case of a felony offense; or

(4) After five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is later, if the conviction is of two or more misdemeanor or gross misdemeanor offenses or a combination of misdemeanor or gross misdemeanor offenses occurring within any 24-month period.

(C) The City will issue a Dancer, Live Entertainer or Performer license to an applicant within 30 days of the application unless one or more of the following conditions exist:

(1) The applicant is under age 18;

(2) The applicant failed to supply all of the information requested on the license application;

(3) The applicant gives false, fraudulent, or untruthful information on the license application;

(4) The applicant has been convicted of a misdemeanor relating to sex offenses, obscenity offenses, or Adult Establishments, a gross misdemeanor relating to sex offenses, obscenity offenses, or Adult Establishments, or a felony relating to sex offenses, obscenity offenses, or Adult Establishments;

(5) The applicant has not paid the required license fee; or

(6) The applicant is shown to have committed an act which resulted in suspension or revocation of an Adult Establishment or Accessory Adult Establishment license.

(D) A Dancer, Live Entertainer or Performer license applicant may qualify for a license:

(1) After one year has elapsed in the case of a previous license revocation;

(2) After two years have elapsed since the date of a conviction or the date of release from confinement in the case of a misdemeanor or gross misdemeanor offense;

(3) After five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is later, in the case of a felony offense; or

(4) After five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is later, if the conviction is of two or more misdemeanor or gross misdemeanor offenses or a combination of misdemeanor or gross misdemeanor offenses occurring within any 24-month period. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

#### **§ 114.28 EXPIRATION AND RENEWAL.**

(A) *Expiration.* All licenses issued pursuant to this Chapter expire at the end of the calendar year.

(B) *Renewal.* A licensee may renew a license by completing an application as provided in § 114.26. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

#### **§ 114.29 SUSPENSION.**

(A) *Causes of suspension.* The City may suspend a license for a period not to exceed 60 days if it determines that the licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any provision of this Ordinance;

(2) Allowed or engaged in the sale or use of alcoholic beverages while on the Adult Establishment premises other than at an Adult Hotel or Motel;

(3) Refused to allow an inspection of the Adult Establishment or Accessory Adult Establishment as authorized by this Ordinance; or

(4) Knowingly permitted unlawful gambling by a person on the Adult Establishment premises.

(B) *Notice.* A suspension by the City shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least ten (10) days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof, or by mailing the notice by U.S. Mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on its license application. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

### **§ 114.30 REVOCATION.**

(A) *Suspended licenses.* The City may revoke a license if a cause of suspension in § 114.29 occurs and the license has been suspended at least once before within the preceding 14 months.

(B) *Causes of revocation.* The City may revoke a license if it determines that:

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

(2) A licensee or an employee knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) A licensee or an employee has knowingly allowed prostitution on the premises;

(4) A licensee or an employee knowingly operated the Adult Establishment or Accessory Adult Establishment during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in the applicable provisions of § 114.27, for which the time period required in § 114.27 has not elapsed; or

(6) Except in the case of an Adult Hotel or Motel, a licensee or an employee knowingly allowed an act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

(C) *Appeals.* The fact that a conviction is being appealed shall have no effect on the revocation of the license.

**(D) *Granting a license after revocation.*** When the City revokes a license, the revocation shall continue for one year and the licensee shall not be issued an Adult Establishment license, an Accessory Adult Establishment license, or a Dancer, Live Entertainer or Performer license for one year from the date revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license is revoked due to a criminal conviction under the applicable provisions of § 114.27, an applicant may not be granted another license until the appropriate number of years required under § 114.27 have elapsed. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

### **§ 114.31 PROCEDURES FOR APPEAL.**

Non-renewals and revocation of all licenses issued pursuant to this Chapter are governed by the following:

**(A) *Notice and hearing.*** In the event that the City proposes not to renew or revoke a license, the City will notify the licensee in writing of the basis for the action. The Council will hold a hearing for the purpose of determining whether or not to renew or revoke the license. The hearing must be held within 30 days of the date of the notice. The City Council must determine whether or not to renew or revoke a license within 30 days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner. The Council must notify the licensee of its decision within that period.

