

CHAPTER 6

OTHER BUSINESS REGULATION AND LICENSING

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CHAPTER 6

OTHER BUSINESS REGULATION AND LICENSING

SECTION 6.01. DEFINITIONS. As used in this Chapter, the following words and terms shall have the meanings stated:

- A. **“Applicant”** - means any person making an application for a license under this chapter.
- B. **“Application”** - means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his/her request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.
- C. **“Bond”** - means a corporate surety document in the form and with the provisions acceptable and specifically approved by the City Attorney.
- D. **“Business”** - means any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both, licensed and regulated, by the terms and conditions of this Chapter.
- E. **“License”** - means a document issued by the City to an applicant permitting him/her to carry on and transact a business.
- F. **“Licensee”** - means an applicant who, pursuant to his/her application, holds a valid, current, unexpired and unrevoked license from the City for carrying on a business.
- G. **“License Fee”** - means the money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on a business.
- H. **“Sale”, “Sell” and “Sold”** - means all forms of barter and all manner or means of furnishing merchandise to persons.

SECTION 6.02. LICENSE APPLICATIONS – PROCEDURE AND ADMINISTRATION.

Subd. 1. General Application Requirements. All activities licensed by the City are subject to the application process and requirements set forth in this Section, and as supplemented by other Sections of this Code or as otherwise required by law. All applications shall be made at the office of the City Clerk upon forms prescribed by the City, or if by the State of Minnesota, then together with such additional information as the Council may desire. Information required may vary with the type of business organization or person making application. All questions asked or information required by during the application process shall be answered fully and truthfully by the applicant.

The Council has determined that a comprehensive background investigation is necessary for of each applicant. Such an investigation must be performed during the initial application process and may be performed anytime during the pendency or renewal of a license. A licensee shall allow the City to examine its records or other data in its possession or control in order to verify or investigate owners of a business or other information related to licensure. Each person or business named in or as part of this application shall execute a written authorization allowing the city and/or the Chief of Police to verify all information disclosed as part of the application.

Subd. 2. False Statements. It is unlawful for any applicant to make a false statement or willful omission in any application form or document, or to any inquiry or assertion made during the application process. A license application or license is rendered void at the moment such false statement or willful omission is made, whether or not it is discovered by the City. A voided license application or licensee's not cured by a subsequent grant of license renewal or amendment by the City, nor does it protect the applicant or licensee from prosecution or civil penalties for violation of law or operating without a valid license. Upon discovery of such false statement or willful omission a license application or license is revoked effective immediately upon notice to the applicant or licensee.

Subd. 3. Fees.

- A. Application Fees. At the time of the initial application or license renewal, an applicant for each license type set forth in this Code shall pay the City a separate application fee as established by the Council.
- B. Investigation Fees. A the time of an initial application, license renewal or at any time during the pendency of a license the City may conduct a background investigation of each applicant. The applicant shall pay an investigation fee as established by Council. Should the City's investigation costs exceed the scheduled fee, the applicant shall reimburse the City for its actual costs to conduct the background investigation. During initial and renewal applications this fee is due before an application will be processed by the City.

Subd. 4. License Action.

- A. Granting. All licenses shall be issued on an annual basis as specified by each license type. The Council may approve a license application for a remaining period of the annual license year or for the entire ensuing license year. Prior to consideration of any application for a license, the applicant shall pay the license fee, and if applicable, pay the investigation fee.
- B. Issuing. If an application is approved, the City Clerk shall forthwith issue a license pursuant thereto in the form prescribed by the City or the property agency of the State of Minnesota, as the case may be. For licenses issued and which are to become effective other than on the first day of the license year, the fee to be paid

with the application shall be valid only at one location and on the premises therein described.

- C. Refundment. Fees are paid in full and not subject to a refund unless otherwise specified by statute. A quarterly pro-rata share of an annual license fee shall be paid for any license approved for a period of less than one year.
- D. Transfer. No license shall be transferable between persons without prior consent of the Council and payment of the investigation fee. No license shall be transferable to a different location without prior consent of the Council and payment of the fee for a duplicate license or other costs related to investigation of the transfer.
- E. Refusal and Termination. The Council may, in its sole discretion and for any reasonable cause, refuse to grant any application. The City shall only terminate a license by expiration or revocation. A licensee may terminate a license by failure to adhere to lawful requirements or by voluntary cancellation.
- F. Fine, Suspension or Revocation. The Council may, in its sole discretion and for any reasonable cause, proscribe a civil penalty not to exceed \$2,000.00 or suspend for a period not to exceed sixty days, any license granted under the provisions of this chapter. The Council may, in its sole discretion and for any reasonable cause, revoke any license granted under the provisions of this chapter. These penalties are independent from any criminal prosecution.
- G. Right to Hearing. No civil fine, suspension or revocation shall take effect until the licensee has afforded an opportunity for a hearing before the Council, a committee of the Council, or a hearing examiner, or as may be determined by the Council in action calling the hearing. Such hearing shall be called by the Council upon written notice to the licensee served in person or by certified mail not less than fifteen days prior to the hearing date, stating the time, place and purpose thereof.

Subd. 5. Business Applicants & Licensees.

- A. Business Ownership. An application for a license to be used by a business entity shall disclose all owners which have a beneficial interest in the business. It is presumed that any entity owning 5% or more of the business owns a beneficial interest. A business applicant must furnish the City with a list of all entities which own a beneficial interest and describe the extent of such interest. The list shall name all such owners, show the number of shares or percentage of ownership held by each, either individually or beneficially for others.
- B. Report Change of Ownership. It is the duty of each business licensee to notify the Clerk of any change in legal ownership, beneficial interest or voting control in such corporation. Such notification is required for any corporation, partnership,

limited liability corporation, trust, sole proprietorship, or any other form of business ownership. A transfer of stock or ownership of a beneficial interest of a business holding a license is deemed a transfer of the license, and transfer without prior approval of the City Council renders the license void. An application to transfer a license shall be provided to the City Clerk at least 90 days prior to the proposed transfer and shall be treated the same as an application for a new license. A transfer of ownership or beneficial interest in the type of shares entitled to vote at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the share(s) therein, shall be deemed equivalent to a transfer of the license issued to the corporation, and any such license shall be revoked thirty days after any such change in ownership or beneficial interest of shares unless the Council has been notified of the change in writing and has approved under the same standards as an application for a new license.

Subd. 6. Duplicate Licenses. Duplicates of all original licenses under this Chapter may be issued by the Clerk without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of a fee as established by the Council for issuance of the duplicate. All duplicate licenses shall be clearly marked DUPLICATE.

Subd. 7. Posting. All licensees shall conspicuously post their licenses in their places of business. If the licensee does not have a place of business the licensee shall conspicuously display the license on or about their person.

Subd. 8. Agent. Before a license is issued to an individual or to any business, corporation, partnership, or association, the applicant or applicants shall appoint in writing a natural person as its manager or agent. Such resident manager or agent shall, by the terms of his/her written consent, (1) take full responsibility for the conduct of the licensed premises, and, (2) serve as agent for service of the notices and other process relating to the license. Such manager or agent must be a person who, by reason of age, character, reputation, and other attributes, could qualify individually as a licensee.

Subd. 9. Persons Disqualified. No license may be issued, transferred, or renewed if the results of any investigation show, to the satisfaction of the Council, that such issuance, transfer, or renewal would not be in the public interest. It is presumed that is not in the public interest to issue a license to any person or any establishment owned (in whole or in part) to a disqualified person. The criteria of qualified and disqualified persons will vary depending on the type of license, and the Council shall set forth such criteria as it shall deem appropriate.

Subd. 10. Delinquent Taxes and Charges. Any license issued by the City is voided whenever taxes, assessments, or other financial responsibilities to the City or other government institution are delinquent or unpaid, either in whole, in part, or by failure to pay an installment by the licensee or related to a licensed premises.

SECTION 6.03, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.

SECTION 6.04. FIXING LICENSE FEES. Except as otherwise herein provided, all fees for licenses, late fee penalties, and investigation of applicants under this Chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such license fees may, from time-to-time, be amended by the Council by resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the Clerk, and open to inspection during regular business hours. For the purpose of fixing such fees, the Council may subdivide and categorize licenses under a specific license requirement, provided, that any such subdivision or categorization shall be included in the resolution authorized by this Section.

SECTION 6.05. CARRYING OR POSTING. All solicitors shall at all times when so engaged, carry their license on their person. All other licensees shall post their licenses in their place of business near the licensed activity. Provided, however, that in the case of machine or other device licensing, the City may provide a sticker for the current license year which shall be affixed to each machine or device requiring such sticker. All licensees shall display their licenses upon demand by any officer or citizen.

SECTION 6.06. PENALTY FOR PROPERTY OWNER. It is unlawful for any person to knowingly permit any real property owned or controlled by him/her to be used, without a license, for any business for which a license is required by this Chapter.

SECTION 6.07. RESPONSIBILITY OF LICENSEE. The conduct of agents or employees of a licensee, while engaged in performance of their duties for their principal or employer under such license, shall be deemed the conduct of the licensee.

SECTION 6.08. CONDITIONAL LICENSES. Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefore, place such conditions and restrictions upon a license as it, in its discretion, may deem reasonable and justified.

SECTION 6.09. RENEWAL OF LICENSES. Applications for renewal of all licenses shall be made at least 90 days prior to the date of expiration of the license, and shall contain such information as is required by the City. This time requirement may be waived by the Council for good and sufficient cause. The decision whether or not to renew a license rest within the sole discretion of the Council. No licensee has a right to have a renewed license.

SECTION 6.10. INSURANCE REQUIREMENTS. Whenever insurance is required by a Section of this Chapter, after approval by the Council, but before the license shall issue, the applicant shall file with the Clerk a policy or certificate of public liability insurance showing (1) that the limits are at least as high as required, (2) that coverage is effective for at least the license term approved, and (3) that such insurance will not be cancelled or terminated without thirty days' written notice served upon the

Clerk. Cancellation or termination of such coverage shall be grounds for license revocation.

SECTION 6.11. LICENSE DENIAL AND FIXING RATES – HEARING.

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

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

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

SECTIONS 6.12 THROUGH 6.29, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.

SECTION 6.30. AMUSEMENT DEVICES.

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

- A. **“Game of Skill”** - Any device excepting pool and billiard tables, bowling alleys and shooting lanes, but including miniatures thereof, played by manipulating special equipment propelling balls or other projectiles across a board or field into respective positions whereby a score is established, which is available to be played by the public generally at a price paid either directly or indirectly for such privilege.
- B. **“Coin Amusement”** - Any machine which upon the insertion of a coin, token or slug, operates or may be operated and is available to the public generally for entertainment or amusement, which machine emits music, noise or displays

motion pictures. This definition shall not apply to coin-operated music boxes, more commonly known as “jukeboxes”.

