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# Chapter 3

  

## Licensing and Municipal Regulation

### Section 300 - General Licensing and Permit Provisions

**300.01. Licenses and Permits.**

**Subd. 1. General Rule.** Except as otherwise provided in this Code, the provisions of this Section govern the granting of all licenses and permits by the City.

**Subd. 2. Acts Prohibited.** No person shall conduct any activity or use any property for which a license or permit is required by law or this Code without a currently valid license or permit for such activity or use.

**300.02. Application.** Except as otherwise provided, every application for a license or permit shall be submitted to the Administrator, in writing, on a form provided by the Administrator. It shall be accompanied by payment to the Administrator of the prescribed fee. If the Administrator decides that the application is incomplete, the Administrator shall inform the applicant of the required necessary information that is missing. If the application is complete, the Administrator shall issue the license as provided in this Chapter.

**300.03. Procedure for Issuance.** If, after investigation, the Administrator is satisfied that all requirements of law and this Code have been met, the Administrator will present the application and a report of the investigation and findings to the Council for action. If the license or permit does not require Council approval, the Administrator may issue the license or permit. If a license is denied, the Council shall inform the applicant of its decision and the reason for the denial along with a notice of the applicant's right to appeal the decision. Otherwise, the Council shall order the issuance of the license.

**300.04. Non-Transferability.** A license is not transferable without permission of the Council. When the Council permits the transfer of a license, it may waive any residency requirement but only for the required term of the license.

**300.05. Bond.** Where a bond is required for a license or permit, or requested by the Council or Administrator, the bond will be a corporate surety bond executed on a form approved by the City Attorney and shall be filed with the Administrator before the license or permit is issued. The bond

will be in the amount and with the penalty provisions as required by the Code.

**300.06. License Period.** All licenses and permits will terminate on December 31 of the year issued, unless otherwise indicated.

**300.07. Renewal.** Applications for renewal of a license shall be made to the Administrator, in writing, on a form provided by the Administrator. The renewal application will contain the information required for the original application plus any additional information required by the Administrator.

**300.08. Duplicates.** A duplicate license may be issued by the Administrator to replace any license previously issued which has been lost, stolen, defaced or destroyed, without any willful conduct by the licensee, if the licensee files an affidavit with the Administrator attesting to such fact and pays to the Administrator a fee as established by the Council.

**300.09. Suspension and Revocation.** Any license or permit may be suspended or revoked by the Council for a violation of the section or chapter under which it is issued or any of the provisions of this Code or law. However, the revocation must follow any procedure provided in the section or chapter under which the license or permit was issued.

**300.10. Appeal.** Any person who has made application for a license or permit that has been denied or not acted upon within 30 days after the application may apply directly to the Council for a license or permit. The application to the Council shall contain the same information required in the original application and any additional information that the Council may require or that the applicant may feel is pertinent. The Council may grant the license or permit, after a hearing, if the requirements of this Section and underlying Code provisions are complied with and granting the license or permit would be in the best interests of the public.

### **Section 310 - Cigarettes and Tobacco**

**310.00. Purpose.** The Legislature of the State of Minnesota has found that:

- A. Smoking causes premature death, disability, and chronic disease, including cancer, heart disease and lung disease;
- B. Smoking related diseases result in excess medical care costs;
- C. Smoking initiation occurs primarily in adolescence; and
- D. It is in the public interest to protect the public health, comfort and environment by prohibiting smoking in areas where children or ill and injured persons are present, and by

limiting smoking in public places and at public meetings to designated smoking areas.

**310.01. Adoption and Incorporation of Statute.** The City accepts and adopts the findings of the Legislature as set forth in Minn. Stat. §§ 144.391. Minn. Stat. §§ 144.412 through 144.417 and 461.12 are adopted by reference and incorporated herein as if set out here in full.

**310.02. Definitions.** “Tobacco,” “tobacco related devices” and “electronic delivery device” shall have the meanings set forth in Minn. Stat. § 609.685, which statute is adopted by reference and incorporated herein as if set out here in full.

**310.03. Prohibitions.**

**Subd. 1. Sale to Minors.** No person shall sell or furnish tobacco, tobacco related devices or electronic delivery devices to a person under the age of 18 years.

**Subd. 2. Tobacco use by Minors.** Whoever uses tobacco, tobacco related devices or electronic delivery devices and is under the age of 18 is guilty of a petty misdemeanor.

**Subd. 3. Vending Machines.** No person shall permit a person below the age of 18 years to purchase cigarettes through a cigarette vending machine. Such purchase shall be presumed to be with the knowledge and consent of the licensee of the vending machine, the lessee of the machine or occupant of the premises where the machine is located.

**Subd. 4. Public Places.** No person shall smoke tobacco in a public place or public meeting except in a designated smoking area.

**310.04. License Required.** No person shall directly or indirectly or by means of automatic vending machines or other devices kept for retail sale, sell at retail or otherwise dispose of any tobacco, tobacco related devices or electronic delivery devices within the City unless a license shall first have applied for and obtained as provided in this Chapter.

**310.05. Fees.** The license fee shall be as established by resolution of the Council.

**310.06. Penalties.** In addition to the penalties provided for in this Code, administrative penalties shall be imposed for violation of this Section.

**Subd. 1. Administrative Penalties; Licensees.** If a licensee or employee of a licensee sells tobacco, tobacco related devices or electronic delivery devices to a person under the age of 18 years or violates any other provision of this chapter, the licensee shall be charged an administrative penalty as set by the Council. An administrative penalty shall be imposed for a second violation at the same location within 24 months after the initial violation, as set by the Council. For a third violation at the same location within 24 months after the initial violation, an

administrative penalty shall be imposed, as set by the Council, and the licensee's authority to sell tobacco, tobacco related devices or electronic delivery devices at that location shall be suspended for not less than seven (7) days. No suspension or penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred shall be in writing.

**Subd. 2. Administrative Penalties; Individuals.** An individual who sells tobacco, tobacco related devices or electronic delivery devices to a person under the age of 18 years shall be charged an administrative penalty as set by the Council. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

### **Section 320 - Public Dance Halls and Public Dancing**

#### **320.01. Definitions.**

**Subd. 1. Public Dance.** A public dance shall mean any dance wherein the public may participate by payment, directly or indirectly, of an admission fee or price for dancing or a fee for membership in a club or organization, and shall include any manner of holding a dance in which the public participates through payment of money either directly or indirectly. By way of illustration and not limitation, a dance shall be considered a public dance if the public is generally admitted or invited either orally or by advertisement although no admission or fee is charged. A wedding dance not limited by special invitation to a select group shall be considered a public dance.

**Subd. 2. Public Dancing Place.** A public dancing place shall mean any room, place, or space open to the public in which a public dance is held.

**Subd. 3. Private Dance.** A private dance shall mean a dance conducted by a social or fraternal organization or conducted at private premises primarily for social or recreational purposes by private invitation only where the public is not generally admitted or invited either orally or by advertisement. A private dance may become public if the public is generally admitted by open invitation.

**320.02. License Required.** No person shall conduct a public dance within the City unless a

license has been applied for and obtained from the Administrator as provided in this Section.

**320.03. License Fee.** The license fee shall be as established by resolution of the Council.

**320.04. Hours.** No public dance shall be conducted between the hours of 1:00 a.m. and 6:00 a.m. on any day. No public dance shall be conducted on Sunday between the hours of 1:00 a.m. and 12:00 noon.

