

## 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:

1. **"Applicant"** means any person making an application for a license under this chapter.
2. **"Application"** means a form furnished by the City and uniformly required to be completed by an applicant seeking the issuance of a license under this chapter.
3. **"Bond"** means a corporate surety document in the form and with the provisions acceptable and specifically approved by the City attorney.
4. **"Business"** means any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both licensed and regulated, by the terms and conditions of this chapter.
5. **"License"** means a document issued by the City to an applicant permitting the applicant to carry on and transact a business.
6. **"Licensee"** means an applicant who holds a valid, current, unexpired and unrevoked license from the City for carrying on a business.
7. **"License Fee"** means the money paid to the City pursuant to an application and prior to issuance of a license under this chapter.
8. **"Sale", "Sell" and "Sold"** mean all forms of barter and all manner or means of furnishing merchandise to persons.

*Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.02 APPLICATIONS.** All applications shall be made as follows:

**Subd. 1.** All applications shall be made at the office of the City Administrator or City Clerk upon forms that have been furnished by the City for such purposes. *Source: Ordinance 48 2<sup>nd</sup> Series, Sept. 9, 2000*

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

**Subd. 3.** It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or willful omission of any information requested on such application form, shall, upon discovery of such falsehood, work an automatic refusal of license. If a license has already been issued, the license shall be revoked, but

only after the licensee is given an opportunity for a hearing on the revocation in accordance with Sections 2.09 and 2.10 of the City Code.

**Subd. 4.** The City Administrator or City Clerk shall, upon receipt of each application completed in accordance with this chapter, forthwith investigate the truth of the information provided and of the moral character and business reputation of each applicant to such extent as the City Clerk deems necessary. For such investigation the City Administrator or City Clerk may enlist the aid of the Chief of Police. The Council shall not consider an application before such investigation has been completed. *Source: Ordinance 48 2<sup>nd</sup> Series, Sept. 9, 2000*

**Subd. 5.** Applications for renewal licenses may be made in such abbreviated form as the furnished by the City for such purposes.  
*Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.03. ACTION ON APPLICATION, TRANSFER, TERMINATION AND DUPLICATE LICENSE.**

**Subd. 1. Granting.** The Council may grant any application for the period of the remainder of the then current calendar year or for the entire ensuing license year. Failure to pay any portion of a fee when due shall be cause for revocation. No license fee shall be refundable upon revocation or voluntarily ceasing to carry on the licensed activity. All applications, including proposed license periods, must be consistent with this Chapter.

**Subd. 2. Issuing.** If an Application is approved, the City Administrator or City Clerk shall forthwith issue a license pursuant thereto in the form prescribed by the Council, payment of the appropriate license fee, and approval of the bond or insurance as to form and surety or carrier, if required. All licenses shall be on a calendar year basis unless otherwise specified herein as to particular businesses. Except as to licenses which are specifically City-wide, licenses shall be valid only at one location and on the premises therein described. *Source: Ordinance 48 2<sup>nd</sup> Series, Sept. 9, 2000*

**Subd. 3. Transfer.** A license shall be transferable between persons upon consent of the Council and payment of the investigation fee, if any, unless otherwise specified herein. No license shall be transferable to a different location without prior consent of the Council and upon payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this subdivision.

**Subd. 4. Termination.** licenses shall terminate only by expiration or revocation.

**Subd. 5. Refusal and Revocation.** The Council may, for any reasonable cause, refuse to grant any application, or revoke any license. No license shall be granted to a person of questionable moral character or business reputation. Before revocation of any license, the Council shall give notice to the licensee and grant such licensee opportunity to be heard. Notice shall be given by United States mail not less than fifteen (15) nor more than thirty (30) days prior to the hearing date, and shall state the time, place and purpose thereof. Grounds for revocation may be, but are not limited to, any of the following:

- (1) that the licensee suffered or permitted illegal acts upon licensed premises;
- (2) that the licensee had knowledge of such illegal acts but failed to report the same to police;
- (3) that the licensee failed or refused to cooperate fully with police in investigating such alleged illegal acts; or,
- (4) that the activities of the licensee created a serious danger to public health, safety, or welfare.

**Subd. 6. Duplicate License.** Duplicates of all original licenses may be issued by the City Administrator or City Clerk, without action by the Council, upon Licensee's affidavit that the Original has been lost, and upon payment of a fee in an amount adopted by ordinance of the Council for issuance of the duplicate. All duplicate licenses shall be clearly marked DUPLICATE. *Source: Ordinance 48 2<sup>nd</sup> Series, Sept. 9, 2000*

*Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.04. FIXING LICENSE FEES.** Except as otherwise herein provided, all fees for licenses under this chapter shall be fixed and determined by the Council, adopted by ordinance, and uniformly enforced. Such license fees may, from time to time, be amended by the Council by ordinance. A copy of the ordinance setting forth currently effective license fees shall be kept on file in the office of the City Administrator or City 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 ordinance authorized by this Section. *Source: Ordinance 48 2<sup>nd</sup> Series, Sept. 9, 2000; Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.05. CARRYING OR POSTING.** All peddlers, transient merchants or solicitors shall at all times when so engaged, carry their registration or license on their person. All other licensees shall post their licenses in their place of business near the licensed activity. All licensees shall display their licenses upon demand by any officer or citizen. *Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.06. PENALTY FOR PROPERTY OWNER.** It is unlawful for any person to knowingly permit any real property owned or controlled by him to be used, without a license, for any business for which a license is required by this chapter. *Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.07. RESPONSIBILITY OF LICENSEE.** The conduct of agents or employees of a licensee, while engaged in the performance of duties for the licensee as principal or employer under such license, except as to criminal liability therefor, shall be deemed the conduct of the licensee. *Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.08. CONDITIONAL LICENSES.** Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefor, place such conditions and restrictions upon a license as it, in its discretion, may deem reasonable and necessary. *Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.09. RENEWAL OF LICENSES.** Applications for renewal of an existing license shall be made at least thirty (30) days prior to the date of expiration of the license, and shall contain such information as is required by the City. This time requirement may be waived by the Council for good and sufficient cause. *Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.10. INSURANCE REQUIREMENTS.** Whenever insurance is required by a section of this chapter, after approval of the application for license by the Council, but before the license shall issue, the applicant shall file with the City Administrator or City Clerk a policy or certificate of public liability insurance showing (1) that the liability 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 canceled or terminated without thirty (30) days' written notice served upon the City Administrator or City Clerk. Cancellation or termination of such coverage shall be grounds for license revocation. *Source: Ordinance 48 2<sup>nd</sup> Series, Sept. 9, 2000; Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 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, 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 after such notice to interested parties and the public as it may deem necessary or proper.

**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 the denial of a license or rates fixed or approved by the Council shall have a right to a hearing before the Council upon written request therefor. Notice of time, place and purpose of such hearing shall be given to such persons and by such means as the Council may determine in calling the hearing.

*Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.12. WORKERS' COMPENSATION.** No license to operate a business shall be issued by the City until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes by providing the name of the insurance company, the policy number, and dates of coverage, or the permit to self-insure.

*Source: City Code, Effective Date: 5-8-95*

*Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

(Sections 6.13 through 6.18, inclusive, reserved for future expansion.)

## SECTION 6.19. CABLE FRANCHISES

**Subd. 1. Intent.** The City’s intent in adopting this Cable Ordinance is to further the public interest in the delivery of Cable Service and ensure that all providers are subject to comparable burdens. This Cable Ordinance may encourage further development of, and competitive choices for, Cable Service and related communications services in the City. Such a development could contribute significantly to the communication needs and desires of residents of the City, benefit local economic development, and improve public and municipal services.

**Subd. 2. Findings.** The City finds that multiple providers may be interested in providing Cable Service in the City. The City is authorized to grant one or more nonexclusive Franchises to provide Cable Service in the City.

**Subd. 3. Definitions.** For the purposes of this Cable Ordinance, the following terms, phrases, words, and their derivations must have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The words “must” and “will” are always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

1. **“Basic Cable Service”** means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise.
2. **“Cable System”** or **“System”** means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, terminal devices, equipment, or facilities located in whole, or in part, in the City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing Cable Service in the City. A Cable System may be designed and constructed to be capable of delivering services in addition to Cable Services.
3. **“Cable Programming Service”** means any video programming regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:
  - a. Basic Cable Service;
  - b. Video programming offered on a pay-per-channel or pay-per-program basis; or
  - c. A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service consists of commonly-identified video programming and is not bundled with any regulated tier of service.

4. **“Cable Service”** means: the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and; subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
5. **“Channel”** means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC). *Source: Ordinance 80, 2<sup>nd</sup> Series, effective date: July 22, 2003*
6. **“City”** means the City of Becker, Minnesota, a municipal corporation, in the State of Minnesota.
7. **“Competition”** means the offering of Cable Service in the City by two (2) or more providers pursuant to Franchises. *Source: Ordinance 80, 2<sup>nd</sup> Series, effective date: July 22, 2003*
8. **“Drop”** means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable.
9. **“FCC”** means the Federal Communications Commission.
10. **“Franchise”, “Cable Franchise” or “Franchise Agreement”** means an agreement between the City and any provider of Cable Service pursuant to this Cable Ordinance granting an initial authorization, or renewal thereof, to provide Cable Service or operate a Cable System in the City.
11. **“Franchise Fee”** means the fee or assessment imposed by the City on a Grantee solely because of its status as a recipient of a Franchise. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability; (ii) capital costs which are required by the Franchise to be incurred by the Grantee for public, educational, or governmental access facilities; (iii) requirements or charges incidental to awarding or enforcing the Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages; (iv) any fee imposed under Title 17 of the United States Code. *Source: Ordinance 80, 2<sup>nd</sup> Series, effective date: July 22, 2003*
12. **“Grantee”** is any recipient of a Franchise, and its agents and employees, lawful successors, transferees or assignees.
13. **“Gross Revenues”** means all revenue received by the Grantee, its affiliates, subsidiaries, or parent from the sale or provision of Cable Service in the City. The term Gross Revenues shall not include bad debt, any taxes or fees on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit, or revenues received by the grantee, its affiliates, subsidiaries or parent from the sale or provision of Telecommunications Services in the City.

14. **“Installation”** means the connection from feeder cable to the point of connection with the Subscriber Converter.
15. **“Lockout Device”** means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable System.
16. **“Normal Business Hours”** means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week and/or some weekend hours.
17. **“Normal Operating Conditions”** means those service conditions which are within the control of a Grantee. Those conditions which are not within the control of a Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of a Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of a Grantee's facilities.
18. **“Pay Television”** means the delivery of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
19. **“PEG Access Facilities”** means public, educational, and governmental programming channels, or any equipment or facilities for use of such channels.
20. **“Person”** means any person, firm, partnership, association, corporation, company, or other legal entity.
21. **“Right-of-Way”** or **“Rights-of-Way”** means the area on, below, or above any real property in the City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including other dedicated Rights-of-Way for travel purposes and utility easements, except property which the City owns in fee.
22. **“Right-of-Way Ordinance”** means the ordinance adopted by the City creating requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.
23. **“Standard Installation”** means any residential installation, which can be completed using a Drop of 125 feet or less.
24. **“Subscriber”** means any Person who lawfully receives Cable Service.

- 25. “Telecommunications Services”** shall have the meaning ascribed in 47 U.S.C. § 153(46), as may be explained or interpreted by final action of the FCC.
- 26. “Terminal Device”** means an electronic device, which converts signals to a form accessible by the Subscriber.

**Sudb. 4. Franchises.**

**Section 4.1 Generally**

- a.** No Person may provide Cable Service in the City, nor operate a Cable System in the City, unless and until such Person is granted a Franchise. All Franchises must be granted pursuant to the provisions of this Cable Ordinance.
- b.** Any Franchise granted hereunder will authorize the Grantee to deliver Cable Service and construct, operate and maintain a Cable System in the Rights-of-Way in the City.
- c.** All Franchises shall be nonexclusive, and City may grant additional Franchises at any time. The City will not grant a Franchise for an area included in an existing Franchise on terms and conditions more favorable or less burdensome than those in the existing Franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees, unless the area in which the additional Franchise is being sought is not actually being served by any existing Grantee. The City may impose additional terms and conditions on any additional Franchises.
- d.** This Cable Ordinance and Franchises granted pursuant hereto are intended to comply with Minnesota Statutes Chapter 238. Any applicable requirement established by Minn. Stat. 238.084 not expressly incorporated in this Cable Ordinance or a Franchise shall be deemed incorporated by reference in the Franchise as though fully set forth therein.
- e.** The performance of any Grantee is subject to periodic evaluation by the City upon reasonable notice to the Grantee.

**Section 4.2 Use of Rights-of-Way**

- a.** Use of the Rights-of-Way to provide Cable Service and operate a Cable System must not be inconsistent with the terms and conditions by which such Rights-of-Way were
- b.**
- c.** created or dedicated and is subject to all legal requirements related to the use of such Rights-of-Way.
- d.** The City may adopt and enforce a Right of Way Ordinance, and all Grantees are subject to such Right of Way Ordinance. The terms of any Franchise and this Cable Ordinance shall be subordinate to such Right of Way Ordinance.

- e. The City may construct, maintain, repair or relocate sewers; grade, pave, maintain, repair, relocate and/or alter any Right-of-Way; construct, repair, maintain or relocate water mains; or construct, maintain, relocate, or repair any sidewalk or other public work.
- f. All System facilities, lines and equipment in the City must be located so as not to obstruct or interfere with the proper use of Rights-of-Way, alleys and other public ways and places, and cause minimum interference with the rights of property owners who abut any of the said Rights-of-Way, alleys and other public ways and places, and not interfere with existing public utility installations.
- g. Grantees must file with the City maps, plats, or other record of the location and character of all facilities constructed in the City, including underground facilities. Grantees must update such maps, plats and permanent records annually if changes have been made in the System. Consistent with applicable state law, Grantee may identify such maps, plats or other records as “confidential trade secret,” and City shall comply with all states laws regarding the protection and dissemination of such materials.
- h. If the City alters, or changes the grade or location of any Right-of-Way, alley or other public way, Grantees shall, at their own expense, upon reasonable notice by City, remove and relocate poles, wires, cables, conduits, manholes and other System fixtures, and in each instance comply with the standards and specifications of City. If City reimburses other occupants of the Right-of-Way, the affected Grantees will be likewise reimbursed.
- i. Grantees shall not place poles, conduits, or other System fixtures where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all requirements of City.
- j. Grantees will, on request of any Person holding a moving permit issued by the City, temporarily move wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantees will be given no less than ten (10) business days advance notice to arrange for such temporary changes.
- k. Grantees will be liable for the failure to exercise reasonable care during construction, operation or maintenance of a System.