- C. **“Video Game”** - Any electrical device which displays objects on a screen and upon insertion of a coin, token or slug may be played by the public generally for entertainment or amusement.
- D. **“Amusement Device”** - includes a game of skill, a coin amusement, or a video game, as defined in this Subdivision, or any combination thereof, and includes devices designed for and used exclusively as rides by children, such as, but not limited to, kiddy cars, miniature airplanes, mechanical horses, and other miniature mechanical devices not operated as a part of or in connection with any carnival, circus, show, or other entertainment or exhibition.
- E. **“Amusement Center”** - A contiguous area in which more than five (5) amusement devices are kept for use by the public generally. Provided, however, that liquor establishments are excluded from this definition.

Subd. 2. License Required. It is unlawful for any person to keep or maintain an amusement device for use by the public, or operate an amusement center, without first having obtained a license therefore from the City. Prior to issuance of an amusement center license, the application shall be presented to the Planning Commission for recommendations in connection with the issuance of a special use permit.

Subd. 3. Exception. This Section shall not apply to video games of chances under the control of the Charitable Gambling Board.

Subd. 4. Insurance Required. If the application is for an amusement center, liability insurance with limits of \$100,000.00 for one person or \$300,000.00 for one occurrence shall be provided.

Subd. 5. License Restrictions and Regulations.

- A. The license may be transferred from one amusement device to another similar amusement device if the licensed device is replaced with a newly acquired amusement device.
- B. Not more than one amusement device shall be operated under one license and the licensee shall be required to secure a license for each and every amusement device displayed or operated by him/her.
- C. No amusement device shall be located, placed, maintained or operated on any street or other public property.
- D. No amusement device shall be operated so as to constitute a public nuisance.

- E. No licensee shall permit an amusement device to be used for gambling or for the making of bets or wagers.

Subd. 6. Amusement Center Restrictions and Regulations.

- A. Neither amusement center nor any amusement device therein shall be operated so as to constitute a public nuisance.
- B. It shall be the responsibility of the licensee to see that the licensed premises do not become overcrowded so as to constitute a hazard to health or safety of persons therein. The Fire Chief may designate the maximum number of persons to be permitted on the licensed premises.
- C. The licensee shall provide a full-time adult attendant upon the licensed premises during business hours.
- D. It is unlawful for any person engaged in the business of operating an amusement center to sell, offer for sale, or knowingly permit to be sold or offered for sale or to be dispensed or consumed or knowingly brought on the licensed premises any alcoholic beverages, or narcotic drugs, or to knowingly allow any illegal activity upon the licensed premises.
- E. Every licensed amusement center shall have affixed on its premises in plain view a decal evidencing the issuance of its license and each machine on the licensed premises shall have affixed to it a plate or sticker evidencing its being licensed under this Section.
- F. The license required and described in this Section shall be purely a personal privilege and shall not constitute property. It is not transferable in any manner.
- G. Licensed premises shall be closed at 12:00 o'clock midnight each night and not open until 9:00 o'clock A.M. on weekdays or until 12:00 o'clock noon on Sunday.
- H. The licensee shall enforce the curfew and truancy laws, and ensure that no minors of school age are allowed to be on the premises during school hours that should otherwise be in school.
- I. Unlawful Use and Devices. It is unlawful for any person to: (1) sell or maintain a machine or device which is for gambling or contains an automatic pay-off device; (2) give any prize, award, merchandise, gift, or thing of value to any person on account of operation of such device; (3) sell or maintain, or permit to be operated in his/her place of business, any amusement device equipped with an automatic pay-off device; or, (4) equip any amusement device with an automatic pay-off device.

SECTION 6.31. ENTERTAINMENT LICENSE.

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

- A.** Entertainment Event: Any public or private gathering for a commercial purpose where sound is amplified, or where live music, theater or other public oration occurs.
- B.** Annual Entertainment License: An annual license authorizing entertainment events for a single establishment, licensed establishment, or individual business unit at a single address in the City, and as contained within an authorized structure as defined in Chapter 11.
- C.** Special Event Entertainment License: A license authorizing entertainment event(s) at a specific location in the City, and for a specific period of days not to exceed three (3) consecutive days. This license is necessary for any entertainment event not specifically authorized by an annual entertainment license.

Subd. 2. License Required. It is unlawful to hold an entertainment event, or to maintain sound amplifying equipment outside of a structure, except under an entertainment license from the City. No license shall be required in the following instances:

- A.** Events presented in local schools and colleges, or under the sponsorship of such schools and colleges, and primarily for the students thereof only.
- B.** Athletic, musical or theatrical events sponsored by local schools or colleges using student talent only.
- C.** Events at private homes that do not otherwise meet the requirements of an entertainment event.
- D.** Recitals presented in local businesses such as Dance Studios, Music Studios, etc., where the students, parents and/or instructors are providing the performance.
- E.** Services held on the grounds of churches or religious organizations.
- F.** Athletic events held in City parks and subject to park rules and regulations.

Subd. 4. Application and License. Notwithstanding other provisions in the Code of Ordinances, the follow provisions apply as a condition of maintaining a license under this section:

- A. No entertainment license shall be issued to any applicant under the age of eighteen (18) years.
- B. No entertainment license is valid until approved by the Council and the appropriate fees are paid to the City.
- C. Licenses are valid only for the date(s) specified on the license. Annual licenses are valid from July 1st through June 30th of the following year, or pro rata from the date granted through June 30th.
- D. Granting of an entertainment license does not waive enforcement of a city ordinance unless specifically indicated on the license. The city does not have the authority to waive enforcement of a state or federal law or regulation.
- E. A proposed site security and parking plan must be submitted to the Police and Fire Department as part of license application pursuant to this Chapter. A final plan must be submitted to these Departments no less than forty-five (45) days prior to issuing the license.
- F. During the entertainment event, the approved site security and parking plan must be conspicuously posted and otherwise available to the Police and Fire Departments.
- G. The Police or Fire Departments have the right to conduct inspections pursuant to this Chapter. They may inspect the premises of an entertainment event, and all property therein. They may do so at any time without a warrant for purposes of evaluating a pending license application, or for any reason once a license is issued pursuant to this Chapter. Failure to allow immediate access to the premises for inspection immediately voids the license or pending application. Licensee is responsible for ensuring compliance with this provision for any of its employees, contractors, agents and all other persons related to the operation of the entertainment event.
- H. The Police or Fire Departments have the right to immediately suspend any entertainment event or any provision within an entertainment license if they have reason to believe a violation of law has occurred, if a condition of the license has not been met, or for reasons they deem to be in the best interest of public safety or security. Under these limited conditions, no licensee has the right to a hearing before the suspension occurs.
- I. The Council shall act upon all entertainment license applications at a regular meeting within sixty (60) days of the completed application and fee being received at by City staff. Inaction by the Council within this period is a denial of the application.

Subd. 5. Entertainment Event Regulations.

- A. Sound Level: Sound from a licensed entertainment event must meet the following conditions:
 - a. Sound measured at fifty (50) feet from the source shall not exceed ninety (90) dB(A).
 - b. Sound measured off the property where the equipment is allowed under the license shall never be more than fifteen (15) dB(A) above the ambient noise level.
- B. Hours Of Operation For Licensed Entertainment Events: Sound from an entertainment event may occur between the hours of 9:00 a.m. and 9:00 p.m. unless otherwise approved by the Council and specified in the license.
- C. Entertainment Event Security:
 - 1. Security shall be hired by Licensee.
 - 2. All security personnel shall wear uniforms clearly indicating that they are security for the event (i.e. identifiable uniform colors; security logo located on front and back).
 - 3. Outdoor events require two (2) security personnel for every fifty (50) patrons. For all other events, the police department shall determine the level of security based on the type of event.
 - 4. Licensee must have an approved security plan from the police department before an entertainment license shall be issued by City staff.
- D. Parking: All events must have adequate and clearly marked parking subject to a parking plan approved by the City. Unless otherwise provided by existing signage, licensee shall clearly mark all parking with approved signs and provide adequate personnel hired by the licensee for parking enforcement.
- E. Obscenity: All events under this Chapter shall not contain obscene acts and shall fully conform to the provisions found in Chapter 11.35 regulating adult oriented business and adult uses even if the event or its actors are not a business or the acts do not occur in an establishment regulated by that section.

Subd. 6. License Revocation.

- A. At the sole discretion of the City Council or its appointed hearing officer, an entertainment license may be suspended, revoked or cancelled pursuant to Section 6.02, subd. 5, or for the specific conditions found in this Chapter. Reasons for revocation include but are not limited to citizen complaints related to noise, parking, disorderly conduct or other related violations at the establishment.

Except in cases of a license suspension enforced by the Police Department or Fire Department as set forth above, no other suspension, revocation or cancellation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. §§ 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may appoint a hearing officer to fulfill its duties.

- B. If a license is revoked or voided, another license shall not be issued for a twelve (12) month period.
- C. If a license is revoked or voided, license fees will not be refunded. Under any circumstances, fees for performing background checks or investigations will not be refunded.

SECTION 6.33. TOBACCO.

Subd. 1. Definitions. As used in this section, the following terms are defined as follows:

- A. **“Tobacco or Tobacco Products”** - Tobacco or Tobacco products shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco, cheroots; stogies; perique; granulated plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos, refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.
- B. **“Tobacco Related Devices”** - Tobacco related devices shall mean any tobacco product as well as a pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.
- C. **“Self-Service Merchandising”** - Self-Service Merchandising shall mean 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 employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.
- D. **“Vending Machines”** - Vending Machine shall mean any mechanical, electric or electronic or other type of device which dispenses 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 product or tobacco related device.

- E. **“Individually Packaged”** - Individually packaged shall mean 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 other packing 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.
- F. **“Loosies”** - Loosies shall mean the common term used to refer to a single or individually packaged cigarette.
- G. **“Minor”** - Minor shall mean any natural person who has not yet reached the age of eighteen (18) years.
- H. **“Retail Establishment”** - Retail establishment shall mean any place of business where tobacco, tobacco products or tobacco related devices are available for sale to the general public. Retail establishment shall include, but not be limited to, grocery stores, convenience stores and restaurants.
- I. **“Moveable Place of Business”** - Moveable Place of Business shall refer to 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 permanent type of structure authorized for sales transactions.
- J. **“Sale”** - A sale shall mean any transfer of goods for money, trade, barter or other consideration.
- K. **“Community Service”** - Community Service shall mean a service that provides assistance to the community. Community service shall have a reparative element which enables offenders to actually, and symbolically, pay back a debt to the community.