**320.05. Exemption.** A dance held at any church or school shall not require a license but notice of the dance shall be given to the Police Department at least one week before the dance is held. No license shall be required for schools of instruction in dancing.

**320.06. Attendance of Peace Officer.** It shall be the responsibility of the licensee of a public dance to maintain peace and good order at all public dances. The Chief of Police may require that a peace officer designated by the Chief attend a public dance. The peace officer need not be a Police Officer of the City Police Department and shall act as a special deputy for the limited purposes of maintenance of peace and good order. The peace officer shall have the authority to call upon the City Police or other law enforcement officers for assistance and for taking persons who may be charged with an offense into custody. The Chief of Police may require City Police Officers on duty to make periodic inspections of public dances to assure that good order is being maintained and City Ordinances and State Statutes complied with.

**320.07. Rules and Regulations.** The Council may adopt rules and regulations for conduct of dances that shall be incorporated in this Chapter and have the same force and effect as if set forth fully in this Chapter.

### **Section 330 - Circuses, Carnivals and Shows**

**330.01. License Required.** No person shall give or maintain any show or public entertainment circus, carnival, games or concert to which an admission is charged without applying for, in writing, and obtaining a license from the Administrator as provided in this Section. No license shall be required for entertainment given for the benefit of any school, church, benevolent or charitable purpose.

**330.02. Application and Issuance.** Application for the license shall be made to the Administrator on the forms provided at least seven days before the time when the show or entertainment is intended to be given. The Police Department shall investigate the facts set forth in the application and report to the Administrator its recommendations. The applicant or any other person shall be



given an opportunity to be heard for or against granting the license.

**330.03. Fee.** The license fee shall be as established by resolution of the Council.

**330.04. Restrictions.** No obscene, vulgar, immoral, or disorderly shows or entertainment shall be licensed or permitted. No person shall conduct, permit, or take part in any activity regulated by this section. No gambling or games of chance are allowed concerning any activity regulated by this Section unless specifically authorized by the Council.

### **Section 340 – Regulation of Peddlers, Solicitors and Transient Merchants**

**340.01. Definitions.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following definitions shall apply unless the context clearly indicates or requires a different meaning:

A. **NON-COMMERICAL DOOR-TO-DOOR ADVOCATE.** A person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purpose of this ordinance, the term door-to-door advocate shall fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

B. **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 movement, offering for sale, displaying for exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personal property that the person is carrying or otherwise transporting. For purpose of this ordinance, the term peddler shall have the same common meaning as the term hawker.

C. **PERSON.** Any natural individual, group, organization, corporation, partnership, or similar association.

D. **REGULAR BUSINESS DAY.** Any day during which the City hall is normally open and conducting public business. Holidays defined by state law shall not be considered regular business days.

E. **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 movement, 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 later. 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. For purposes of this ordinance, the term solicitor shall have the same meaning as the term canvasser.

F. **TRANSIENT MERCHANT.** A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for 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 in any one location for more than fourteen (14) consecutive days.

**340.02. Exceptions to Definitions.** For this chapter, the terms *PEDDLER*, *SOLICITOR*, and *TRANSIENT MERCHANT* shall not apply to:

- A. Non-commercial door-to-door advocates. Nothing within this ordinance shall be interpreted to prohibit or restrict non-commercial door-to-door advocates. Persons engaging in non-commercial door-to-door advocacy shall not be required to register as a solicitor under Section 340.07.
- B. Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retail seller of the items being sold by the wholesaler.
- C. Any person who makes initial contacts with other people for establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products, such as baked goods or milk.
- D. Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route.
- E. Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, when attempting to establish a regular delivery route, or when publications are delivered to the community at large.
- F. Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales.
- G. Any person participating in an organized multi-person bazaar or flea market.
- H. Any person conducting an auction as a properly licensed auctioneer.

I. Any officer of the court conducting a court-ordered sale.

Exemption from these definitions shall not, for the scope of this chapter, excuse any person from complying with any other applicable statutory provision or requirement provided by another City ordinance.

**340.03. Licensing; exemptions.**

**Subd. 1. 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 may be required by Minn. Stat. Chapter 329 as it may be amended from time to time, if the county issues a license for the activity.

**Subd. 2. City license required.** Except as otherwise provided for by this ordinance, no person shall conduct business within City limits as a peddler or a transient merchant without first obtaining a City license. Solicitors need not be licensed, but are required to register with the City pursuant to Section 340.07.

**Subd. 3. Application.** An application for a City license to conduct business as a peddler or transient merchant shall be made at least fourteen (14) regular business days before the applicant desires to begin conducting a business operation within the City. Application for a license shall be made on a form approved by the Council and available from the office of the Administrator. All applications shall be signed by the applicant. All applications shall include the following information:

- A. The applicant's full legal name.
- B. All other names under which the applicant has or does conduct business, or to which the applicant will officially answer to.
- C. A physical description of the applicant (hair color, eye color, height, weight, any distinguishing marks or features, and the like).
- D. Full address of applicant's permanent residence.
- E. Telephone number of applicant's permanent residence.
- F. Full legal name of all business operations owned, managed, or operated by applicant, or for which the applicant is an employee or an agent.
- G. Full address of applicant's regular place of business, if any exists.
- H. All business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines.

- I. The type of business for which the applicant is applying for a license.
- J. Whether the applicant is applying for an annual or daily license.
- K. The dates during which the applicant intends to conduct business. If the applicant is applying for a daily license, the number of days he or she will be conducting business within the City, with a maximum of fourteen (14) consecutive days.
- L. All addresses and telephone numbers where the applicant can be reached while conducting business within the City, including the location where a transient merchant intends to set up his or her business.
- M. A statement as to whether the applicant has been convicted with the last five (5) years of any felony, gross misdemeanor or misdemeanor for violating any state or federal statute or any local ordinance, other than minor traffic offenses.
- N. A list of the three (3) most recent locations where the applicant has conducted business as a peddler or transient merchant.
- O. Proof of any required county license.
- P. Written permission of the property owner or the property owner's agent for any location to be used by a transient merchant.
- Q. A general description of the items to be sold or services to be provided.
- R. All additional information as may be deemed necessary by the Council.
- S. The applicant's driver's license number or other acceptable form of identification.
- T. The license plate number, registration information, vehicle identification number (VIN) and physical description for any vehicle to be used in conjunction with the licensed business operation.

**Subd. 4. Fee.** All applications for a license under this chapter shall be accompanied by the fee established in the City licensing fee schedule as it may be amended from time to time.

**Subd. 5. Procedure.** Upon receipt of the application and payment of the license fee, the Administrator shall, within two (2) regular business days, determine if the application is complete. An application will be considered complete if all required information is provided. If the Administrator determines that the application is incomplete, the Administrator must inform the applicant of the required, necessary information that is missing. If the application is complete, the Administrator must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten (10) regular business days of receiving a

complete application the Administrator must issue the license unless grounds exist for denying the license application under Section 340.04, in which case the Administrator must deny the request for a City peddler or transient merchant license. If the Administrator denies the license application, the applicant must be notified in writing of the decision, the reason for denial and the applicant's right to appeal the denial by requesting, within twenty (20) days of receiving notice of rejection, a public hearing before the Council. The Council shall hear the appeal with twenty (20) days of the date of the request for a hearing. The decision of the Council following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

**Subd. 6. Duration.** An annual license granted under this ordinance shall be valid for one calendar year from the date of issuance. All other licenses granted to peddlers and transient merchants under this ordinance shall be valid only during the period indicated on the license.