**Section 4.3 Tree Trimming.** Grantees are authorized to trim any trees upon and overhanging the Rights-of-Way, alleys, sidewalks, or public easements of City so as to prevent the branches of such trees from coming in contact with wires and cables. The City may supervise tree trimming activities and condition the authority to trim trees as it deems appropriate.

**Section 4.4 Franchise Term.** Franchises will be granted for a term established in the Franchise Agreement. No Franchise may be granted for a period exceeding fifteen (15) years from the date of acceptance by Grantee.

**Section 4.5 Regulation of Cable Service.**

- a. The requirements of this Cable Ordinance define the City's regulatory authority over Cable Services and Cable Systems. All Grantees are subject to all lawful exercise of the City's police power, ordinance-making authority, and power of eminent domain.
- b. The terms of a Franchise Agreement define the contractual rights and obligations of the City and the Grantee thereunder.

**Section 4.6 Initial Franchise Applications.**

- a. Upon request or its own initiative, the City may initiate the cable franchise application process required by Minnesota Statutes Section 238.081. Any Person desiring an initial Franchise must file an application with the City.
- b. The City will establish an application fee in an amount to offset the costs of processing applications and awarding a Franchise. Such application fees will not constitute a Franchise Fee.
- c. Upon receipt of an application for a Franchise, City staff will prepare a report and recommendations to the City Council regarding the application(s).
- d. A public hearing concerning applications will be held prior to rejection or acceptance of applications, and award of any Franchises.

**Section 4.7 Franchise Renewals.** Franchise renewals will be conducted in accordance with applicable laws. To the extent consistent with applicable laws, the City will require reimbursement of the City's expenses incurred in processing the renewal.

**Subd. 5. Construction Standards**

**Section 5.1 Registration, Permits and Construction Codes.**

- a. Within ninety (90) days of acceptance of a Franchise, the Grantee must apply for the necessary governmental permits, licenses, certificates, and authorizations to construct, repair, replace, relocate, operate, maintain or reconstruct a System. Grantees must strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the facilities used to provide Cable Service in the City.

- b. The City may inspect any construction or installation work performed pursuant to the provisions of a Franchise. The City may make such tests as it must find necessary to ensure compliance with the terms of this Cable Ordinance, the Franchise, and applicable provisions of local, state and federal law.

**Section 5.2 Repairs of Rights-of-Way and Property.**

- a. Any Rights-of-Way or other property disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of a Cable System shall be promptly and fully restored by the Grantee performing such work, at its expense, to a condition as good as that prevailing prior to such work.
- b. If a Grantee fails to promptly perform the restoration required herein, the City shall have the right, following ten (10) business days written notice to Grantee, to restore Rights-of-Way and other public property. The City shall be fully reimbursed by the Grantee for such restoration.

**Section 5.3 Undergrounding of Facilities.**

- a. In all areas of the City where utility facilities are required to be placed underground, or where all other utility lines are underground, all Grantees must construct and install System facilities underground.
- b. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground, but such facilities shall be of such size, design, and location as not to be unsightly or unsafe, as approved by the City.
- c. Grantees must bury new Drops within a reasonable time period, which must not exceed Thirty (30) business days, subject to weather conditions. In the event the ground is frozen, Grantees will be permitted to delay burial until the ground is suitable for burial which in no event must be later than June 30th. *Source: Ordinance 80, 2<sup>nd</sup> Series, effective date: July 22, 2003*

**Section 5.4 Erection, Removal and Joint Use of Poles.**

- a. In any area of the City where facilities may be located above ground, Grantees must make use of existing poles and other facilities to the extent technically feasible and commercially feasible. *Source: Ordinance 80, 2<sup>nd</sup> Series, effective date: July 22, 2003*
- b. No poles, above-ground conduits, amplifier boxes, similar structures, or other wire-holding structures may be erected or installed by the Grantee on public property without prior approval of the City with regard to location, height, type and other pertinent aspects.
- c. All facilities are subject to applicable zoning and other land use regulations.

**Section 5.5 Safety Requirements.**

- a. Grantees must at all times employ ordinary and reasonable care in the construction, installation and maintenance of System facilities and must use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All System facilities must at all times be kept and maintained in good condition, order, and repair so that the same must not menace or endanger the life or property of the City or any Person.
- b. Grantees must install and maintain equipment and facilities in accordance with all federal, state and local laws and regulations, and the requirements of the National Electric Safety Code and in such manner that they will not interfere with private radio, police and fire communications or any installations of City or of any public utility serving City.

**Subd. 6. System Design and Extension Provisions**

**Section 6.1 System Capacity and Channels.** At a minimum, any Franchise granted hereunder shall describe the Grantee’s network in terms of the total system capacity such as the total number of analog and digital video channels which can be provided, and the minimum number of video channels which will be offered.

**Section 6.2 Service Availability.**

- a. Any Franchise granted hereunder may authorize Service throughout the City.  
*Source: Ordinance 80, 2<sup>nd</sup> Series, effective date: July 22, 2003*
- b. Each Franchise will identify a required service area. Grantees will be required to offer Service to all dwellings, homes and businesses within its required service area. *Source: Ordinance 80, 2<sup>nd</sup> Series, effective date: July 22, 2003*
- c. Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides.

*Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**Section 6.3 Non-Standard Installations.** Grantees must provide Cable Service to any Person requesting other than a Standard Installation except that a Grantee may charge for the incremental increase in material and labor costs incurred above the cost of making a Standard Installation.

**Section 6.4 Technical Standards.** Cable Service offered in the City must comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time.

**Section 6.5 System Testing.** The City may test any System or facilities used to provide Cable Service in the City. The City will seek to arrange its testing so as to minimize hardship or inconvenience to Grantee and Subscribers. In the event that testing reveals that the system is not in compliance with requirements of Section 6.4, the cost of the testing must be borne by the Grantee. If the testing reveals that the Grantee is in compliance with Section 6.4, the cost of the testing must be borne by the City. *Source: Ordinance 80, 2<sup>nd</sup> Series, Effective Date July 22, 2003*

**Section 6.6 FCC Reports.** Grantees must, upon written request from City, file all required FCC technical reports with the City.

**Section 6.7 Nonvoice Return Capability.** Grantees are required to provide a System with capacity and technical capability to provide nonvoice return communications.

**Section 6.8 Lockout Device.** Grantees shall provide by sale or lease a Lockout Device to any requesting Subscriber.

**Section 6.9 Emergency Alert System.** All Grantees must provide an emergency alert system (EAS) that complies with FCC requirements. Grantees must further ensure that City can insert, or direct the insertion of, brief audio emergency messages simultaneously on all channels. The City shall indemnify Grantee for City's use of a Cable System for emergency messages unless such use is consistent with the FCC's EAS requirements. *Ordinance 80, 2<sup>nd</sup> Series, Effective Date July 22<sup>nd</sup>, 2003*

#### **Subd. 7. Consumer Protection and Customer Service Standards**

**Section 7.1 Enforcement of Customer Service Standards.** The City will stay and not enforce this Section 7 during periods when Competition exists in the City, except that the City may initiate enforcement of this Section while Competition exists in the event the City receives, in any thirty (30) day period, at least two (2) complaints with respect to each competitor concerning similar customer service issues. In such case, the City Council may initiate enforcement of this Section by adopting a Resolution indicating the basis for initiating enforcement.

#### **Section 7.2 Regulation of Service Rates.**

- a. The City may regulate rates for the provision of Cable Service to the extent allowed under federal or state law(s).
- b. Grantees must file a list of current Subscriber rates and charges with the City, which lists will be maintained on file with City and will be available for public inspection. To the extent required by federal law, Grantees must give the City and Subscribers written notice of any change in a Cable Service rate or charge no less than thirty (30) days prior to the effective date of the change. *Ordinance 80 2<sup>nd</sup> Series, Effective Date July 22<sup>nd</sup>, 2003*

**Section 7.3 Sales Procedures.** Grantees may not exercise deceptive sales procedures when marketing any of its services within City. Grantees may conduct marketing consistent with local ordinances and other applicable laws and regulations.

**Section 7.4 Telephone Inquiries and Complaints.**

- a. Grantees must maintain local, toll-free or collect call telephone access lines which will be available to its Subscribers 24 hours a day, seven days a week.
- b. During Normal Business Hours, trained representatives of Grantee must be available to respond to Subscriber inquiries. Grantees must ensure that: (1) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours, and; (2) after Normal Business Hours, the access line will be answered by a trained company representative or a service or an automated response system such as an answering machine.
- c. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

**Section 7.5 Telephone Answer Time and Busy Signals.**

- a. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, must not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time must not exceed thirty (30) seconds.
- b. These standards must be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis. Under Normal Operating Conditions, the customer must receive a busy signal less than three (3) percent of the time.

**Section 7.6 Installation, Outage and Service Calls.** Under Normal Operating Conditions each of the following standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

- a. Excluding conditions beyond the control of a Grantee which prevent performance, Grantees will begin working on service interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and Grantees must begin actions to correct other service problems the next business day after notification of the service problem and resolve such problems as soon as is reasonably possible;
- b. The “appointment window” alternatives for Installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. Grantees may schedule service calls and other installation activities outside of Normal Business Hours for the convenience of the customer;

- c. Grantees may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment;
- d. If a representative of a Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time during Normal Business Hours which is convenient for the customer.

**Section 7.7 Complaint and Other Service Records.**

- a. Upon written request by the City, and subject to a Grantee’s obligation to maintain the privacy of certain information, Grantees must prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution.
- b. Written complaint records must be on file at the office of a Grantee. Upon written request by the City, Grantees must provide the City with a written summary of such complaints and their resolution on a quarterly basis and in a form mutually agreeable to the City and Grantee.
- c. Upon written request by the City, Grantees must provide detailed compliance reports on a quarterly basis with respect to the objectively measurable service standards required in this Section. A Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards contained in this Section unless a historical record of complaints indicates a failure to comply.

**Section 7.8 Subscriber Contracts.** Grantees must provide to the City upon request any standard form Subscriber contract utilized. If no such written contract exists, Grantee must provide a document completely and concisely stating the length and terms of the Subscriber contract offered to customers.

**Section 7.9 Video Programming.** All Franchises will identify the initial video channels to be provided by a Grantee. In accordance with 47 U.S.C. § 544(b), prior City approval is required for any change in the broad categories of video programming provided. Individual programming decisions may be made in the discretion of a Grantee.

**Section 7.10 Billing and Subscriber Communications.**

- a. Subject to federal law, Grantees must give the City and Subscribers thirty (30) days advance written notice of any changes in rates, programming service or channel alignments. *Source: Ordinance 80 2<sup>nd</sup> Series, Effective Date July 22, 2003*
- b. Bills must be clear, concise, and understandable. Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

**Section 7.11 Refunds and Credits.**

- a. If a Grantee's Service is interrupted or discontinued for 24 or more consecutive hours, its Subscribers must be credited pro rata for such interruption. Credits must be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.
- b. In the event a Subscriber establishes or terminates Service and receives less than a full month's Service, the Grantee must prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than the return of the equipment supplied by the Grantee if Service is terminated.

**Section 7.12 Local Office/Drop Box.** Grantees must maintain a local office or a local drop box for receiving Subscriber payments.

**Section 7.13 Additional Customer Service Requirements.** The City may adopt additional or modified customer service requirements to address subscriber concerns or complaints.

**Subd. 8. Community Services**

**Section 8.1 PEG Access Facilities.** Franchises will establish obligations to provide PEG Access Facilities to meet the community's needs and interests.

**Section 8.2 Service to Institutions.** Franchises will establish obligations for the provision of free or reduced cost Services to identified institutions.

**Subd. 9. Administration Provisions**

**Section 9.1 Administration of Franchise.**

- a. The City Administrator will have continuing regulatory authority over Cable Services and Cable Systems, and Franchise compliance.
- b. The City Administrator may delegate this regulatory authority by giving written notice of such delegation to affected Grantees. Grantees must cooperate with any such delegatee of the City Administrator.

**Section 9.2 Franchise Fee.**

- a. Grantees must pay to the City a Franchise Fee in the amount established in the Franchise Agreement.
- b. Franchise Fee payments are payable quarterly. Franchise Fee payments must be made within sixty (60) days of the end of each calendar quarter.

- d. Each Franchise Fee payment must be accompanied by a report certified by an officer of the Grantee, in form reasonably acceptable to City, detailing the computation of the payment. All amounts paid must be subject to audit and recomputation by the City and acceptance of any payment must not be construed as an accord that the amount paid is in fact the correct amount.

### **Section 9.3 Access to Records.**

- a. The City may, upon reasonable notice and during Normal Business Hours, and subject to the privacy provisions of 47 U.S.C. § 521 et seq., inspect any records maintained by a Grantee which relate to its Franchise or System operations, including specifically Grantee's revenue records. Grantees must make copies of documents upon City's reasonable request but may identify and label any such documents as "confidential trade secret" in accordance with Section 4.2 above.
- b. Grantees must prepare and furnish to the City such reports with respect to the operations, affairs, transactions or property, as they relate to this Franchise or Cable Services as City may reasonably request.

### **Subd. 10. Indemnification and Insurance**

#### **Section 10.1 Indemnification of the City.**

- a. Grantees must indemnify, defend and hold the City, its officers, boards, committees, commissions, elected officials, employees and agents harmless from and against any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to a System or other facilities used by a Grantee to deliver Cable Service. Notwithstanding the foregoing, Grantees shall not be required to provide indemnification or defense for any willful neglect or negligence by the City, its officers, boards, committees, commissions, elected officials, employees and agents.
- b. Grantees must indemnify, defend, and hold the City, its officers, boards, committees, commissions, elected officials, employees and agents, harmless from and against all lawsuits, claims, actions, liability, damages, costs, expenses or penalties incurred as a result of the award or enforcement of a Franchise. Notwithstanding the foregoing, a Grantee shall not be required to provide indemnification or defense for any enforcement action taken by the City against such Grantee. The Grantees' obligations herein do not include liability based solely on the City's operation of PEG Access Facilities, delivery of PEG Access programming, EAS messages originated by the City.
- c. The City must, with respect to any claim for indemnification:

1. promptly notify the Grantee in writing of any suit, claim or proceeding which gives rise to such right;
2. afford the Grantee an opportunity to participate in any compromise, settlement or other resolution or disposition of any suit, claim or proceeding; and
3. fully cooperate with reasonable requests of the Grantee, at Grantee's expense, in its participation in a suit, claim or proceeding.

**Section 10.2 Insurance.**

- a. A Grantee must obtain and maintain in full force and effect, at its sole expense, a comprehensive general liability insurance policy, in protection of the Grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for damages which may arise as a result of operation of the System or delivery of Cable Service.
- b. The policies of insurance must be in the sum of not less than One Million Dollars (\$1,000,000.00) for personal injury or death of any one Person, and Two Million Dollars (\$2,000,000.00) for personal injury or death of two or more Persons in any one occurrence, Five Hundred Thousand Dollars (\$500,000.00) for property damage to any one person and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one act or occurrence.
- c. The insurance policy must be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance must contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.