Subd. 2. License Required. 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.

- A. **Application for License.** 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, and any additional information the City deems necessary. Upon receipt of completed application, the City Administrator shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the Administrator shall determine that an application is incomplete, he or she shall determine that an application is

incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

- B. Action. The Council may either approve or deny the license, or it may delay action for a reasonable amount of time to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve 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.
- C. Term. All licenses issued under this ordinance will expire December 31st of the year the license was purchased.
- D. Suspension or Revocation. Any license under this ordinance may be revoked or suspended as provided in Section 350.06.
- E. Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Council. The licensee shall not be entitled to a refund of the license fee upon revocation or voluntarily ceasing the licensed activity.
- F. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- G. 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 thirty days but no more than sixty days before the expiration of the current license. The issuance of a license issued under this ordinance 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.

Subd. 3. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. the fee for a license under this ordinance shall be found in Section 350.09.

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

- A. The applicant is under the age of 18 years.

- B. The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products or tobacco related devices.
- C. The applicant has had a license to sell tobacco, tobacco products or tobacco related devices.
- D. The applicant fails to provide any information required on the application, or provide false or misleading information.
- E. The applicant is prohibited by Federal, State or other local law, ordinance or other regulation, from holding such a license.

Subd. 5. Prohibited Sales. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- 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 products or tobacco related devices and whereby there is not a physical exchange of tobacco, tobacco products or tobacco related device between the license or the licensee's employee and the customer.
- D. By means of loosies as defined in Section 345.01, Subd. 06 of this ordinance.
- E. Containing opium, morphine, jimson weed, belladonna, strychnos, cocaine, marijuana or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- 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.

Subd. 6. Vending Machines. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Subd. 7. Self-Service Sales. It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products or tobacco related devices by any means whereby the customer may have access to such items without having to

request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco products or the tobacco related devices 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 ordinance is adopted shall comply with this Section within 180 days. Self-service sales restriction shall not apply to retail stores which derive at least 90% of their revenue from tobacco and tobacco related products and which cannot be entered at any time by persons younger 18 years of age.

Subd. 8. Responsibility. All licenses under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices on the licensed premises and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or federal law, or other applicable law or regulation.

Subd. 9. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.

- A. **Illegal Sales.** It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any minor.
- B. **Illegal Possession.** It shall be a violation of this ordinance for a minor to have in his or her possession any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.
- C. **Illegal Use.** It shall be a violation of this ordinance of any minor to smoke, chew, sniff or otherwise use any tobacco product, or tobacco related device.
- D. **Illegal Procurement.** It shall be a violation of this ordinance 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 ordinance for any person to purchase or otherwise obtain such 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. **Use of False Identification.** It shall be a violation of this ordinance 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.

- F. Activity Inside Retail Establishments. 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 products is prohibited.

Subd. 10. Violations.

- A. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.
- B. Hearings. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.
- C. Hearing Officer. The Council shall serve as the hearing officer.
- D. Decision. If the hearing officer determines that a violation of this ordinance did occur, the decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 345.13 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.
- E. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court of the city in which the alleged violation occurred.
- F. Criminal Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution for any alleged violation of this ordinance.
- G. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Subd. 11. Penalties.

- A. Licensees and Employees. Any licensee, and any employee of a licensee, found to have violated this ordinance shall be charged an administrative fine of \$200 for a first violation of this ordinance; \$500 for a second offense at the same licensed premises within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

- B. Other Individuals. Other individuals, other than minors regulated by Subdivision 3 of this Subsection, found to be in violation of this ordinance shall be charged an administrative fee of \$100.
- C. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products or tobacco related devices shall be charged an administrative fee of \$25.00 and will be subjected to 20 hours of community service.
- D. Criminal Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution for any violation of this ordinance.

Subd. 12. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco, tobacco products or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

Subd. 13. Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as a validation or effect the validity and enforceability of any other section or provision of this ordinance.

SECTION 6.34. SOLICITORS.

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

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

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

- B. **“Solicitee”** - means the person solicited.
- C. **“Goods”** - means any tangible thing of value, but not including money, things in action or intangible personal property other than merchandise certificates or coupons as herein described. The term includes such chattels as are furnished or used at the time of sale or subsequently in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable there from. The term also includes merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.
- D. **“Services”** - means work, labor, or services of any kind.
- E. **“Established Place”** - means real estate in the City owned, leased on a month-to-month or term-certain longer than thirty (30) days. The term includes a booth, compartment, or area leased or assigned during and for the length of an event or occasion.
- F. **“Business Solicitation”** - means an attempt by a solicitor, engaging in transactions of the same kind, to sell or distribute for a consideration any goods or services primarily for personal, family, or household purposes, when either the solicitor or person acting for him/her contacts the solicitee by telephone or in person, other than at the established place of business of solicitor, except (1) an attempted solicitation in which the solicitee personally knows the identity of the solicitor, the name of the business firm or organization he/she represents, and the identity or kinds of goods, services or things of value offered; or, (2) an attempted solicitation in which the solicitor has first initiated the contact with the solicitee; or, (3) an attempted solicitation of a newspaper subscription in which the solicitor is a minor child engaged in both the delivery and sale of the newspaper; or, (4) an attempted solicitation for the sale of products of a farm or garden occupied or cultivated by the solicitor, when facts of such occupancy or cultivation are proven by the solicitor.
- G. **“Contribution Solicitation”** - means an attempt by a solicitor to obtain money from a solicitee for any cause or purpose, when either the solicitor or person acting for him/her contacts the solicitee by telephone or in person other than at the established place of meeting, business, service, or activity of the organization represented by the solicitor, except: (1) an attempted solicitation in which the solicitor personally knows the identity of the solicitor, the name of the organization he/she represents, and the identity of the services performed or offered by the organization, or, (2) an attempted solicitation in which the solicitor has first initiated the contact with the solicitor or the organization represented by him.

Subd. 3. Prohibited Solicitation Practices.

- A. It is unlawful for any solicitor to engage in solicitation for any unlawful business or organizational purpose or activity.
- B. It is unlawful for any solicitor to practice harassment, nuisance, theft, deceit, or menacing, troublesome or otherwise unlawful activities during the course of solicitation.
- C. It is unlawful for any solicitor to enter, or attempt to gain entrance, to residential premises displaying at such entrance a sign at least 3-3/4 inches long and 3-3/4 inches high with the words "Peddlers and Solicitors Prohibited" or "Solicitors Prohibited" in type not smaller than 48 point.
- D. It is unlawful for any solicitor to refuse to leave any premises when requested by the owner, lessee, or person in charge thereof.
- E. It is unlawful for any person to engage in contribution solicitation without completion of licensing or registration as herein provided.
- F. It is unlawful for any person to engage in business solicitation without a license as herein provided.

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

Subd. 5. Investigation, Approval or Disapproval.

- A. All applications for licensing or registration shall be immediately referred to the Chief of Police, and by him/her or other person acting in his/her stead, investigated as to the truth thereof. The Chief of Police shall have five (5) business days within which to investigate and make a recommendation thereon.
- B. If he/she finds no past history of the applicant indicating violations similar to those declared unlawful in this Section he/she shall recommend issuing a license or approving registration, as the case may be, and the Clerk shall forthwith advise the applicant. The Clerk shall issue a license, upon payment of the fee therefore, to the approved applicant for business solicitation, and shall approve the completion of registration by the applicant for a contribution solicitor.
- C. If the Chief of Police finds a past history of the applicant indicating violations similar to those declared unlawful in this Section, he/she shall recommend denial of the license or registration. In all matters of recommended denial the applicant shall be forthwith advised thereof, and the application shall be referred to the Council and considered by it at its next regular or special meeting occurring more

than ten (10) days thereafter. The applicant shall be afforded an opportunity to be heard at such meeting.

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

Subd. 7. Exclusions. The City may exclude certain classes of solicitor events from compliance with licensing or registration provisions of this Section. Provided, however, that such exclusion shall not extend to the prohibited solicitation practices set forth in Subdivision 3, Subparagraphs A through D, inclusive, of this Section.

SECTION 6.35. GARBAGE AND REFUSE HAULERS.

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

- A. **“Garbage”** - As used herein shall include only organic refuse resulting from the preparation of food and decayed and spoiled food from any source.
- B. **“Rubbish”** - As used herein shall include all inorganic refuse matter, such as non-recyclable packaging, ashes, and sweepings.
- C. **“Compost”** - As used herein shall include plant materials, such as grass, leaves, straw and non-woody plant materials stored on a person's property for the purposes of recycling organic materials as a soil conditioner.
- D. **“Yard Waste”** - As used herein shall include leaves, grass clippings, organic garden waste, or similar non-woody plant materials.
- E. **“Residence”** - As used herein shall include any single building of one to three dwelling units with individual kitchen facilities for each.
- F. **“Multiple Dwelling”** - As used herein shall include any building used for residential purposes consisting of four or more residential units with kitchen facilities for each.
- G. **“Commercial Establishment”** - As used herein shall include any premises where a commercial or industrial enterprise of any kind is carried on, including restaurants and clubs, churches, and schools where food is served.
- H. **“Hauler”** - As used herein shall include a collector or transporter of garbage, rubbish, recyclable materials, or yard waste.
- I. **“Manufactured Housing Park”** - As used herein shall include any park, trailer court, trailer camp, court, camp site, lot, parcel, a tract of land designed,

maintained or intended for the purpose of supplying a location or accommodation for any manufactured home.

- J. **“Recyclable Materials”** - As used herein shall include, but not being limited to, tin and aluminum cans, newspapers, corrugated cardboard, glass and plastics.

Subd. 2. Failure to Dispose of Garbage and Rubbish. It shall be unlawful for any person, firm, or corporation to fail to dispose of garbage and rubbish which may be or which may accumulate upon property owned or occupied by him or them in a sanitary manner. Failure or refusal to make provision for and secure such disposal at his or their expense or with the written approval of the property owner where it is being disposed shall be subject to the penalties imposed in Subd. 10. To make use of the services of a licensed hauler, persons shall do so by notifying one of said haulers and paying the fee thereof.

Subd. 3. Garbage Containers. Every residence, multiple dwelling and commercial establishment having garbage to dispose of, who does not otherwise provide for the disposal of such garbage in a sanitary manner, shall provide one or more fly tight waterproof containers sufficient to receive all garbage in a sanitary manner which may accumulate between the times of collection. Each non-disposable container shall have a capacity not to exceed 90 gallons, except where dumpsters are used in conjunction with multiple dwellings, and commercial establishments. Each non-disposable container shall be provided with a tight fitting cover and shall be maintained, cleaned and kept in a state of repair which will prevent leakage. All garbage shall be drained of surplus water and wrapped in a manner sufficient to prevent leakage before it is placed in said containers.