**Subd. 7. License exemptions.**

A. 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.

B. No license shall be required for any person going from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement for the primary purpose of exercising that person's state or federal constitutional rights such as the freedom of speech, freedom of the press, freedom of religion, and the like. This exemption will not apply if the person's exercise of constitutional rights is merely incidental to what would properly be considered a commercial activity.

**340.04. License Ineligibility.** The following shall be grounds for denying a peddler or transient merchant license:

A. The failure of an applicant to obtain and demonstrate proof of having obtained any required county license.

B. The failure of an applicant to truthfully provide any information requested by the City as part of the application process.

C. The failure of an applicant to sign the license application.

D. The failure of an applicant to pay the required fee at the time of application.

E. A conviction with the past five (5) years of the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects upon the person's ability to conduct the business for which the license is being sought in a

professional, honest and legal manner. Such violations shall include, but are not limited to, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.

F. The revocation with the past five (5) years of any license issued to an applicant for conducting business as a peddler, solicitor, or transient merchant.

G. When an applicant has a bad business reputation. Evidence of a bad business reputation shall include, but is not limited to, the existence of more than three (3) complaints against an applicant with the Better Business Bureau, the Office of the Minnesota Attorney General or other state attorney general's office, or other similar business or consumer rights office or agency, with the preceding twelve (12) months, or three (3) complaints filed with the City against an applicant within the preceding five (5) years.

#### **340.05. License Suspension and Revocation.**

**Subd. 1. Generally.** Any license issued under this section may be suspended or revoked at the discretion of the Council for violation of any of the following:

- A. Subsequent knowledge by the City of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.
- B. Fraud, misrepresentation or false statements made during the licensed activity.
- C. Subsequent conviction of any offense to which the granting of the license could have been denied under Section 340.04.
- D. Engaging in any prohibited activity as provided under Section 340.08 of this ordinance.
- E. Violation of any other provision of this ordinance.

**Subd. 2. Multiple persons under one license.** The suspension or revocation of any license 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.

**Subd. 3. Notice.** Prior to revoking or suspending any license issued under this chapter, the City shall provide a license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

**Subd. 4. Public Hearing.** Upon receiving the notice provided in Subd. 3 of this Section, the licensee may request a public hearing. If no request for a hearing is received by the City clerk within ten (10) days following the service of the notice, the City may proceed with the suspension or revocation. For mailed notice, 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 twenty (20) days from the date of the request for the public hearing. Within three (3) regular business days of the hearing, the Council shall notify the licensee of its decision.

**Subd. 5. Emergency.** If, in the discretion of the 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 ordinance, the Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in Subd. 3 of this section.

**Subd. 6. Appeal.** Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court.

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

**340.07. Registration.**

A. All solicitors and any person exempt from the licensing requirements of this ordinance under Section 340.03 shall be required to register with the City prior to engaging in those activities. 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 Administrator shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferrable.

B. Individuals that will be engaging in non-commercial door-to-door advocacy shall not be required to register.

**340.08. Prohibited Activities.** No peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall conduct business in any of the following manner:

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

B. Obstructing the free flow of traffic, either vehicular or pedestrian, on any street,

sidewalk, alleyway, or public right-of-way.

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

D. Conducting business before 8:00 a.m. or after 9:00 p.m.

E. Failing to provide proof of license, or registration, and identification when requested.

F. Using the license or registration of another person.

G. Alleging false or misleading statements about the products or services 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.

H. Remaining on the property of another when requested to leave.

I. Otherwise operating their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

**340.09. Exclusion by Placard.** Unless specifically invited by the property owner or tenant, no peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall enter onto the property of another for conducting business as a peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or similar activity when the property is marked with a sign or placard:

A. At least four inches long.

B. At least four inches wide.

C. With print of at least 48 point in size.

D. Stating “No Peddlers, Solicitors or Transient Merchants,” “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.

**340.10. Penalty.** Any individual found in violation of any provision of this ordinance, shall be a guilty of a misdemeanor.

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



**Section 345 – Mobile Food Trucks/Vendors**

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

**345.02. Definitions.** For the purposes of this Section, the following definitions shall apply:

- A. “Mobile food truck” and “mobile food truck/vendor” shall be defined as any self-propelled vehicle or fully contained trailer, licensed by the State of Minnesota to operate on public streets and roadways, which vends food (either prepackaged, prepared in the unit, or at a commissary) at retail for immediate consumption by the customer. Said vehicle and/or trailer may also be referred to herein as "unit".
- B. “Commissary” shall be defined as a permanent, State-licensed location which services food trucks, including but not limited to the provision of food storage, paper goods and supplies, waste and grease disposal and food preparation.
- C. “Vend” or “vending” shall be defined as the process of the transfer of a food product from the unit operator to a customer. Vending begins when the unit initially stops in a location at which customers can access the unit and continues until the unit leaves that location.

**345.03. Applicability.** Notwithstanding any contrary provision of any City ordinance, regulation, or rule, mobile food trucks/vendors shall be licensed and located as provided in this ordinance.

**Subd. 1. Licenses required.** No person shall vend from a mobile food truck without first having obtained a license to do so from the City, subject to the following exceptions:

- A. Mobile food trucks which are vending under a Special Event Permit issued by the City can operate under that Special Event Permit as authorized by the organizers/managers of the event, at the location of, and for the duration of the event.
- B. Appropriately licensed caterers are exempted from this Section for catered events.
- C. Food vendors for any City Fair do not need to be licensed pursuant to this Section.

**Subd. 2. Fees.** The fee for an annual license shall be established from time-to-time by the Council and shall entitle the operator to vend from one such unit from the date on which the license is issued through December 31st of that year. Each unit must obtain a separate license which shall be displayed on or within the unit, visible from the outside of the unit, whenever the unit is vending.

**Subd. 3. Inspections.** Applicants must provide evidence of current licensing of the unit by the Minnesota Department of Agriculture or by the Minnesota Department of Health, as appropriate.

**Subd. 4. Insurance.** Applicants must provide evidence of liability insurance in which the City is named coinsured which shall provide a limit of coverage as established from time-to-time by the Council for both bodily injury and for property damage. Written notice of cancellation of such insurance must be given to the City not less than thirty (30) days prior to actual cancellation.

**Subd. 5. Restrictions on Vending Activity.**

A. Mobile food trucks/vendors are prohibited from vending activities within 300' of a community event for which the City has issued a Special Event Permit, unless they are specifically authorized by the event sponsor to participate in the event. The terms of the Special Event Permit shall apply.

B. Mobile food trucks/vendors can operate as an accessory use on private property as expressly authorized by the owner/manager/agent of the private property, and only for the length of time authorized by the Minnesota Department of Agriculture or Minnesota Department of Public Health.

C. Mobile food trucks/vendors can vend on public streets between the hours of 8:00 a.m. to 10:00 p.m. inclusive, and on private property between the hours of 7:00 a.m. to 10:00 p.m. inclusive, on all days of the week.

**Subd. 6. Location or placement.**

A. On public streets and in City public parks no unit shall occupy more than two (2) parking spaces.

B. In no case, shall a unit vend while occupying a traffic lane, parked on a sidewalk, or in any location which obstructs or impedes traffic.

C. The unit shall vend only from the side of the vehicle away from moving traffic and as near as possible to the curb or side of the street.