**Subd. 11. Franchise Transfer or Abandonment**

**Section 11.1 Abandonment of Service.** A Grantee may not discontinue the provision of Cable Service without having first given three (3) months written notice to the City.

**Section 11.2 System Removal After Abandonment, Termination or Forfeiture.**

- a. In the event of termination or forfeiture of the Franchise or abandonment of the System, the City may require the Grantee to remove all or any portion of its System from all Rights-of-Way and public property within the City; provided, however, that the Grantee will not be required to remove its System to the extent it lawfully provides telecommunications services over the System.

- b. If the Grantee has failed to commence removal of its System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written demand for removal is given, or if the Grantee has failed to complete such removal within twelve (12) months after written demand for removal is given, the City may apply funds secured by the Franchise toward removal and/or declare all right, title, and interest in the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.

**Section 11.3 Sale or Transfer of Franchise.**

- a. No sale or transfer of ownership of a Grantee or “fundamental corporate change” in a Grantee as defined in Minn. Stat. 238.083, nor sale or transfer of a Franchise, is permitted without City approval. Any sale or transfer of stock in a Grantee creating a new controlling interest constitutes a sale or transfer of ownership. A “controlling interest” includes majority stock ownership or a lesser amount sufficient to confer actual working control in whatever manner exercised. City approval is not required where a Grantee grants a security interest in its Franchise or System to secure an indebtedness. *Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*
- b. A Grantee must file a written request with the City prior to any transaction described above. The City will approve or deny a transfer request within one hundred and twenty (120) days of receipt of a written request. The City will not unreasonably withhold its approval. In no event will a transaction be approved unless the transferee becomes a signatory to, and assumes all rights and obligations under, the Franchise.
- c. In the event of any proposed transaction described above, the City will have the right to purchase the System. In the event a Grantee has received a bona fide offer for purchase of its System, the City shall have the right to purchase for the price which the proposed assignee or transferee agreed to pay. The City will be deemed to have waived its right to purchase the System in the following circumstances:
  - 1. The City does not notify the Grantee in writing, within 90 days of notice, that it intends to exercise its right of purchase; or
  - 2. The City approves the transaction.

**Subd. 12. Protection of Individual Rights**

**Section 12.1 Discriminatory Practices Prohibited.** No Grantee may deny service, deny access, or otherwise discriminate against citizens or businesses on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability.

**Section 12.2 Subscriber Privacy.**

- a. Grantees must comply with the subscriber privacy-related requirements of 47 U.S.C. § 551.

- b. No signals may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written authorization of the Subscriber.
- c. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers may be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, without the express written authorization of the Subscriber.
- d. Written Subscriber authorization is limited to a period not to exceed one (1) year. Subscriber authorization may be renewed at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew such authorization. The authorization must be revocable at any time by the Subscriber without penalty of any kind whatsoever.
- e. Written authorization from a Subscriber is not required for conducting network wide or individually addressed electronic sweeps to verify network integrity or monitor for billing purposes. This information must be kept confidential subject to the provision set forth in Subparagraph (b) of this Section. *Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**Subd. 13. Unauthorized Connections and Modifications**

**Section 13.1 Unauthorized Connections or Modifications Prohibited.**

It is unlawful for any Person, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a Grantee's System.

- a. It is unlawful for any Person to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of a System for any purpose.
- b. Any Person found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense.

**Subd. 14. Enforcement of the Cable Ordinance or Franchise**

**Section 14.1 Violations or Other Occurrences Giving Rise to Enforcement Action.**

- a. In order to take enforcement action pursuant to this Cable Ordinance or a Franchise, the City must provide the Grantee with written notice. The notice must identify the nature of the violation or other occurrence giving rise to the City's action.

- b. The Grantee has thirty (30) days subsequent to receipt of the notice to cure the violation or occurrence giving rise to the City's action, or to provide adequate assurance of performance in compliance with the Cable Ordinance and Franchise.

The Grantee may, within seven (7) days of receipt of notice from the City, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the Grantee to the City shall specify with particularity the matters disputed by Grantee.

- c. In the event the Grantee does not cure to the City's satisfaction within thirty (30) days or disputes whether a violation or failure has in fact occurred, the City will schedule a public hearing affording Grantee due process. The City will endeavor to schedule the hearing for a date within ninety (90) days of the initial violation notice. Notice of the hearing must be provided to the Grantee.
- d. At the completion of the hearing, the City will provide the Grantee with written findings of fact and its final determination. A Grantee may not appeal until the final determination is issued.
- e. In the event City determines that no violation has taken place, the City will rescind the notice of violation in writing.

**Section 14.2 Franchise Revocation.**

- a. In addition to all other rights and remedies that the City possesses pursuant to law, equity and the terms of the Franchise Agreement, the City may revoke or terminate the Franchise, and all rights and privileges pertaining thereto, if the City determines that:
  1. The Grantee has violated any material requirement or provision of the Cable Ordinance or a Franchise and has failed to timely cure; or
  2. The Grantee has attempted to evade any of the material provisions of the Cable Ordinance or a Franchise; or
  3. The Grantee has practiced fraud or deceit upon the City or a Subscriber; or
  4. The Grantee has filed for bankruptcy.
- b. During any appeal period, the Franchise will remain in full force and effect unless the term thereof sooner expires.

**Section 14.3 Compliance with Federal, State and Local Laws.** The City and Grantee will conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and conform to federal laws and regulations regarding cable as they become effective. *Source: Ordinance 64 2<sup>nd</sup> Series, November 17, 2001*

**SEC. 6.20. TOBACCO.**

**Subd. 1. Purpose.** Because the city recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal law; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing laws.

**Subd. 2. Definitions.** Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

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

**Cigar.** Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as it may be amended from time to time.

**Compliance Checks.** The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance checks may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

**Delivery Sale.** The sale of any licensed product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. Delivery sale includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

**Electronic Delivery Device.** Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any

nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

**Flavored Product.** Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

**Imitation Tobacco Product.** Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. Imitation tobacco product includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. Imitation tobacco product does not include electronic delivery devices or nicotine or lobelia delivery products.

**Indoor Area.** All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

**Licensed Products.** The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

**Loosies.** The common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. LOOSIES does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

**Moveable Place Of Business.** Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

**Nicotine Or Lobelia Delivery Product.** Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not

tobacco or an electronic delivery device as defined in this section. Nicotine or obelia delivery product does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

**Retail Establishment.** Any place of business where licensed products are available for sale to the general public. Retail establishment includes but is not limited to grocery stores, tobacco products shops, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

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

**Self-Service Display.** The open display of licensed products in a retail establishment in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee’s employee and where a physical exchange of the licensed product from the licensee or the licensee’s employee to the customer is not required in order to access the licensed products.

**Smoking.** Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.

**Tobacco.** Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

**Tobacco-Related Device.** Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco-related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco.

**Vending Machine.** Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment into or onto the device by the person seeking to purchase the licensed product.

**Subd. 3. License.**

- A. License required.** No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city.
- B. Application.** An application for a license to sell licensed products must be made on a form provided by the city. The application must 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 a completed application, the City Clerk will forward the application to the City Council for action at its next regularly scheduled meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.
- C. Investigation and Fee.** At the time the initial application is made, an applicant for a license under this chapter shall accompany such application with payment of a fee to be considered an application and investigation fee, not refundable to the applicant, to cover the cost to the City of processing the application and investigating the applicant. No investigations shall be required of an applicant for a renewal license unless so ordered by the Council.
- D. Action.** The City Council may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the application, the City Clerk will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- E. Term.** All licenses issued shall be valid through December 31<sup>st</sup> of the issuing year. Licenses may be granted and issued for a fractional year thereof in case of a new license application.
- F. Revocation or suspension.** Any license issued may be suspended or revoked following the procedures set forth in Section 11.
- G. Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- H. Display.** All licenses must be posted and displayed at all times in plain view of the general public in the retail establishment.
- I. Renewals.** The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license.

- J. Issuance as privilege and not a right.** The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
- K. Smoking prohibited.** Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.
- L. Samples prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.

**Subd. 4. Fees.** No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the city's fee schedule and may be amended from time to time. Fees shall not be prorated for partial year licenses.

**Subd. 5. Basis for Denial of License.**

- A.** Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:
  - 1. The applicant is under 21 years of age.
  - 2. 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 licensed products.
  - 3. The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
  - 4. The applicant fails to provide any of the information required on the licensing application, or provides false or misleading information.
  - 5. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
  - 6. The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.
- B.** 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.
- C.** If a license is mistakenly issued or renewed to a person, the city will revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

**Subd. 6. Prohibited Sales.**

**A. In general.** No person shall sell or offer to sell any licensed product:

1. By means of any type of vending machine.
2. By means of loosies.
3. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products subject to this ordinance.
4. By means of self-service display. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.
5. By means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.
6. 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.

**B. Legal age.** No person shall sell any licensed product to any person under the age of 21.

1. **Age verification.** Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age.
2. **Signage.** Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

**C. Cigars.** No person shall sell or offer to sell a single cigar with a sales price of less than \$2.01 after any discounts are applied and before sales taxes are imposed.

**E. Imitation tobacco products.** No person shall sell, offer to sell, or otherwise distribute any imitation tobacco products within the city.

**F. Liquid packaging.** No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

**Subd. 7. Responsibility.** All licensees are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee.

**Subd. 8. Compliance Checks and Inspections.** All licensed premises must be open to inspection by law enforcement or other authorized city officials during regular business hours. From time to time, but at least once per year, the city will conduct compliance checks. In accordance with state law, the city will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

**Subd. 9. Other Prohibited Acts.** Unless otherwise provided, the following acts are an administrative violation of this ordinance. This subdivision shall not apply to anyone over the ages of 17 and under the age of 21 lawfully involved in compliance checks.

- A. Prohibited furnishing or procurement.** It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.
- B. Use of false identification.** It is a violation of this ordinance for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.
- C. Illegal sales.** It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco or tobacco related device to anyone under 21 years of age.
- D. Illegal possession.** It shall be a violation of this ordinance for anyone under 18 years of age to have in his or her possession any tobacco or tobacco related device.
- E. Illegal use.** It shall be a violation of this ordinance for anyone under 18 years of age to smoke, chew, sniff or otherwise use any tobacco or tobacco related device.

**Subd. 10. Exceptions and Defenses.**

- A. Religious, Spiritual, or Cultural Ceremonies or Practices.** Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- B. Reasonable Reliance.** It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

**Subd. 11. Violations and Penalties.**

**A. Violations. (1)**

1. **Notice.** A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of their right to be heard on the accusation
2. **Hearings.**
  - i. (a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
  - ii. The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.
3. **Hearing Officer.** The City Council shall serve as the hearing officer.
4. **Decision.** A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in section 11, paragraph (A)(6) of this section.

5. **Appeals.** Appeals of any decision made by the hearing officer must be filed in Sherburne County district court within 10 business days of the date of the decision.
6. **Misdemeanor violation.** Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If Sherburne County elects to seek misdemeanor prosecution, the action should not prohibit an administrative penalty also being imposed.
7. **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

**B. Administrative Penalties.**

1. **Licensees.** Any licensee cited for violating this ordinance, or whose employee has violated this ordinance, will be charged an administrative fine of \$300 for a first violation; \$600 for a second offense at the same licensed premises within a 36 month period and a 7 day license suspension; and \$1000 for a third or subsequent offense at the same location within a 36 month period and a 30 day suspension of license. Upon a fourth violation within a 36 month period, the license will be revoked. Any violation during a suspension will result in license revocation.

Any administrative fine assessed against a licensee pursuant to this section must be paid in full within 30 days from receipt of written notification of the City Council imposition of the administrative fine. Failure to pay the fine within that time period shall result in a 10 day license suspension. Licensees whose licenses have been revoked may not be issued a new license within six months from the effective date of such revocation.

2. **Employees of licensees and other individuals.** Individuals, other than persons under the age of 21 regulated by paragraph (B)(3) of this section, who are found to be in violation of this ordinance may be charged an administrative fine of \$50
3. **Persons under the age of 21.** Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products shall be charged a fine and /or be required to complete tobacco related education classes, diversion programs, community services or other penalty. The administrative penalty or other penalty shall be established by ordinance upon the City's consultation with interested parties of the courts, educators, parents and children and may be amended from time to time.
4. **Statutory penalties.** If the administrative penalty for violations against licensed retailers under Section 11(B)(1) authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

**C. Misdemeanor prosecution.** Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for an alleged second violation of this ordinance by a person 21 years of age or older within five years of a previous conviction under the ordinance.

**Subd. 12. Severability.** If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

*Source: Ordinance 228, 2<sup>nd</sup> Series, Effective Date: October 13, 2020*

**SEC. 6.21. GAMBLING**

**Subd. 1. Adoption of State Law By Reference.** The provisions of Minnesota Statute Chapter 349, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, provisions relating to sales, and all other matters pertaining to lawful gambling are hereby adopted by reference and are made a part of this ordinance as if set out in full. It is the intention of the Council that all future amendments of Minnesota Statute Chapter 349, are hereby adopted by reference or referenced as if they had been in existence at the time this ordinance was adopted.

**Subd. 2. Purpose.** The purpose of this ordinance is to regulate lawful gambling within the City of Becker, to prevent its commercialization, to ensure the integrity of operations, and to provide for the use of net profits only for lawful purposes.

**Subd. 3. Definitions.** In addition to the definitions contained in Minnesota Statute § 349.12, as it may be amended from time to time, the following terms are defined for purposes of this ordinance:

- A. **“Board”** means the State of Minnesota Gambling Control Board.
- B. **“City”** means the City of Becker.
- C. **“Council”** means the City Council of the City of Becker.
- D. **“Organization”** means a fraternal, religious, veterans or other nonprofit entity which has been in existence for at least three years, has at least 15 active voting members and is not in existence solely for the purpose of conducting gambling.
- E. **“Premises Permit”** means a permit granted by the Minnesota Gambling Control Board for each premises where lawful gambling is to be conducted.
- F. **“Trade Area”** means City of Becker, Becker Township, Clear Lake Township, Silver Creek Township and City of Monticello.

**Subd. 4. Lawful Gambling Permitted.** Lawful gambling is permitted within the city provided it is conducted in accordance with Minn. Stat. §§ 609.75-.763, inclusive, as they may be amended from time to time; Minn. Stat. §§ 349.11-.23, inclusive, as they may be amended from time to time; and this ordinance.

**Subd. 5 Council Approval.**

- A. Lawful gambling authorized by Minn. Stat. §§ 349.11-.23, inclusive, as they may be amended from time to time, shall not be conducted unless approved by the Council, subject to the provisions of this ordinance and state law.

