

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. GENERAL LICENSING PROVISIONS**
- 111. COMMERCIAL AMUSEMENTS**
- 112. LIQUOR REGULATIONS**
- 113. PEDDLERS AND SOLICITORS**
- 114. TATTOO AND BODY PIERCING SERVICES**
- 115. TOBACCO REGULATIONS**
- 116. REGULATING LAWFUL GAMBLING**
- 117. GARAGE AND RUMMAGE SALES**
- 118. REGULATION OF PUBLIC DANCES AND SPECIAL EVENTS**
- 119. SEXUALLY ORIENTED BUSINESSES**

CHAPTER 110: GENERAL LICENSING PROVISIONS

Section

- 110.01 Licenses required to engage in certain businesses
- 110.02 Application for license
- 110.03 Issuance of license
- 110.04 Date and duration of license
- 110.05 License not transferable
- 110.06 License certificate to be displayed
- 110.07 Revocation or suspension
- 110.08 Appeal and review

§110.01 LICENSES REQUIRED TO ENGAGE IN CERTAIN BUSINESSES.

No person shall engage in any of the trades, businesses, or professions for which licenses are required by Title XI of this code or by any other ordinance of the city or provision of this code without first applying for and obtaining a license from the City Administrator or other duly authorized issuing authority.
Penalty, see §10.99

§110.02 APPLICATION FOR LICENSE.

(A) All original applications for licenses, unless otherwise specifically provided, shall be made to the City Administrator or other authorized official in writing upon forms to be furnished by him or her and shall contain:

- (1) The applicant's full name, address, and telephone number, and the full name of each officer, partner or business associate, if applicable;
- (2) His or her present occupation and principal place of business;
- (3) His or her place of residence for the preceding five years;
- (4) The nature and location of the intended business or enterprise;
- (5) The period of time for which the license is desired;

City of Browns Valley Code - Business Regulations

(6) A description of the merchandise, goods or services to be sold;

(7) If a motor vehicle is to be used, a full description of the motor vehicle, including the make, model, year, color, license number, and vehicle registration (VIN) number of the vehicle.

(8) Other information concerning the applicant and his or her business as may be reasonable and proper, having regard to the nature of the license desired.

(B) Any change in the information required by division (A) of this section must be reported to the City Administrator or other authorized official within 14 days of that change.

(C) Renewal of an annual license may be granted to a licensee in good standing on the basis of the original application, unless otherwise provided. However, if a request for renewal is not submitted to the City Administrator or other authorized official within 21 days after the date of expiration for the preceding license, the applicant must fill out an original application.

(D) With each original or renewal application, the applicant shall deposit the fee required for the license requested.

(E) It shall be unlawful to knowingly make any false statement or representation in the license application.

Penalty, see §10.99

§110.03 ISSUANCE OF LICENSE.

Upon receipt of an application for a license, accompanied by the proper fee if approval by another officer or department is not required, the City Administrator, shall deposit the fee in the general fund of the city and issue to the applicant a proper license certificate signed by the City Administrator.

§110.04 DATE AND DURATION OF LICENSE.

A license shall not be valid beyond the expiration date therein specified and, unless otherwise provided, shall not extend beyond December 31 of the year issued. However, at any time after December 1, licenses may be issued for the next calendar year. Unless otherwise specified, the full annual fee will be required of licensees irrespective of the date of issuance of the license.

§110.05 LICENSE NOT TRANSFERABLE.

Every license shall be issued to a real party in interest in the enterprise or business, and unless otherwise provided, no license shall be assigned or transferred.

Penalty, see §10.99

§110.06 LICENSE CERTIFICATE TO BE DISPLAYED.

Every licensee carrying on business at a fixed location shall keep posted in a prominent place upon the premises the license certificate. Other licensees shall carry their licenses at all times, and whenever requested by any officer or citizen, shall exhibit the license.

Penalty, see §10.99

§110.07 REVOCATION OR SUSPENSION.

(A) Any license may be suspended or revoked by the City Administrator or City Council at any time for the following reasons:

(1) For conditions or considerations which, had they existed at the time of issuance, would have been valid grounds for its denial;

(2) For any misrepresentation of a material fact in the application discovered after issuance of the license;

(3) For any misrepresentation or materially false statement made in the course of carrying on the trade, business or profession;

(4) For violation of any provision of this chapter or other federal, state or municipal law or ordinance relating to the operation of the business or enterprise for which the license has been issued; or

(5) Upon conviction of a licensee for any federal, state or municipal law or ordinance involving the creation of a nuisance, a breach of the peace, interference with the rights of property owners, or any other offense constituting a threat to the public health, safety, morals or general welfare of the public.

(B) The suspension or revocation shall become effective upon notice served upon the licensee. The notice shall contain a written summary of the reasons for the suspension or revocation and a statement concerning the right to appeal the decision. The notice shall be delivered by certified mail, return receipt requested, to the address given on the licensee's application.

§110.08 APPEAL AND REVIEW.

In case any applicant has been denied a license by the City Administrator, or if his or her license has been suspended or revoked by the City Administrator, the applicant or licensee shall within ten business days have the right to appeal to the City Council from the denial, suspension or revocation. Notice of appeal shall be filed in writing with the City Administrator or other authorized official. Notice of appeal shall be filed in writing with the City Administrator. Unless a regular meeting of the City Council at which the appeal can be heard is

scheduled within 21 days after receiving the notice of appeal, the Mayor shall schedule a special meeting of the City Council for the hearing within the 21-day period. Three members of the City Council shall constitute a quorum to hear the appeal. The appellant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of the City Council present at the meeting declare in favor of the applicant, the license shall be issued or fully reinstated as the case may be; otherwise the suspension or revocation shall become final.

CHAPTER 111: COMMERCIAL AMUSEMENTS

Section

- 111.01 Bowling; billiards and pool
- 111.02 Circuses, carnivals, shows and other entertainment
- 111.03 Amusement devices
- 111.04 Deposit required
- 111.05 License fee for public entertainment or exhibition
- 111.06 Amusement rides

§111.01 BOWLING; BILLIARDS AND POOL.

Each proprietor of a billiard or pool table or of a bowling alley, or a combination of both, shall pay an annual license fee in an amount established in the Ordinance Establishing Fees and Charges adopted pursuant to §30.11, as it may be amended from time to time.

Penalty, see §10.99

§111.02 CIRCUSES, CARNIVALS, SHOWS AND OTHER ENTERTAINMENT.

(A) (1) Pursuant to M.S. §437.07, as it may be amended from time to time, each person, desiring to conduct, stage or give a circus, carnival, theatrical exhibition, public show, athletic game or other entertainment, for which there is a charge for admission, shall first obtain a license and pay the license fee or fees as established by the Ordinance Establishing Fees and Charges adopted pursuant to §30.11 of this code, as that ordinance may be amended from time to time.

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

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

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

Penalty, see §10.99

§111.03 AMUSEMENT DEVICES.

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

(B) A person, firm, corporation or association must not display for public use any coin-operated mechanical amusement device without obtaining a license for it and paying the fee established in the Ordinance Establishing Fees and Charges adopted pursuant to §30.11 of this code, as that ordinance may be amended from time to time. Applications for a license must be made to the City Administrator.

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

Penalty, see §10.99

§111.04 DEPOSIT REQUIRED.

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

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

Penalty, see §10.99

§111.05 LICENSE FEE FOR PUBLIC ENTERTAINMENT OR EXHIBITION.

The fee for the license shall be in an amount as established in the Ordinance Establishing Fees and Charges adopted pursuant to §30.11 of this code, as that ordinance may be amended from time to time.

§111.06 AMUSEMENT RIDES.

(A) For the purposes of this section *AMUSEMENT RIDE* shall mean a mechanical device that carries or conveys passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement subject to regulation under M.S. §184B.01 through §184B.09, as it may be amended from time to time. *AMUSEMENT RIDE* does not include:

(1) A coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator; or

(2) Nonmechanized playground equipment, including but not limited to swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, playground slides, trampolines, and physical fitness devices;

(3) Any other amusement device regulated under §111.03 of this code, as that ordinance may be amended from time to time.

(B) A person, firm, corporation or association must not operate an amusement ride without first obtaining a license under §111.02 of this code, as that ordinance may be amended from time to time and providing the City Administrator with a copy of:

(1) A certificate stating that the insurance required by M.S. §184B.02, as it may be amended from time to time, is in effect; and

(2) An affidavit attesting that the inspection required by M.S. §184B.03, as it may be amended from time to time, has been performed. The City Administrator, upon receipt shall furnish such information to the local law enforcement office.