D. The unit shall not vend to any person standing in the traveled portion of any public roadway.

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

F. No unit shall vend while the unit is in motion.

G. Connection of the unit to public utilities is not permitted.

H. There shall be no overnight parking of food trucks on the public right of way.

**Subd. 7. Dimensions.** No mobile food truck shall exceed 32' feet in length (overall length for a self-propelled vehicle; trailer length including the towing vehicle for self-contained trailers) or ten (10) feet in height.

**Subd. 8. Signs and Appurtenances.**

A. Mobile food trucks/vendors shall not employ or utilize any signs that are not attached directly to the vehicle/trailer. Signs may not project above the unit, nor more than six (6) inches from the side of the unit. No flashing, strobing or intermittent lighting is allowed.

B. No external seating shall be provided or utilized except as may be provided by the owner, manager, or agent of any private property on which the unit may be properly located.

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

D. While vending, operator may not call attention to the unit by crying out, blowing a horn, ringing a bell, or playing music or other sounds discernible beyond the unit. Amplified sound is not permitted outside of the unit.

E. Waste receptacles must be provided by the unit operator and the vending site must be cleaned of all litter and garbage generated by the unit and customers before the unit leaves the location.

**345.03. Enforcement.** Any violation of this Section, including but not limited to the vending operation of a mobile food truck within the City without a license issued pursuant to this Section, shall be a misdemeanor punishable by up to a \$1,000.00 fine and/or ninety (90) days in jail.

**Section 350 - Taxicabs**

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

A. "Taxicab" is a vehicle driven by mechanical power. The term "taxicab" will include any motor vehicle for hire designed to carry seven persons or less, operated upon any highway in this City or on call or demand, accepting or soliciting passengers indiscriminately for transportation for hire between points along streets or highways as may be directed by the passenger or passengers so being transported.

B. The term "driver" means the person driving and having physical control over a taxicab, whether they be the licensee or in the employ of the licensee.

**350.02. License Required for Taxicab Drivers.** No person will drive or operate a taxicab in the City unless the driver or operator is the holder of a valid Minnesota driver's license authorizing operation of the licensed vehicle, and obtains a license from the Administrator after having provided proof of the requirements of this section.

**350.03. Insurance Required.** Before a taxicab may be operated in the City, and at all times effective during such period, the licensee shall have and maintain public liability and bodily injury insurance in the amount of Fifty Thousand Dollars (\$50,000) for any one person and One Hundred Thousand Dollars (\$100,000) for two or more persons in any one accident, as well as Five Thousand Dollars (\$5,000) property damage insurance. Such insurance shall cover all passengers carried by the insured licensee and shall be for public taxicab purposes. All such policies shall contain a clause providing for ten days' written notice to the Administrator before cancellation and a memorandum of such insurance shall be furnished to the City before a license is issued.

**350.04. Vehicle Requirements; Inspection.** As a condition for the issuance of a taxicab vehicle license, the applicant shall file with the Administrator, a certificate signed by a competent and experienced mechanic acceptable to the City showing that each taxicab vehicle has been inspected within a period of 30 days prior to the application and found to be in proper mechanical condition and safe for the transportation of passengers.

**350.05. Revocation.** A taxicab driver's license or taxicab vehicle license may be revoked, suspended or not renewed at any time for cause pursuant to the provisions of this chapter upon notice and hearing by the Council.

A. Any time that a licensee's Minnesota driver's license is suspended, revoked or canceled, his or her taxicab driver's license will likewise be immediately suspended, revoked or canceled. No person will operate a taxicab without a valid Minnesota driver's license.

B. Any person holding a taxicab driver's license whose Minnesota driver's license is suspended, canceled or revoked for any reason will immediately surrender his or her taxicab driver's license to the Police Department. The taxicab driver's license will be returned to the licensee upon reinstatement of the Minnesota driver's license or issuance of a limited license authorizing operation of a taxicab; provided, however, that suspension, cancellation or revocation of a Minnesota driver's license due to refusal to submit to a legally required blood

alcohol test under the state implied consent statute will be grounds for the revocation, non-issuance or nonrenewal of the taxicab driver's license.

C. Any licensed taxicab driver whose Minnesota driver's license has been revoked and who has been issued a limited license authorizing the operation of a taxicab will immediately notify the Police Department of the same. At that time, the licensee will furnish to the Police Department a copy of the limited license and a written statement containing a schedule of the days and hours of each day during which he or she will be driving a taxicab during the term of the limited license. No deviation from the schedule will be permitted. In addition, the licensee will personally furnish to the Police Department copies of all trip sheets for all shifts worked during the term of the limited license. The limited license documentation and trip sheets must be furnished weekly, i.e., every Monday by 12:00 noon, to the Police Department.

D. Any person holding a taxicab driver's license will notify the Silver Bay Police Department immediately whenever he or she is convicted of an alcohol-related driving offense, whether or not it involves the operation of a taxicab.

E. Refusal to take and/or failure to pass a standard breathalyzer test administered pursuant to Minn. Stat. § 169.123 while on duty will be grounds for revocation of a taxicab driver's license.

F. Failure to comply with the provisions of this section will be grounds for revocation of a taxicab driver's license.

**350.06. Appeals.** A determination by the City to deny, suspend, revoke or not renew any license under this section may be appealed to the Council by filing with the Administrator a written notice of appeal within fifteen (15) days of the date on which the City mails such determination to the applicant or licensee. In that event, the appeal will be heard by the Council at its next meeting occurring at least fifteen (15) days after the filing of the Notice of Appeal. At any appeal of a determination by the City under this Ordinance, the licensee or applicant, or an attorney representing said party, may appear and make a presentation to the Council. The licensee or applicant shall present to the Council the basis for the determination being appealed. If the appeal is based on the results of a driving record or criminal history background investigation, the licensee or applicant may present to the Council evidence of rehabilitation as set forth in Subdivision 6.F of this Section. After the hearing, the Council may uphold, reverse or modify the decision of the

City based upon the provision of this Ordinance and upon the protection of the public health, safety or general welfare. The Council shall issue written findings and determination within thirty-one (31) days of the hearing, unless the Council extends that time for good cause. A decision of the Council made following an appeal as set forth herein may be appealed by Writ of Certiorari to the Minnesota Court of Appeals pursuant to its Rules of Civil Appellate Procedure and Minnesota Statutes.

**Section 360 - Omitted**

**Section 370 – Gambling**

**370.01. License required.** No person shall conduct any gambling within the City without having applied for and obtained a license as provided in Minn. Stat. Chapter 349.

**370.02. Exemptions.** Bingo, raffles and other lawful gambling may be conducted within the City as provided by Minn. Stat. § 349.166 without securing a permit or license from the City.

**370.03. Local Gambling Tax.** The Council may by resolution adopted under this section impose a local gambling tax on any State licensed organization operating local lawful gambling, as provided in Minn. Stat. § 349.213, Sub.3.

**Section 371 – Adult Oriented Business**

**371.01. Findings and Purpose.**

**371.01.1.** The purpose of this section is to control, through licensing and zoning regulations, certain land uses that have a direct and detrimental effect on the character of the City's residential and commercial neighborhoods.