- a. Excluded or exempt gambling activities as authorized by Minn. Stat. §§349.166, as it may be amended from time to time, shall be exempt from Council approval, but must be submitted to the city clerk for review and signature.

**Subd. 6. Application and Local Approval of Premises Permits**

- A. Any organization seeking to obtain a premises permit from the Board shall file with the city clerk an executed application, together with all exhibits and documents accompanying the application as will be filed with the Board.
- B. Organizations applying for a state-issued premises permit shall pay the city a \$50 investigation fee and complete the investigation form provided by the City and furnish any additional information requested. This fee shall be refunded if the application is withdrawn before the investigation is commenced.
  - a. The investigation fee shall be waived for charitable organizations originating within the City.
- C. Upon receipt of application for issuance of a premises permit, the city clerk shall transmit the application and investigation form to the chief of police for review and recommendations.
- D. The chief of police shall investigate the matter and make review and recommendations to city clerk as soon as possible, but in no event later than 45 days following receipt of the application by the city.
- E. The applicant shall be notified of the date on which the Council will consider the recommendation.
- F. The Council shall by resolution approve or disapprove the application within 60 days of the receipt of application.

**Subd. 7. Restrictions on Issuance of a Premises Permit**

- A. The Council reserves the right to deny an application for issuance or renewal of a premises permit for any of the following reasons:
  - a. Violation by the gambling organization of any state statute, state rule, or city ordinance relating to gambling in last three (3) years.
  - b. The organization has not been in existence for at least three (3) consecutive years prior to the date of applications

- c. The organization has less than 15 active voting members.
- d. Failure of the applicant to pay the investigative fee provided for by Subdivision 6.

**Subd. 8. Organizations and Premises Eligible**

- A. No premises permit will be approved unless:
  - a. The organization meets the definition of an organization as set forth in Subd. 3.
  - b. Only upon demonstration that no other organization from within the trade area shows an interest in a lawful gambling premises permit in Becker shall outside organizations be given an opportunity to hold a premises permit within the City.
  - c. If more than one organization within the trade area applies for a premise permit for the same location, priority shall be given to (1) applicant with the least number of approved premises permits within the city and (2) application submitted first.

**Subd. 9. Notification of Material Changes to Application.** An organization holding a state-issued premises permit shall notify the city within ten (10) days in writing whenever any material change is made in the information submitted on the application.

**Subd. 10. Lawful Purpose Expenditures by Organizations Conducting Gambling**

- A. Each organization licensed to conduct gambling within the city shall expend fifty percent (50%) of its lawful purpose expenditures on lawful purposes conducted within the city's trade area.
- B. This section applies only to lawful purpose expenditures of gross profits derived from gambling conducted by organizations holding a premises permit within the city's jurisdiction.
- C. An organization that conducts gambling on fewer than five days in a calendar year is exempt from the requirements of this section.

**Subd. 11. Records and Reporting**

- A. Organizations licensed by the Board conducting lawful gambling shall file with the city clerk one copy of all records and reports required to be filed with the Board, pursuant to Minn. Stat. Ch. 349, as it may be amended from time to time, and rules adopted pursuant thereto, as they may be amended from time to time. The records and reports shall be filed on or before the day they are required to be filed with the Board.

- B. Organizations licensed by the Board shall file a report with the city proving compliance with the trade area spending requirements imposed by Subd. 12. Such report shall be made on a form prescribed by the city and shall be submitted annually.

**Subd. 12. Application and Local Approval of Exempt and Excluded Permits**

- A. Any organization seeking to obtain an exempt or excluded permit from the Board shall file with the city clerk an executed application as will be filed with the Board.
- B. All applications shall be forwarded to the chief of police for recommendations for approval or denial.
  - a. If gambling activity is held at a city facility, the application shall also be forwarded to the facility manager for recommendations to chief of police.

**Subd. 13. Restriction on Issuance of Exempt or Excluded Permits**

- A. The City reserves the right to deny an application for issuance or renewal of an exempt or excluded permit for any of the following reasons:
  - a. Violation by the gambling organization of any state statute, state rule, or city ordinance relating to gambling in last three (3) years.
  - b. If held at a city facility, manager has not been notified of gambling activity scheduled to take place.
    - i. This shall not preclude applicant from resubmitting upon notification.

**Subd. 14. Hours of Operation.** Lawful gambling shall not be conducted between 1 a.m. and 8 a.m. on any day of the week.

**Subd. 15. Penalty.** Any person who violates any provision of this ordinance; Minn. Stat. §§ 609.75-609.763, inclusive, as they may be amended from time to time; or Minn. Stat. §§ 349.11-349.21, as they may be amended from time to time; or any rules promulgated under those sections, as they may be amended from time to time, shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000 or imprisonment for a term not to exceed 90 days, or both, plus in either case the costs of prosecution. In addition, violations shall be reported to the Board and recommendation shall be made for suspension, revocation, or cancellation of an organization's license.

*Source: Ordinance 242, 2<sup>nd</sup> Series, Effective Date: 10/13/2021.*

**SEC. 6.22 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS**

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

- A. “Non-Commercial Door-to-Door Advocate”** A person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purpose of this ordinance, the term door-to-door advocate shall fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.
- B. Peddler.** A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of offering for sale, displaying for exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personal property that the person is carrying or otherwise transporting. For purpose of this ordinance, the term peddler shall have the same common meaning as the term hawker.
- C. Person.** Any natural individual, group, organization, corporation, partnership, or similar association.
- D. Regular Business Day.** Any day during which the city hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be considered regular business days.
- E. Solicitor.** A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person’s activity is to obtain or attempt to obtain orders as discussed above. For purposes of this ordinance, the term solicitor shall have the same meaning as the term canvasser.
- F. Transient Merchant.** A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, or other personal property and who does not remain in any one location for more than fourteen (14) consecutive days.

**Subd 2. Exceptions to Definitions.** For the purpose of this chapter, the terms *PEDDLER*, *SOLICITOR*, and *TRANSIENT MERCHANT* shall not apply to:

- A. Non-commercial door-to-door advocates. Nothing within this ordinance shall be interpreted to prohibit or restrict non-commercial door-to-door advocates. Person engaging in non-commercial door-to-door advocacy shall not be required to register as a solicitor under Section 7.
- B. Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retail seller of the items being sold by the wholesaler.
- C. Any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products, such as baked goods or milk.
- D. Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route.
- E. Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, when attempting to establish a regular delivery route, or when publications are delivered to the community at large.
- F. Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales.
- G. Any person participating in an organized multi-person bazaar or flea market.
- H. Any person conducting an auction as a properly licensed auctioneer.
- I. Any officer of the court conducting a court-ordered sale.

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

**Subd. 3. Licensing; Exemptions.**

- A. **County license required.** No person shall conduct business as a peddler, solicitor, or transient merchant within the city limits without first having obtained the appropriate license from the county as may be required by Minnesota Statutes Chapter 329 as it may be amended from time to time, if the county issues a license for the activity.

**B. City license required.** Except as otherwise provided for by this ordinance, no person shall conduct business within this jurisdiction as a peddler or a transient merchant without first obtaining a city license. Solicitors need not be licensed, but are required to register with the city pursuant to Section 7.

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

- (1) The applicant's full legal name.
- (2) Any and all other names under which the applicant has or does conduct business, or to which the applicant will officially answer to.
- (3) A physical description of the applicant (hair color, eye color, height, weight, any distinguishing marks or features, and the like).
- (4) Full address of applicant's permanent residence.
- (5) Telephone number of applicant's permanent residence.
- (6) Full legal name of any and all business operations owned, managed, or operated by applicant, or for which the applicant is an employee or an agent.
- (7) Full address of applicant's regular place of business, if any exists.
- (8) Any and all business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines.
- (9) The type of business for which the applicant is applying for a license.
- (10) Whether the applicant is applying for an annual or daily license.
- (11) The dates during which the applicant intends to conduct business. If the applicant is applying for a daily license, the number of days he or she will be conducting business within the city, with a maximum of fourteen (14) consecutive days.
- (12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up his or her business.

- (13) A statement as to whether or not the applicant has been convicted with the last five (5) years of any felony, gross misdemeanor or misdemeanor for violating any state or federal statute or any local ordinance, other than minor traffic offenses.
  - (14) A list of the three (3) most recent locations where the applicant has conducted business as a peddler or transient merchant.
  - (15) Proof of any required county license.
  - (16) Written permission of the property owner or the property owner's agent for any location to be used by a transient merchant.
  - (17) A general description of the items to be sold or services to be provided.
  - (18) Any and all additional information as may be deemed necessary by the City Council.
  - (19) The applicant's driver's license number or other acceptable form of identification.
  - (20) The license plate number, registration information, vehicle identification number (VIN) and physical description for any vehicle to be used in conjunction with the licensed business operation.
- D. Fee.** All applications for a license under this chapter shall be accompanied by the fee established in the city licensing fee schedule as it may be amended from time to time.
- E. Procedure.** Upon receipt of the application and payment of the license fee, the city clerk will, within two (2) regular business days, determine if the application is complete. An application will be considered complete if all required information is provided. If the city clerk determines that the application is incomplete, the city clerk must inform the applicant of the required, necessary information that is missing. If the application is complete, the city clerk must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten (10) regular business days of receiving a complete application the city clerk must issue the license unless grounds exist for denying the license application under Section 4, in which case the clerk must deny the request for a city peddler or transient merchant license. If the city clerk denies the license application, the applicant must be notified in writing of the decision, the reason for denial and the applicant's right to appeal the denial by requesting, within twenty (20) days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal with twenty (20) days of the date of the request for a hearing. The decision of the City Council following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

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

**G. License exemptions.**

- (1) No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated, or raised on any farm.
- (2) No license shall be required for any person going from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement for the primary purpose of exercising that person's state or federal constitutional rights such as the freedom of speech, freedom of the press, freedom of religion, and the like. This exemption will not apply if the person's exercise of constitutional rights is merely incidental to what would properly be considered a commercial activity.

**Subd. 4. License Ineligibility.** The following shall be grounds for denying a peddler or transient merchant license:

- A. The failure of an applicant to obtain and demonstrate proof of having obtained any required county license.
- B. The failure of an applicant to truthfully provide any information requested by the city as part of the application process.
- C. The failure of an applicant to sign the license application.
- D. The failure of an applicant to pay the required fee at the time of application.
- E. A conviction within the past five (5) years of the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects upon the person's ability to conduct the business for which the license is being sought in a professional, honest and legal manner. Such violations shall include, but are not limited to, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
- F. The revocation within the past five (5) years of any license issued to an applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant.

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

**Subd. 5. License Suspension and Revocation.**

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

- (1) Subsequent knowledge by the city of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.
- (2) Fraud, misrepresentation or false statements made during the course of the licensed activity.
- (3) Subsequent conviction of any offense to which the granting of the license could have been denied under Section 4.
- (4) Engaging in any prohibited activity as provided under Section 8 of this ordinance.
- (5) Violation of any other provision of this ordinance.

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

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

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

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

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

**Subd. 6. License Transferability.** No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

**Subd. 7. Registration.**

**A.** All solicitors and any person exempt from the licensing requirements of this ordinance under Section 3 shall be required to register with the city prior to engaging in those activities. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the city clerk shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferrable.

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

**Subd. 8. Prohibited Activities.** No peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall conduct business in any of the following manner:

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

**B.** Obstructing the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way.

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

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

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

**F.** Using the license or registration of another person.

- G. Alleging false or misleading statements about the products or services being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person.
- H. Remaining on the property of another when requested to leave.
- I. Otherwise operating their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

**Subd. 9. Exclusion by Placard.** Unless specifically invited by the property owner or tenant, no peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall enter onto the property of another for the purpose of conducting business as a peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or similar activity when the property is marked with a sign or placard:

- (1) At least four inches long.
- (2) At least four inches wide.
- (3) With print of at least 48 point in size.
- (4) Stating “No Peddlers, Solicitors or Transient Merchants,” “Peddlers, Solicitors, and Transient Merchants Prohibited,” or other comparable statement.

No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

**Subd. 10. Penalty.** Any individual found in violation of any provision of this ordinance, shall be a guilty of a misdemeanor.

**Subd. 11. Severability.** If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.  
*Source: Ordinance 191, 2<sup>nd</sup> Series, Effective Date: August 21, 2017*

(Sections 6.23 thru 6.24 were removed per Ordinance 242, 2<sup>nd</sup> Series, Effective date 10/13/2021)

(Sections 6.23 through 6.24, inclusive, reserved for future expansion.)

## SEC. 6.25 ADULT ENTERTAINMENT ESTABLISHMENTS

**Subd. 1. Purpose and Intent.** It is the purpose of this chapter to regulate adult entertainment establishments to promote the health, safety, morals and general welfare of the citizens of the city and to establish reasonable and uniform regulations to:

- A. Prevent additional criminal activity within the city;
- B. Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;
- C. Locate adult entertainment establishments away from residential areas, schools, churches, parks and playgrounds.

**Subd. 2. Provisions Not Applicable to Or Restrictive of Content of Materials.** The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to adult-oriented materials protected by the First Amendment, nor to deny access by distributors and exhibitors of adult-oriented entertainment to their intended market.

**Subd. 3. Definitions.** For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

1. **ADULT ESTABLISHMENTS.** An adult establishment is any establishment in which an adult use comprises more than 10% of the floor area of the establishment in which it is located or which comprises more than 20% of the gross receipts of the entire business operation.
2. **ADULT USE.** Any of the activities and businesses described below:
  - a. **ADULT USES.** Include adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas which are capable of being seen by members of the public. Activities classified as obscene as defined by M.S. § 617.241, as it may be amended from time to time, are not included.