**(B) *Revocation.*** If the Council determines to revoke a license, the revocation is not effective until 15 days after notification of the decision to the licensee. If, within that 15 days, the licensee files and serves an action in state or federal court challenging the Council's action, the revocation is stayed until the conclusion of such action.

**(C) *Non-renewal.*** If the City Council determines not to renew a license, the licensee may continue its business for 15 days after receiving notice of such non-renewal. If the licensee files and serves an action in state or federal court within the 15 days for the purpose of determining whether the City acted properly, the licensee may continue in business until the conclusion of the action.

**(D) *Prompt judicial review.*** After denial of an application or a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such action in any court of competent jurisdiction. The court shall promptly review such action. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

### **§ 114.32 POSTING.**

The license, if granted, must state on its face the name of the person or entity to whom it is granted, the expiration date, and the address of the adult establishment or accessory adult establishment, if applicable. The license must be posted in a conspicuous place at or near the entrance to the Adult Establishment or Accessory Adult Establishment. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

### **§ 114.33 FEES.**

The annual license fee for Adult Establishments and Accessory Adult Establishments is \$2,000. The annual fee for a Dancer, Live Entertainer or Performer license is \$100. If eight (8) months of any licensing year have elapsed when an application is made, the fee shall be reduced to one-half of the regular amount. The fee is non-refundable. The City may also require the applicant to escrow additional funds sufficient for the City's cost of research and performing background checks. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

### **§ 114.34 INSPECTIONS.**

(A) *Access.* An applicant or licensee shall permit health officials, representatives of the police department, fire department, and building inspector, to inspect the premises of an Adult Establishment or Accessory Adult Establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. The licensee is at all times responsible for the conduct, activity and operation of the business.

(B) *Refusal to permit inspections.* Refusal to permit a lawful inspection of the premises by health officials, representatives of the Police Department, Fire Department, or Building Inspector at any time it is occupied or open for business is a violation of this Ordinance. Refusal to permit inspections may result in non-renewal, suspension or revocation of the license.

(C) *Exceptions.* The provisions of this section do not apply to areas of an Adult Hotel or Motel that are currently being rented by a customer for use as permanent or temporary habitation. Temporary habitation is defined as a period of time of at least 12 hours. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

### **§ 114.35 TRANSFER OF LICENSE.**

A licensee shall not transfer a license to another, nor shall a licensee operate an Adult Establishment or Accessory Adult Establishment under the authority of a license at any place other than the address designated in the application. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

### **§ 114.98 SEVERABILITY.**

Every section, provision, or part of this §§ 114.20 through 114.35 is declared severable from every other section, provision or part thereof to the extent that if any section, provision, or part of §§ 114.20 through 114.35 be held invalid by a court of competent jurisdiction it shall not invalidate any other section, provision, or part thereof. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

**§ 114.99 PENALTY.**

Any person violating any provision of §§ 114.20 through 114.35 shall be guilty of a misdemeanor, and upon conviction shall be subject to the penalties for a misdemeanor as prescribed by state law. Each day the violation continues shall be considered a separate misdemeanor offense punishable by a separate misdemeanor penalty. The city may also enforce any provision of §§ 114.20 through 114.35 by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction. (Ord. 2008-11, 3rd Series, passed 9-15-2008)

## CHAPTER 115: PEDDLERS AND SOLICITORS

### Section

- 115.01 Definitions
- 115.02 Exceptions to definitions
- 115.03 Licensing; exemptions
- 115.04 License ineligibility
- 115.05 License suspension and revocation
- 115.06 License transferability
- 115.07 Registration
- 115.08 Prohibited activities
- 115.09 Exclusion by placard
  
- 115.98 Violations

### § 115.01 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.

*DOOR-TO-DOOR ADVOCACY* includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political, and other ideas.

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

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

*REGULAR BUSINESS DAY*. Any day during which the city hall is normally open for the purpose of conducting public business. Holidays 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 *SOLICITOR* shall mean the same as the term *CANVASSER*.