CHAPTER 112: LIQUOR REGULATIONS

Section

General Provisions

- 112.01 Adoption of state law by reference
- 112.02 City may be more restrictive than state law
- 112.03 Definitions
- 112.04 Nudity on the premises of licensed establishments prohibited
- 112.05 Consumption in public places

Licensing

- 112.20 Number of licenses which may be issued
- 112.21 Term and expiration of licenses
- 112.22 Kinds of liquor licenses
- 112.23 License fees; pro rata
- 112.24 Council discretion to grant or deny a license
- 112.25 Application for license
- 112.26 Description of premises
- 112.27 Applications for renewal
- 112.28 Transfer of license
- 112.29 Investigation
- 112.30 Hearing and issuance
- 112.31 Restrictions on issuance
- 112.32 Conditions of license
- 112.33 Hours and days of sale
- 112.34 Minors on premises
- 112.35 Restrictions on purchase and consumption
- 112.36 Suspension and revocation

Municipal Liquor Stores

- 112.50 Application of this subchapter
- 112.51 Existing municipal stores continued
- 112.52 Location
- 112.53 Operation
- 112.54 Proof of financial responsibility
- 112.55 Issuance of other licenses

- 112.99 Penalties

GENERAL PROVISIONS**§112.01 ADOPTION OF STATE LAW BY REFERENCE.**

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

§112.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

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

§112.03 DEFINITIONS.

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

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

RESTAURANT. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a *Restaurant* as defined by this section, an establishment shall have a license from the state as required by M.S. §157.16, as it may be amended from time to time, and meet the definition of either a *Small establishment*, a *Medium establishment* or a *Large establishment* as defined in M.S. §157.16, Subd. 3d, as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this chapter unless it meets the definitions of “small establishment”, “medium establishment” or “large establishment.”

§112.04 NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.

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

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

(C) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or the imposition of a civil penalty under the provisions of §112.99(B).
Penalty, see §112.99

§112.05 CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this chapter, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted.
Penalty, see §112.99

LICENSING

§112.20 NUMBER OF LICENSES WHICH MAY BE ISSUED.

State law establishes the number of liquor licenses that a city may issue. However, the number of licenses which may be granted under this chapter is limited to the number of license which were issued as of the effective date of this chapter, even if a larger number of licenses are authorized by law or election. The Council in its sound discretion may provide by ordinance that a larger number of licenses may be issued up to the number of licenses authorized by M.S. Ch. 340A, as it may be amended

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

§112.21 TERM AND EXPIRATION OF LICENSES.

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

§112.22 KINDS OF LIQUOR LICENSES.

The Council of a city that does not have a municipal liquor store is authorized to issue the following licenses and permits, up to the number specified in §112.20. The Council of a city which has a municipal liquor store is authorized to issue only those licenses specified in §112.55.

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

(B) 3.2 percent malt liquor off-sale license.

(C) Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization.

(D) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores or drug stores that have an off-sale license which was first issued on or before May 1, 1994. The fee for an off-sale intoxicating liquor license established by the Council under §112.23 shall not exceed \$100 or a greater amount which may be permitted by M.S. §340A.408, Subd. 3, as it may be amended from time to time.

(E) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by M.S. §340A.101, as it may be amended from time to time, and this chapter: hotels, restaurants, bowling centers, theaters, clubs or congressionally chartered veterans organizations, and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under §112.23 shall not exceed the amounts provided for in M.S. §340A.408, Subd. 2b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off

the licensed premises at a community festival held within the city under the provisions of M.S. §340A.404, Subd. 4b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of M.S. §340A.404, Subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

(F) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M.S. §340A.504, Subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in §112.03, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council under the provisions of §112.23, shall not exceed \$200, or the maximum amount provided by M.S. §340A.504, Subd. 3c, as it may be amended from time to time.

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

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

(I) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: theaters, restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of M.S. §340A.404, Subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in §112.03; and to licensed bed and breakfast facilities which meet the criteria in M.S. §340A.401, Subd. 1, as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of §112.23 shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

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

(K) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of §112.23 shall not exceed \$300, or the maximum amount permitted by M.S. §340A.14, Subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.

(L) Culinary class limited on-sale licenses may be issued to a business establishment not otherwise eligible for an on-sale intoxicating liquor license that, as part of its business, conducts culinary or cooking classes for which payment is made by each participant or advance reservation required. The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or 12 ounces of intoxicating malt liquor, during and as part of the class, for consumption on the licensed premises only.

(M) Temporary off-sale wine licenses, with the approval of the Commission of Public Safety, may be issued for the off-sale of wine at an auction. A license issued under this subdivision authorizes the sale of only vintage wine of a brand and vintage that is not commonly being offered for sale by any wholesaler in Minnesota. The license may authorize the off-sale of wine for not more than three consecutive days provided not more than 600 cases of wine are sold at any auction. The licenses are subject to the terms, including license fee, imposed by §112.23.

(N) Brew pub on-sale intoxicating liquor or on-sale 3.2% malt liquor licenses, with the approval of the Commissioner of Public Safety, may be issued to brewers who operate a restaurant in their place of manufacture and who meet the criteria established at M.S. §340A.301, Subd. 6(d) and 7(b), as it may be amended from time to time. Sales under this license at on-sale may not exceed 3,500 barrels per year. If a brew pub licensed under this section possesses a license for off-sale under division (O) below, the brew pub=s total combined retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

(O) Brewer off-sale intoxicating liquor license, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under division (N) above or that produces fewer than 3,500 barrels of malt liquor in a year and otherwise meets the criteria established as M.S. §340A.301, Subd. 6(d) and 7(b), as it may be amended from time to time. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the city. Malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. All malt liquor sold under this license shall be packaged in the manner required by M.S. §340A.301, Subd. 7 as it may be amended from time to time. Sales under this license may not exceed 500 barrels per year. If a brewer licensed under this section possesses a license under division (N) above, the brewer=s total retail sales at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

(P) Brewer temporary on-sale intoxicating liquor licenses may be issued, with the approval of the Commissioner of Public Safety, to brewers who manufacture fewer than 3,500 barrels of malt liquor in a year for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer.

§112.23 LICENSE FEES; PRO RATA.

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

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

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

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

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

(F) Off-sale intoxicating liquor licensees may request a reduction in their annual license fee by the amount specified in M.S. §340A.408 if at the time of initial application or renewal they:

(1) Agree to have a private vendor approved by the city train all employees within 60 days of hire and annually thereafter in laws pertaining to the sale alcohol, the rules for identification checks, and the responsibilities of establishments serving intoxicating liquors;

(2) Post a policy requiring identification checks for all persons appearing to be 30 years old or less;

(3) Establish a written cash award and incentive program to award employees who catch underage drinkers and a written penalty program to punish employees in the event of a failed compliance check;

(4) Failure to abide by the provisions of this division may result in suspension of the license until the conditions of the fee reduction are met and may result in suspension and/or revocation of the license pursuant to §112.36 of this chapter.

§112.24 COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.

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

§112.25 APPLICATION FOR LICENSE.

(A) *Form.* Every application for a license issued under this chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as

to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.

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

Penalty, see §112.99

§112.26 DESCRIPTION OF PREMISES.

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

§112.27 APPLICATIONS FOR RENEWAL.

At least 90 days before a license issued under this chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

§112.28 TRANSFER OF LICENSE.

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

Penalty, see §112.99

§112.29 INVESTIGATION.

(A) *Preliminary background and financial investigation.* On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of \$500 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

(B) *Comprehensive background and financial investigation.* If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be \$500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

§112.30 HEARING AND ISSUANCE.

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

§112.31 RESTRICTIONS ON ISSUANCE.

(A) Each license shall be issued only to the applicant for the premises described in the application.

(B) Not more than one license shall be directly or indirectly issued within the city to any one person.

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

(D) No license shall be issued for any place or any business ineligible for a license under state law.

(E) No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing on the effective date of this chapter or to the renewal of an existing license.

(F) No license shall be granted within 500 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.

Penalty, see §112.99

§112.32 CONDITIONS OF LICENSE.

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

(A) Within 90 days after employment, every person selling or serving liquor in an establishment which has an on-sale license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.

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

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

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

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

(F) Failure by an off-sale intoxicating liquor licensee who has received a fee reduction pursuant to §112.23(F) of this chapter to abide with the provisions of §112.23(F).

Penalty, see §112.99

§112.33 HOURS AND DAYS OF SALE.

(A) The hours of operation and days of sale shall be those set by M.S. §340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows.

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

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

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

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

Penalty, see §112.99

§112.34 MINORS ON PREMISES.

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

(B) No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

Penalty, see §112.99

§112.35 RESTRICTIONS ON PURCHASE AND CONSUMPTION.

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

Penalty, see §112.99

§112.36 SUSPENSION AND REVOCATION.

(A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. ' §14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

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

(1) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of §112.04, the license shall be revoked.

(2) The license shall be suspended by the Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:

(a) For the first violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.

(b) For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

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

(d) For a fourth violation within any three-year period, the license shall be revoked.

(3) The Council shall select the day or days during which the license will be suspended.