- b. ***ADULT USE - BODY PAINTING STUDIO.*** An establishment or business which provides the service of applying paint or other substance, whether transparent or nontransparent, to the body of a patron when the body is wholly or partially nude in terms of specified anatomical areas.
- c. ***ADULT USE - BOOKSTORE.*** A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if the building or portion of a building is not open to the public generally but only to 1 or more classes of the public, excluding any minor by reason of age, and if a substantial or significant portion of the items are distinguished and characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.
- d. ***ADULT USE - CABARET.*** A building or portion of a building for providing dancing or other live entertainment, if the building or portion of a building excludes minors by virtue of age and if the dancing or other live entertainment is distinguished and characterized by an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas.
- e. ***ADULT USE - COMPANIONSHIP ESTABLISHMENT.*** A companionship establishment which excludes minors by reason of age, and which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if the service is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.
- f. ***ADULT USE - CONVERSATION/RAP PARLOR.*** A conversation/rap parlor which excludes minors by reason of age, and which provides the services of engaging in or listening to conversation, talk, or discussion, if the service is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.
- g. ***ADULT USE - HEALTH/SPORT CLUB.*** A health/sport club which excludes minors by reason of age, if the club is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.
- h. ***ADULT USE - HOTEL OR MOTEL.*** A hotel or motel from which minors are specifically excluded from patronage and where material is presented which is distinguished and characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

- i. ***ADULT USE - MASSAGE PARLOR, HEALTH CLUB.*** A massage parlor or health club which restricts minors, by reason or age, and which provides the services of massage, if the service is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.
- j. ***ADULT USE - MINI-MOTION PICTURE THEATER.*** A building or portion of a building with a capacity for less than 50 persons used for presenting material if the material is distinguished and characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- k. ***ADULT USE - MODELING STUDIO.*** An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.
- l. ***ADULT USE - MOTION PICTURE ARCADE.*** Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image-producing devices are maintained to show images to 5 or fewer persons per machine at any 1 time, and where the images so displayed are distinguished and characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.
- m. ***ADULT USE - MOTION PICTURE THEATER.*** A building or portion of a building with a capacity of 50 or more persons used for presenting material if the building or portion of a building as a prevailing practice excludes minors by reason of age and if the material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.
- n. ***ADULT USE - NOVELTY BUSINESS.*** A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.
- o. ***ADULT USE - SAUNA.*** A sauna which excludes minors by reason of age, and which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

- p. **ADULT USE - STEAM ROOM/BATHHOUSE FACILITY.** A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if the building or portion of a building restricts minors by reason of age and if the service provided by the steam room/bathhouse facility is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.
- 3. **CHURCH SITE.** A church or building which is used primarily for religious worship and related religious activities.
- 4. **PARK SITE.** A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian / bicycle paths, wilderness areas, or other similar public land within the city which is under the control, operation, or management of the city park and recreational authorities.
- 5. **SCHOOL SITE.** A public or private education facility including but not limited to nursery schools, preschools, kindergartens, elementary schools, middle schools, junior high schools, high schools or special education schools; school includes the school grounds, but does not include the facilities used primarily for another purpose.
- 6. **SPECIFIED ANATOMICAL AREAS.**
  - a. Less than completely and opaquely covered:
    - i. Human genitals, pubic region, or pubic hair;
    - ii. Buttock; and
    - iii. Female breast below a point immediately above the top of the areola; and
  - b. Human male genitals in a discernible turgid state, even if opaquely covered.
- 7. **SPECIFIED SEXUAL ACTIVITIES.**
  - a. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or

- b. Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or
- c. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
- d. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s); or
- e. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of the persons; or
- f. Erotic or lewd touching, fondling or other sexually oriented contact with an animal by a human being; or
- g. Human excretion, urination, menstruation, vaginal or anal irrigation.

8. ***TRANSFER OF LICENSE***

- a. The sale lease, or sublease of the business;
- b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- c. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**Subd. 4. Application.** Except as in this chapter specifically provided, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used for any purpose nor in any manner which is not in conformity with this chapter. No adult entertainment establishment shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the city, the laws of the state of Minnesota, or the United States of America. Nothing in this chapter shall be construed as authorizing or permitting conduct which is prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale, or distribution of obscene material generally, or the exhibition, sale, or distribution of specified materials to minors.

**Subd. 5. Location.** As allowed by Chapter 11 Land Use Regulations as is may be amended from time to time.

**Subd. 6. Operation.**

- A. *Off-site viewing.* An establishment operating as an adult entertainment establishment shall prevent off-site viewing of its merchandise which, if viewed by a minor, would be in violation M.S. Ch. 617, as it may be amended from time to time, or other applicable federal or state statutes or local ordinances.
- B. *Entrances.* All entrances to the business, with the exception of emergency fire exits which are not useable by patrons to enter the business, shall be usable from a public right-of-way.
- C. *Layout.* The layout of the display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the store can observe all patrons while they have access to any merchandise offered for sale or viewing, including but not limited to books, magazines, photographs, video tapes, or any other material.
- D. *Illumination.* Illumination of the premises' exterior shall be adequate to observe the location and activities of all persons on the exterior of the premises.
- E. *Signs.* Signs for adult entertainment establishment shall comply with the city's sign regulations, and, in addition, signs for adult entertainment establishment shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the operation. All signs shall be wall signs. No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or in any area where they can be viewed from a public street or sidewalk.
- F. *Minors restricted.* No minor under the age of 18 shall knowingly be allowed access on the premises of a adult entertainment establishment.

**Subd. 7. Licenses.**

- A. *Licenses required.* All establishments, including any business operating at the time this chapter becomes effective, operating or intending to operate an adult entertainment establishments, shall apply for and obtain a license from the city. A person is in violation of the City Code if he or she operates an adult entertainment establishment without a valid license issued by the city.
- B. *Applications.* An application for a license must be made on a form provided by the city.
  - a. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

- b. The applicant must be qualified according to the provisions of this section and the premises must be inspected and found to be in compliance with the appropriate state, county, and local law and codes by the health official, Fire Marshal, and Building Official.
  - c. Application for a license shall contain the address and legal description of the property to be used; the names, addresses, phone numbers and dates of birth of the owner, lessee, if any, and the operator or manager at time of application; the name, address, and phone number of 2 persons who shall be residents of the state of Minnesota and who may be called upon to attest to the applicant's, manager's, or operator's character; whether the applicant, manager, or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete accurate information as to the disposition thereof; the names and addresses of all creditors of the applicant, owner, lessee, or manager who have extended credit 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 business.
  - d. 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, addresses, and date of birth of all individuals having an interest in the business, including partners, officers, owners, board of directors and creditors furnishing credit for the establishment, acquisition, maintenance, and furnishing of the business.
  - e. All applicants shall furnish to the city, along with their applications, complete and accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon which the building is proposed to be located or the furnishings thereof, personal property thereof, or the operation or maintenance thereof. Documentation shall be 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.
- C. The Chief of Police and City Clerk may recommend approval of the issuance of a license by the city to an applicant within 60 days after receipt of an application unless they find 1 or more of the following to be true:
- a. Applicant(s) or manager is under 18 years of age;
  - b. Applicant(s) or an applicant's spouse is overdue or delinquent, or subject to a penalty imposed by law for the late payment in their payment to the city, county, or state of taxes, fees, fines, or penalties assessed against them or imposed upon them in relation to an adult only entertainment business;

- c. Applicant(s) has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- d. Applicant(s) or an applicant's spouse has been convicted of a violation of a provision of this section, other than the offense of operating an adult only entertainment business without a license within 3 years immediately preceding the application. The fact that a conviction is being appealed shall have no effect;
- e. Applicant(s) is residing with a person who has been denied a license by the city or any other Minnesota municipal corporation to operate an adult only entertainment business within the preceding 12 months, or residing with a person whose license to operate an adult only entertainment business has been revoked within the preceding 12 months;
- f. The premises to be used for the adult only entertainment business has not been approved by the Health Department, Fire Department, and the Building Official as being in compliance with applicable laws and ordinances; the inspections shall be completed within 30 days from the date the application was submitted, provided that the application contains all of the information required by this chapter. If the application is deficient, the inspections shall be completed within 30 days from the date the deficiency has been corrected;
- g. An applicant has been convicted of a crime involving any of the following offenses:
  - i. Any sex crimes as defined by M.S. §§ 609.29 through 609.352 inclusive, as they may be amended from time to time, or as defined by any ordinance or statute in conformity therewith;
  - ii. Any obscenity crime as defined by M.S. §§ 617.23 through 617.299 inclusive, as they may be amended from time to time, or as defined by any ordinance or statute in conformity therewith; for which:
    - 1. Less than 3 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
    - 2. Less than 5 years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or

3. Less than 5 years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the conviction is of 2 or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24 month period.

iii. The fact that a conviction is being appealed shall have no effect on disqualification of the applicant or applicants spouse.

h. The license fee required by this chapter has not been paid.

D. *Requalification.* An applicant who has been convicted of an offense listed in subsection Subd 7, (C) (g) may qualify for an adult entertainment establishment license only when the time period required by Subd 7, (C) (g) has elapsed.

E. *Posting.* The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the adult entertainment establishments. The license shall be posted in a conspicuous place at or near the entrance to the adult entertainment establishment so that it may be read at any time.

F. *Council action.* The City Council shall act to approve or disapprove the license application within 60 days from the date the application was submitted, provided that the application contains all information required by this chapter. If the application is deficient, the Council shall act on the application within 60 days from the date that the deficiency has been corrected.

G. *Appeals.* Within 30 days after the decision by the Council, the applicant may appeal to the District Court by serving a notice upon the Mayor or Clerk of the city.

**Subd. 8. Term.** All licenses shall expire on the last day of December in each year.

**Subd. 9. License Fees.** License fees shall be set by city ordinance. Fees shall not be prorated.

A. Every application for a new adult entertainment establishment license shall be accompanied by the non-refundable application / investigation fee.

B. Every application for an annual renewal license shall be accompanied by the non-refundable application / investigation fee.

**Subd. 10. Inspection.**

- A. *Access.* An applicant or licensee shall permit health officials, representatives of the Police Department, Fire Department, and Building Inspection Division to inspect the premises of an adult entertainment establishment for the purpose of insuring compliance with the law at any time it is occupied or open for business.
- B. *Refusal to permit inspections.* A person who operates an adult entertainment establishment or his or her agent or employee commits an offense if he or she refuses to permit a lawful inspection of the premises by health officials, representatives of the Police Department, Fire Department and Building Inspection Division at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license as provided in Subd. 12.
- C. *Exceptions.* The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

**Subd. 11. Expiration And Renewal.**

- A. *Expiration.* Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in Subd. 7 (A). Application for renewal must be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.
- B. *Denial of renewal.* When the city denies renewal of a license, the applicant shall not be issued a license for 1 year from the date of denial. If, subsequent to denial the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

**Subd. 12. Suspension.**

- A. *Causes of suspension.* The city may suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:
  - a. Violated or is not in compliance with any provision of this chapter;
  - b. Engaged in the use of alcoholic beverages while on the adult entertainment establishment premises other than at an adult hotel or motel;
  - c. Refused to allow an inspection of the adult entertainment establishment premises as authorized by this chapter;

- d. Knowingly permitted gambling by any person on the adult entertainment establishment premises;
  - e. Demonstrated inability to operate or manage an adult entertainment establishment in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
- B. *Notice.* A suspension by the city shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least 10 days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof.

**Subd. 13. Revocation.**

- A. *Suspended licenses.* The city may revoke a license if a cause of suspension in Subd. 11 occurs and the license has been suspended within the preceding 12 months.
- B. *Causes of revocation.* The city shall revoke a license if it determines that:
- a. A licensee gave false or misleading information in the material submitted to the city during the application process;
  - b. A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
  - c. A licensee or an employee has knowingly allowed prostitution on the premises;
  - d. A licensee or an employee knowingly operated the adult entertainment establishment during a period of time when the licensee's license was suspended;
  - e. A licensee has been convicted of an offense listed in Subd. 7. (C)(g), for which the time period required in Subd. 7. (C)(g), has not elapsed;
  - f. On 2 or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Subd. 7. (C)(g), for which a conviction has been obtained, and the person or persons were employees of the adult entertainment establishment at the time the offenses were committed;
  - g. A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.
  - h. A licensee is delinquent in payment, in excess of thirty (30) days, to the City, County or State for any taxes or fees past due.

- C. *Exceptions.* Subd. 13. (B)(g) does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.
  
- D. *Granting a license after revocation.* When the city revokes a license, the revocation shall continue for 1 year and the licensee shall not be issued an adult entertainment establishment license for 1 year from the date revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under Subd. 13. (B), an applicant may not be granted another license until the appropriate number of years required under Subd. 7. (C)(g), has elapsed.
  
- E. *Notice.* A revocation by the city shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least 10 days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof.

**Subd. 14. Transfer of License.** A licensee shall not transfer this license to another, nor shall a licensee operate an adult entertainment establishment under the authority of a license at any place other than the address designated in the application.

**Subd. 15. Nonconforming Uses.** Any adult use existing in the city that is not in conformance with the provisions of this chapter as of the effective date of this chapter shall be deemed a nonconforming use and shall become unlawful 3 years after the date of enactment.

**Subd. 16. Enforcement.** Violation of any section of this chapter shall be a misdemeanor. Each day that a violation occurs shall be considered a separate offense. The city may enforce any provision of this chapter by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction.

**Subd. 17. Severability.** If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

## SEC. 6.26 MOBILE FOOD UNITS

**Subd. 1. Purpose and Findings.** The purpose of this ordinance to regulate mobile food units in order to protect the health, safety, and general welfare of the citizens of Becker by establishing standards to ensure that mobile food units, as defined herein, are appropriately located, permitted and inspected, do not impede vehicular access, traffic flow or circulation, or create public safety hazards.

**Subd. 2. Definitions.** The following words and phrases, when used in this Section, shall have the following meanings unless the context clearly indicates otherwise.

**A. Mobile Food Unit** means a food and beverage service establishment that is a vehicle mounted unit, such as:

1. **Motorized or Trailer:** (1) a self-contained food service operation, located in a motorized, wheeled or towed vehicle, that is readily movable without disassembling and that is used to store, prepare, display, or serve food intended for individual portion service; or (2) a mobile food unit as defined in Minnesota Statutes Section 157.15, Subdivision 9.

2. **Food Cart:** a food and beverage service establishment that is a non-motorized vehicle that is self-propelled by the operator.

3. **Ice Cream Truck:** a motor vehicle utilized as the point of retail sales of pre-wrapped or pre-packaged ice cream, frozen yogurt, frozen custard, flavored frozen water, or similar frozen dessert products.

**B. Vend or Vending** shall be defined as the process of the transfer of a food product from the unit operator to a customer. Vending begins when the unit initially stops in a location at which customers can access the unit and continues until the unit leaves that location.

**C. Licensed Caterer** An individual or business which is under contract to provide food service for an event such as a reception, party, luncheon, conference, ceremony or trade show.

### **Subd. 3 Permit Requirement.**

**A. Type of Permit.** A temporary permit allows a mobile food unit to operate in the city for up to seven (7) days total. An annual permit allows mobile food unit operations in the city for eight (8) days or more during any year. The permittee will only be issued one temporary permit per calendar year, however, nothing shall prohibit a temporary permittee from applying for an annual permit within the same year.