*SPECIAL EVENT.* A festival, city-wide celebration or other happening which is designated as a special event by resolution of the City Council, which resolution shall define the dates and locations of the special event.

*TRANSIENT MERCHANT.* A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise or other personal property and who does not remain or intend to remain in any one location for more than 14 consecutive days. The term *TRANSIENT MERCHANT* shall mean the same as *TEMPORARY MERCHANT* or *TEMPORARY VENDOR*. (Am. Ord. 562, passed 2-20-2007)

### **§ 115.02 EXCEPTIONS TO DEFINITIONS.**

(A) For the purpose of the requirements of this chapter, the terms *PEDDLER*, *SOLICITOR*, and *TRANSIENT MERCHANT* shall not apply to:

i) 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; or

ii) 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; or

iii) to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route ;or

iv) , persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales; or

v) those persons participating in an organized multi-person bazaar or flea market; or

vi) anyone conducting an auction as a properly licensed auctioneer, or

vii) 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.

(B) Nothing in this chapter shall be interpreted to prohibit or restrict *DOOR-TO-DOOR ADVOCACY*. Persons engaging in door-to-door advocacy shall not be required to register as solicitors.

### **§ 115.03 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, if the county issues a license for the activity.

(B) *City license or registration 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 § 115.07.

(C) *Application.* Application for a city license to conduct business as a peddler or transient merchant shall be made at least 10 regular business days before the applicant desires to begin conducting business. Application for a license shall be available from the office of the City Clerk. 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) Complete and current personal contact information for applicant
  - (4) 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;
  - (5) Complete and current business contact information for applicant (if any)
  - (6) The type of business for which the applicant is applying for a license;
  - (7) The term of license being applied for;
  - (8) The date(s) during which the applicant intends to conduct business. If the applicant is applying for a daily license, the number of days he or she intends to conduct business in the city (*maximum 14 consecutive days, except for those meeting the requirements of § 155.07(G); Special Provisions – Transient Merchant – Extended Stay*)
  - (9) The location where an applicant intends to set up business;
  - (10) 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;
  - (11) A list of the 3 most recent locations where the applicant has conducted business as a peddler or transient merchant;
  - (12) Proof of any requested county license;
  - (13) Certificate of Insurance
  - (14) A general description of the items to be sold or services to be provided;
  - (15) All additional information deemed necessary by the City Council;
  - (16) A color copy of the applicant's driver's license or other acceptable form of photo identification;
- and
- (17) The license plate number, registration information, description, and vehicle identification number for any vehicle(s) to be used in conjunction with the licensed business.
  - (18) If the applicant will have employee(s) working, then all additional employee(s) are required to

successfully complete a background investigation prior to being authorized to work under any license issued to an applicant.

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established by ordinance.

(E) *Procedure.*

(1) Upon receipt of the completed application and payment of the license fee and background check fee, the City Clerk, 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.

(2) If the City Clerk determines that the application is incomplete, the City Clerk must inform the applicant of the required necessary information that is missing.

(3) If the application is complete, the City Clerk must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving a complete application the City Clerk must issue the license unless there exist grounds for denying the license under § 115.04, in which case the Clerk must deny the license.

(4) If the City Clerk 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.

(5) 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 only be appealed by filing an appeal in the Dakota County District Court within 30 days of the final decision by the City Council.

(F) *Duration.* All licenses granted under this chapter shall be valid only during the time period indicated on the license. Transient merchant licenses are limited to 14 consecutive days or must meet the requirements of § 155.07(G)- Transient Merchant – Extended Stay.

(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.

(H) Any license issued under this chapter shall not be valid during any special event designated by resolution of the City Council. Separate peddler's and transient merchant's licenses shall be required for any special event.

(I) *Special event.* The following standards apply to all special events designated by resolution of the City Council.

(1) Only those peddler and transient merchant licenses issued specially for the special event shall be valid during the term and location of the special event as designated by resolution of the City Council. All other peddler and transient merchant licenses shall be invalid within the parameters set by the resolution of the City Council creating the special event.