Subd. 4. Storage of Garbage, Rubbish, Yard Waste and Recyclable Materials.

- A. Except on scheduled collection days, garbage, rubbish, yard waste and recyclable materials shall be stored behind the front of the building line for the width of the property. Garbage, rubbish, yard waste and recyclable materials may be placed at curbside or on the boulevard for collection by a licensed hauler during the twelve hour period prior to the day of collection. Any garbage cans or other containers or materials left over from collection shall be removed from the curbside or boulevard within twelve hours after said collection.
- B. Dumpsters for garbage, rubbish, yard waste and recyclable materials used in conjunction with multiple dwellings and commercial establishments for the convenience of the property owners, renters or lessees, shall be stored in the rear or side yards, and must be screened from public view in an enclosure consisting of three walls, at least six feet high and a door. The walls must be flush to the ground.

- C. Dumpsters intended for collecting recyclable materials from the public for charitable purposes may be located on a paved surface not designated for parking and must be clearly marked to indicate the type of recyclables accepted and the name of the charity to receive the resulting revenues.

Subd. 5. Composting. Any property owner and/or lease holder may provide for the handling of certain yard wastes as defined by Subd. 1 Paragraph 4 of this Chapter by means of composting. Composting shall be accomplished above ground in a controlled area allowing for the decomposition of the material through an aerobic process providing adequate oxygen and moisture. At no time shall composting create a health hazard or a nuisance to adjoining properties.

Subd. 6. Yard Waste. Except for purposes of composting under Subd. 9 of this Code it shall be unlawful for any person, firm or corporation to dispose of yard waste on private or public lands located in the City of Lexington. All yard waste must be disposed of in the manner prescribed by law. Yard waste for purposes of this Section consists of all grass clippings, leaves, twigs, tree branches and other woody and non-woody plant materials.

Subd. 7. Licensing Requirements.

- A. It is unlawful for any person to collect garbage, rubbish, recyclables, or yard waste from commercial establishments, multi-family dwellings or manufactured home parks in the City without first securing a solid waste collection license from the City.
- B. Each license shall be applied for, issued and renewed, and may be suspended or revoked, as provided by this Chapter, and each licensee shall comply with all applicable requirements of this Chapter.
- C. Haulers collecting yard waste, recyclables and non-recyclables or any combination thereof from residential areas, commercial establishments, multiple dwellings and/or manufactured housing parks must be licensed.
- D. Any person, firm or corporation desiring a license to collect garbage shall make application for the same to the City Clerk upon a form prescribed by the City. The applicant shall set forth the following:
 - 1) The name and address of the applicant.
 - 2) A list of the equipment which the applicant proposes to use in such collection.
 - 3) The place or places to which the garbage, rubbish, yard waste and/or recyclable materials are to be hauled.

- 4) The manner in which said garbage, rubbish, yard waste and/or recyclable materials are to be disposed of.
- E. Before a license is issued, the applicant shall file with the City Clerk evidence that the applicant has in effect public liability insurance for the hauler's business and for all vehicles in at least the sum of \$500,000 for injury of one person, \$1,000,000 for the injury of two or more persons in the same accident and \$100,000 property damage.
 - F. When the application is submitted, the applicant shall file with the City Clerk a schedule of proposed rates to be charged during the licensed period. Every licensee shall provide 30 days prior written notification to the City and the licensee's customers of any change in rates to be implemented during the licensed period.
 - G. Before a license is issued, the applicant shall pay to the City a license fee to be established by resolution of the City Council, which shall accompany the application.
 - H. No license issued shall be for a longer period than one year and all licenses shall expire on June 30 of each year.
 - I. Licenses may be suspended or revoked by the Council, after the licensee has been given a reasonable notice and an opportunity to be heard, for the violation of any provisions of this Chapter, or for the violation of any conditions or restrictions in the motion granting the license, or any motion passed by the Council, or upon failure of the licensee to comply with any conditions, order or direction issued by the City.
 - J. In addition to the other requirements of this Chapter, haulers servicing residences, manufactured housing parks and multiple dwellings shall comply with the following:
 - 1) Curbside recycling collection will be made available to all residential, multiple dwelling and manufactured housing park customers. Such service shall include weekly or bi-weekly collection of all recyclable materials but may not necessarily occur on the same day as garbage and rubbish collection for residences.
 - 2) Weekly collection of garbage and rubbish and weekly or biweekly collection of recyclable materials will be provided, but not necessarily on the same day, for multiple dwellings and manufactured housing parks.

- 3) Collection service provided on the basis of volume shall be provided. All billings shall be itemized so as to show what individual charges are being levied.
- 4) Each licensee shall separately collect and dispose of yard waste on a regular basis for a minimum of eight weeks in the spring, commencing on April 1, and eight weeks in the Fall, commencing on September 15th.

Subd. 8. Requirements and Restrictions. All licensees shall comply with all of the following requirements and restrictions:

- A. No hauler shall operate in a residential district after 6:00 P.M. or before 7:00 A.M. of any day, and no hauler shall operate in a residential district on Sunday or legal holidays.
- B. All haulers operating on a route in a residential district shall operate vehicles on City streets within the weight allowed by Minnesota State Statutes.
- C. Licensees shall have covered water-tight, packer-type vehicles, or in the case of recycling, appropriate container vehicles, in good condition and which prevent loss in transit of liquid or solid cargo. All vehicles shall be kept clean and as free from offensive odors as possible, and shall not be allowed to stand in any street longer than reasonably necessary to collect garbage, rubbish, recyclable materials, or yard waste.
- D. All garbage and rubbish shall be dumped or unloaded only at designated facilities.
- E. Recyclable materials shall be disposed of at a recycling facility, an organized recyclable drive or through another licensed hauler.
- F. Yard wastes may be composted privately or may be disposed of at an approved composting facility or through another licensed hauler.
- G. Each vehicle for which a hauler's license is issued shall exhibit such license in a prominent position on the vehicle.

Subd. 9. Reporting of Recyclables and Yard Waste. All licensees shall report to the City in a manner consistent with the requirements of the Metropolitan Council. Such quantities shall be reported by tonnage, except that yard waste shall be reported in estimates of cubic yardage abated. Failure to certify accurate volumes within the time specified by the City may be cause for suspension or revocation of a hauling license.

Subd. 10. Penalty. Any person, firm or corporation violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

SECTION 6.36. REPEALED.

SECTION 6.37. PRIVATE STABLES.

Subd. 1. Definition. The term “**private stable**” as used in this Section means the keeping or maintaining of one or more horses, cows, pigs, sheep, goats or other domesticated animals, or five or more rabbits, chickens, ducks, geese, turkeys, pigeons or mink.

Subd. 2. License Required. It is unlawful for any person to maintain a private stable without having a license therefore from the City.

Subd. 3. License Restrictions and Regulations.

- A. Floors, walls and ceilings of buildings wherein said animals or fowl are kept shall be clean, sanitary and in good repair.
- B. All barns, cages, pens, benches, boxes and receptacles in which the animals or fowl are confined shall be kept clean, sanitary and in good repair, and shall be properly sufficient and humane in size for the confinement of said animals or fowl.
- C. All rooms shall be properly and adequately lighted and ventilated.
- D. Such premises shall be operated in a proper and humane manner, and the licensee, or person having charge thereof, shall not deprive the animals or fowl of necessary food, water or shelter, or perform any act of cruelty to the animals or fowl, or in any way further any acts of cruelty toward them or in any act tending to produce said cruelty.

SECTION 6.38. EXCAVATORS.

Subd. 1. Definitions. For the purpose of this Section, the following definitions apply:

- A. “**City Specifications**” - means that certain document adopted by the Council by resolution setting forth the manner in which excavations shall be made and repaired in public right-of-way.
- B. “**Excavation**” - means the scraping or movement of the surface or subsurface of any street right-of- way.
- C. “**Excavator**” - means any person, not acting within the course and scope of a contract with the City, who makes an excavation.

- D. **“Owner”** - means the person hiring or engaging the excavator or benefiting from the excavation.

Subd. 2. Purpose and Intent. In order to insure proper restoration of excavations within the street right-of-way, public alleys and easements, a license is required by any person excavating in said public land. The license holder shall comply with all City regulations, requirements, and specifications in the performance of any excavations and the restorations of the excavated area.

Subd. 3. License Required. It is unlawful for any excavator to make an excavation without a license therefore from the City.

Subd. 4. Licensee and Owner Restrictions and Regulations.

- A. Notice. Except in emergency situations, notice must be given to the office of the Clerk not less than twenty-four (24) hours before commencing any work and immediately upon the completion of any excavations. The license holder shall submit a form, provided by the City that explains the excavation in detail to the Clerk's office within 48 hours after the excavation has been completed. Upon proper notice it will become the responsibility of the Clerk to notify all emergency personnel of the excavation procedure.
- B. Inspection. It shall be the responsibility of the excavator to arrange for any and all required inspections. No excavation will be considered completed until all mandatory inspections are completed.
- C. Bond Required. The applicant shall give bond to the City in the penal sum of \$2,000.00 conditioned upon faithful and lawful performance of all work in the City.
- D. Public Liability Insurance. The applicant shall provide public liability insurance with minimum limits of \$100,000.00 for injury to one person, \$200,000.00 for injury to more than one person, and \$25,000.00 for property damage.
- E. Worker's Compensation Insurance. The excavator must provide a certificate to the City prior to the issuance of a license, showing workmen's compensation insurance as required by Minnesota State Law.
- F. Responsibility. The owner and the excavator shall be responsible for compliance with the conditions of this Section and subject to the penalties provided for violation of this Chapter.
- G. City Specifications Compliance. The owner and excavator shall be responsible for compliance, in detail, with City specifications.

SECTION 6.39. NEW OR USED MOTOR VEHICLE DEALERS.

Subd. 1. Definition. The term “new or used motor vehicle dealer” means any person who engages in the business of selling, trading, exchanging or advertising for sale or exchanges any new or used motor vehicle to consumers or other dealers. For the purpose of this Subdivision, any person who has for sale, trade, or exchange, more than five motor vehicles at any time shall be deemed to be engaged in the business of selling motor vehicles.

Subd. 2. License Required. It is unlawful for any person to be a new or used motor vehicle dealer without a license therefore from the City.

SECTION 6.40. GENERAL CONTRACTORS.