**B. Permit Application.** It is unlawful for any person to operate a mobile food unit in the city without first obtaining a permit from the city. An application for a permit shall be filed, along with the required fee, with the City Clerk. The applicant must be the owner of the mobile food unit. The application shall be made on a form supplied by the city and shall contain information requested by the city, including the following:

1. Name of the owner of the mobile food unit and permanent and temporary home and business address;
2. The applicant's full legal name, date of birth, and driver's license number;
3. A description of the nature of the business and the goods to be sold and the license plate number and description for any vehicle to be used in conjunction with the activity;
4. The permanent and any temporary home and business address, phone numbers, and email address of the applicant, with a designation of a preferred mailing address for notices related to the permit;
5. The name, address and contact information for the commissary with which the mobile food unit is affiliated, if applicable;
6. Written consent of each private property owner from which mobile food unit sales will be conducted;
7. If the mobile food unit will be located on city property or public right-of-way, a signed statement that the permittee shall hold harmless the city and its officers and employees, and shall indemnify the city and its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit;
8. If applying only for a temporary permit, the applicant must provide the dates and locations for its up to seven (7) dates of mobile food unit operations;
9. Applicant's State Sales Tax ID Number and Federal Employer Identification Number or Social Security Number

**C. Insurance.** A certificate of insurance by an insurance company authorized to do business in the State of Minnesota, evidencing the following forms of insurance shall be provided with the application:

1. Commercial general liability insurance, including products and completed operations coverage, with a limit of not less than one million dollars (\$1,000,000) each occurrence. If such insurance contains an annual aggregate limit, the annual aggregate limit shall be not less than two million dollars (\$2,000,000).;
2. Automobility liability insurance with a limit of not less than one million dollars (\$1,000,000) combined single limit. The insurance shall cover liability arising out of any auto, including owned, hired, and non-owned vehicles;
3. Workers compensation insurance (statutory limits) or evidence of exemption from state law; and

4. The city shall be endorsed as an additional insured on the certification of insurance and the umbrella/excess insurance if the applicant intends to operate its mobile food unit on public property, including public right-of-way.
5. Certificate of insurance must contain a provision requiring at least thirty (30) days' advanced written notice to the city, or ten (10) days' written notice for non-payment of premium notification be sent to the city should the policy be cancelled before its stated expiration date;

**D. Procedure.** Upon receipt of the application and payment of the fee, the City Clerk will, within two (2) regular business days, determine if the application is complete. An application will be considered complete if all required information is provided. If the city clerk determines that the application is incomplete, the city clerk must inform the applicant of the required, necessary information that is missing. If the application is complete, the city clerk must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten (10) regular business days of receiving a complete application the city clerk must issue the permit unless grounds exist for denying the permit application under Section 6, in which case the clerk must deny the request for a mobile food unit. If the city clerk denies the permit application, the applicant must be notified in writing of the decision, the reason for denial and the applicant's right to appeal the denial by requesting, within twenty (20) days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal with twenty (20) days of the date of the request for a hearing. The decision of the City Council following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

**Subd. 4 Conditions of Licensing.** A mobile food unit may only operate as set forth in the following:

- A. Locations.** A mobile food unit may only operate in the locations set forth in this paragraph. A mobile food unit may operate in a private commercial or industrial parking lot, non-profit owned property and on private residential property. A mobile food unit may only operate with the written consent of the private property owner for those requiring a permit. When operations occur on private residential property, mobile food unit sales may only be for catering purposes (such as a private graduation party or wedding) and not open for sales to the general public. A mobile food unit may only operate along a public or private street when the street is closed to all non-emergency vehicles. A mobile food unit may only operate in a city park or on city property with the prior written approval by the City; additional permits may be required for such operations.
1. Ice Cream Trucks may operate in all zoning districts and within the public right of way of residential districts.

**B. Mobile Food Unit Operations and Performance Standards.** A mobile food unit permittee is subject to the following operation and performance standards:

1. Applicable permit fee shall be paid.
2. A mobile food unit operating on City property, including public right-of-way, must submit a signed statement that the permittee shall hold harmless the City and its officers and employees, and shall indemnify the City and its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit.
3. A mobile food unit with an annual permit may not operate on the same property more than twenty-one (21) days during any calendar year.
4. A mobile food unit may not operate within 500 feet of an existing restaurant unless permitted through a City event.
5. A mobile food unit may not operate within 300 feet of a City sponsored festival or event unless permitted through a City Event.
6. A mobile food unit shall operate in strict compliance with the laws, rules, and regulations of the United States, State of Minnesota, Sherburne County; and the City of Becker.
7. At no time shall any sales be made from a mobile food unit while it is in motion.
8. A mobile food unit is not required to obtain a sign permit from the City. However, no additional signage is permitted beyond that which is on the mobile food unit unless it meets the following requirements:
  - a. One single sandwich board style sign is permitted per mobile food unit
  - b. The maximum sign size is 8 square feet
  - c. The sign must be placed on the ground and within 10 feet of the mobile food unit;
  - d. The sign must not be placed within the public right of way except with the express permission of the City; and
  - e. The sign cannot project from the food truck or be mounted to the roof of the mobile food unit.
  - f. May not contain strobing, flashing or intermittent lighting.
9. No external seating may be utilized while operating on public property.
10. No other equipment may be utilized that is not fully contained within the vehicle/trailer/unit while operating on public property.
11. Mobile food units may not connect to public utilities. Any generator in use must be self-contained and fully screened from view and operate so as not to be deemed a nuisance.
12. Any conditions of the State Health Department shall be incorporated into the permit under this section.
13. Applicant shall provide waste disposal for litter and garbage generated by the operation of the mobile food unit and shall clean all such litter and garbage before moving from location.

14. The mobile food unit shall obey the orders of any traffic control officer, peace officer, zoning official, or inspector, and shall be open to inspection during all open hours.
15. Mobile food units shall comply with all applicable fire codes and may be inspected by a city fire official prior to operation.
16. Proof of Department of Health or Department of Agriculture licensing must be provided and posted on unit.
17. Wastewater may not be drained into City water drains.
18. Hours of operation shall be from 11:00 a.m. to 5:00 p.m.
19. No overnight storage of a mobile food unit shall be permitted at the point of sale
  - a. Off-site storage will be permitted as allowed in Chapter 11, Sec. 11.20, Subd. 4 of City Code.

**C. Permit.** A mobile food unit Permit is non-transferable. The approved permit shall be displayed on or within the unit, visible from the outside of the unit, whenever the unit is vending.

**D. Department of Health License Requirement.** Applicants must provide evidence of current licensing of the unit by the Minnesota Department of Health or the Minnesota Department of Agriculture, or other approved Department of health licensing authority.

**E. Fees.** All applications for a permit under this section shall be accompanied by the fee established in the City's fee schedule as adopted from time to time by Council.

1. Proration of fees is allowed only on annual permits; temporary permits shall not be prorated. A quarterly proration of \$25 may be given following the end of March, June and September.
2. There shall be no refunding of paid fees.
3. A separate permit accompanied by fees shall be required for each mobile food unit regardless of ownership.

**F. Term of Permit.**

1. Annual Permit
  - i. Permits issued as an annual permit shall expire January 1 of each year.
2. Temporary Permit
  - i. Temporary Permits are issued on a 1 to 7 day term. Dates of vending are not required to be concurrent but must be within a one-year period.
  - ii. All permits issued for a specific term must adhere to the dates allowed to vend identified on the applicant's permit.

**G. Exemption from Permit.**

1. Mobile food units are exempt from applying for a permit in conjunction with a City sponsored festival or event.
  - i. Mobile food unit must register for the festival or event and pay any applicable fees.
  - ii. A copy of the State Department of Health or Department of Agriculture permit to operate shall be provided.
2. Appropriately licensed caterers are exempted from this section for catered events.
3. Mobile food units which are vending at a school, church, or other non-profit owned land for a non-profit event. Mobile food units must be fully contained on non-profit owned land.
4. Mobile food units which are hired to vend on private residential property for private events, located in any residential or agriculture zoned property. Mobile food units must be fully contained on private property.
5. Mobile food units which are hired to vend a private one day event, for customers of a business only, up to twice a year. *Source: Ordinance 242, 2<sup>nd</sup> Series; Effective Date: 10-13-2021.*

**H. Practices Prohibited.** It is unlawful for any person engaged in the business of a mobile food unit operation to do any of the following:

1. Call attention to that permittee's business by shouting, crying out, blowing a horn, ringing a bell, or use any sound device, including any loud speaking radio or sound amplifying system upon any public property, or upon any private premises in the City where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon public property, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposed to sell, unless prior approval with conditions is received from the City.
  - a. Ice cream trucks traveling through a residential district may have outdoor music or noise-making devices to announce their presence. A commercial noise permit application and fee must be submitted.
2. Fail to display proof of permit and produce valid identification when requested.
3. Leave a mobile food unit unattended or at an authorized location outside allowed hours of operation.
4. Operate a mobile food unit in or on public sidewalks or trails.
5. Remain on the property of another when asked to leave.
6. Obstruct the ingress or egress from commercial buildings during the building hours of operation.
7. Claim endorsements by the City.
8. Conduct business in any manner as to create a threat to the health, safety, and welfare of a specific individual or the general public.

**Subd. 5 Investigation, Approval, or Disapproval.**

- A. Mobile food unit applicants wishing to operate on any publicly owned land, right-of-way, or street located in a residential district, or in any City Park, shall be required to undergo a background check that may include, but is not limited to, a driver's license check and a criminal history check, for the protection of the public good.

**Subd. 6 Approval or Denial of Permit.** The City shall approve or deny the application in the manner prescribed in this Section within a reasonable period of time. The following shall be grounds for denying a permit:

- A. Failure of an applicant to truthfully provide any information requested by the City as part of the application process.
- B. Failure of the applicant to complete the application and/or pay any required fee.
- C. When an applicant has a bad business reputation. Evidence of a bad business reputation may include prior revocations of any permit or license, prior convictions for violations of any federal, state, or local law or which adversely reflects upon the person's ability to conduct the business for which the permit is being sought, or prior complaints with the City, Better Business Bureau, State Attorney General, or other similar business or consumer rights office.
- D. The conviction of the applicant within the past five years from the date of application, for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the permit is being sought in an honest and legal manner or that will not adversely affect the health, safety, and welfare of the residents of the City. Such violations shall include, but not be limited to: burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
- E. The revocation within the past five (5) years of any license or permit issued to the applicant for the purpose of conducting a mobile food unit or similar business transaction.
- F. The denial, within the last year, of any license or permit application for the purpose of conducting a mobile food unit or similar business transaction.
- G. Failure to follow all federal, state and local regulations, including failure to be registered, licensed or permitted if such registration, license or permit is required by any federal, state, or local regulation.

**H. Appeal.** Any permit applicant aggrieved by the denial of a permit may appeal by filing with the City Administrator within ten (10) days of the date of mailing of the notice of denial, a written statement requesting a hearing before the City Council and setting forth fully the grounds for the appeal. A hearing shall be held within thirty (30) days of receipt of the request. Notice of the hearing shall be given by the City Administrator in writing, setting forth the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permit applicant at his/her last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for the hearing.

**Subd. 7 Suspension or Revocation.**

- A.** Permits issued under the provisions of the Section may be revoked after notice and a hearing conducted by the City Administrator, for any of the following causes: violation of this Section; violation of federal, state, or local law, rule, or regulation relating to mobile food units; or any action identified in Subd. 4.D of this Section.
- B.** Notice of the hearing for revocation of a permit shall be given by the City Administrator in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permit holder at his/her last known address at least five (5) days prior to the date set for the hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for the hearing.

**Subd. 8 Appeal.** The decision of the City Administrator following a hearing as provided for in this Section can be appealed by petitioning the Becker City Council. The appeal must be delivered to the City Administrator in writing within ten (10) days of the date of mailing of the City Administrator's decision.

**Subd. 9 Emergency.** If, in the discretion of the City Administrator, imminent harm to the health or safety of the public may occur because of the actions of any person permitted under this Section, the City Administrator may immediately suspend the person's permit and in such event shall provide notice to the person of the right to a post-suspension hearing pursuant to the procedures in Subd. 7. B. of this Section.

**Subd. 10 Severability.** If any provision of this section is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

**Subd. 11. Penalty.** Any violation of this Section, including but not limited to the vending operation of a mobile food unit within the City without a permit pursuant to this section, shall be a misdemeanor punishable in accordance with the penalties established by Minnesota Statutes.

**SEC 6.27 MASSAGE ESTABLISHMENTS**

**Subd. 1. Purpose.** The purpose of this article is to prohibit massage businesses and services to the public except those licensed as therapeutic massage establishment and massage therapists pursuant to this article. The licensing regulations prescribed herein are necessary in order to prevent criminal activity and to protect the health and welfare of the community. The purpose of this article is not intended to impose restrictions or limitations on the freedom of protected speech or expression.

**Subd. 2. Finding of City Council.** The City Council of the City of Becker makes the following findings regarding the need to license therapeutic massage enterprises and therapists and to prohibit all other types of massage businesses and services to the public:

1. Persons who have bona fide and standardized training in therapeutic massage, health, and hygiene can provide a legitimate and necessary service to the general public.
2. Health and sanitation regulations governing therapeutic massage enterprises and therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.
3. Limiting the number of therapeutic massage enterprise licenses and license qualifications for the restrictions on therapeutic massage enterprises and therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.
4. Massage services provided by persons with no specialized and standardized training in massage can endanger citizens by facilitating the spread of communicable diseases, by exposing citizens to unhealthy and unsanitary conditions, and by increasing the risk of personal injury.
5. Massage businesses which employ persons with no specialized and standardized training can tax city law enforcement services because such businesses are more likely to be operated as fronts for prostitution and other criminal activity than operations established by persons with standardized training.
6. The training of professional massage therapists at accredited institutions is an important means of ensuring the fullest measure of protecting the public health, safety, and welfare.
7. Premises where prior massage therapists have had their licenses revoked require a period of time where massage services should not be provided in order to avoid continuation of the same clientele and association of the location with unlawful services.

**Subd. 3. Definitions.** The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

1. **Accredited Institution** means an educational institution holding accredited status approved by the United States Department of Education or Minnesota Office of Higher Education.
2. **Accredited Program** means a professional massage program or educational institution accredited by the Commission on Massage Therapy Accreditation (COMTA).
3. **Clean** means the absence of dirt, grease, rubbish, garbage, and other offensive, unsightly, or extraneous matter.
4. **Good repair** means 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.
5. **Issuing authority** means the city clerk or designee.
6. **Massage** means any method of pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, or rolling of the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations.
7. **Massage therapist** means an individual who practices or administers massage to the public who can demonstrate to the issuing authority that he or she:
  - a. Has current insurance coverage of \$1,000,000.00 for professional liability in the practice of massage;
  - b. Is affiliated with, employed by, or owns a therapeutic massage enterprise licensed by the city; and
  - c. Has completed 500 hours of certified therapeutic massage training with content that includes the subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an accredited program, accredited institution, or a program or institution licensed or verified by a state licensing board or agency that has been approved by the issuing authority. These training hours must be authenticated by a single provider through a certified copy of the transcript of academic record from the school issuing the training, degree or diploma. In the event the

accredited program or accredited institution is no longer in existence, in the sole discretion of the city, a certified copy of the transcript of academic record may be accepted directly from the applicant with an affidavit stating said transcript of academic record is authentic. The transcript of academic record must be from a program or institution that was once accredited and approved by the issuing authority. The certified copy of the transcript of academic record must contain the applicant's name, last address of the accredited institution at the time of closing, and reflect the 500 hours of certified therapeutic massage training with content that includes the subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice as required.