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

(D) The provisions of §112.99 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.
Penalty, see §112.99

MUNICIPAL LIQUOR STORES

§112.50 APPLICATION OF THIS SUBCHAPTER.

This subchapter, consisting of ' §112.50 through 112.55, applies only to a city that has in existence on the effective date of this chapter a municipal liquor store.

§112.51 EXISTING MUNICIPAL STORES CONTINUED.

If the city has in existence on the effective date of this chapter a municipal liquor store for the sale of intoxicating liquor, the store is continued. Except as provided in §112.55, no intoxicating liquor may be sold at retail elsewhere in the city.
Penalty, see §112.99

§112.52 LOCATION.

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

§112.53 OPERATION.

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

(B) *Other employees.* The Council may also appoint additional employees as may be required and shall fix their compensation. All employees, including the Manager, shall hold their positions at the pleasure of the Council. No person under the age of 18 shall be employed in the store. The Council may require the employees to furnish surety bonds conditioned for the faithful discharge of their duties in a sum as specified by the Council. The premium on the bond may be paid by the city or the employees, as the Council determines.

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

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

(E) *Hours of operation.* The hours during which the sale of intoxicating liquor may be sold shall be as provided in §112.33. No person, other than the Manager or a store employee, may remain in the municipal liquor store longer than one-half hour after the time when the sale of intoxicating liquor must cease. Penalty, see §112.99

§112.54 PROOF OF FINANCIAL RESPONSIBILITY.

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

§112.55 ISSUANCE OF OTHER LICENSES.

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

(B) *Off-sale licenses for the sale of intoxicating liquor.* State law does not authorize the issuance of off-sale licenses for the sale of intoxicating liquor by cities which operate a municipal liquor dispensary.

(C) *On- and off-sale 3.2 percent malt liquor licenses.* The Council may issue 3.2 percent malt liquor licenses in its sound discretion as provided in this chapter.

§112.99 PENALTIES.

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

(B) The Council shall impose a civil penalty of up to \$2,000 for each violation of M.S. Ch. 340A, as it may be amended from time to time, and of this chapter. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, M.S. ' §14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the licenses is revoked:

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

(C) The term *violation* as used in this section includes any and all violations of the provisions of this chapter, or of M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.

AMENDMENT TO ORDINANCE SECTION 112
AN ORDINANCE DEALING WITH LIQUOR REGULATIONS
IN THE CITY OF BROWNS VALLEY

Findings.

1. The existing Ordinance concerning liquor regulations contains provisions concerning the number of liquor licenses that can be issued, as well as provisions for the City operating a municipal liquor store.
2. The City is in the process of selling the City's municipal liquor store, requiring these provisions to be changed or rendering them obsolete.
3. The Browns Valley City Council believes that it is in the best interests of the residents of the City of Browns Valley to modify its Ordinance in order to reflect the regulation of liquor within the City of Browns Valley.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BROWNS VALLEY ORDAINS AS FOLLOWS:

1. That Browns Valley City Ordinance **Section 112.20** is hereby amended to read as follows:

“State law establishes the number of liquor licenses that a city may issue. However, the number of licenses which may be granted under this chapter for the next five years is limited to two, even though a larger number of licenses are authorized by law or election. This limitation does not apply to temporary licenses for malt beverages or wine, which are governed by M.S. §340A.410, Subd. 10, as it may be amended from time to time. At the expiration of the five years, the Council in its sound discretion may provide by ordinance that a larger number of licenses may be issued up to the number of licenses authorized by M.S. Ch. 340A, as it may be amended from time to time. If a larger number of licenses in a particular category has been authorized by a referendum held under the provisions of M.S. §340A.413, Subd. 3, as it may be amended from time to time, but not all of them have been issued, the larger number of licenses is no longer in effect until the Council by ordinance determines that any or all of the licenses may be issued. The Council is not required to issue the full number of licenses that it has available.”

2. That the first paragraph of Browns Valley City Ordinance **Section 112.22** is hereby amended to read as follows:

“The Council is authorized to issue the following licenses and permits, up to the number specified in §112.20.”

3. That Browns Valley City Ordinance **Sections 112.50 through 112.55**, which pertain municipal liquor stores, is hereby repealed.

PASSED AND ADOPTED this 14th day of April, 2014.

BROWN VALLEY CITY COUNCIL

Brenda Bartz
Brenda Bartz, Mayor

ATTEST:

Thomas Schmitz
Thomas Schmitz, City Administrator

Adoption: 4/14/14 4-0
Motion: Warren
Seconded: Dusing
Published: 04/22/14

AMENDMENT TO ORDINANCE SECTION 112

**AN ORDINANCE DEALING WITH LIQUOR REGULATIONS
IN THE CITY OF BROWNS VALLEY**

Findings.

1. The existing Ordinance concerning liquor regulations contains a provision prohibiting the issuance of a liquor license to a person or persons who reside outside the State of Minnesota.
2. The City is in the process of selling the City's municipal liquor store to a person who resides outside the State of Minnesota.
3. The Browns Valley City Council believes that it is in the best interests of the residents of the City of Browns Valley to modify its Ordinance to allow non-Minnesota residents to receive a liquor license.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BROWNS VALLEY ORDAINS
AS FOLLOWS:**

1. That Browns Valley City Ordinance Sections 112.31(E) is hereby repealed.

PASSED AND ADOPTED this 28th day of April, 2014.

BROWN VALLEY CITY COUNCIL

Brenda Bartz, Mayor

ATTEST:

Thomas Schmitz, City Administrator

Adoption: 4-1
Motion: Dusing
Seconded: Warren
Published:

CHAPTER 113: PEDDLERS AND SOLICITORS

Section

- 113.01 Definitions
- 113.02 Exceptions to definitions
- 113.03 Licensing; exemptions
- 113.04 License ineligibility
- 113.05 License suspension and revocation
- 113.06 License transferability
- 113.07 Registration
- 113.08 Prohibited activities
- 113.09 Exclusion by placard
- 113.10 Effectiveness

§113.01 DEFINITIONS.

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

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

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

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

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

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

§113.02 EXCEPTIONS TO DEFINITIONS.

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

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

(C) Nothing in this chapter shall be interpreted to prohibit or restrict door-to-door advocacy. Persons engaging in door-to-door advocacy shall not be required to register as solicitors under §113.07. The term **DOOR-TO-DOOR ADVOCACY** includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas.

§113.03 LICENSING; EXEMPTIONS.

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

(B) *City license required.* Pursuant to M.S. §437.02, as it may be amended from time to time, except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register pursuant to §113.07.

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

- (1) Applicant's full legal name.
- (2) All other names under which the applicant conducts business or to which applicant officially answers.
- (3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, and the like).
- (4) Full address of applicant's permanent residence.
- (5) Telephone number of applicant's permanent residence.
- (6) Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent.
- (7) Full address of applicant's regular place of business (if any).
- (8) Any and all business related telephone numbers of the applicant.
- (9) The type of business for which the applicant is applying for a license.
- (10) Whether the applicant is applying for an annual or daily license.
- (11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days).

(12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.

(13) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses.

(14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant.

(15) Proof of any requested county license.

(16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.

(17) A general description of the items to be sold or services to be provided.

(18) All additional information deemed necessary by the City Council.

(19) The applicant's driver's license number or other acceptable form of identification.

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

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established in the Ordinance Establishing Fees and Charges, adopted pursuant to §30.11, as it may be amended from time to time.

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Administrator, within two regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the City Administrator determines that the application is incomplete, the City Administrator must inform the applicant of the required necessary information that is missing. If the application is complete, the City Administrator must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving a complete application the City Administrator must issue the license unless there exist grounds for denying the license under §113.04, in which case the Administrator must deny the license. If the City Administrator denies the license, the applicant must be notified in writing of the decision, the reason for denial, and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request. The decision of the City Council following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

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

(G) *License exemptions.*

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

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

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

§113.04 LICENSE INELIGIBILITY.

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

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

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

(C) The conviction of the applicant within the past 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 license is being sought in an honest and legal manner. Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.

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

(E) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant

with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years.

§113.05 LICENSE SUSPENSION AND REVOCATION.

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

- (1) Fraud, misrepresentation or incorrect statements on the application form.
- (2) Fraud, misrepresentation or false statements made during the course of the licensed activity.
- (3) Conviction of any offense for which granting of a license could have been denied under §113.04.
- (4) Violation of any provision of this chapter.

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

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

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

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

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

Penalty, see §10.99

§113.06 LICENSE TRANSFERABILITY.

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

Penalty, see §10.99

§113.07 REGISTRATION.

All solicitors, and any person exempt from the licensing requirements of this chapter under §113.03, shall be required to register with the city. Persons engaging in door-to-door advocacy shall not be required to register. The term *DOOR-TO-DOOR ADVOCACY* includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Administrator shall issue to the registrant a Certificate of Registration as proof of the registration. Certificates of Registration shall be non-transferable.