**371.01.2.** The Council makes the following findings about the effect adult uses and sexually-oriented businesses have on the character of the City. In making the findings, the Council accepts the recommendations and findings of other municipalities that have studied the experiences of other areas about such businesses. Based upon studies and findings, the Council concludes:

**371.01.2.1.** Adult uses and sexually-oriented businesses can contribute to an increase in crime in the area where such businesses are located. This can be a burden to City crime prevention programs and law enforcement services. To lessen the burden upon crime prevention programs, all adult-uses and sexually-oriented

businesses, other than adult accessory uses, as defined and regulated in and by this section, shall be in the Business Park District.

**371.01.2.2.** Adult uses and sexually-oriented businesses have adverse secondary impacts of the types discussed above.

**371.01.2.3.** It is necessary to provide for the special and express regulation of businesses, establishments or commercial enterprises that operate as adult body painting studios, adult bookstores, adult cabarets, adult car washes, adult companionship establishments, adult hotels or motels, adult massage parlors or health clubs, adult mini-motion picture theaters, adult modeling studios, adult motion picture arcades or theaters, adult novelty businesses, adult saunas and similar adult-oriented services operating under different names to protect the public health, safety and welfare, and to guard against the inception and transmission of disease.

**371.01.2.4.** The commercial enterprises such as the types described above and all other similar establishments whose services include sessions offered to adults conducted in private by members of the same or opposite sex, are susceptible to operations contravening subverting or endangering the morals of the City by being the site of acts of prostitution, illicit sex and occasions of violent crimes, and thus requiring close inspection, licensing and regulation.

**371.01.2.5.** Control and regulation of commercial establishments of these types, in view of the abuses often perpetrated, require intensive efforts by the police department and other departments of the City. These types of establishments can diminish the ability of the City to protect and promote the general health, welfare, morals and safety of the City. It is necessary for the City to provide services to all areas of the City. To reduce the demand on law enforcement services and other government services, commercial establishment of these types, other than adult accessory uses, as defined in and regulated by this section, shall be allowed only in the Business Park District.

**371.01.2.6.** The Council will adopt land use regulations and the licensing regulations pursuant to this section, recognizing that it has an interest in the present and future character of the City's residential and commercial neighborhoods. These

regulations are to lessen the detrimental and adverse effects adult uses and sexually oriented businesses have on adjacent land uses and to protect and promote the health, safety and welfare of the residents of the City.

**371.01.2.7.** It is not the intent of the Council to prohibit adult uses or sexually oriented business establishments from having an opportunity to locate in Silver Bay. It also is not the intent of the Council to regulate these businesses based on content, but only based on likely adverse secondary effects.

**371.02. Definitions.** For this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**371.02.1.** “Adult use” shall mean any or all of the following: adult body painting studios, adult bookstores, adult cabarets, adult car washes, adult hotels or motels, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health/sports clubs, adult saunas/steam rooms/bath houses, adult companionship establishments, adult rap/conversation parlors, adult novelty businesses, adult motion picture arcades, adult modeling studios and all other premises, enterprises, establishments, businesses and places open to some or all members of the public, in person or via electronic or Internet means, at or in which there is an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas which the public could see. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by state-licensed or registered persons. Activities classified as obscene, as defined by Minn. Stat. § 5617.241, as it may be amended from time to time, are not lawful and are not included in the definition of adult uses.

**371.02.2.** “Adult Use, accessory” shall mean the offering of adult printed matter and/or adult video tapes and/or adult novelties where all such items occupy no more than one or both areas described in Minn. Stat. § 371.02.2.1 and § 371.02.2.2.

**371.02.2.1.** No more than ten percent (10%) of the floor space of the establishment that is dedicated to retail sales or one hundred (100) square feet of floor space, whichever is less.

**371.02.2.2.** No more than ten percent (10%) of the internal wall space of the establishment that is dedicated to retail sales or one hundred (100) square feet, whichever is less.

**371.02.3.** “Adult Use, principal” shall mean an Adult Use, other than an Adult Use,



accessory, and shall include but not be limited to the following:

**371.02.3.1.** “Adult body painting studio” shall mean an establishment or business that provides the service of applying paint or other substance, whether transparent or nontransparent, to or on the body of a patron when such body is wholly or partially nude in terms of specified anatomical areas.

**371.02.3.2.** “Adult bookstore” shall mean an establishment, building or business engaging in the barter, rental or sale of items or merchandise consisting of printed matter, pictures, slides, records, audiotapes, videotapes, computer or video disks, motion picture film or any other similar materials, if one or both of the areas described in (a) and (b) that follow have products or materials distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas:

(a) more than ten percent (10%) of the floor space of the establishment that is dedicated to retail sales or more than one hundred (100) square feet of floor space, whichever is smaller.

(b) more than ten percent (10%) of the internal wall space of the establishment that is dedicated to retail sales or more than one hundred (100) square feet of wall space, whichever is smaller.

**371.02.3.3.** “Adult cabaret” shall mean an establishment, building or business that provides dancing or other live entertainment if such dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, presentation, display, depiction, or description of specified sexual activities or of specified anatomical areas.

**371.02.3.4.** “Adult car wash” shall mean a wash facility for any type of motor vehicle that allows employees, agents, independent contractors or persons to appear in a state of partial or total nudity in terms of specified anatomical areas.

**371.02.3.5.** “Adult companionship establishment” shall mean an establishment or business if such establishment excludes minors because of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified

anatomical areas.

**371.02.3.6.** “Adult entertainment facility” shall mean a building or space in which an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and in which may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

**371.02.3.7.** “Adult establishment” shall mean an establishment, building or business engaging in any of the following activities or which uses any of the following business procedures or practices, either:

**371.02.3.7.1.** Any business conducted exclusively for the patronage of adults and about which minors are specifically excluded from patronage either by law or by the operators of such business; or

**371.02.3.7.2.** Any business that offers its patrons services, products or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas.

**371.02.3.7.3.** Specifically included in the term, but without limitation are adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health clubs, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult car washes, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel and adult body painting studios.

**371.02.3.8.** “Adult hotel or motel” shall mean a hotel or motel from which minors are specifically excluded from patronage and in which material is presented that is distinguished or characterized by matter depicting, describing or relating to sexual activities or specified anatomical areas.

**371.02.3.9.** “Adult massage parlor, health/sport club” shall restrict minors because of age and provide the services of massage, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**371.02.3.10.** “Adult mini-motion picture theater” shall mean a business, building

or establishment in an enclosed building with a capacity for less than 50 persons used for presenting visual media material if:

**371.02.3.10.1.** Such business as a prevailing practice excludes minors by age; or

**371.02.3.10.2.** Said material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.

**371.02.3.11.** “Adult modeling studio” shall mean an establishment or business whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted by such customers.

**371.02.3.12.** “Adult motion picture arcade” shall mean any building or place to which the public is allowed or invited in which coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, computers or other image-producing devices that show images to five or fewer persons per machine at once, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

**371.02.3.13.** “Adult motion picture theaters” shall mean a business premises within an enclosed building with a capacity of 50 or more persons used for presenting visual media material if said business as a prevailing practice excludes minors by age, or if said material is distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

**371.02.3.14.** “Adult novelty business” shall mean an establishment, building or business engaging in the barter, rental or sale of adult novelties, if one or both areas described in (a) and (b) that follow have products or materials distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas:

(a) more than ten percent (10%) of the floor space of the establishment that is dedicated to retail sales or more than one hundred (100) square feet of floor space, whichever is smaller.

(b) more than ten percent (10%) of the internal wall space of the establishment that is dedicated to retail sales or more than one hundred (100) square feet of wall space, whichever is smaller.