Subd. 1. Contractors. It is deemed to be in the best interest of the residents of the City of Lexington that any work involving the remodeling, alteration or construction of any building; or the installation of any appliances or service facilities in any building shall be done only by individuals, firms or corporations that have demonstrated and submitted evidence of their competency to perform such work in accordance with applications of the building code adopted by the City of Lexington.

Subd. 2. City Licensing. The permits which the zoning officer is authorized to issue under the code of the City of Lexington shall be issued only to individuals, firms, or corporations holding a license by the City for work to be performed under the permit, except as hereinafter noted.

Subd. 3. Licensing Approval. Application for license shall be made to the zoning officer and such license shall be granted upon proof of the applicant's qualifications therefore, their willingness to comply with the provisions of the code, the filing of certificates evidencing the holding of public liability insurance in the limits of \$100,000.00 per person and \$300,000.00 per accident for bodily injury and \$100,000.00 for property damages and certificates of workman's compensation insurance as required by law. Any person aggrieved by the zoning officer's refusal to issue a license may appeal the zoning officer's decision to the City Council, which shall then review the zoning officer's decision and either affirm or reverse said decision.

Subd. 4. License Fees. The annual license fee and expiration date shall be as provided in Chapter 6.04 of the Code, except that no license shall be required for:

- A. Plumbing work that entails the installation within a building of the pipes, fittings, and fixtures that carry water and waste;
- B. Electrical construction and installation;
- C. Water conditioning servicing and installation;

- D. Water supply installation and construction (well drillers) provided that the applicant for any of these licenses presents for filing a copy of his license issued by the appropriate State of Minnesota regulatory board.

Subd. 5. Requirements. Licenses shall be obtained by every person engaging in the following businesses or work in accordance with the applicable section of the code of the City of Lexington

- A. General contractors in the business of building construction. Exempted from this general contractor licensing requirement shall be any individual who applies to the City for a permit to build a home to be occupied by himself. However, if the same individual makes another application to build another home to be occupied by himself within two (2) years from the date of the first building permit application, a general contracting license shall then be required for any structure building within the two (2) year period.
- B. Heating, ventilation and refrigeration;
- C. Water supply system installation and construction;
- D. Sewer and water connections between street connection and property line;
- E. Plumbing, including the installation of cesspool, septic tank, drain fields, connections to the municipal system, inside plumbing and the business of scavenging;
- F. Water supply system installation and construction;
- G. Excavations, including excavation for footings;
- H. Cement contractors and block layers. Nothing here shall be construed as preventing any such qualified licensee from performing the work by an employee under his/her supervision and control, or by contract with another person qualified to perform the same, provided the contractor is subject to the control of the licensee and the licensee is at all times responsible for the work performed.

Subd. 6. Work Performed By Property Owner. The owner of the property may perform work on property which he occupies, so long as the work when performed is in accordance with the code of the City, and for such purpose, a permit may be granted to such owner without the necessity of obtaining a license.

Subd. 7. Master License. Those persons who possess valid master licenses issued by the State of Minnesota shall not be required to obtain a license from the City; they shall, however, be required to file proof of the existence of a valid master's license together with proof of satisfactory workmen's compensation and liability insurance coverage.

Subd. 8. Public Service Corporations. Public service corporations shall not be required to obtain licenses for work upon, or in connection with their own property except as may be provided by other sections of the City Code.

Subd. 9. Manufacturers. Manufacturers shall not be required to obtain licenses for work incorporated within equipment as a part of manufacturing except as may be provided by other sections of the City Code.

Subd. 10. Liability. This section shall not be construed to affect the responsibility of any party owning, operating, controlling or installing the above described work for damages to persons or property caused by any defect therein nor shall the City of Lexington be held as assuming any such liability by reason of the licensing of persons, firms or corporations engaged in such work.

SECTION 6.41. PAWNBROKERS.

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

- A. **“Pawnbroker”** - A pawnbroker is a person who loans money on deposit of or pledge for personal property or other valuable things, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back again at a stipulated price, or who loans money secured by chattel mortgages on personal property, taking possession of the property or any part thereof so mortgaged.
- B. **“Secondhand Goods Dealer”** - A secondhand goods dealer is a person whose regular business includes selling or receiving tangible personal property excluding motor vehicles, furniture, clothing, and related accessories; previously used, rented, owned or leased.

Subd. 2. License Required.

- A. No person, partnership, or corporation shall engage in or carry on the business of pawnbroker/secondhand dealer, without a license issued by the City of Lexington for each and every separate office or place of business operated by such licensee in the City of Lexington. The annual fee for such license shall be established by resolution.
- B. A license issued under this Section shall expire on December 31 of the year of issuance. The annual license fee shall be paid in full before the application for a license is accepted. The fee for a pawnbroker/secondhand dealer license granted after the commencement of the license year shall be prorated on a monthly basis, or any part thereof exceeding 15 days. For the purposes of establishing the prorated license fee, the month of the application is excluded.

- C. The actual license fee shall be based upon the date of Council approval of the license and in the event that the licensee paid a fee in excess of the required fee at the time of application, any excess payment shall be refunded. Upon rejection of a license or upon withdrawal of the application for a license before approval of the issuance by the Council, the license fee shall be refunded.
- D. A license under this Section shall authorize the licensee to carry on its business only at the permanent place of business designated in the license. No license may be transferred to a different location or to a different license. Any and all property or buildings used for storage of items related to the pawn shop or secondhand goods dealership must be identified in the application for either license.
- E. A pawnbroker may not operate or engage in the business of secondhand goods dealer without having obtained a secondhand goods dealer license in addition to a pawnbroker's license. A secondhand goods dealer may not conduct, operate or engage in the business of pawnbroker without having first obtained a pawnbroker's license in addition to a secondhand goods dealer license.
- F. The aforementioned license requirements do not apply to or include the following:
 - 1) The sale of secondhand goods where all of the following conditions are present;
 - (a) The sale is held on property occupied as a dwelling by the seller, or owned, rented or leased by a charitable or political organization;
 - (b) The items offered for sale are owned by the occupant;
 - (c) The sale does not exceed a period of 72 consecutive hours;
 - (d) Not more than two sales are held either by the same person or on the same property in any twelve month period;
 - (e) None of the items offered for sale have been purchased for resale or received on consignment for purpose of resale;
 - 2) Sales by a person licensed as a motor vehicle dealer.
 - 3) The sale of secondhand books, magazines, sound or video recordings, or films.
 - 4) The sale of goods at an auction held by a licensed auctioneer.

- 5) The business of buying or selling only those secondhand goods taken as part of full payment for new goods, and where such business is incidental to and not the primary business of a person.
 - 6) A bulk sale of property from merchant, manufacturer, or wholesaler having an established place of business or of goods sold at open sale from bankrupt stock.
 - 7) Goods sold at a public market.
 - 8) Goods sold at an exhibition.
 - 9) The sale of furniture, clothing and related accessories.
- G. The owner of a business at which two or more secondhand goods dealers are engaged in business by maintaining separate sales space and identifying themselves to the public as individual dealers may obtain a multiple secondhand goods dealer license for that location. A multiple license may not be issued unless the following requirements are met:
- 1) The businesses must have a single name and address.
 - 2) The businesses must operate in a compact and contiguous space.
 - 3) The businesses must be under the unified control and supervision of the one person who holds the license.
 - 4) Sales must be consummated at a central point or register operated by the owner of the business, and the owner must maintain a comprehensive account of all sales.
- H. The holder of a secondhand goods dealer license under this Section for a business with more than one dealer at the same location must comply with all of the requirements of this Section, including the responsibility for police reporting and record keeping in the same manner as any other dealer licensed under this Section. A dealer licensed under this subsection is responsible to its customers for stolen or misrepresented goods sold at its place of business in the same manner as any other dealer licensed under this section.

Subd. 3. Application Procedure. Every applicant for a license to maintain, operate, or conduct a pawnbroker business or a secondhand goods dealer business shall file a completed application under oath with the City of Lexington upon a form provided by the Office of the City Clerk and pay a non-refundable \$500.00 application fee. The application, once accepted, shall be referred to the Police Department for investigation. Copies of this application shall be forwarded to such other City departments as shall be necessary for verification and investigation of the facts set forth

in the application. The Chief of Police and such other department heads shall make a written recommendation as to the issuance or non-issuance of the license within thirty days. The completed application form shall contain all information indicated, including:

- A. Full name, place, date of birth, and street residence of the applicant.
- B. The business address and the name and address of the owner of the premises.
- C. A statement as to whether, within the preceding five years, the applicant has been convicted of any law relating to theft, damage or trespass to property, sale of a controlled substance, or the operation of business; the nature of such offense and the penalty assessed.
- D. Whether the applicant is a natural person, corporation, or partnership, and;
 - 1) If the applicant is a corporation, the state of the incorporation and the names and addresses of all officers and directors.
 - 2) If the applicant is a partnership, the names and addresses of all partners.
- E. The name of the manager or proprietor of the business.
- F. Each application shall be accompanied by a bond in the amount of \$10,000.00 executed by a corporation authorized to do business in this state and conditioned that in conducting such business the licensee will observe all laws in relation to pawnbrokers and will conduct business in conformity thereto, and that the licensee will account for and deliver to any person legally entitled any goods which have come into the licensee's possession through the licensee's business as a pawnbroker, or in lieu thereof, will pay there reasonable value in money to the person.
 - 1) Such bond shall be maintained so long as the pawnbroker does business, and shall be for the benefit of the City or any person who shall suffer any damage through the act of such pawnbroker and shall not be terminable without the bond company giving written notice thirty days in advance of termination to the City Clerk.
 - 2) If the applicant is a natural person, the application shall be signed and sworn to by the person; if a corporation, by an agent authorized to sign; if a partnership, by a general partner.
 - 3) No person shall make any material false statement in the application. In addition to other penalties, the licensee's license may be revoked by the City Council for giving false information on the application.

- 4) All licenses shall expire one year after issuance unless earlier renewed. A new application fee shall be required whenever there is any change in the facts presented by the application other than date, applicant(s)' home address or building owner(s)' address. A new application fee shall be charged whenever a license is not renewed prior to its expiration.
- 5) All applicants requesting a license pursuant to this chapter may be required to submit to a background investigation, including, but not limited to, a criminal history check.

Subd. 4. Records Required.