Penalty, see §10.99

§113.08 PROHIBITED ACTIVITIES.

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

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

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

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

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

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

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

(G) Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.
Penalty, see §10.99

§113.09 EXCLUSION BY PLACARD.

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

Penalty, see §10.99

§113.10 EFFECTIVENESS.

The provisions of ' §113.01, 113.02, 113.08 and 113.09 shall automatically apply upon adoption of this chapter. Sections 113.03, 113.04, 113.05, 113.06 and 113.07 shall not be effective until the adoption of a City Council resolution or ordinance authorizing the licensing of persons covered by those sections.

CHAPTER 114: TATTOO AND BODY PIERCING SERVICES

Section

- 114.01 Definitions
- 114.02 Prohibitions
- 114.03 Application for license; fees; issuance
- 114.04 Inspection of facilities
- 114.05 Suspension or revocation of license
- 114.06 Consent for performing procedures on persons under 18
- 114.07 Prohibitions relating to persons under 18
- 114.08 Defenses to violations
- 114.09 Training standards; records; safety and sanitation; equipment

§114.01 DEFINITIONS.

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

BOARD OF HEALTH. A Board of Health established under the provisions of M.S. §145A.03, as it may be amended from time to time. If the city does not have a Board of Health, then this term means the authority having the duties of a Board of Health in the city, including but not limited to the County Board of Health.

BODY PIERCING. Includes ear piercing except when the ear piercing procedure is performed with an ear piercing gun.

BUSINESS. Any entity that provides services for compensation.

EAR PIERCING GUN. A mechanical device that pierces the ear by forcing a disposable single-use stud or solid needle through the ear.

PARENT or **GUARDIAN.** Parent, guardian or other adult person having the primary care or custody of the minor.

TATTOO. Has the same meaning given in M.S. §609.2246, Subd. 2, as it may be amended from time to time.

§114.02 PROHIBITIONS.

No person shall do any of the following:

(A) Operate a business that offers tattooing or body piercing services unless the City Council issues it a license to do so;

(B) Perform a tattooing or body piercing procedure in a manner that does not meet the safety and sanitation standards established by this chapter and any federal, state or local laws, rules or regulations;

(C) Perform a tattooing procedure, body piercing procedure, or ear piercing procedure with an ear piercing gun in a manner that does not meet the standards for appropriate disinfection and sterilization of invasive equipment or parts of equipment used in performing the procedures established by this chapter and any federal, state or local laws, rules or regulations.

Penalty, see §10.99

§114.03 APPLICATION FOR LICENSE; FEES; ISSUANCE.

(A) A person seeking approval to operate a business that offers tattooing or body piercing services shall apply to the city on forms the city or the Board of Health shall prescribe and provide. The applicant shall submit all information the city and the Board of Health determines is necessary to process the application. The applicant shall include the fee established under the city's Ordinance Establishing Fees and Charges authorized by §30.11 as it may be amended from time to time, or as established by the Board of Health.

(B) To receive approval to offer tattooing or body piercing services, a business must demonstrate to the Board of Health the ability to meet the requirements established by this chapter and any federal, state or local laws, rules or regulations for safe performance of the tattooing or body piercing procedures, training of the individuals who perform the procedures, and maintenance of records.

(C) If the Board of Health determines, following an inspection conducted under §114.04, that a business meets the requirements for approval, it shall so advise the city. The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Administrator shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision. Approval remains valid for one year unless earlier suspended or revoked under §114.05. A business's approval may be renewed. Approval is not transferable.

Penalty, see §10.99

§114.04 INSPECTION OF FACILITIES.

The Board of Health, or a person or another body designed by the city, shall conduct at least one inspection of a business prior to approving the business under §114.03 to offer tattooing or body piercing services. The Board may conduct additional inspections as necessary for the approval process. The Board of Health may inspect an approved business at any time the Board considers necessary. In an inspection, the Board of Health shall be given access to the business's premises and to all records relevant to the inspection.

Penalty, see §10.99

§114.05 SUSPENSION OR REVOCATION OF LICENSE.

The City Council may suspend or revoke the approval of a business to offer tattooing or body piercing services at any time it determines that the business is being operated in violation of this chapter or any federal, state or local laws, rules or regulations. Proceedings for suspensions and revocations shall be conducted in accordance with rules adopted in Chapter 110 for the suspension or revocation of business licenses.

§114.06 CONSENT FOR PERFORMING PROCEDURES ON PERSONS UNDER 18.

(A) No person shall perform a tattooing procedure, body piercing procedure, or ear piercing procedure with an ear piercing gun on an individual who is under 18 years of age unless consent has been given by the individual's parent, guardian, or custodian in accordance with division (B) of this section. The consent must include both the custodial and non-custodial parents, where applicable.

(B) A parent, guardian or custodian of an individual under age 18 who desires to give consent to a business to perform on the individual under age 18 a tattooing procedure, body piercing procedure, or ear piercing procedure performed with an ear piercing gun shall do both of the following:

(1) Appear in person at the business at the time the procedure is performed;

(2) Sign a document provided by the business that explains the manner in which the procedure will be performed and methods for proper care of the affected body area following performance of the procedure.

Penalty, see §10.99

§114.07 PROHIBITIONS RELATING TO PERSONS UNDER 18.

(A) (1) unless consent has been given in accordance with §114.06, no individual who is under age 18 shall obtain or attempt to obtain a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

(2) No individual who is under age 18 shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of obtaining a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

(B) (1) No individual shall knowingly show or give any false information as to the name, age, or other identification of an individual who is under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

(2) No individual shall impersonate the parent, guardian or custodian of an individual who is under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

Penalty, see §10.99

§114.08 DEFENSES TO VIOLATIONS.

(A) An operator or employee of a business that performs tattooing services, body piercing services, or ear piercing services performed with an ear piercing gun may not be found guilty of a violation of §114.06(A) or any federal, state or local laws, rules or regulations in which age is an element of the provisions if:

(1) The individual obtaining a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun, at the time of so doing, exhibited to the operator or employee of the tattooing, body piercing, or ear piercing business a driver's or commercial driver's license or an identification card issued under state law showing that the individual was then at least age 18;

(2) The operator or employee made a bona fide effort to ascertain the true age of the individual obtaining a tattooing, body piercing, or ear piercing service by checking the identification presented, at the time of the service, to ascertain that the description on the identification compared with the appearance of the individual and that the identification had not been altered in any way; and

(3) The operator or employee had reason to believe that the individual obtaining a tattooing, body piercing, or ear piercing service was at least age 18.

(B) In any action or proceeding before a court of record in which a defense is raised under this section, the Registrar of Motor Vehicles or the Registrar's Deputy who issued a driver's or commercial driver's license or an identification card shall be permitted to submit certified copies of the records, in the Registrar's or Deputy's possession, of the issuance in lieu of the testimony of the personnel of the Bureau of Motor Vehicles at the hearing, action or proceeding.

§114.09 TRAINING STANDARDS; RECORDS; SAFETY AND SANITATION; EQUIPMENT.

(A) Each operator of a business that offers tattooing or body piercing services shall do all of the following:

(1) Maintain procedures for ensuring that the individuals who perform tattooing or body piercing procedures are adequately trained to perform the procedures properly;

(2) With respect to tattooing services, maintain written records that include the color, manufacturer and lot number of each pigment used for each tattoo performed;

(3) Comply with the safety and sanitation requirements for preventing transmission of infectious diseases, as established in any federal, state or local laws, rules or regulations;

(4) Require the individuals who perform tattooing and body piercing procedures to disinfect and sterilize all invasive equipment or parts of equipment used in performing the procedures by using methods that meet the disinfection and sterilization requirements established in any federal, state or local laws, rules or regulations;

(5) Ensure that weekly tests of the business's heat sterilization devices are performed to determine whether the devices are functioning properly. In having the devices tested, the operator of the business shall use a biological monitoring system that indicates whether the devices are killing microorganisms. If a test indicates that a device is not functioning properly, the operator shall take immediate remedial action to ensure that heat sterilization is being accomplished. The operator shall maintain documentation that the weekly tests are being performed. To comply with the documentation requirement, the documents must consist of a log that indicates the date on which each test is performed and the name of the person who performed the test or, if a test was conducted by an independent testing entity, a copy of the entity's testing report. The operator shall maintain records of each test performed for at least two years.

(B) Each operator of a business that offers ear piercing services performed with an ear piercing gun shall require the individuals who perform the ear piercing services to disinfect and sterilize the ear piercing gun by using chemical solutions that meet the disinfection and sterilization requirements established in any federal, state or local laws, rules or regulations.