**371.02.3.15.** “Adult printed matter” shall mean printed matter that is distinguished or characterized by an emphasis on matters depicting, describing or related to specified sexual activities or of specified anatomical areas.

**371.02.3.16.** “Adult sauna/steam room/bathhouse” shall mean a sauna/steam room/bathhouse that excludes minors because of age, or which provides a steam bath or heat bathing room used for bathing, pleasure, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna/steam room/bathhouse is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**371.02.3.17.** “Adult video tapes” shall mean tapes that are distinguished or characterized by an emphasis on matters depicting, describing or related to specified sexual activities or of specified anatomical areas.

**371.02.4.** “Booths, stalls or partitions” shall mean enclosures specifically offered to persons for a fee or as an incident to performing sexual conduct, or enclosures which are part of a business operated on the premises which offers movies or any other type of entertainment dispensed for a fee. This definition does apply to enclosures which are private offices used by the managers, owners or persons employed on the premises for use during business which are not held open to the public or members of the establishment for hire or for a fee or for viewing movies or any other type of entertainment.

**371.02.5.** “Clean” shall mean the absence of dirt, grease, rubbish, garbage, semen, bodily excrement and other offensive, unsightly or extraneous matter.

**371.02.6.** “Entity” shall mean any corporation, limited liability partnership, partnership, limited liability company, joint venture or any other legally recognized business organization.

**371.02.7.** “Licensed family day-care home, licensed group family day-care home, licensed

child-care center” shall mean a facility holding a license from Lake County or Minnesota pursuant to Minn. Stat. § 245A, as it may be amended from time to time, and/or Minnesota Rules, Chapter 9502 or Chapter 9503, as they may be amended from time to time.

**371.02.8.** “Minor” shall mean any natural person under the age of 18 years.

**371.02.9.** “Nudity” shall mean the showing of the human male or female genitals or pubic area with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any portion thereof below a point immediately above the top of the areola; or the depiction or showing of the covered male genitals in a discernibly turgid state.

**371.02.10.** “Public library” shall mean any library that provides free access to all residents of a City or county without discrimination and is organized under the provisions of Minn. Stat. § 134, as it may be amended from time to time.

**371.02.11.** “Public park” shall mean a park, reservation, open space, play ground, beach or recreation or community center in the City owned, leased or used wholly or in part, by the City, county, state, school district or federal government for recreation purposes.

**371.02.12.** “Place of worship” shall mean a building or space that is principally used as a place where people of the same faith or religion regularly assemble for worship.

**371.02.13.** “School” shall mean a building or space that is principally used as a place where 25 or more persons receive a course of educational instruction. Any postsecondary or post-high school educational building, including any college or any vocational-technical college, shall not be deemed a “school” for purposes of this section.

**371.02.14.** “Sexually-oriented business” shall mean an adult book store, adult body painting studio, adult car wash, adult cabaret, adult hotel or motel, adult companionship establishment, adult motion picture theater, adult mini-motion picture theater, adult massage parlor, adult entertainment facility, adult health or sports clubs, adult novelty business, adult modeling studio or adult sauna as defined herein. Activities classified as obscene as defined by Minn. Stat. § 617.241, as it may be amended from time to time, are not lawful and are not included in the definition of adult uses.

**371.02.15.** “Specified anatomical areas” shall mean anatomical areas consisting of:

**371.02.15.1.** Less than completely and opaquely covered human genitals, pubic region or pubic hair, buttock, anus or female breast or breasts below a point

immediately above the top of the areola or any combination of the foregoing; and  
**371.02.15.2.** Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**371.02.16.** “Specified sexual activities” shall mean activities consisting of the following:

**371.02.16.1.** Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation or fondling of unclothed genitals, pubic region, buttock or female breast, flagellation or torture in a sexual relationship, or the use of excretory functions in a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, sodomy, zooerasty;

**371.02.16.2.** Human genitals in the state of sexual stimulation, arousal or tumescence;

**371.02.16.3.** Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus or masturbation;

**371.02.16.4.** Fondling or touching of human genitals, pubic region or pubic hair, buttocks or female breast or breasts;

**371.02.16.5.** Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such person;

**371.02.16.6.** Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being;

**371.02.16.7.** Human excretion, urination, menstruation, vaginal or anal irrigation;  
or

**371.02.16.8.** Any combination of the above.

### **371.03. Licenses.**

**371.03.1. License Required.** No person, firm or corporation shall own or operate an adult use, principal or sexually-oriented business in Silver Bay without having first secured a license as provided herein.

**371.03.2. Application.** The City shall provide an application form for any license required

hereunder. This application shall include:

**371.03.2.1.** The name, residence, phone number and birth date of the applicant, if an individual; and if an entity, the names, residences, phone numbers and birth dates of those owners holding more than 5% of the ownership interests in such entity;

**371.03.2.2.** The name, address, phone number and birth date of each operator and manager of such operation, if different from the owners;

**371.03.2.3.** The address and legal description of the building, establishment or premises where the adult use or sexually-oriented business is to be located;

**371.03.2.4.** A statement detailing each misdemeanor or felony relating to a sex offense and/or the operation of adult uses or sexually-oriented businesses and related activities of which the applicant or, for an entity, the owners of more than 5% of the ownership interest of such entity, have been convicted, and whether the applicant has ever applied for or held a license to operate a similar type of business in other cities; additionally, the applicant must provide a signed release of information to allow the City to conduct its own investigation into criminal background of the applicant;

**371.03.2.5.** The activities and types of business to be conducted;

**371.03.2.6.** The hours of operation;

**371.03.2.7.** The provisions made to restrict access by minors;

**371.03.2.8.** A building plan of the premises detailing all internal operations and activities, including floor plan and provisions designed to prevent the display or perception by the public from any sidewalk or other public right-of-way of any adult use materials depicting, describing or related to specified sexual activities or specified anatomical areas by any visual or auditory media, including display, decoration, sign, show window, sound transmission or any other means;

**371.03.2.9.** A description or building plan that details all proposed interior and exterior changes to an existing building or structure; and

**371.03.2.10.** A plan of the exterior of the premises detailing all activities designed to prevent, deter and curtail any criminal activity or secondary effects. This plan includes but is not necessarily limited to parking lot design, parking lot lighting, exterior lighting and placement of screening material.

**371.03.3. License Fees.**

**371.03.3.1.** Each application for a license shall be accompanied by a receipt from the City for payment in full of the required application and investigative fee for the license as established from time to time by resolution of the Council. All fees shall be paid into the general fund of the City.

**371.03.3.2.** All licenses shall expire on the last day of December in each year. The City shall issue each license for one year, except that if part of the license year has elapsed when the application is made, the City may issue a license for the remainder of the year. The fee for any license shall not be prorated in such event.

**371.03.3.3.** The annual fee for an adult use or sexually-oriented business license shall be as established from time to time by resolution of the Council.

**371.03.3.4.** Each application shall contain a provision on the application in bold print stating that any withholding of information or the providing of false or misleading information will be grounds for the denial or revocation of a license and shall be a violation of this section punishable as a misdemeanor. Any changes in the information provided on the application or provided during the investigation shall be reported to the Council by the applicant or licensee. If said changes take place during the investigation, the data shall be provided to the Chief of Police in writing and they shall report the changes to the Council. Failure to report said changes by the applicant(s) or the licensee may result in a denial or revocation of a license.