- A. Every pawnbroker or secondhand goods dealer purchasing or receiving on deposit for a loan any article of personal property shall give to the person selling or depositing such article a plain written or printed ticket or receipt for the article sold or deposited, showing the terms of such sale or loan.
- B. Each licensee shall keep a record of each transaction made in the course of business. Such records shall be in a form prescribed by the Chief of Police and shall, in all instances, be legibly made in ink and be in the English language. The records so kept shall include the following information about each transaction:
 - 1) The full name, address, and the date of birth of the person pledging or selling the item.
 - 2) The time and date of the transaction.
 - 3) A complete description of the item pledged or sold, including all identifying numbers and identifying marks.
 - 4) A physical description of the person pawning or selling the item, including:
 - sex
 - height
 - weight
 - race
 - color of eyes
 - color of hair
 - 5) The amount of money paid or loaned for the item.
 - 6) The signature of the person pledging or selling the item.
 - 7) The identification number from any of the following forms of identification of the seller:
 - valid driver's license containing a picture
 - picture identification

- 8) In the event that the property is stored at a place other than the permanent place of business designated in the license, the location of the property or buildings used for the storage of the item. The property or buildings used for storage must be identified in the application for the pawnbroker or secondhand goods dealer license as set forth in Subd. 2. License Required.
 - 9) Any other information the Police Chief shall require.
- C. Every pawnbroker or secondhand goods dealer shall make available to the Chief of Police every day, before the hours of 12:00 Noon, a complete, legible and correct copy of the records required by this Section for all transactions which occurred on the previous day. The records required herein shall be kept at the licensee's place of business for three years, and shall be available for police inspection at any reasonable time.
- D. For the following items, regardless of resale price, a secondhand goods dealer or pawnbroker must make out, on forms approved by the appropriate law enforcement agency, and second dally by mail to the appropriate law enforcement agency, a legible description of the goods received during the preceding day, together with the time received and a description of the person from whom the goods were received:
- 1) Items with a serial number identification, or "operation identification" symbol;
 - 2) Cameras;
 - 3) Electronic audio or video equipment;
 - 4) Precious jewelry or gems, and precious metals;
 - 5) Artist-signed or artist-attributed works of art;
 - 6) Guns and firearms; and
 - 7) Items not included in the above, except furniture and kitchen or laundry appliances, which the secondhand goods dealer intends to sell for more than \$200.00.

Subd. 5. Inspection.

- A. Any person, firm or corporation licensed under the provisions of Subd. 1 through Subd. 2, shall, at all times during the terms of said license, allow the officers of the Police Department to enter the premises where the licensee is carrying on such business or at any property or buildings used for storage of items related to the business, for the purpose on inspecting such premises and inspecting the

goods, wares and merchandise therein for the purpose of locating goods suspected or alleged to have been stolen or otherwise improperly disposed of.

Subd. 6. Holding of Property.

- A. When the Chief of Police, or any member of the police force designated by the Chief of Police, notifies any pawnbroker or secondhand goods dealer not to sell any property received on deposit or purchased by him, or not to permit the same to be redeemed, the pawnbroker shall not sell nor permit such property to be redeemed until such property is released in writing by the Chief of Police, or his designate.
- B. No personal property deposited with or purchased by any licensee under Subd. 1 through Subd. 12 shall be permitted to be redeemed from the place of business of licensee until three (3) working days after the copy of the records required by Subd. 4 have been made available to the Chief of Police, except upon written permission of the Chief of Police.

Subd. 7. Report of Stolen or Lost Goods. If any goods, articles or things shall be advertised in any public newspaper of the City of Lexington as having been lost or stolen, and such goods, articles or things shall then be, or shall thereafter come into the possession of any licensee under the terms hereof said licensee shall, upon actual notice hereof, immediately thereafter, as a supplement to said licensee's daily report for that day to the Chief of Police, give information in writing that certain goods, articles or things advertised are in said licensee's possession, and shall not thereafter dispose of the same except upon written authority so to do from the Chief of Police of the Police Department.

Subd. 8. Redemption Period. Any person who pawns an item shall have at least thirty days to redeem the item before it may be sold.

Subd. 9. Prohibited Transactions.

- A. No pawnbroker or secondhand goods dealer shall purchase or receive on deposit or pledge anything of value as security for a loan of money from any person, male or female, under age 18, nor knowingly from an intoxicated person or one of unsound mind.
- B. A pawnbroker or secondhand goods dealer may not receive goods unless the seller presents identification in the form of driver's license or other picture identification.

Subd. 10. Storage of Firearms. A pawnbroker or secondhand goods dealer holding for sale a firearm or other dangerous weapon shall store the firearm or dangerous weapon in a locked and opaque compartment except when being viewed by a customer following a request to view the firearm or dangerous weapon.

Subd. 11. Persons Ineligible for License. A pawnbroker or secondhand goods dealer license will not be issued to:

- A. A person not a citizen of the United States or a resident alien;
- B. A person under 18 years of age;
- C. Subject to the provisions of law, a person who within five years of the license application date has been convicted of receiving stolen property, sale of stolen property or controlled substance, burglary, robbery, damage or trespass to property, felony theft, larceny, fraud, or any law or ordinance regulating the business of pawnbroker or secondhand goods dealer;
- D. A person who within five years of the license application date had a pawnbroker or secondhand goods dealer license revoked;
- E. A person whom the City Council determines not to be of sufficient good moral character and repute; or
- F. When the City Council determines, after investigation and public hearing, that issuance or renewal of the license would adversely affect the public health, safety, or welfare.

Subd. 12. Places Ineligible for License. A license will not be issued or renewed under this section for any place or for any business:

- A. If taxes, assessments or other financial claims of the City or the State of Minnesota on the licensee's business premises are delinquent and unpaid;
- B. If the premises is located within 300 feet of a school, church or residential area; or
- C. Where operation of a licensed premises would violate zoning ordinances.

Subd. 13. Method of Payment. When a pawnbroker or secondhand goods dealer accepts an item for purchase or as security for a loan, payment shall be made by check only, made payable to the actual intended seller or borrower.

Subd. 14. Denial, Suspension or Revocation of License. Any license under Subd. 1 through Subd. 14 may be denied, suspended, or revoked for any of the following reasons:

- A. Any conflict with the Lexington Zoning Code.

- B. Any conflict with any health, building, building maintenance or provisions of this code or ordinance or state law;
- C. Failure by applicant to comply with one or more provisions of Subd. 1 through Subd. 14;
- D. Fraud, misrepresentation, or bribery in securing a license;
- E. Fraud, misrepresentation, or false statements in the course of the applicant's business;
- F. The applicant was convicted of violating any law relating to theft, damage or trespass to property, sale of a controlled substance, or unlawful operation of business within the preceding five years.

Subd. 15. Applicability. The licenses required by Subd. 2 shall be applied for within thirty days of the effective date of this Ordinance. Said licenses shall be obtained within sixty days of the effective date of this Ordinance. If said licenses are not obtained within the sixty day period, the designated business shall cease operating within the City of Lexington, unless the City Council extends the time for issuance of the license. All other provisions of this Chapter shall be effective and complied with within sixty days after the effective date of this Ordinance.

Subd. 16. Separability. Should any section, subdivision, clause or other provision of this Ordinance be declared by a court of competent jurisdiction to be invalid such decision shall not affect the validity of the Ordinance as a whole or any part other than the part so declared to be invalid.

Subd. 17. Penalty. Any person violating any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than \$700.00 or by imprisonment of not more than 90 days, or both, plus costs of prosecution in either case.

SECTIONS 6.42. COMMERCIAL SAUNA AND MASSAGE SERVICES

Subd. 1. Statement of Policy.

- A. The City Council of the City deems it necessary to provide for the special and express regulation of businesses or commercial enterprises which provide therapeutic massage or public saunas. Similar adult-oriented services operate under different names in order to protect the public health, safety and welfare and to guard against the inception and transmission of disease.
- B. The City Council finds that commercial enterprises such as the type described in this Chapter, and all other similar establishments whose services include sessions offered to adults, conducted in private by members of the same or the

opposite sex and employing personnel with no specialized training are susceptible to operation in a manner contravening, subverting or endangering the morals of the community by being the site of acts of prostitution, illicit sex and occasions of violent crimes, thus requiring close inspection, policing, licensing and regulation.

- C. The City Council finds that commercial enterprises such as the type described in this Chapter, and all other similar establishments whose services include sessions offered to adults, conducted in private by members of the same or the opposite sex and employing personnel with specialized training, professional licensing and/or standards of professional practice are less susceptible to operation in a manner contravening, subverting or endangering the morals of the community thus requiring a different level of inspection, licensing and regulation than establishments employing personnel with no specialized training, professional licensing and/or standards of professional practice.
- D. The City further finds that regulating businesses and individuals who practice therapeutic massage and work associated with massage by creating a licensed activity for those who have a higher level of training, license, and professional standards help to:
 - 1) Create barriers to entry into the commercial field of therapeutic massage against individuals or businesses likely commit criminal acts or provide injurious services to the public;
 - 2) Ensure that people who use therapeutic massage for health and wellness will receiving the highest possible level of competent, ethical, and effective treatment and care;
 - 3) Remove the stigma of therapeutic massage being a sensual or sexual activity and promote it as an accepted business practice.

Subd. 2. Definitions.

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

- A. **“Day Spa”** - A spa that offers all or a portion of the following:
 - 1) Environment: a clean, safe, calming and nurturing environment;
 - 2) Privacy: private treatment area for each client receiving a personal service;
 - 3) Business licenses: professional, licensed esthetician and therapists on staff;
 - 4) Products: professional spa products for which estheticians and therapists have received training in their use;

- 5) Massages: Swedish, lymph drainage, reflexology, shiatsu, polarity, sports, deep tissue, deep muscle, or other types of massage related work;
 - 6) Body treatments (one or more on the menu): body packs and wraps, exfoliation, cellulite, body toning/contouring, waxing, homecare program (optional: electrical impulse body toning, heat treatments, Ayurveda treatments, laser hair removal, electrolysis, hand and foot care);
 - 7) Face: cleansing facial, homecare program (optional medical facial, electrical toning, laser hair removal, electrolysis, cosmetic, make-up consultation);
 - 8) Aromatherapy: personalized for body and/or face:
 - (a) One of the following:
 - i) Hydrotherapy; or
 - ii) Steam and sauna.
 - (b) One of the following:
 - i) Nutritional counseling/weight management; or
 - ii) Private trainer/yoga/meditation; or
 - iii) Spa cuisine.
 - 9) Optional: hair: full-service salon, scalp treatments and hair packs, spa manicure and pedicure.
- B. **“Good Repair”** - Free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions and similar defects so as to constitute a good and sound condition.
- C. **“Massage”** - The rubbing, stroking, kneading, tapping or rolling of the body of another with the hands for the exclusive purpose of physical fitness, relaxation, beautification, healthcare and for no other purpose, and performed in a manner consistent with the training, education and policies recognized by professional societies and standards to include, but not limited to the:
- 1) National Organization Board for Therapeutic Massage and Bodywork;
 - 2) American Massage Therapy Association; or
 - 3) Associated Massage and Bodywork Professionals.