Penalty, see §10.99

AMENDMENT TO SECTION 115 - TOBACCO ORDINANCE

**AN ORDINANCE REGULATING THE POSSESSION, SALE AND CONSUMPTION
OF TOBACCO AND TOBACCO RELATED DEVICES AND PRODUCTS
WITHIN THE CITY OF BROWNS VALLEY**

Findings.

1. The City of Browns Valley has an existing section in its Ordinances dealing with the regulation of the usage and sale of tobacco products;
2. It has come to the attention of the Browns Valley City Council that the regulations pertaining to this Ordinance have been updated by state statute, along with the introduction of a related product - vaping - that requires regulation, thus requiring similar amendments to the existing Ordinance; and
3. The Browns Valley City Council believes that it is in the best interests of the residents of the City of Browns Valley that the existing Tobacco Ordinance be changed and updated.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BROWNS VALLEY ORDAINS AS FOLLOWS:

1. That the existing Browns Valley Code of Ordinance - Section 115 Tobacco Ordinance is hereby revoked in its entirety.
2. That the new and updated Browns Valley Code of Ordinance - Section 115 Tobacco Ordinance, attached hereto, is hereby adopted in its entirety, and shall comprise the new Section 115.

PASSED AND ADOPTED this 13th day of April, 2020.

BROWNS VALLEY CITY COUNCIL

Mike Heck

ATTEST:

Jodi Hook, City Administrator

Adoption: 04/13/2020

Motion: Miller

Seconded: K. Warren

Published:

CHAPTER 115: TOBACCO REGULATIONS

AN ORDINANCE REGULATING THE POSSESSION, SALE AND CONSUMPTION OF TOBACCO AND TOBACCO RELATED DEVICES AND PRODUCTS WITHIN THE CITY OF BROWNS VALLEY, STATE OF MINNESOTA

Section

- 115.01 Purpose and intent
- 115.02 Definitions
- 115.03 License
- 115.04 Fees
- 115.05 Basis for denial of license
- 115.06 Prohibited sales
- 115.07 Self-service sales
- 115.08 Responsibility
- 115.09 Compliance checks and inspections
- 115.10 Other illegal acts
- 115.11 Exceptions and defenses
- 115.12 Severability and savings clause
- 115.13 Violations and penalty
- 115.14 Exceptions and defenses
- 115.15 Severability and savings clause
- 115.16 Effective date
- 115.17 Repealer

§115.01 PURPOSE AND INTENT.

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 18 violates both state and federal laws; and because studies, which the City accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of smokers begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because the CDC reports that as of November 20, 2019, there have been 2,290 cases of e-cigarette product use associated lung injury nationwide resulting in 47 deaths (widely known as "vaping" injuries and deaths); and because three of those deaths have occurred in Minnesota; and because the Surgeon General and the FDA Commissioner has labeled the recent uptick in youth use of electronic delivery devices as an "epidemic;" and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; 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 and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports and advisory, E-cigarette Use Among Youth and Young Adults (2016), The Health Consequences of Smoking-50 Years of Progress (2014), Preventing Tobacco Use Among Youth and Young Adults (2012), and Surgeon General's Advisory on E-Cigarette Use Among Youth (2018); the Centers for Disease Control and Prevention in their studies, Vital Signs: Tobacco Product Use Among Middle and High School Students - United States, 2011- 2018(2019), Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997(1998), and Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products (available at: https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html) (2019); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D'Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455-459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327-333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326-7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673-677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740-746; Minnesota Department of Health. (2018). Data Highlights from the 2017 Minnesota Youth Tobacco Survey. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking*. University of California - San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco/>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326-333, copies of which are adopted by reference.

§115.02 DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

- (A) ***Compliance Checks.*** The system the City uses to investigate and ensure that those authorized to sell licensed products and electronic delivery devices 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.
- (B) ***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 product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

- (C) **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.
- (D) **Licensed Products.** Collectively refers to any tobacco, tobacco-related device, or nicotine or lobelia delivery product.
- (E) **Loosies.** The common term used to refer to single cigarettes, cigars, and any other licensed product 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.
- (F) **Moveable Place of Business.** Any form of business operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.
- (G) **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 Lobelia Delivery Product** does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- (H) **Retail Establishment.** Any place of business where licensed products are available for sale to the general public. **Retail Establishment** includes, but is not be limited to, grocery stores, tobacco products shops, gasoline service stations, convenience stores, bars, and restaurants.
- (I) **Sale.** Any transfer of goods for money, trade, barter, or other consideration.
- (J) **Self-Service Merchandising.** Open displays of licensed products in any manner where any person shall have access to the licensed products, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed products between the customer and the licensee or employee. **Self-service merchandising** shall not include vending machines.
- (K) **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 product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose. For the purpose of this Tobacco Sale Ordinance, tobacco-related device does not include electronic delivery devices.

- (L) **Tobacco-Related Devices.** Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. **Tobacco-Related Devices** include components of tobacco-related devices or tobacco products, which may be marketed or sold separately. **Tobacco-Related Devices** may or may not contain tobacco. For the purpose of this Tobacco Sale Ordinance, tobacco does not include electronic delivery devices.
- (M) **Vending Machine.** Any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed products.

§115.03 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. No license shall be issued to sell electronic delivery devices, in accordance with Section 350.60, Sub. 1 of this Ordinance.
- (B) **Application.** An application for a license to sell licensed products shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicants 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 shall forward the application to the City Council for action at its next regularly scheduled meeting. If the City Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.
- (C) **Action.** The City Council may approve or deny the license, or it may delay action for such reasonable period of time necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.
- (D) **Term.** All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.
- (E) **Revocation or Suspension.** Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.
- (F) **Transfers.** All licenses issued under this ordinance shall be valid only on the premises for which

the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.

- (G) *Moveable Place of Business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.
- (H) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- (I) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.
- (J) *Issuance is a Privilege Not a Right.* The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.
- (K) *Smoking.* Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products is prohibited.

§115.04 FEES.

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be in an amount set from time to time in a fee schedule, adopted by resolution of the City Council.

§115.05 BASIS FOR DENIAL OF LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this ordinance:

- (A) The applicant is under the age of 21 years.
- (B) The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to licensed products or electronic delivery devices.
- (C) The applicant has had a license to sell licensed products or electronic delivery devices revoked within the preceding twelve months of the date of application.
- (D) The applicant fails to provide any information required on the application, or provides false or misleading information.
- (E) The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

Except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section:

§115.06 PROHIBITED SALES.

- (A) *Electronic delivery devices.* No person shall sell or offer for sale any electronic delivery device.
- (B) *General Provisions.* It shall be a violation of this ordinance for any person to sell or offer to sell any licensed product:
- (1) By means of any type of vending machine.
 - (2) By means of loosies as defined.
 - (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.
 - (4) By any other means, to any other persons, on in any other manner or form prohibited by Federal, State, or local law, ordinance provision, or other regulation.
- (C) *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 that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (2) No person under the age of twenty-one (21) years shall purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products using a driver's license, a Minnesota identification card, or other form of identification which is false, fictitious, altered, or counterfeited as to age or any other material fact of identification. Use of a false identification to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products is a misdemeanor.
 - (3) *Signage.* Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the City, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
 - (4) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in M.S.A. §340A.503, Subd. 6.
 - (5) *Exceptions.*
 - (a) Notwithstanding the above-stated provisions, individuals exempted under M.S.A. §609.685 are also exempt from this section.
 - (b) The penalties in this section do not apply to a person under the age of twenty-one (21) years who purchases or attempts to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products while under

the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

(D) *Additional provisions.*

- (1) No person shall sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes shall be sold in packages of fewer than twenty (20) cigarettes.
- (2) No person shall sell or dispense tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices from a motor vehicle or other movable place of business.
- (3) No person shall offer for sale tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any open displays which are accessible to the public without the intervention of a store employee.
- (4) No person shall sell, offer for sale, or otherwise distribute any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device.

§115.07 SELF-SERVICE SALES.

It shall be unlawful for a licensee under this ordinance to allow the sale of licensed products by any self-service displays where the customer may have access to such items without having to request the item from the licensee or the licensee's employee and where there is not a physical exchange of the licensed product between the licensee or the licensee's employee and the customer. All licensed products shall be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted shall comply with this Section within thirty (30) days following the effective date of this ordinance.

§115.08 FLAVORED PRODUCTS.

No person shall sell, offer for sale, or otherwise distribute any flavored products.

§115.09 RESPONSIBILITY.

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products and electronic delivery devices on the licensed premises. The sale, offer to sell, or furnishing of any licensed product and electronic delivery device by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to any civil penalties that the City deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

§115.10 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 twice per year, the City will conduct compliance checks. In accordance with state law, the City will conduct at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20 to enter the licensed premises to attempt to purchase licensed products or any electronic delivery devices. 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.

§115.11 PROHIBITED FURNISHING OR PROCUREMENT.

Unless otherwise provided, the following acts shall be an administrative violation of this ordinance. 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 illegally purchase or attempt to purchase any licensed product.