8. **Operate** means to own, manage, or conduct, or to have control, charge, or custody over.
9. **Person** means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.
10. **Therapeutic massage enterprise** means an entity which operates a business which hires only licensed therapeutic massage therapists to provide therapeutic massage to the public. The owner/operator of a therapeutic massage enterprise need not be licensed as a therapeutic massage therapist if he or she does not at any time practice or administer massage to the public. A therapeutic massage enterprise may employ other individuals such as cosmetologists and estheticians, and these individuals are not required to have a massage therapist license as long as they are not providing therapeutic massage to the public.
11. **Within the city** means includes physical presence as well as telephone referrals such as phone-a-massage operations in which the business premises, although not physically located within the city, serves as a point of assignment of employees who respond to requests for services from within the city.

**Subd. 4. License required.**

1. **Therapeutic massage enterprise license.** It shall be unlawful for any person or entity to own, operate, engage in, or carry on, within the city, any type of massage services to the public for consideration without first having obtained a therapeutic massage enterprise license from the city pursuant to this section.
2. **Massage therapist license.** It shall be unlawful for any individual to practice, administer, or provide massage services to the public for consideration within the city without first having obtained a massage therapist license from the city pursuant to this section.

**Subd. 5. Exceptions.** A therapeutic massage enterprise or therapist license is not required for the following persons and places:

1. Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, or professional practices licensed or registered by this state and regulated by a governmental body with a board where concerns and complaints could be directed, provided the massage is administered in the regular course of the medical business and not provided as part of a separate and distinct massage business.
2. Persons duly licensed by this state as beauty culturists or barbers, provided such persons do not hold themselves out as giving massage treatments and provided the massage by beauty culturists is limited to the head, hand, neck, and feet and the massage by barbers is limited to the head and neck.
3. Persons working solely under the direction and control of a person duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry or professional practices licensed or registered by this state and regulated by a governmental body with a board where concerns and complaints could be directed
4. Places duly licensed or operating as a hospital, nursing home, hospice, sanitarium, or group home established for the hospitalization or care of human beings.
5. Students of an accredited institution who are performing massage services in the course of a clinical component of an accredited program of study, provided that the students are performing the massage services at the location of the accredited institution or provided the students are limited to performing massage therapy only on owners or staff of licensed massage enterprises and not on members of the public.
6. Individuals licensed in another municipality performing massage services as part of a wellness event/expo where such event will not be more than three days in length. Written notice must be provided to the city and must include dates, times, and location(s) of such event.

**Subd. 6. License application.**

1. **Therapeutic massage enterprise license application.** An application for a therapeutic massage enterprise license shall be made on a form supplied by the city clerk and shall request the following information:
  - a. **All applicants.** For all applicants:

- i.** Whether the applicant is an individual, corporation, partnership, or other form of organization.
- ii.** The legal description of the premises to be licensed together with a plan of the area showing dimensions, location of buildings, street access, and parking facilities.
- iii.** The floor number, street number, suite number(s) and rooms where the massage services are to be conducted.
- iv.** Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.
- v.** Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans for design are on file with the city's building and inspection department, no plans need be submitted to the issuing authority.
- vi.** The name, street address, and suite number(s) of the business if it is to be conducted under a designation, name, or style other than the name of the applicant, and a certified copy of the certificate as required by Minn. Stats. § 333.02.
- vii.** The amount of the investment that the applicant has in the business, buildings, premises, fixtures, furniture, and equipment, and proof of the source of such investment. The identity of all other persons investing in the business, building, premises, fixture, furniture and equipment, the amount of their investment and proof of the source of such investment.
- viii.** All applications for licenses, whether enterprise or individual applications, shall be signed and sworn to. If the application is that of a natural person, it shall be signed and sworn to by such person; if by a corporation, by an officer thereof; if by an incorporated association, by the manager or officer thereof; if by a limited liability company (LLC), by a member thereof. Any falsification of information on the license application shall result in the denial of the license and the applicant may be subject to prosecution for forgery as defined by Minnesota State Statute.

- ix. Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was denied, revoked or suspended within the last ten years of the date the license application is submitted to the issuing authority.
  - x. Such application must identify a responsible party relative to each license who shall be responsible for the conduct of the business. If the responsible party for a licensee will change, an application for the change shall be provided to the city clerk at least 30 days prior to such change and shall be treated the same as an application for a new license. In the event that a 30-day prior notice is not feasible, a written explanation will be submitted to the city clerk within one week of the known change documenting the reason(s) for the deviation; this is subject to approval by the police chief or his/her designee. Failure to file a timely application or explanation for a change in responsible party shall be grounds for revocation, suspension or non-renewal of any license.
  - xi. Whether the applicant has ever been engaged in the operation of massage services. If so, applicant shall furnish information as to the name, place, dates and length of time of the involvement of any and all such establishments.
  - xii. Federal and state income tax returns, business and personal, for the previous three years.
  - xiii. Such other information as the city council or issuing authority shall require.
  - xiv. Applicant is responsible for reading and understanding the city ordinance regarding therapeutic massage and for communicating and providing interpretation when necessary to all massage therapists licensed at the enterprise to ensure compliance.
- b. **Individuals.** For applicants who are individuals:
- i. The name, place and date of birth, and street residence address of the applicant.
  - ii. Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used.

- iii. Whether the applicant is a citizen of the United States or a resident alien or has the legal authority to work in the United States.
  - iv. Street addresses and dates at which the applicant has lived during the preceding ten years.
  - v. The type, name, location, and dates of every business or occupation the applicant has been engaged in during the preceding ten years.
  - vi. Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.
  - vii. Names, addresses, contact information and dates of the applicant's employment for the preceding ten years.
  - viii. Whether the applicant has ever been arrested, charged or convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense. If so, the applicant shall furnish information as to the date, time, place and offense for which arrests, charges or convictions were had.
  - ix. Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last ten years of the date the license application is submitted to the issuing authority.
  - x. Whether the applicant has ever been engaged in the operation of massage services. If so, applicant shall furnish information as to the name, dates, place and length of time of the involvement in such an establishment.
  - xi. Such other information as the city council or issuing authority shall require.
- c. **Partnerships.** For the applicants that are partnerships: the names and addresses of all general and limited partners and all information concerning each general partner as is required in Subd. 1 (b) of this section of this Code. The managing partners shall be designated and the interest of each general and limited partner in the business shall be disclosed. A true copy of the partnership agreement shall be submitted with the application, and if the partnership is required to file a certificate as to a trade name under Minn. Stats. § 333.02, a certified copy of such certificate shall be submitted. The license shall be issued in the name of the partnership.

- d. **Corporations and other organizations.** For applicants that are corporations or other types of organizations:
  - i. The name of the organization, and if incorporated, the state of incorporation.
  - ii. A true copy of the certificate of incorporation, and, if a foreign corporation, a certificate of authority as described in Minn. Stat. § 303.02.
  - iii. The name of the general manager, corporate officers, proprietor, and other person in charge of the premises to be licensed, and all the information about said persons as is required in Subd. 1 (b) of this section of this Code.
  - iv. A list of all persons who own or control an interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all the information regarding such persons as is required in Subd. 1 (b) of this section of this Code.

2. **Massage therapist license application.** An application for a massage therapist license shall be made on a form supplied by the city clerk and shall request the following information:

- a. The applicant's name and current address.
- b. The applicant's current employer.
- c. The applicant's employers for the previous ten years, including the employer's name, address and dates of employment.
- d. The applicant's addresses and dates for the previous ten years.
- e. The applicant's date of birth, home telephone number, weight, height, color of eyes, and color of hair. A color photocopy of the applicant's MN driver's license or MN I.D. front and back, or any other government-issued I.D. If the photocopy is not acceptable to the police chief, the police department may take photographs for the file.
- f. Whether the applicant has ever been arrested, charged or convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense and, if so, the time, place, date(s) and offense for which arrests, charges or convictions were had.

- g. Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was denied, revoked or suspended within the last ten years of the date the license application is submitted to the issuing authority.
- h. The names, resident and business addresses and contact information of those residents of the metropolitan area, of good moral character, not related to the applicant or financially interested in the premises of the business, who may be referred to as to the applicant's character.
- i. Whether the applicant is a U.S. citizen or resident alien or has the legal authority to work in the United States.
- j. Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used.
- k. Whether the applicant has met the definition of a massage therapist in Subd. 3 (7) of this Code.
- l. Whether the applicant has ever been the subject of an investigation, public or private, criminal or non-criminal, regarding massage therapy.
- m. Such other information as the city council or issuing authority shall require.

**Subd. 7. License fees.** The fees for a therapeutic massage enterprise and therapist licenses shall be as set forth by Chapter 2, Sec. 2.19 of this Code. An investigation fee shall be charged for therapeutic massage enterprise licenses and an individual therapeutic massage license. Each application for a license shall be accompanied by payment in full of the required license and investigation fees. No investigation fee shall be refunded.

**Subd. 8. License application verification and consideration.**

**1. Therapeutic massage enterprise license.**

- a. All applications shall be referred to the chief of police, or his or her designee, and such other city departments as the city administrator shall deem necessary for verification and investigation of the facts set forth in the application. The chief of police, or his or her designee, is empowered to conduct any and all investigations to verify the information on the application, including ordering a computerized criminal history inquiry and/or a driver's license history inquiry on the applicant. The individual or

individual associated with an entity listed above applying for a therapeutic massage enterprise license must submit to mandatory finger printing by the police department. The chief of police, or his or her designee, is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions Computerized Criminal History information system in accordance with BCA policy. The chief of police, or his or her designee, and other consultants shall make a written recommendation to the city council as to the issuance or non-issuance of the license. The city council or chief of police or his or her designee may order and conduct such additional investigation as it deems necessary, including but not limited to contacting other state agencies. Upon completion of its investigation, the council shall grant or deny the license unless the application is withdrawn prior to council action.

## 2. **Massage therapist license.**

- a. **Verification and consideration.** Within a reasonable period after receipt of a complete application and applicable fees for a massage therapist license, the issuing authority shall make recommendation to grant or deny the application. The issuing authority is empowered to conduct any and all investigations to verify the information on the application, including ordering a computerized criminal history inquiry, background check, and/or a driver's license history inquiry on the applicant. All individual applicants applying for a massage therapist license must submit to mandatory finger printing by the police department. The massage therapist applicant must also provide three letters of reference from former employers or in conjunction with instructors who provided vocational instruction associated with the 500 hours of massage therapy study. The city council or chief of police or his or her designee may order and conduct such additional investigation as it deems necessary, including but not limited to contacting other state agencies. Notice shall be sent by the city clerk by regular mail to the applicant upon a denial informing the applicant of the right to appeal to the city council within 20 days. If an appeal is properly made, the matter shall be scheduled before a hearing officer, on behalf of the city council, for consideration and conclusion.
- b. **Photo I.D. cards.** The message therapist applicant must provide a current two by two inch color photo of the applicant that clearly shows the full applicant's uncovered face in view. This photo shall be affixed to the license at all times if approved by the City Council and will have it readily available whenever the applicant is on the property of the massage enterprise applicant's property.

**Subd. 9. Person's ineligible for license.**

1. **Therapeutic massage enterprise license.** No therapeutic massage enterprise license shall be issued to an individual or entity which:
  - a. Is not 18 years of age or older at the time the application is submitted to the issuing authority;
  - b. Has been convicted of any crime directly related to the occupation licensed as prescribed by Minn. Stats. § 364.03, subd. 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by Minn. Stats. § 364.03, subd. 3;
  - c. Has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license in any jurisdiction that was denied, revoked or suspended within the last ten years of the date the license application is submitted to the issuing authority;
  - d. Is not a citizen of the United States or a resident alien, or is legally prohibited from working in the United States;
  - e. Is not of good moral character or repute;
  - f. Is not the real party in interest of the enterprise;
  - g. Has knowingly misrepresented or falsified information on a license application at any time in the preceding ten years;
  - h. Cannot meet the definition of therapeutic massage enterprise in subd. 3 (10) of this Code;
  - i. Owes taxes or assessments to the state, county, school district, or city that are due and delinquent;
  - j. Is the spouse of a person whose massage-related license has been denied, suspended or revoked in the past ten years;
  - k. Allowed a license to expire or surrendered a license, unless, at the sole discretion of the city, a license application is submitted for consideration. The application shall be treated the same as an application for a new license, subject to all ordinance regulations and review; or

1. The city's massage therapist ordinance does not provide for a "mobile" or transient performance of massage therapy services that is not located at the particular addressed property that has obtained a message therapy enterprise license.
2. **Massage therapist license.** No massage therapist license shall be issued to a person who:
  - a. Is not 18 years of age or older at the time the application is submitted to the issuing authority;
  - b. Has been convicted of any crime directly related to the occupation licensed as prescribed by Minn. Stats. § 364.03, subd. 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by Minn. Stats. § 364.03, subd. 3;
  - c. Whether the applicant has had an interest in, individually or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was denied, revoked or suspended within the last ten years of the date the license application is submitted to the issuing authority;
  - d. Is not a citizen of the United States or a resident alien, or is legally prohibited from working in the United States;
  - e. Is not of good moral character or repute;
  - f. Has knowingly misrepresented or falsified information on a license application at any time in the preceding ten years;
  - g. Is not affiliated with, employed by, or does not own a therapeutic massage enterprise licensed by the city;
  - h. Cannot meet the definition of massage therapist in subd. 3 (7) of this Code; or
  - i. Allowed a license to expire or surrendered a license, unless, at the sole discretion of the city, a license application is submitted for consideration. The application shall be treated the same as an application for a new license, subject to all ordinance regulations and review.

**Subd. 10. Locations ineligible for therapeutic massage enterprise license.**

1. **Delinquent taxes.** No therapeutic massage enterprise shall be licensed if such enterprise is located on property on which taxes, assessments, or other financial claims to the state, county, school district, or city are due and delinquent. In the event a suit has been commenced under Minn. Stats. § 278.01—278.13, questioning the amount or validity of taxes, the city council may on application waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof, which remain unpaid for a period exceeding one year after becoming due.
2. **Improper zoning.** No therapeutic massage enterprise shall be licensed if the location of such enterprise is not in conformance with the city's zoning code.
3. **Building, fire, and code compliance violations.** No therapeutic massage enterprise shall be licensed if the location of such enterprise is not in compliance with state building and fire codes in addition to this Code.
4. **Distinct entrance.** No therapeutic massage enterprise, unless a home-based enterprise, shall be licensed if the location of such enterprise does not have a distinct, front-facing, public entrance. A distinct, front-facing public entrance for an entire building is required for enterprise locations with multiple suites.
5. **Previous license infractions.** No therapeutic massage enterprise license shall be issued or renewed if the massage therapy enterprise has employed two or more massage therapists whose licenses have been suspended and/or revoked within any 12-month period during period of employment.
6. Notice of revocation proceedings to property owner and limitation on issuance of license for property where there has been a previous infraction(s).
  - a. The property owner of a premises that is subject to a massage license revocation will receive notice of an intent to revoke said license prior to the actual revocation of the license as well as the notice of revocation. Failure to provide said notice to the property owner will not invalidate any massage license revocation.
  - b. No therapeutic massage enterprise shall be licensed if such enterprise is located on property on which prior massage therapists have had their licenses revoked pursuant to this ordinance or predecessor ordinances on the same subject except as follows:
    - i. A period of at least 24 months has passed since the revocation of a prior license where said prior revocation was the only revocation at that location in the preceding 60 months.