- D. **“Massage Therapist Certificate”** - A certificate issued by the City to a person who meets the appropriate requirements to practice or administer massage in the City.
- E. **“Massage Therapy Establishment”** - Any premises at or in which therapeutic massage is performed.
- F. **“Massage Therapist”** - A person who practices or administers massage and has obtained the required certification to practice or administer massage in the City.
- G. **“Sauna”** - A steam bath or heat bathing room used for the purpose of bathing, relaxing or reducing agent utilizing steam or hot air as a cleaning, relaxing or reducing agent.
- H. **“Sauna Establishment License”** - A license issued by the City authorizing the commercial operation of a sauna on premises within the City.

Subd. 3. Distinction; Exemptions.

- A. The practice of massage as an activity licensed by the City is hereby declared to be distinct from the practice set forth below and those practices expressly excluded from the provisions of this Chapter. Practices expressly excluded from this Chapter include:
 - 1) The practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry; persons duly licensed in this State to practice medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry, nurses and health care workers who work solely under the direction of those persons;
 - 2) Institutions such as hospitals, rest homes, nursing homes, or other institutions licensed under the provisions of Minnesota Statutes § 144.50 to § 144.69;
 - 3) Beauty culturists and barbers who do not give or hold themselves out to give massage, as defined herein, other than is customarily given in those shops or places of business shall be exempt from the provisions of this chapter insofar as they hold an appropriate license issued by the State of Minnesota;
 - 4) Athletic directors and trainers who perform massage in the course of any athletic program or event which is sponsored by a local unit of government, bona fide educational institution complying with State or local regulations, bona fide churches, synagogues or institutions of organized religion or bona fide, nonprofit civic organizations are expressly excluded from the requirements of this Chapter, provided that the performing of massage is subsidiary to the performing of other services and tasks.

Subd. 4 Through Subd. 14, Inclusive, Reserved for Future Expansion

LICENSES

Subd. 15. Licenses Required.

- A. No person shall engage in the business of operating a sauna, day spa, or massage therapy establishment either exclusively or in connection with any business enterprise without obtaining a license for that business establishment located in a commercial or mixed use zone and within a commercial enterprise as provided in this Chapter and shall only provide services on the premises of the licensed establishment.
- B. General requirements for obtaining licensing as provided in this Chapter.
 - 1) Individuals who provide services regulated by this Chapter for the licensed establishment may only do so if they are individually licensed or certified pursuant to this Chapter.
 - 2) No establishment regulated by this Chapter may be granted a license or operate as a business unless it employs at least one person who is individually licensed or certified pursuant to this Chapter to perform services regulated by this Chapter.
 - 3) All licenses pursuant to this Chapter must participate in a background investigation and successful completion of same prior to receiving a license. All licensees must grant the City the unlimited right to perform criminal background investigations during the pendency and period of the license application and operation.
- C. Whenever any establishment ceases to be licensed as a sauna, day spa or massage therapy establishment, whether through the suspension, cancellation, revocation, nonrenewal, lack of employing of a licensed individual, or lapse of its license, its owners shall immediately remove from public view any sign or display which identified the establishment as a sauna, day spa, or massage therapy establishment or as offering sauna or massage services.

Subd. 16. Contents of Application.

- A. Application for a sauna, day spa, or massage therapy establishment license shall be made only on the forms provided by the Administrator or designated staff.
- B. Four complete copies of the application shall be furnished to the office of the Administrator containing the following information:
 - 1) Address and legal description of the property to be used;

- 2) The names, addresses and telephone numbers of the owner, lessee if any, and the operator or manager;
- 3) The name, address and telephone number of three persons who may be called upon to attest to the applicant's, manager's or operator's character;
- 4) Whether the applicant, manager or operator has ever been convicted or charged with a crime or offense other than a non-criminal traffic offense and, if so, provide information as to the time, place and nature of the crime and the disposition for each charged offense. This includes disclosure of charges that have been dismissed, expunged, acquitted, pardoned, or any type of stayed sentence or adjudication, or diversion program;
- 5) The names and addresses of all creditors of the applicant, owner, lessee or manager insofar as and regarding credit which has been extended for the purposes of constructing, equipping, maintaining, operating or furnishing or acquiring the premises, personal effects, equipment or anything incident to the establishment, maintenance and operation of the massage parlor or massage establishment;
- 6) If the application is made on behalf of a corporation, joint business venture, partnership or any legally constituted business association, it shall submit, along with its application, accurate and complete business records showing the names and addresses of all individuals having an interest in the business, including partners, officers, owners, managers, members of the board of directors and creditors furnishing credit for the establishment, acquisition, maintenance and furnishing of the business, including the purchase or acquisition of any items of personal property for use in the operation;
- 7) Complete accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon or in which the business is proposed to be located, in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise offering massage;
- 8) The application shall also contain blueprints, diagrams, plans, layouts and the like showing the construction, revision, remodeling, alteration or additions of or to the premises, and specifically showing the layout, design and arrangement of the bathing and restroom facilities and the size and type of equipment and facilities to be used.
- 9) Identify any prior or current professional license or license application from a jurisdiction other than the City. For each license or application supply the date

of application, the nature of the license, whether the application was granted or denied, current status of the license or application, specify any adverse action (such as revocation, suspension, cancellation, or conditional provisions of practice of a professional license, or criminal charges) take against the license, licensee, any employee, agent, contractor, or other person associated with any license or license application from another jurisdiction;

- 10) The name and identify of all persons practicing services for the applicant establishment that are regulated by this Chapter. The applicant must specify the individual(s) who will be licensed and certified by the City to conduct the regulated services and must always keep that information current by giving immediate notice to the local Police Department and City anytime that information changes. (Each of these individuals are subject to individual licensing or certification requirements of this Chapter.);
- 11) A general authorization for release of information signed by the applicant granting the local Police Department and/or City authorization to complete the required investigation and to reinvestigate during the pendency of the license period.

Subd. 17. License Fee, Investigation Fee and License Year.

- A. The investigation fee shall be set by Council, on an annual basis, through ordinance along with the annual license fee. A license, unless revoked, is for the calendar year or a part thereof for which it has been issued. The license fee and fee for the investigation of the license application shall be paid when the application is filed. In the event that the application is denied or the license, once issued, is revoked, cancelled or surrendered, no part of the annual license fee and investigation fee shall be returned to the applicant unless by express action of the City Council.
- B. A separate license shall be obtained each year for each place of business. The licensee shall display the license in a prominent place in the licensed premises at all times. A license for the operation of a massage therapy establishment or sauna establishment is nontransferable.

Subd. 18. Granting or Denial of Licenses.

- A. License applications shall be reviewed by the Police Department and other departments as the City Council shall deem necessary.
- B. The review shall include any inspection of the premises covered by the application by the Building Inspector and Fire Department to determine whether the premises conform to all applicable code requirements. Recommendations shall be made in writing to the Administrator. Thereafter, licenses shall be

granted or denied by the City Council subject to the provisions of this chapter. The applicant may appeal to the City Council.

Subd. 19. Conditions Governing Issuance of License.

- A. No sauna, day spa or massage therapy establishment license shall be issued if the applicant or any of its owners, lessees, managers, employees or agents is a person of bad repute;
- B. Sauna, day spa or massage therapy establishment licenses shall be issued only if the applicant and all of its owners, lessees, managers, employees and agents are free of convictions for offenses 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 licensed activity;
- C. Licenses shall be issued only to applicants who have not, within one year prior to the date of application, been denied licensing; or who have not within that period had their license revoked;
- D. Licenses shall be issued only to applicants who have completely answered all of the information requested in the application in an accurate and truthful manner subject to the penalty of criminal perjury, have paid the full license fee and have cooperated with the city in review of the application;
- E. A license shall not be granted to an applicant who is under the age of 18 years;
- F. Licenses may be granted only for locations with commercial or mixed use zones allowing similar activities;
- G. Licenses may be granted only to establishments which can meet the health, safety, sanitary and building code requirements of the City;
- H. A license shall not be granted if granting the license either would be inconsistent with the comprehensive development plan of the City, or would otherwise have a detrimental effect upon the property or properties in the vicinity; and
- I. Licensee must provide and maintain a current copy of its insurance policy with the City and that policy must maintain a provision that the insurer shall notify the City of any change to the policy, notice of nonpayment or notice of cancellation.
- J. Licensee must provide a general authorization for release of information signed by the applicant granting the local Police Department and/or City authorization to complete the required investigation and reinvestigate during the pendency of the license period.

Subd. 20. Construction and Maintenance Requirements.

- A. Each licensed premises shall have separate restrooms for members of each sex or else have individual restrooms suited for use by one person at a time.
- B. Floors, walls and equipment in massage rooms, restrooms and bathrooms must be kept in a state of good repair and sanitary condition at all times. Linen and other materials shall be stored at least 12 inches off the floor.
- C. Massage tables and other equipment shall be kept in a sanitary condition including but not limited to the use of disposable or cloth sanitary protectors on tables and face cradles.
- D. Each licensed premises shall provide adequate refuse receptacles, which shall be emptied as often as required.
- E.
 - 1) The doors to the individual massage rooms shall not be equipped with any locking device or else all interior doors shall be locked with a common keyed lock and a copy of that key shall be on deposit with the local Police Department.
 - 2) Main entrance doors to the premises shall be unlocked at all times during business hours and while anyone is present on the premises.
- F. Exterior signage is required and must prominently state that the establishment provides sauna, day spa or massage therapy services.

Subd. 21. Restrictions and Regulations.

- A. No licensee shall employ any person as a massage therapist without first ensuring that the employee possesses a valid certificate for the administration or practice of massage from the City. The certificate shall be prominently and openly displayed on the premises.
- B. The licensed premises may only be open for business or in operation anytime between the hours of 8:00 a.m. and 9:00 p.m. The actual hours when a licensee chooses to conduct business on the licensed premises must be on file with the local Police Department and the City as designated in their license application. These designated hours must be prominently posted on the exterior and interior of the licensed premises. Each licensee must so file their designated hours of operation. No person may engage in the practice of any service regulated by this Chapter outside of those designated hours. Clientele may be on the licensed premises for no more than fifteen minutes before or after the designated hours. No other person may be on the premises for more than one hour before or after the designated hours. Persons on the premises outside of the designated or authorized hours are subject to criminal prosecution for loitering or other crimes. Clientele, employees, agents and other persons on the premises must be so

notified that they may be subject to criminal prosecution in this manner and it is incumbent upon the licensed establishment to so notify individuals by either posted notice or in writing. Failure to give notice to an individual shall not be a defense to this subdivision violation.