§115.12 VIOLATIONS.

- (A) *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 his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.
- (B) *Hearings.*
 - (1) 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.
 - (2) 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.
- (C) *Hearing Officer.* The City Council of the City of Browns Valley shall serve as the hearing panel.
- (D) *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 subsection 5 of this section.
- (E) *Appeals.* Appeals of any decision made by the hearing panel shall be filed in the district court for the jurisdiction of the City of Browns Valley in which the alleged violation occurred.
- (F) *Continued Violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (G) *Costs.* If the citation is upheld by the hearing officer, the City's actual expenses in holding the hearing up to a maximum of \$1,000 must be paid by the person requesting the hearing.

§115.13 PENALTIES.

- (A) *Licensees.* Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$200 for a first violation of this ordinance; \$500 for a second violation at the same licensed premises within a twenty four (24) month period; and \$750 for a third or subsequent violation at the same location within a twenty four (24) month period. Upon the third offense, the license shall be suspended for not less than seven days. Upon the fourth violation, the license will be revoked.
- (B) *Other Individuals.* Other individuals, other than persons under the age of 21, found to be in violation of this ordinance shall be charged an administrative fee of \$50.
- (C) *Misdemeanor.* Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this ordinance by a person age 21 or older.

§115.14 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.

§115.15 SEVERABILITY AND SAVINGS CLAUSE.

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

§115.16 EFFECTIVE DATE.

This ordinance shall take effect upon the passage and publication of this ordinance and a notice for two consecutive weeks stating that printed copies are available at the office of the City Clerk.

§115.17 REPEALER.

The former Browns Valley Tobacco Ordinance relating to the sale of licensed products and electronic delivery devices is hereby repealed.

CHAPTER 115: TOBACCO REGULATIONS (Revoked)

Section

- 115.01 Purpose and intent
- 115.02 Definitions
- 115.03 License
- 115.04 Fees
- 115.05 Basis for denial of license
- 115.06 Prohibited sales
- 115.07 Vending machines
- 115.08 Self-service sales
- 115.09 Responsibility
- 115.10 Compliance checks and inspections
- 115.11 Other illegal acts
- 115.12 Exceptions and defenses

- 115.99 Violations and penalty

§115.01 PURPOSE AND INTENT.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, and tobacco related devices, and the sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this chapter shall be intended to regulate the sale, possession and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. §144.391, as it may be amended from time to time.

§115.02 DEFINITIONS.

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

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this chapter. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices for educational, research and training purposes as authorized by state and federal laws. **COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products, and tobacco related devices.

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

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

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

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

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products or tobacco related devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores and restaurants.

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

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. The phrase shall not include vending machines. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the tobacco between the Administrator and the customer.

TOBACCO or TOBACCO PRODUCTS. Any substance or item containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in a manner as to be suitable for chewing, sniffing or smoking.

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

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products or tobacco related devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco related device.

§115.03 LICENSE.

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

(B) *Application.* An application for a license to sell tobacco, tobacco products, or tobacco related devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Administrator shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Administrator shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

(D) *Term.* All licenses issued under this chapter shall be valid for one calendar year from the date of issue.

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in §115.99.

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

(G) *Moveable place of business*. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this chapter.

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

(I) *Renewals*. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

(J) *Issuance as privilege and not a right*. The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Penalty, see §115.99

§115.04 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established in the city's Ordinance Establishing Fees and Charges, adopted pursuant to §30.11, as it may be amended from time to time.

Penalty, see §115.99

§115.05 BASIS FOR DENIAL OF LICENSE.

(A) Grounds for denying the issuance or renewal of a license under this chapter includes but is not limited to the following:

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

(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 tobacco or tobacco products, or tobacco related devices.

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

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

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

(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, it shall be revoked upon the discovery that the person was ineligible for the license under this chapter.
Penalty, see §115.99

§115.06 PROHIBITED SALES.

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:

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

(B) By means of any type of vending machine, except as may otherwise be provided in §115.07.

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

(D) By means of loosies as defined in §115.02.

(E) 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 tobacco products.

(F) By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.
Penalty, see §115.99

§115.07 VENDING MACHINES.

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.
Penalty, see §115.99

§115.08 SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, or tobacco related devices by any means where by the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco related device between the licensee or his or her Administrator and the customer. All tobacco, tobacco products, and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, or tobacco related devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.

Penalty, see §115.99

§115.09 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the Administrator to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

Penalty, see §115.99

§115.10 COMPLIANCE CHECKS AND INSPECTIONS.

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

Penalty, see §115.99

§115.11 OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this chapter:

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

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

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, snuff or otherwise use any tobacco, tobacco product, or tobacco related device.

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

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

Penalty, see §115.99

§115.12 EXCEPTIONS AND DEFENSES.

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

§115.99 VIOLATIONS AND PENALTY.

(A) *Violations.*

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

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

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer.

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

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred.

(6) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

(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 found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

(2) *Other individuals.* Other individuals, other than minors regulated by division (B)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.

(3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be subject to an administrative fine, or may be subject to tobacco related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges, adopted pursuant to §30.11, as it may be amended from time to time.

(4) *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter.

(5) *Statutory penalties.* If the administrative penalties authorized to be imposed by M.S. §461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

CHAPTER 116: REGULATING LAWFUL GAMBLING

Section

- 116.01 Adoption of state law by reference
- 116.02 City may be more restrictive than state law
- 116.03 Purpose
- 116.04 Definitions
- 116.05 Applicability
- 116.06 Lawful gambling permitted
- 116.07 Council approval
- 116.08 Application and local approval of premises permits
- 116.09 Local permits
- 116.10 Revocation and suspension of local permit
- 116.11 License and permit display
- 116.12 Notification of material changes to application
- 116.13 Contribution of net profits to fund administered by city
- 116.14 Designated trade area
- 116.15 Records and reporting
- 116.16 Hours of operation
- 116.17 Severability

- 116.99 Penalty

§116.01 ADOPTION OF STATE LAW BY REFERENCE.

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

§116.02 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

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

§116.03 PURPOSE.

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

§116.04 DEFINITIONS.

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

BOARD. The State of Minnesota Gambling Control Board.

LICENSED ORGANIZATION. An organization licensed by the Board.

LOCAL PERMIT. A permit issued by the city.

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

§116.05 APPLICABILITY.

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

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

(B) Raffles, if the value of all prizes awarded by the organization in a calendar year does not exceed \$1,500.

§116.06 LAWFUL GAMBLING PERMITTED.

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

§116.07 COUNCIL APPROVAL.

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

Penalty, see §116.99

§116.08 APPLICATION AND LOCAL APPROVAL OF PREMISES PERMITS.

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

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

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

(D) Organizations or bingo halls applying for a state-issued premises permit or bingo hall license shall pay the city a \$100 investigation fee. This fee shall be refunded if the application is withdrawn before the investigation is commenced.

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

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

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

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

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

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

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

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

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

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

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

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

Otherwise the Council shall pass a resolution approving the application.

§116.09 LOCAL PERMITS.

(A) No organization shall conduct lawful gambling excluded or exempted from state licensure requirements by M.S. §349.166, as it may be amended from time to time, without a valid local permit. This section shall not apply to lawful gambling exempted from local regulation by §116.05.

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

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

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

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

(4) Address of premises where event will occur.

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

(6) Estimated value of prizes to be awarded.

(C) The fee for a local permit shall be \$100. The fee shall be submitted with the application for a local permit. This fee shall be refunded if the application is withdrawn before the investigation is commenced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Otherwise the Council shall approve the application.

(I) Local permits shall be valid for one year after the date of issuance unless suspended or revoked. Penalty, see §116.99

§116.10 REVOCATION AND SUSPENSION OF LOCAL PERMIT.

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

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

§116.11 LICENSE AND PERMIT DISPLAY.

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

Penalty, see §116.99

§116.12 NOTIFICATION OF MATERIAL CHANGES TO APPLICATION.

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

Penalty, see §116.99

§116.13 CONTRIBUTION OF NET PROFITS TO FUND ADMINISTERED BY CITY.

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

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

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

Penalty, see §116.99

§116.14 DESIGNATED TRADE AREA.

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

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

Penalty, see §116.99

§116.15 RECORDS AND REPORTING.

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

(B) Organizations licensed by the Board shall file a report with the city proving compliance with the trade area spending requirements imposed by §116.14. Such report shall be made on a form prescribed by the city and shall be submitted annually and in advance of application for renewal.

Penalty, see §116.99

§116.16 HOURS OF OPERATION.

Lawful gambling shall not be conducted between 1:00 a.m. and 8:00 a.m. on any day of the week.
Penalty, see §116.99

§116.17 SEVERABILITY.

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

§116.99 PENALTY.