- ii. A period of at least 60 months has passed since the revocation of a prior license where said prior revocation was the second revocation at that location in the preceding 60 months.
- iii. A period of at least 84 months has passed since the revocation of a prior license where said prior revocation was the third or greater number of revocations at that location in the preceding 120 months.

For purposes of this section (6)(b), the period of revocation will begin to run from the date of action by the city, whether by the city council, hearing officer or other authorized city representative revoking said license.

**Subd. 11. License restrictions.**

- 1. Posting of license.** A therapeutic massage enterprise license issued must be posted in a conspicuous place on the premises for which it is used. A person licensed as a massage therapist shall also post their massage therapist license, with color photo, in a conspicuous place on the premises at which the therapist is associated. A person licensed as a massage therapist shall have it readily available at all times where therapeutic massage services are rendered, and the photo identification as noted in subd. 8 (2) (b).
- 2. Licensed premises.** A therapeutic massage enterprise license is only effective for the compact and contiguous space specified in the approved license application. If the licensed premises is enlarged, altered, or extended, the licensee shall inform the city clerk within ten business days. A massage therapist license shall entitle the licensed therapist to perform on-site massage at the therapeutic massage enterprise they are licensed for, the place of residence of the licensed massage therapist or client, or at an office, business, park or institution excluding hotel and motel guest rooms. It shall be the continuing duty of each licensee to properly notify the city clerk, within ten business days, of any change in the information or facts required to be furnished on the application for license and failure to comply with this section shall constitute cause for revocation or suspension of such license. All therapeutic massage must be performed within a building with a valid certificate of occupancy and not in or upon any vacant lot, lot, motor vehicle, trailer, tent or railroad car, including but not limited to structures not meant for human habitation.
- 3. Transfer of license prohibited.** The license issued is for the person or the premises named on the approved license application. No transfer of a license shall be permitted from place to place or from person to person without complying with the requirements of an original application.

4. **Affiliation with enterprise required.** A massage therapist shall be employed by, affiliated with, or own a massage enterprise business licensed by the city, unless a person or place is specifically exempted from obtaining a therapeutic massage enterprise license in subd. 5 of this Code.
5. **Employment of unlicensed massage therapists prohibited.** No therapeutic massage enterprise shall employ or use any person to perform massage who is not licensed as a therapeutic massage therapist under this section, unless the person is specifically exempted from obtaining a therapist license in subd. 5 of this Code.
6. **Coverage of genitals/breasts during massage.** The licensee shall require that the person who is receiving the massage shall completely cover at all times genitals and breasts with non-transparent material or clothing.
7. **Therapist dress/uniform requirements.** Any therapist performing massage shall at all times be dressed professionally, including short sleeved crew neck shirts, skirts and shorts no shorter than three inches above the knees, nails clean, trimmed and neat, hair pulled back and closed-toed shoes.
8. **Effect of license suspension or revocation.** No licensee shall solicit business or offer to perform massage services while under license suspension or revocation by the city.
9. **Massage of certain body parts prohibited.** At no time shall the massage therapist intentionally massage or offer to massage the penis, scrotum, mons veneris, vulva, vaginal area or breasts of a person, except that massage of pectoral muscles may be performed if requested by customer or patron.
10. **Restrictions regarding hours of operation.** No therapeutic massage enterprise shall be open for business, nor will any therapeutic massage therapist offer massage services, before 9:00 a.m. or after 9:00 p.m. any day of the week. No customers or patrons shall be allowed to remain upon the licensed premises after 9:00 p.m. and before 9:00 a.m. daily. Support activities such as cleaning, maintenance and bookkeeping are allowed outside of business hours.
11. **Proof of local residency required.**
  - a. In the case of a therapeutic massage enterprise, the licensee, managing partner, or manager of the licensed premise must show proof of residency within 150 miles of the city.
  - b. In the case of therapeutic massage therapists, the licensee must show proof of residing within 150 miles of the city.

- 12. Inspections.** In light of the high risk of involvement with illegal conduct an establishment providing massage therapy poses to the general public, the issuing authority, environmental health department or designee, and/or the city police department shall have the right to enter, inspect, and search the licensed premises during the hours in which the licensed premises is open for business to ensure compliance with all provisions of this section. Any search of the licensed premises are subject to reasonableness standards as recognized by the courts; search warrants will be secured when applicable. Any entry into a private residence will require either consent, exigent circumstances, or a search warrant. With reasonable notice, the business records of the licensee, including income tax returns, shall be available for inspection during the hours in which the licensed premises is open for business. The licensee is subject to a \$250.00 fee for a third inspection, if orders to correct are issued to the licensee and those orders are not corrected upon re-inspection. Licenses shall be granted only to establishments which can meet the safety and sanitary requirements of the city and of the building code regulations of the city and state.
- 13. Posting of rates.** All massage enterprise businesses must post their rates for service in a prominent place in the entrance or lobby of the business.
- 14. Illegal activities.** In addition to the license restrictions set forth in this section, any advertising by a licensee or representative of licensee of any potential unlawful, misleading, sexually explicit, obscene or erotic conduct at the licensed establishment shall be prohibited. A licensee under this chapter shall be strictly responsible for the conduct of the business being operated in compliance with all applicable laws and ordinances, including the actions of any employee or agent of the licensee on the licensed premises. No audio or visual recording is allowed at anytime.
- 15. Restrictions involving minors.** No person under the age of 18 shall be permitted at any time to be in or on the licensed premises as a customer, guest, or employee, unless accompanied by his/her parent or guardian.
- 16. Food preparation.** Food preparation on site shall only occur in locations specifically designed for that purpose and with proper building permits having been obtained. Food preparation is limited to use for employees during breaks during the regular shift.
- 17. Habitation.** Massage enterprises shall not contain nor allow the use by any person of sleeping quarters or living spaces of any kind intended for habitation, including but not limited to beds, cots, or mattresses. Home-based enterprises shall not contain nor allow the use by any person of sleeping quarters or living spaces of any kind intended for habitation, including but not limited to beds, cots, or mattresses in any area where massage is performed.

**18. Intoxicating alcoholic beverages.** Per Minn. Stats. § 340A.401, no person may directly or indirectly, on any pretense or by any device, sell, barter, keep for sale, charge for possession or otherwise dispose of intoxicating alcoholic beverages onsite. Intoxicating alcoholic beverages does not include alcohol used in direct conjunction with massage therapy such as in cleaning.

**19. Sign permit required.** In the event of transfer or new ownership of any existing massage enterprise.

**Subd. 12. Restrictions regarding sanitation, health and safety.**

1. **Toilet room requirements.** A licensed therapeutic massage enterprise shall be equipped with adequate and conveniently located toilet rooms for the accommodation of its employees and patrons. The toilet room shall be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room shall be kept clean and in good repair and shall be adequately lighted.
2. **Paper/linen requirements.** A licensed therapeutic massage enterprise shall provide single-service disposal paper or clean linens to cover the massage therapy table or, chair, on which the patron receives the massage; or in the alternative, if the massage therapy table or, chair, on which the patron receives the massage is made of material impervious to moisture, such massage therapy table or chair shall be properly sanitized after each massage.
3. **Washing of hands required.** The massage therapist shall wash his or her hands and arms with water and soap, anti-bacterial scrubs, alcohol, or other disinfectants prior to and following each massage service performed.
4. **Door latches and locks.** Doors on massage therapy rooms shall not be locked or capable of being locked. Locks, latches or other devices intended to secure a door so as to prevent it from being opened by any person from either side of the door with or without a key cannot be present on any doors of rooms intended for massage therapy.
5. **Equipment.** All modalities shall be performed on a raised massage therapy table or chair; no bed, mattress or other similar type equipment shall be allowed onsite except for a mat similar to those used in yoga. No modality may be performed that requires a massage therapist to stand on the massage therapy table or chair unless necessary due to size ratio of massage therapist/client.
6. **Prohibited modalities.** Modalities involving work performed on the floor or requiring a massage therapist to stand on a massage therapy table, including but not limited to Shiatsu are strictly prohibited unless completely clothed and massage therapist is certified in Shiatsu or other modality by an accredited institution or program.

**Subd. 13. Term, renewal of license.**

1. The term of a massage therapist license and a therapeutic massage enterprise license is one year. If an individual or enterprise submits a new application any time during a calendar year, the term shall expire December 31 of the year of issuance. The new application license fee for a partial calendar year may be prorated to one-half of the annual fee if an application is filed with the issuing authority after June 30.
2. Licenses must be renewed annually. A massage therapist license issued under this section shall expire on December 31 of the year of issuance of the license. A therapeutic massage enterprise license issued under this section shall expire on December 31 of the year of issuance. An application for the renewal of an existing license shall be made at least 75 days prior to the expiration date of the license and shall be made in such form as the issuing authority requires.
3. An application for a renewal of an enterprise or individual license shall be made on the renewal application form provided by the City. The license and investigation fees for a renewal shall be the same as those contained in Chapter 2, Section 2.19 of this City Code. If the license holder is a corporation, licenses must also be renewed within 30 days whenever more than ten percent of the corporation's stock is transferred. If the license holder is a partnership, the license must also be renewed within 30 days whenever a new partner is added to the partnership. If the license holder is an LLC, the license must be renewed within 30 days whenever a change in membership or chief manager occurs.
4. After the completion of the renewal license verification process, the issuing authority shall present the enterprise license application to the city council in accordance with this section. If the application is denied, the city clerk shall notify the applicant of the determination in writing and by regular mail to the address provided on the application form. The notice shall inform the applicant of the right, within 20 days after receipt of the notice by the applicant, to request an appeal of the denial. If an appeal is timely received by the city clerk, the hearing before a hearing officer, on behalf of the city council, shall take place within a reasonable period of receipt of the appeal by the issuing authority.
5. After the completion of the renewal license verification process, the issuing authority shall issue the massage therapist license in accordance with this section. If the application is denied, the city clerk shall notify the applicant of the determination in writing and by regular mail to the address provided on the application form. The notice shall inform the applicant of the right, within 20 days after receipt of the notice by the applicant, to request an appeal of the denial. If an appeal is timely received by the city clerk, the hearing before a hearing officer, on behalf of the city council, shall take place within a reasonable period of receipt of the appeal by the issuing authority.

**Subd. 14. Sanctions for license violations.**

1. **Suspension or revocation.** A hearing officer, on behalf of the city council may impose an administrative penalty, suspend or revoke a license issued pursuant to this section, at its discretion, for:
  - a. A violation related to fraud, misrepresentation, or false statement contained in a license application or a renewal application.
  - b. A violation related to fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business.
  - c. Any violation of this section or state law.
  - d. A violation by any licensee or individual that is directly related to the occupation or business licensed as defined by Minn. Stat. § 364.03, subd. 2.
  - e. Conducting the licensed business or occupation in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the community.
  - f. If the owner, manager, lessee or any of the employees are found to be in control or possession of an alcoholic beverage, a narcotic drug or controlled substance on the premises, other than drugs which may be purchased over the counter without a prescription or those for which the individual has a prescription.
  - g. If the holder of an enterprise license fails to maintain with the issuing authority a current list of all employees of such licensed premises. The list shall include all massage therapists licensed under this section.
  - h. A material variance in the actual plan and design of the premises from the plans submitted.
  - i. Neither the charging of a criminal violation nor a criminal conviction is required in order for the hearing officer on behalf of the council or issuing authority to impose an administrative penalty or suspend, deny or revoke a license.
  - j. In the event of multiple massage enterprise locations, any license suspension/revocation shall apply to any and all massage enterprise locations within the City of Becker.
  
2. **Notice and hearing.** A revocation or suspension by the hearing officer, on behalf of the city council, shall be preceded by written notice to the licensee. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice shall be mailed by

regular mail to the licensee at the most recent address listed on the license application.

3. **Ability to reapply after revocation.** The holder of a massage enterprise license or massage therapist license may not reapply for a new license for a period of five years if their license is revoked under this section.
4. **Ability to reapply after denial.** The applicant for a massage enterprise license or massage therapist license may not reapply for a license for a period of five years if the applicant's license has previously been denied due to fraud, misrepresentation, or false statement contained in a previous license or renewal application.
5. **Previous license infractions.** In the event there is a license infraction or a pending citation involving a licensed establishment and/or a licensed massage therapist, the city may, at its option, choose to not to take action on any license or renewal application until such infraction or pending citation has been resolved. The applicant for a massage enterprise license or massage therapist license may not be eligible to reapply for a license for a period of five years if the licensee is convicted of any violation of the ordinance.

**Subd. 15. Suspension of license for violations.** The chief of police or his or her designee may immediately suspend a license, pending a hearing, if the licensee, or any person working on behalf of the licensee, is determined to be conducting business in an unlawful manner, any manner that constitutes a breach of the peace or a menace to the health, safety, or general welfare of the public, or after repeated complaints received regarding conduct of business practices or method of solicitation.

**Subd. 16. Violations and penalties.** Any person or entity violating the provisions of this section is guilty of a misdemeanor under Minnesota law and shall be punished by a fine or by imprisonment, or both, together with the costs of prosecution. Each violation of this section shall constitute a separate offense. The facts leading to arrests, charges, or conviction of a violation of this section, while not required, may be considered in identifying grounds for the nonrenewal, suspension, denial or revocation of any license issued under this section.

**Subd. 17. Severability.** If any section, subsection, sentence, clause, or phrase of this section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this section. The city council hereby declares that it would have adopted the section in each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Source: Ordinance 242, 2<sup>nd</sup> Series; Effective Date: 10-13-2021.

(Sections 6.28 through 6.98, inclusive, reserved for future expansion.)

**SEC. 6.99 VIOLATION A MISDEMEANOR.** A person violates a Section, Subdivision, Paragraph or Provision of this Chapter when that person performs an act thereby prohibited or declared unlawful, and upon conviction thereof, such violation shall be punishable as a misdemeanor except as otherwise stated in specific provisions thereof.