**371.03.4. Granting of License.**

**371.03.4.1.** The City shall investigate all facts set out in the application. After the City finishes its investigation, the City shall hold a public hearing and shall give everyone present an opportunity to be heard for or against the granting of the license a chance to present his or her views. After the investigation and public hearing, the Council shall grant or refuse the application.

**371.03.4.2.** The City shall only issue a license to the applicant. The license may not be transferred to another holder. The City shall only issue a license for the premises or location described in the application. When a licensed adult use or sexually-oriented business is sold or transferred, the existing licensee shall



immediately notify the Council of the sale or transfer. If the new owner or operator is to continue operating the adult use or sexually-oriented business, the proposed new owner or operator must immediately apply for a license pursuant to this section and cannot conduct an adult use or sexually-oriented business until such new owner or operator is issued a license under this section.

**371.03.5. Persons Ineligible for License.** The City shall not grant a license to, nor may one be held by, any person or entity who:

**371.03.5.1.** Has been convicted of any felony or been convicted of a misdemeanor involving sexual activities;

**371.03.5.2.** Is not the owner of the establishment for which the license is issued;

**371.03.5.3.** Has not paid the license and investigative fees required by this section;

**371.03.5.4.** Is not a citizen of the United States;

**371.03.5.5.** Has had an adult use or sexually-oriented business or similar license or permit revoked under an ordinance or statute similar to this; and/or

**371.03.5.6.** Already has been issued a license under this section.

**371.03.6. Places Ineligible for License.**

**371.03.6.1.** No license shall be granted for adult uses or sexually-oriented businesses on any premises where a licensee has been convicted of a violation, or where any license hereunder has been revoked for cause, until one year has elapsed after such conviction or revocation.

**371.03.6.2.** No license shall be granted for any adult use or sexually-oriented business that does not meet all City code requirements, all building and fire code requirements and all provisions of state and federal law.

**371.03.6.3.** No adult use, principal, shall be granted for adult uses or sexually-oriented businesses for any premises not located in a Bay Business Park District.

**371.03.7. Conditions of License.**

**371.03.7.1.** Every license shall be granted subject to the condition in the following subdivisions and all other provisions of this section, and of any applicable sections of the Code, state and federal law.

**371.03.7.2.** All licensed premises shall have the license posted in a conspicuous place.

**371.03.7.3.** No minor shall be allowed in or on the premises of an adult use or sexually oriented business.

**371.03.7.4.** A designated inspection or law enforcement officer shall have the right to enter, inspect and search premises during business hours.

**371.03.7.5.** Every licensee shall be responsible for the conduct of their place of business and shall maintain conditions of this section and the Code.

**371.03.7.6.** No adult goods, materials or services shall be offered, sold, transferred, conveyed, given, displayed or bartered to any minor.

**371.03.7.7.** All performers, dancers and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas in the licensed premises where such entertainment can be seen by patrons of the licensed premises shall remain at all times a minimum distance of ten feet from all patrons, customers or spectators and shall dance or provide such entertainment on a platform intended for that purpose, which shall be raised at least two feet from the level of the floor on which the patrons, customers or spectators are located.

**371.03.7.8.** No dancer, performer or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas shall fondle or caress any patron, customer or spectator.

**371.03.7.9.** No patron, customer or spectator of a licensed facility shall directly pay any gratuity to any dancer, performer or person, providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas. Neither shall any dancer, performer or other person solicit any pay or gratuity from any patron, customer or spectator.

**371.03.8. Adult Use, Principal; Conditions.** The City permits adult use, principal, only in the Business Park District. Adult use, principal, licenses shall be subject to the following conditions:

**371.03.8.1.** No adult use, principal, sexually-oriented business shall be located within the Business Park District closer than 1,000 feet from any preexisting

residential lot line, place of worship, school, public park, open space, licensed family day-care home, licensed group family day-care home, public library or licensed child-care or daycare center. Measurements shall be made in a straight line, without regard to City boundaries, intervening structures or objects, from the nearest property line of the actual business premises of the adult use, principal, or sexually-oriented business to the nearest property line of the premises or building used as a dwelling or residence, place of worship, school, public park, open space, licensed family day-care home, licensed group family day care home, public library or licensed child-care or day-care center.

**371.03.8.2.** All adult uses and sexually-oriented businesses must follow and comply with all the provisions of this section and the Code.

**371.03.8.3.** No building owner or operator shall have more than one of the following uses, tenants or activities in the same building or structure: adult body painting studio, adult book store, adult cabaret, adult car wash, adult companionship establishment, adult entertainment facility, adult hotel or motel, adult modeling studio, adult sauna/steam room/bath house, adult motion picture theater, adult mini-motion picture theater, adult massage parlor, adult health/sports club or adult novelty business.

**371.03.8.4.** An adult use principal sexually-oriented business shall not sell or dispense 3.2 malt liquor, wine or intoxicating liquors, nor shall it be in a building that contains a business that sells or dispenses 3.2 malt liquor, wine or intoxicating liquors.

**371.03.8.5.** No adult use, principal, sexually-oriented businesses shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the adult use establishment that is prohibited by any ordinance of Silver Bay, the laws of the State of Minnesota or the United States of America. Nothing in this section shall be construed as authorizing or permitting conduct that is prohibited or regulated by other statutes, ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale or distribution of obscene material generally, or the exhibition, sale of distribution of specified materials to minors.

**371.03.8.6.** No adult use, principal, sexually-oriented business shall be conducted in any manner that permits the perception or observation from any property not licensed as an adult use of any materials depicting, describing or related 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.

**371.03.8.7.** All adult use, principal, sexually-oriented businesses shall prominently display a sign at the entrance and located within two feet of the door opening device of the adult use establishment, “This business sells or displays activities and/or material containing adult themes. Persons under age 18 years of age shall not enter.”

**371.03.8.8.** No person under the age of 18 shall be permitted on or in the premises of an adult use or sexually-oriented business establishment. No person under the age of 18 shall be permitted access to material displayed, offered for sale, given, transferred, conveyed or rented by an adult use or sexually-oriented business. Proof of age may be established only by a valid driver's license or identification card issued by Minnesota, some other state or a province of Canada, and the proof of age shall include a photograph and date of birth of the licensed person, a valid military identification card issued by the United States Department of Defense or in the case of a foreign national from a nation other than Canada, a valid passport.

**371.03.8.9.** Adult use, principal, sexually-oriented businesses shall not be open between the hours of 1:00 a.m. and 10:00 a.m. on the days of Monday through Saturday, nor between 1:00 a.m. and 12:00 noon on Sunday nor between 4:00 p.m. on December 24 and 12:00 noon on December 26.

**371.03.9. Adult Use, Accessory; Conditions.** Adult use, accessory uses authorized in the Business Park District may only be operated under the following conditions:

**371.03.9.1.** The Adult Use, accessory, shall comprise no more than one or both areas described in (a) and (b) that follow:

(a) No more than ten percent (10%) of the floor space of the establishment that is dedicated to retail sales or no more than one hundred (100) square feet of floor space, whichever is smaller.

(b) No more than ten percent (10%) of the internal wall space of the

establishment that is dedicated to retail sales or no more than one hundred (100) square feet of wall space, whichever is smaller.

**371.03.9.2.** “Display areas for adult video tapes and adult novelties shall be restricted from general view and shall be in a separate room, for which the access is in clear view and in the control of the person responsible for the business establishment. The sign required by Section 371.03.9.7 shall be placed at the entrance to such separate room.”