(2) To protect the public safety by having an orderly placement of peddlers and transient merchants within the location of the special event, peddlers and transient merchants applying for a license for the special event shall be required to obtain a permit from the entity sponsoring the special event. The sponsoring entity may charge a fee for its permit. (Am. Ord. 562, passed 2-20-2007; Am. Ord. 2010-08, 3rd Series, passed 6-21-2010) Penalty, see § 10.99

(J) *Location of Event.* The following apply to all applicants:

(1) Private Property—if the applicant intends to conduct temporary sales on private property, a letter of consent from the property owner or the property owner’s agent must be submitted with the application materials.

(2) Public (City) Property—sales on public (City) property or streets are not permitted except under the following circumstances:

- a) As part of a Special Event as designated by the City Council;
- b) As part of a recreational tournament sanctioned by the City and occurring on public (City) property.

#### **§ 115.04 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.

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

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

- (1) Fraud, misrepresentation, or incorrect statements on the application form or ; during the course of the licensed activity;
- (3) Conviction of any offense for which granting of a license could have been denied under § 115.04;
- (4) Violation of any provision of this chapter; and/or
- (5) Violation of any conditions imposed on a permit issued by a sponsoring entity of a special event.

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

(C) *Notice.* Prior to revoking or suspending any license issued under this chapter, the city shall provide the license holder with written notice of the alleged violation(s) 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 this section, the licensee shall have the right to request a public hearing. If no written request for a hearing is received by the City Clerk within 10 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. (Am. Ord. 562, passed 2-20-2007) Penalty, see § 10.99

## **§ 115.06 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

## **§ 115.07 REGISTRATION.**

All solicitors, and any person exempt from the licensing requirements of this chapter under § 115.03, shall be required to register with the city. Persons engaging in door-to-door advocacy shall not be required to

register. The term *DOOR-TO-DOOR ADVOCACY* includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas. 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 Clerk shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferable. Penalty, see § 10.99

**§ 115.08 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 City 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

**§ 115.09 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 (Ord. 2012-16, 3<sup>rd</sup> Series, passed 4-16-12)

## CHAPTER 116: MASSAGE

### Section

#### *Massage Therapist and Massage Therapy Establishment Licenses*

- 116.01 Statement of purpose
- 116.02 Location of therapeutic massage establishments
- 116.03 Definitions
- 116.04 Massage therapist license and massage therapy establishment license application
- 116.05 License term and license fee
- 116.06 General provisions for massage therapist and massage therapy establishment licenses
- 116.07 Grounds for revocation of license

## ***MASSAGE THERAPIST AND MASSAGE THERAPY ESTABLISHMENT LICENSES***

### **§ 116.01 STATEMENT OF PURPOSE.**

In order to protect the public health, safety, and welfare and to protect against the transmission of diseases, the City Council deems it necessary to provide for the regulation and licensing of persons who administer massages and the establishments where massages are administered. (Prior Code, § 5.71) (Am. Ord. 482, passed 11-11-2002)

### **§ 116.02 LOCATION OF THERAPEUTIC MASSAGE ESTABLISHMENTS.**

(A) Licensed therapeutic massage enterprises may be operated as a home occupation in accordance with the provisions as set forth in Chapter 155 of the Hastings City Code, provided the operation clearly exists as a secondary or accessory use of the premises.

(B) Licensed therapeutic massage enterprises may be located where permitted by Chapter 155 of the Hastings City Code. (Prior Code, § 5.71) (Am. Ord. 482, passed 11-11-2002)

### **§ 116.03 DEFINITIONS.**

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

***MASSAGE THERAPIST.*** A person who, for compensation, practices and provides therapeutic massage, and is a person other than a licensed medical doctor, chiropractor, osteopath, podiatrist, nurse, physical therapist, or physical therapist aide working under the direct supervision of a physical therapist, athletic director or trainer or beautician or barber who confines treatment to the scalp, face and neck.

***MASSAGE THERAPY*** or ***THERAPEUTIC MASSAGE.*** A scientific health care or health maintenance technique or procedure carried out by a massage therapist, involving the massaging and kneading of human skin, muscles, and tissues for the purpose of easing mental and physical tension, the breaking up of fatty tissues and muscle spasms and the improvement of circulation through the body.