Any person who violates:

(A) Any provision of this chapter;

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

(C) M.S. ' §349.11 to 349.21, as they may be amended from time to time, or any rules promulgated under those sections, as they may be amended from time to time;

shall be guilty of a misdemeanor and shall be punished as provided in §10.99

CHAPTER 117: GARAGE OR RUMMAGE SALES

Section

- 117.01 Definition
- 117.02 Restrictions and prohibitions
- 117.03 Exceptions

- 117.99 Penalty

§117.01 DEFINITION.

The following term, as used in this chapter, shall have the meaning stated:

GARAGE OR RUMMAGE SALE. Any display and sale of personal property, conducted on premises located in any Residentially-Zoned District by the occupant and which garage or rummage sale does not require a business license or make taxable sales, leases or services.

§117.02 RESTRICTIONS AND PROHIBITIONS.

(A) None of the items offered for sale shall have been obtained for resale or received on consignment for sale.

(B) Any garage or rummage sale (community or neighborhood sale) shall be conducted solely within the boundaries of the property owned or occupied by the occupant who is conducting the sale.

(C) There shall be no more than four garage or rummage sales conducted at any one premises during any period of 12 calendar months.

(D) No garage or rummage sale shall be conducted during any part of more than three consecutive days.

(E) No garage or rummage sale may be conducted before 7:00 a.m. or after 8:00 p.m.

(F) Any related signage shall be limited to the premises and to other residential property, provided permission from the property owner is obtained, and shall be removed at the termination of the sale. Signs shall be limited to four square feet.

(G) There shall be no more than two consecutive sales with 30-day separation between all others. Penalty, see §117.99

§117.03 EXCEPTIONS.

This chapter shall not apply to any sale under court order, nor to any bona fide auction sale, nor to a sale of farm or garden products by the person producing same.

§117.99 PENALTY.

It is unlawful for any person to conduct a garage or rummage sale in violation of any of the provisions of this chapter. A violation of this chapter is a misdemeanor, to be punished as provided in §10.99.

CHAPTER 118: REGULATION OF PUBLIC DANCES AND SPECIAL EVENTS

Section

Public Dances

- 118.01 Regulation of public dances
- 118.02 Definitions
- 118.03 Permit required
- 118.04 Application for permit
- 118.05 Insurance
- 118.06 Location
- 118.07 Permit to be posted
- 118.08 Liquor license required
- 118.09 Licensed police officer presence
- 118.10 Hours
- 118.11 Minors prohibited
- 118.12 Certain behavior prohibited
- 118.13 Lighting
- 118.14 Noise

Special Events

- 118.20 Purpose and findings
- 118.21 Definitions
- 118.22 Permit required
- 118.23 Application for permit
- 118.24 Issuance of permit, conditions and posting
- 118.25 Exceptions to the permit

- 118.99 Penalty

*PUBLIC DANCES***§118.01 REGULATION OF PUBLIC DANCES.**

All public dances held in this city shall be conducted in accordance with the provisions of this chapter. Penalty, see §118.99

§118.02 DEFINITIONS.

The terms stated below shall have the following meanings:

PUBLIC DANCE. Any dance where the general public may participate, whether or not a charge for admission for dancing is made.

PUBLIC DANCING PLACE. Any room or space or other area, whether indoors or outside, which is open to the general public for the purpose of participating in public dancing.

§118.03 PERMIT REQUIRED.

No person shall conduct a public dance in this city unless a permit has been obtained from the City Administrator prior to the holding of the dance. The fees for a permit shall be as established by the Ordinance Establishing Fees and Charges, adopted pursuant to §30.11 of this code, as that ordinance may be amended from time to time. In addition to this fee, the applicant shall pay the cost to the city of providing a licensed peace officer or officers to be present at the dance. The City Council shall establish criteria for determining the number of licensed peace officers required to be present at any dance. No permit shall be issued until the fee and the cost for providing the peace officer or officers has been paid. Penalty, see §118.99

§118.04 APPLICATION FOR PERMIT.

Any person desiring a permit to hold a public dance in this city shall submit an application for a permit on the form provided by the City Administrator, submitted to the City Administrator at least ten days before the date of the proposed dance. The application shall set forth the name and address of the applicant, who shall be the person responsible for conducting the public dance, and any business, committee or organization sponsoring the dance, the place where the dance is to be held, the date of the dance and the time of its beginning and end. Proof of all insurance required by this chapter shall be submitted with

the application and no permit shall be issued until proof of insurance has been received. A request for any use of a city building or other city property shall be included with the permit application, and no permit shall be issued until the fees for the use of the city building or other city property have also been paid.

Penalty, see §118.99

§118.05 INSURANCE.

Insurance in the amount of \$500,000 per individual claim and \$1,500,000 per event is required. All insurance policies required for the event, including any insurance required by law for the sale of alcoholic beverages, shall list the city as a named insured and provide a provision to defend, indemnify and hold harmless the city and any of its employees from any claims arising from the event.

Penalty, see §118.99

§118.06 LOCATION.

The applicant shall make sure that adequate parking is available for the persons wishing to attend the dance and make sure that the location is safe and accessible. This information shall also be provided to the City Administrator before a permit shall be issued.

Penalty, see §118.99

§118.07 PERMIT TO BE POSTED.

When a permit is issued, the holder of the permit shall post the permit in a prominent location on the premises on which the dance is to be held during the time the dance is occurring. The applicant shall be present at all times while the dance is occurring.

Penalty, see §118.99

§118.08 LIQUOR LICENSE REQUIRED.

No person shall give, hold, conduct or permit any public dance where liquor will be served, as defined in M.S. Ch. 340A, without obtaining a license from the city.

Penalty, see §118.99

§118.09 LICENSED PEACE OFFICER PRESENCE.

No public dance shall occur without at least one licensed peace officer or more, if more are required under the criteria established by the City Council, who shall be present at the public dancing place during

the duration of the dance and after the dance, until all of the participants have left the public dancing place.
Penalty, see §118.99

§118.10 HOURS.

No public dance shall occur between the hours of 1:00 a.m. and 12:00 noon.
Penalty, see §118.99

§118.11 MINORS PROHIBITED.

No person under the age of 21 shall be allowed to be present by the permit holder or any peace officer at a public dance where alcohol is sold or consumed, unless accompanied by a parent or guardian.
Penalty, see §118.99

§118.12 CERTAIN BEHAVIOR PROHIBITED.

No person present at any public dance shall engage in any disorderly conduct, as defined by M.S. §609.72, as it may be amended from time to time, and any disorderly person may be immediately removed from the dance by the peace officer present at the public dancing place. Should a substantial number of persons at the public dance engage in disorderly conduct, the peace officer present may terminate the dance and remove all persons from the public dancing place.
Penalty, see §118.99

§118.13 LIGHTING.

In order to protect the safety of persons attending a public dance, public dancing places shall be adequately illuminated and dancing therein while lights are extinguished, dimmed or turned low so as to give inadequate or imperfect illumination is hereby prohibited. All exit areas shall be illuminated at all times during the public dance with light having intensity of not less than one footcandle at floor level. Illumination of less than 0.5 foot-candles in any area where dancing is occurring, permitted or encouraged is prohibited.
Penalty, see §118.99

§118.14 NOISE.

All public dances shall be subject to the provisions of this code regulating noise.
Penalty, see §118.99

AMENDMENT TO ORDINANCE SECTION 118.09

AN ORDINANCE DEALING WITH PROVIDING SECURITY AT PUBLIC DANCES

Findings.

1. The Browns Valley City Council has adopted the Minnesota Basic Code as it has been amended and supplemented to be its city code; and
2. That code requires the presence of at least one licensed peace officer at all public dances held within the City of Browns Valley.
3. The Browns Valley City Council believes it is in the best interests of the residents of the City of Browns Valley to modify its Ordinance requiring at least one licensed peace officer at all public dances held within the City of Browns Valley, and believes that the public safety needs of those who attend public dances will be met by requiring the presence of security officers instead.

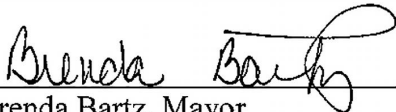
NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BROWNS VALLEY ORDAINS AS FOLLOWS:

1. That Browns Valley City Ordinance Section 118.09 is hereby amended to read as follows:

“No public dance shall occur without the presence of at least six (6) security officers, who shall be present at the public dancing place during the duration of the dance and after the dance, until all of the participants have left the public dancing place. The security officers shall be individuals approved of in advance of the public dance by the Browns Valley City Council. Penalty, see §118.99”

PASSED AND ADOPTED this 27th day of May, 2014.