- C. The licensee, certificate holder or any persons in his or her employ or agents or officers thereof, and any and all persons with interest in the business shall comply with all applicable ordinances, regulations and laws of the City, the State and the United States Government.
- D. If the licensee is a partnership or corporation, the licensee shall designate a person to be manager and in responsible charge of the business. This person shall remain responsible for conduct of the business until another suitable person has been designated in writing by the licensee. The licensee shall promptly notify the local Police Department in writing of any change in manager, indicating the name, address and telephone number of the new manager and the effective date of the change.
- E. During any hours of operation or at any time a person is present on the licensed premises such establishment shall be open for inspection by City inspectors or local police officers. Inspection shall include:
 - 1) Upon demand all persons employed or contracted by the licensed establishment or engaged in providing services shall identify themselves, giving their true and legal name, and proof of their identity.
 - 2) All licenses, certificates, insurance and financial records of the establishment and its employees, contractors or agents must be available for inspection during these times.
 - 3) The physical premises may be inspected.
- F. Refusal to allow an inspection or to answer the request of City, local Police, Fire or other authority to being admitted into a licensed premises, identify employees, or unavailability of financial records shall be grounds for immediate suspension or revocation of all licenses or certificates.
- G. Fees for all services shall be prominently posted in the reception area in a location available to all prospective customers.

Subd. 22 Through Subd. 29, Inclusive, Reserved for Future Expansion

CERTIFICATES

Subd. 30. Massage Certificate Required.

No person shall perform massage services within the City without a massage certificate as provided in this Chapter.

Subd. 31. Contents of Application for Certificate.

- A. An application for a massage certificate shall be made only on forms provided by the City.
- B. The application shall contain the following information together with any other information the City may require:
 - 1) Evidence of the applicant's educational qualifications, including originals or certified copies of degrees, diplomas, certificates or licenses, if any, including proof of receiving educational, certification or licensing requirements least;
 - 2) Evidence of applicant's practical qualifications to practice massage;
 - 3) The names and addresses of three persons, who may be referred to as to the applicant's character;
 - 4) Whether the applicant has ever been convicted or charged with a crime or offense other than a non-criminal traffic offense and if so, information as to the time, place and nature of the crime, and the disposition for each charged offense. This includes disclosure of charges that have been dismissed, expunged, acquitted, pardoned, or any type of stayed sentence or adjudication, or diversion program;
 - 5) A general authorization for release of information signed by the applicant granting the local Police Department and/or City authorization to complete the required investigation and to reinvestigate during the pendency of the license period.

Subd. 32. Fee, Investigation Fee and Year.

The investigation fee shall be determined by City Council on an annual basis through ordinance along with the annual certificate fee. The certificate year shall be the calendar year and a certificate shall be valid for the remainder of the calendar year in which it is issued. The certificate fee and fee for investigation for the certificate shall be paid when the application is filed. In the event that the application is denied or that the certificate, once issued, is revoked, cancelled or surrendered, no part of the annual certificate fee and investigation fee for the issuance of a certificate shall be returned to the applicant unless by express action of the City Council. A separate certificate shall be obtained each year. The certificate holder shall display the certificate in a prominent place in the licensed premises at all times. A certificate permitting the holder thereof to practice massage is nontransferable.

Subd. 33. Investigation of Application.

- A. Certificate applications shall be reviewed by the local Police Department, which shall furnish written recommendations to the City Council.
- B. Thereafter certificates shall be granted or denied by the City Council subject to the provisions of this Chapter.
- C. The applicant may appeal to the City Council.

Subd. 34. Conditions Governing Issuance of Certificate.

- A. Certificates shall be issued only to persons who have received and can furnish proof of receiving a qualifying amount of education. These minimum requirements are any of the following:
 - 1) Hold an associates degree or greater level degree in a field of nursing or physical therapy from a State-accredited, post-secondary educational institution, and hold a current license, in good standing, from the State of Minnesota to practice nursing or physical therapy;
 - 2) Receive no less than 500 hours of certified therapeutic massage training from an institution recognized and accredited by a State or National professional therapeutic massage organization, to include, but not limited to the:
 - (a) American Massage Therapy Association, or
 - (b) Associated Massage and Bodywork Professionals; or
 - 3) Receive no less than 500 hours of certified therapeutic massage training from any institution, and successfully pass the national examination for therapeutic massage within the year prior to application as offered by the National Organization Board for Therapeutic Massage and Bodywork.
- B. Certificates shall be issued only to persons of good repute.
- C. Certificates shall be issued only to persons free of convictions for offenses 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.
- D. Certificates shall not be issued to persons who have, within one year prior to the date of application, been denied certification; or who have had his or her certificate revoked or surrendered in or by any political subdivision, a municipality or by the State.

- E. Certificates shall be issued only to applicants who have completely answered all of the information requested in the application in an accurate and truthful manner subject to the penalty of criminal perjury, have paid the full license fee and have cooperated with the City in review of the application.

Subd. 35. Restrictions and Regulations.

- A. During any hours of operation or at any time a person is present on the licensed premises, such establishment shall be open for inspection by City inspectors or local police officers. Upon demand all persons employed by the licensed establishment or engaged in providing services shall identify themselves, giving their true, legal name and proof of their identity. The certificate issued by the City, insurance and financial records of the establishment must be available for inspection during these times.
- B. Any person acting as a massage therapist shall have his or her certificate displayed in a prominent place at his or her place of employment, and upon demand by any local police officer or other authorized officer or agent of the City, any person engaged in practicing massage shall identify himself or herself giving his or her true, legal name and proof of their identity.
- C. Any person practicing massage within the City shall initially advise the City of his or her address, telephone number and shall further advise the City of any changes in address or telephone number within ten days of the change.
- D. Any person practicing massage within the City may do so only at premises which are licensed for the conduct of the business as herein provided; and further, any person practicing massage shall inform the City of any changes in employment or the location of his or her employment within the City within seven days after the change.
- E. Every person to whom a massage certificate is issued, shall appear personally at the local Police Department to receive delivery of the certificate and upon such appearance shall be photographed for identification purposes. One copy of the photograph shall be permanently affixed to the certificate and a second copy thereof shall be kept in the files of the local Police Department.
- F. Fees for all services shall be prominently posted in the reception area in a location available to all prospective customers.

Subd. 36 Health and Disease Control.

No person while afflicted with any disease in a communicable form or while a carrier of disease or wounds, sores or any acute respiratory infection shall work in, be permitted by an employer to work in, or use the services regulated in this Chapter unless universal precautions are taken to prevent the spread of the disease or condition

and to protect the general health and safety of others. Massage therapists and establishments licensed pursuant to this Chapter must use best practices and use appropriate universal precautions to prevent the spread or transmission of communicable disease. Penalty, see Subd. 99.

Subd. 37. Revocation, Suspension or Nonrenewal of Certificate.

- A. The massage certificate may be denied, revoked, suspended or not renewed by the City Council by showing that the applicant, licensee, its owners, managers, employees, agents or any other interested parties, as enumerated in contents of application section of this Chapter have engaged in any of the following conduct:
- 1) Fraud, deception or misrepresentation in connection with the securing of the license;
 - 2) Drunkenness or intemperance in the use of drugs, including but not limited to the use of drugs, defined in M.S. §618.01, as amended, barbiturates, hallucinogenic drugs, amphetamines, Benzedrine, Dexedrine or other sedatives, depressants, stimulants or tranquilizers;
 - 3) Engaging in conduct involving moral turpitude by 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;
 - 4) Failure to fully comply with any requirements of the City code regarding the sanitary and safety conditions, zoning requirements, building code requirements or ordinances, the violation of which involves moral turpitude, or failure to comply fully with any requirements of this Chapter;
 - 5) Conviction of an offense involving moral turpitude by any court of competent jurisdiction;
 - 6) Engaging in any conduct which would constitute grounds for refusal to issue a license or massage certificate herein;
 - 7) Failing to allow City Officials or local Police Officers access to the license premises for inspection.
- B. Upon the report of any violation of this Chapter by the City inspector, licensed peace officer or City Attorney, the City Administrator may immediately suspend any license or certificate granted pursuant to this Chapter. Such suspensions shall be temporary and are subject to the appeal provisions as set forth in this Chapter, except that an immediate suspension shall allow the aggrieved party the right of appeal no later than ten days after a temporary suspension is

effective. Any appeal pursuant to this subdivision not heard within ten days shall be rescinded.

Subd. 38 Through Subd. 49, Inclusive, Reserved for Future Expansion

ENFORCEMENT

Subd. 50. Appeals.

- A. The license or certificate holder has the right to appeal any adverse action set forth in this Chapter. The scope of such an appeal is as follows:
 - 1) The licenses or certificate holder may appeal the denial, suspension, revocation or nonrenewal of a license or certificate to the City Council within thirty days of this event. If no appeal is filed within this period, the event is affirmed.
 - 2) Except as otherwise set forth in this Chapter, the Council shall consider the appeal at the next regularly scheduled Council meeting on or after 30 days from service of the notice of appeal on the Administrator.
 - 3) The license or certificate holder may present evidence and argument at the hearing of the appeal.
- B. After considering the evidence at the hearing of the appeal, the Council may:
 - 1) Affirm the denial, revocation, suspension or nonrenewal;
 - 2) Grant the license application, reinstate the revocation, suspension or nonrenewal; or
 - 3) Where appropriate, for violations of the conditions set forth in this Chapter the Council may:
 - (a) Impose a civil fine no greater than \$3,000.00; and/or
 - (b) Impose, in its sole discretion, appropriate additional terms, conditions and stipulations upon the licensee or certificate holder before granting a license application, or reinstating a revocation, suspension or nonrenewal.

Subd. 51. Liability for Crimes of Another.

Every person who commits or attempts to commit, conspires to commit or aids and abets in the commission of any act constituting a violation of this Chapter, or any act which constitutes an omission and therefore a violation of this Chapter, whether individually or in connection with one or more persons or as a principal, agent or

accessory, shall be guilty of the offense. Every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any of the provisions of this Chapter is likewise guilty of the underlying offense.

SECTION 6.43 THROUGH 6.98, INCLUSIVE, RESERVED FOR FUTURE EXPANSION.

SECTION 6.99. VIOLATION A MISDEMEANOR. Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as a misdemeanor except as otherwise stated in specific provisions hereof. Failure to obtain a license, permit or any required permission pursuant to this Chapter shall be punished as a misdemeanor. Each day of such failure to comply constitutes a separate offense. Criminal prosecution shall be in addition to any other penalty or enforcement mechanism allowed by law or equity.