***MASSAGE THERAPY ESTABLISHMENT.*** Any room or rooms where persons may, for a fee or other consideration paid either directly or indirectly, receive a therapeutic massage. (Prior Code, § 5.71) (Am. Ord. 482, passed 11-11-2002)

**§ 116.04 MASSAGE THERAPIST LICENSE AND MASSAGE THERAPY ESTABLISHMENT LICENSE APPLICATION.**

(A) *License required.* It is unlawful for any person to practice therapeutic massage therapy without a license from the city.

(B) *License application.* All initial applications shall be made at City Hall to the City Clerk by filing an application form which has been approved by the City Council and which shall contain the following information:

(1) A description and the location of the premises where the licensed activity is to be conducted. If the premise is not constructed and furnished at the time the application is submitted, detailed plans of the premises and furnishing shall be attached to the application. No license will be issued for a massage therapy establishment until a final certificate of occupancy has been issued by the City of Hastings;

(2) Names and addresses of the applicant, together with the names and addresses of the property owner (if different), the business owner (if different), the lessee (if different), the manager or operator (if different), and, if a corporation, all the names and addresses of the officers of the corporation where the licensed activity will take place;

(3) A description of any crime or other offense, including the time, date, place, and disposition, for which any of the persons named above have been arrested or convicted;

(4) A description of the services offered by the massage therapist or the massage therapy establishment;

(5) Accompanied by a non-returnable investigation fee in an amount established by ordinance;

(6) All necessary release forms to allow for the required background, education, and criminal checks;

(7) Any premises proposed to be licensed shall be first inspected by the city's Building Official and fire marshal. These premises must comply with all applicable building codes, fire codes, and health codes of the City of Hastings and State of Minnesota; and

(8) Applications shall contain such other information as the Council may require.

(C) *Review of application; approval or denial.* The application will be reviewed by the Police Department, Planning Department, and such other departments as deemed necessary. Background, criminal conviction, and educational checks will be conducted. The departments will thereafter submit their reports and recommendations to the City Clerk, who will submit all of the reports and recommendations from the other departments, together with his/her report and recommendation, to the City Council. The City Council shall either grant or deny the license after receipt of the reports and recommendations from city staff.

(D) *Notice to property owners and occupants.* At least 15 calendar days before City Council consideration of an application for a massage therapy establishment license, the city shall notify, by mail, all owners and occupants who own property or reside within 350 feet of the establishment to be licensed.

(E) *Hearing; considerations.* The City Council shall afford the applicant and all interested parties an opportunity to be heard and shall have the discretion to consider in granting, denying, renewing, or transferring the license, any reasonable fact or circumstance relating to the public health, safety, and welfare.

(F) *Basis for denial.* The Council may deny an application, or deny an application for transfer or renewal because the public health, safety, or welfare would be adversely affected.

(G) *Conditions.* The City Council may impose reasonable conditions upon the license to preserve the public peace and to protect and promote good order and security.

(H) *Certificates.* A massage therapist applicant must provide proof of the following:

(1) A diploma or certificate of graduation from a school approved by the American Massage Therapist Association or other similar reputable massage association and has completed 100 hours of training in massage; and

(2) Certificate of professional liability insurance in an amount of not less than \$1,000,000. (Prior Code, § 5.71) (Am. Ord. 482, passed 11-11-2002)

## **§ 116.05 LICENSE TERM AND LICENSE FEE.**

(A) *Generally.*

(1) All massage therapist licenses and massage establishment licenses period issued shall terminate on December 31 of each year, regardless of when the license was issued. Any licensee requesting renewal of a license must apply for a renewal in a timely manner.

(2) The annual license fee for a massage therapist and massage therapist establishment license shall be set by ordinance. The fee for the first year of the license shall be prorated from the date it is issued. All license fees must be paid before the license will be issued by the City.

(B) *Eligibility for license; conditions.*

(1) All applicants shall be at least 18 years of age.

(2) Licenses may be granted only in compliance with the zoning code as determined by the City Council and the laws of the State of Minnesota and the ordinances of the City of Hastings.