**371.03.9.3.** Unless located in the separate room required by Section 371.03.9.2 hereof, adult printed matter shall not be accessible to minors and shall be covered with a wrapper or other means to prevent display of any materials other than the publication title.

**371.03.9.4.** Persons under age 18 may not be prohibited in the establishment.

**371.03.9.5.** The business must be conducted to fully comply with the provisions of Minn. Stat. Section 617.291-617.296.

**371.03.9.6.** No Adult Use, principal may be conducted in the establishment.

**371.03.9.7.** No use of adult novelties or viewing of adult videos shall be allowed in the establishment.

#### **371.03.10. Revocation, Suspension and Renewal.**

**371.03.10.1.** The Council may revoke, suspend or not renew a license upon the recommendation of the Administrator that shows the licensee, its owners, managers, employees, agents or any other interested parties have engaged in any of the following conduct:

**371.03.10.1.1.** Fraud, deception or misrepresentation about securing the license;

**371.03.10.1.2.** Habitual drunkenness or intemperance in the use of drugs including, but not limited to the use of drugs defined in M.S. Section 618.01, as it may be amended from time to time, barbiturates, hallucinogenic drugs, amphetamines, Benzedrine, Dexedrine or other sedatives, depressants, stimulants or tranquilizers;

**371.03.10.1.3.** Engaging in conduct involving moral turpitude or permitting or allowing others within their employ or agency to engage in conduct involving moral turpitude or failing to prevent agents, officers, or employees in engaging in conduct involving moral turpitude;

**371.03.10.1.4.** Failure to follow any requirements of the ordinances of Silver Bay about sanitary and safety conditions, zoning requirements, building code requirements or ordinances, or failure to follow the requirements of this section; and/or

**371.03.10.1.5.** Conviction of an offense involving moral turpitude.

**371.03.10.2.** The certificate holder may appeal such suspension, revocation or nonrenewal to the Council. The Council shall consider the appeal at a regularly scheduled public hearing on or after ten days from service of the notice of appeal to the Administrator. After the hearing, the Council may order:

**371.03.10.2.1.** Revocation, suspension or non-renewal be affirmed;

**371.03.10.2.2.** Revocation, suspension or non-renewal be revoked and that the license be returned to the license holder; and/or

**371.03.10.2.3.** The Council may impose, at their discretion, any additional terms, conditions or stipulations for the suspension or issuance of the license.

**371.03.11. Limitations.**

**371.03.11.1.** No more than one adult use license may be directly or indirectly issued to any one person, partnership or corporation or for any one place or location in the City.

**371.03.11.2.** No person, partnership or corporation shall have or possess a direct or indirect interest in more than one adult use license in the City.

**371.03.11.3.** The term “interest” as used in this section includes any pecuniary interest in the ownership, operation, management or profits of an adult use or sexually-oriented business does not include loans, rental agreements, open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to the establishment.

**371.03.11.4.** A person, partnership or a corporation which receives monies from time to time directly or indirectly from a licensee in the absence of a bona fide consideration therefor, and excluding bona fide gifts or donations, shall be deemed to have a pecuniary interest in such adult use license.

**371.03.11.5.** In determining whether an interest exists, the transactions must have

been bona fide and the reasonable value of the goods and things received as consideration for a payment by the goods and things received as consideration for a payment by the licensee and all other facts reasonably tending to prove or disprove the existence of a purposeful scheme or arrangement to evade the restrictions of this section must be considered.

**371.03.11.6.** Upon conviction for violation of this section the Council may revoke all licenses in which such convicted person, partnership or corporation has an interest.

**371.03.12. Payment of Taxes, Assessments, Other Charges.**

**371.03.12.1.** No adult use license shall be granted hereunder for the operation on any premises on which real estate taxes, assessments or other financial claims of the City are delinquent and unpaid.

**371.03.12.2.** In the event the applicant is the owner, either in fee or under a contract for deed of the real estate where the licensed business is to be located and there are delinquent real estate taxes and/or assessments and/or other financial claims of the City against such real estate, the Council may nevertheless, by affirmative vote of three members of the Council, authorize and direct the issuance of such license, but only if the applicant shall submit a certified copy of an agreement under any laws of the State of Minnesota for the payment of such delinquent taxes and assessments and other financial claims.

**371.03.12.3.** In the event the applicant does not own the real estate where the licensed business is to be located and there are delinquent real estate taxes and/or assessments and/or other financial claims of the City against such real estate, the Council may nevertheless, by affirmative vote of three members of the Council, authorize and direct the issuance of such license, but only if the applicant shall submit evidence to the Council that the owner of said real estate and the applicant have entered into a written rental agreement or lease providing that rent paid shall first be applied to such delinquent real estate taxes and assessments and other financial claims.

**371.04. Sign and Window Display Restrictions.**

**371.04.1.** The following sign regulations shall apply to all adult use, principal uses and

adult use, accessory uses in the City.

**371.04.2.** All signs shall be flat wall or freestanding signs. No signs shall be located on any roof, or contain any flashing lights, moving elements or electronically or mechanically changing messages.

**371.04.3.** The City's sign regulations for the zone district where the business is located shall regulate the amount of allowable sign area and the number of allowed signs for an adult use or sexually-oriented business as provided hereof and except that such businesses may have only one sign no larger than 100 square feet in size.

**371.04.4.** No merchandise, photos or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or public right-of-way adjoining the building or structure in which the adult use or sexually-oriented business is located.

**371.04.5.** Window areas shall not be covered nor made opaque in any way. No signs shall be placed in any window. The signs required by 371.03.9.7 may be placed on the door to state hours of operation and admittance to adults only.

**371.04.6.** All license holders under this section shall apply for and pay for any sign permit required by the applicable codes, rules and regulations of the Code.

### **371.05. Sanitation and Health.**

**371.05.1. Partitions Facilitating Sexual Activity.** No license holder shall allow any partition between a subdivision, portion or part of the licensed premises having any aperture which is designed or constructed to facilitate sexual intercourse, sodomy, fondling or other erotic touching of human genitals, pubic region or pubic hair, buttocks or female breast between persons on either side of the partition.

**371.05.2. Restrictions on Booths, Stalls or Partitions.** No license holder shall allow or have on the licensed premises any booths, stalls or partitions used for the viewing of motion pictures or other form of adult use entertainment that have doors, curtains or portal partitions, unless such booths, stalls or partitions have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. The interior of said booths, stalls or partitions shall be lighted in a manner so that the persons within the booths, stalls or partitions are clearly visible from the adjacent public rooms.

**371.05.3. Limit of Persons in Partitioned Area.** Any booths, stalls or partitioned areas



of a room, or individual rooms used for the viewing of motion pictures, other forms video entertainment or live entertainment, shall not be occupied by more than one person at a time.

**371.05.4. Authority for Inspection.** The Council and/or its designates shall have the authority to inspect or cause to have inspected the licensed premises and adjoining areas to determine compliance with this section.

**371.05.5. Sanitation Requirement.** All adult uses and sexually-oriented businesses shall always be kept clean as herein defined.

**371.05.6. Duty to Supervise.** The license holder shall not permit specified sexual activities to take place on the licensed premises and shall have the affirmative duty to supervise the licensed premises and prevent such activities.

**371.06. Criminal Penalties.** Any violation of this section shall be a misdemeanor. Each day of violation shall constitute a separate penalty.