(3) Licenses shall be granted only to establishments which can meet the safety and sanitary requirements of the City Council and the building code regulations of the City of Hastings and the State of Minnesota.

(4) The licensee shall display the license in a prominent place on the licensed premises at all times.

(5) Licenses may be issued only to persons free from convictions of crimes which involve moral turpitude or which relate directly to the person's ability, capacity, or fitness to perform the duties and discharge the responsibilities of the occupation. (Prior Code, § 5.71) (Am. Ord. 482, passed 11-11-2002; Am. Ord. 2008-8, 3rd Series, passed 6-2-2008)

**§ 116.06 GENERAL PROVISIONS FOR MASSAGE THERAPIST AND MASSAGE THERAPY ESTABLISHMENT LICENSES.**

(A) Whenever a therapeutic massage is given, it shall be required by the massage therapist, that the person who is receiving the massage shall have his or her breasts, buttocks, anus, and genitals covered with an appropriate nontransparent covering.

(B) Any massage therapist performing a massage shall, at all times, have their anus, buttocks, breasts, and genitals covered with a nontransparent material.

(C) Therapeutic massages can only be given in a licensed massage therapy establishment, or the place of business or residence of the person receiving the therapeutic massage. For the purpose of Chamber of Commerce sponsored events, a special license may be issued by the City of Hastings to massage therapists licensed by the city to operate off their licensed premises for the duration of the event only.

(D) All massage therapist and massage therapy establishment licensees shall comply with the provisions of this section now in effect and as it may be amended in the future. Failure to comply with the provisions of this section shall be grounds for revocation of any massage therapist license.

(E) No doors of massage rooms, when occupied by 1 or more persons, shall be locked. All locks, if any, shall be keyed only from the exterior of the massage rooms.

(F) All premises licensed under this section shall, at all times, be open to inspection by any health officer or police officer, to verify compliance with this section and any other applicable city or state laws. All persons issued a massage therapy establishment license agree, as a condition of being issued a license, to consent to the inspections, without a warrant, by any health officer or police officer.

(G) It is unlawful for any licensee or agent or employee of a licensee, to hinder or prevent a health officer or police officer from making an inspection of the licensed premises.

(H) No person under the age of 18 shall be permitted at any time on the licensed premises as a customer, guest, or employee, unless accompanied by his or her parent or guardian.

(I) This section shall not apply to a health care facility owned by the state of Minnesota, or any of its agencies or any health care facility licensed by the state of Minnesota.

(J) Every licensee, whether actually on the licensed premises or not, shall be responsible for all actions which take place on the licensed premises. (Prior Code, § 5.71) (Am. Ord. 482, passed 11-11-2002) Penalty, see § 10.99

## **§ 116.07 GROUNDS FOR REVOCATION OF LICENSE.**

(A) It shall be grounds for revocation of a license granted to any person under this chapter if:

(1) The person fails to comply with any of the ordinances of the city or the statutes of the state;

(2) The owner, manager, lessee, or any of the employees are found to be in control or possession of any alcoholic beverages or narcotic drug or controlled substance, as defined by state statutes, on licensed premises;

(3) The owner, manager, lessee, or any of the employees fail to comply with any of the ordinances of the city or states of the state pertaining to the possession, transfer, sale, or distribution of any alcoholic beverages;

(4) The owner, manager, lessee, or any of the employees is convicted of any ordinance or state statute violation arising within the business establishment to which the license was granted under this chapter;

(5) The premises do not comply with the health, safety, and building regulations of the city and state; and/or

(6) If the licensed business is located in a residential district, the applicable provisions of the City of Hastings Code relative to home occupations shall be complied with; failure to comply with the applicable regulations shall be grounds for revocation of the license.

(B) Violation of any law or regulation relating to the building, safety, health, or sanitation shall be grounds for revocation of any license issued under this section. (Prior Code, § 5.71) (Am. Ord. 482, passed 11-11-2002) Penalty, see § 10.99 (Ord. No. 2014-03 3rd Series, Adopted 4-21-14)