BROWNS VALLEY CITY COUNCIL



Brenda Bartz, Mayor

ATTEST:



Thomas Schmitz, City Administrator

Motion: *Dusing*
Seconded: *Warren*
Published: *6-2-14*
Passed: 5-0

*SPECIAL EVENTS***§118.20 PURPOSE AND FINDINGS.**

The purpose of this chapter is to protect the health, safety and welfare of the citizens of this city by regulating the time, place and manner of conduct of special events and by establishing permit requirements for conducting special events as such are herein defined. The City Council finds that special events often exceed the city's capacity to provide usual city services. These city services include, but are not limited to sanitary, fire, police and utility services. The City Council also finds these regulations necessary to ensure that such events are conducted with sufficient consideration given to public safety issues, including, among other things, the impact of these events on parking and vehicular traffic within the city.

§118.21 DEFINITIONS.

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

PERSON. A natural person, association, organization, club, group formed for a common purpose, partnership of any kind, limited liability company, corporation or any other legal entity.

SPECIAL EVENTS. An outdoor gathering of at least 25 individuals, whether on public or private property, assembled with a common purpose for a period of one hour or longer. **SPECIAL EVENTS** include, but are not limited to concerts, fairs, carnivals, circuses, parades, flea markets, marathons, walkathons, festivals, races, bicycle events, celebrations or any other gathering or events of similar nature. **SPECIAL EVENTS** do not include noncommercial events held on private property, such as graduation parties or social parties.

§118.22 PERMIT REQUIRED.

No person shall hold, conduct or participate in a special event within the city, unless a permit has been issued for such event upon timely written application made to the city.

Penalty, see §118.99

§118.23 APPLICATION FOR PERMIT.

Written application for special event permits must be made at least 30 days in advance of the event's proposed date in a form prescribed by the City Council. This application period shall not begin to run until a complete application has been filed with the city. Application forms shall be made available in

the office of the City Administrator. A fee, in the amount specified in the Ordinance Establishing Fees and Charges, shall be paid to the city along with the completed application form. In addition to the fee, the applicant shall pay all additional costs incurred by the city as a direct result of the special event. Failure to provide a complete application or to pay the fee, as herein required, is sufficient reason to deny the special event permit.

§118.24 ISSUANCE OF PERMIT, CONDITIONS AND POSTING.

(A) Special event permits will be issued upon City Council approval. The Council may attach reasonable conditions to the permit as are deemed necessary to protect the health, safety and welfare. Such conditions may pertain to any of the following:

- (1) Location and hours during which the event may be held;
- (2) Sanitation/availability of potable water;
- (3) Security/crowd management;
- (4) Parking and traffic issues;
- (5) Emergency and medical services;
- (6) Clean-up of premises and surrounding area/trash disposal;

(7) Insurance in the amount of \$1,500,000 per event and \$500,000 per individual claim. All required policies shall name the city as an additional insured. Applicants shall agree to defend and indemnify the city from any and all claims;

- (8) Lighting;
- (9) Fire service/safety;
- (10) Temporary construction, barricades/fencing;
- (11) Removal of advertising/promotional materials;
- (12) Noise levels;
- (13) Alcohol consumption;
- (14) Any other conditions which the Council deems necessary.

(B) Upon Council approval, the City Administrator shall issue a permit to the person(s) named in the permit application. The permit shall clearly state the conditions, if any, imposed by the Council. Copies of the permit shall be posted in three prominent locations during the special event.

Penalty, see §118.99

§118.25 EXCEPTIONS TO THE PERMIT.

The permit requirement contained in this chapter does not apply to the following:

(A) Special events sponsored and managed by the city;

(B) Funerals and funeral processions;

(C) The grounds of any school, playground, place of worship, hotel conference center, stadium, athletic field, arena, auditorium or similar permanent place of assembly when used for regularly established assembly purposes.

§118.99 PENALTY.

(A) Any permit holder violating any of the provisions of this chapter relating to public dances shall be guilty of a misdemeanor and punished as provided in §10.99, and their public dance permit is suspended immediately at the time of any arrest or citation for violating this chapter.

(B) (1) Any person who violates any condition of a special event permit or any provision of this chapter shall be guilty of a misdemeanor punishable as prescribed by §10.99.

(2) Enforcement of this division may, at the Council's discretion, take any of the following forms:

(a) Citation/criminal prosecution;

(b) Injunctions, declaratory judgements or other civil remedies;

(c) Permit revocation;

(d) Disbursement of persons gathered.

CHAPTER 119: SEXUALLY ORIENTED BUSINESSES

Section

- 119.01 Purpose and Intent
- 119.02 Definitions
- 119.03 Applications of this Ordinance
- 119.04 Location
- 119.05 Hours of Operation
- 119.06 Operation
- 119.07 License Required
- 119.08 License Application
- 119.09 License Application Execution
- 119.10 License Application Verification
- 119.11 License Application Consideration
- 119.12 License Application Fees
- 119.13 Persons & Locations Ineligible for a License
- 119.14 License Restrictions
- 119.15 Registration Regarding License Transfer
- 119.16 Inspection
- 119.17 Expiration & Renewal
- 119.18 Suspension
- 119.19 Revocation
- 119.20 Severability
- 119.21 Effective

119.99 Penalty

Appendix I: Resolution adopting the findings of the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*

Appendix II: *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*

Cross-reference:

Location of sexually oriented businesses, see '§150.05, 153.05

§119.01 PURPOSE AND INTENT.

- A. Purpose of the City Council. Studies conducted by the Minnesota Attorney General, the American Planning Association, and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Alexandria, Minnesota; Rochester, Minnesota; Phoenix, Arizona; Los Angeles, California; and Seattle, Washington, have studied the impacts that sexually-oriented businesses have in those communities. These studies have concluded that sexually-oriented businesses have adverse impacts on the surrounding neighborhoods. Those impacts included increased crime rates, lower property values, increased transiency, neighborhood blight, and potential health risks. Based on these studies and findings, the city council concludes:
- a. Sexually-oriented businesses have adverse secondary impacts of the types set forth above.
 - b. The adverse impacts caused by sexually-oriented businesses tend to diminish if adult establishments are governed by locational requirements, licensing requirements, and health requirements.
 - c. Minnesota Statutes Section 462.357 allows the city to adopt regulations to promote the public health, safety, morals, and general welfare.
 - d. The public health, safety, morals, and general welfare will be promoted by the city adopting regulations governing sexually-oriented businesses.
 - e. The purpose of this Ordinance is to prescribe licensing requirements for sexually-oriented businesses in order to protect the general health, safety, and welfare, and to control certain land uses that may have a direct and detrimental effect on the character of the City's residential and commercial neighborhoods.
- B. Findings of the City Council. The City Council of the City of Browns Valley makes the following findings regarding the need to license sexually-oriented businesses. The findings are based upon the experience of other cities where such businesses have located. In making these findings, the City Council accepts the recommendations and conclusions of the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses* dated June 6, 1989, a copy of which is referenced and included in Appendix II of this chapter. This chapter shall have no force and effect until the City Council accepts these recommendations by resolution of a majority of its members, using the model resolution contained in Appendix I of this chapter.
- a. Sexually-oriented businesses can exert a dehumanizing and distracting influence on people attending places of worship; children attending state licensed family daycare homes, state licensed group family daycare homes, and state licensed child care centers, students attending school; people using public parks and libraries; and people entering government buildings for services.
 - b. Sexually-oriented businesses can contribute to an increase in criminal activity in the area in which such businesses are located, taxing city crime-prevention programs, law enforcement, and public health services.
 - c. Sexually-oriented businesses can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of such businesses can, however, minimize this risk, provided the owners and operators of such facilities are regulated by licensing or other procedures.

- d. Sexually-oriented businesses can increase the risk of exposure to communicable diseases, including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), for which there currently is no cure. Experiences of other cities indicate that such businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of such establishments, but also the general public.
 - e. Sexually-oriented businesses can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises.
 - f. Sexually-oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the character and quality of residential housing in the area in which such businesses are located. The exterior appearance, including signage, can also have an adverse impact on young people and students.
 - g. The concentration of sexually-oriented businesses in one area can have a substantially detrimental effect on the area in which such businesses are concentrated and on the overall quality of life in the community. A cycle of decay can result from the influx and concentration of sexually-oriented businesses. The presence of such businesses is often perceived by others as an indication that the community or area is deteriorating, and the result can be devastating to other businesses that may be required to move out of the vicinity and which could influence residents to relocate from the area. It has been noted that the presence of such businesses can have the overall effect of causing declining real estate values, the result which can be exacerbated by the concentration of such business, which can erode the City's tax base and contribute to overall community blight.
- C. Intent of the City Council. It is the intent of this Ordinance to regulate Sexually-Oriented Businesses as 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. To locate Sexually-Oriented Businesses away from residential areas, schools, places of worship, public parks and playgrounds, and government buildings.
 - d. Prevent concentration of Sexually-Oriented Businesses within certain areas of the City.
 - e. Lessen the risk of exposure to communicable diseases.

§119.02 DEFINITIONS.

- A. Adult Body Painting Studio. An establishment or business which provides the service of applying paint or other substances, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of Specified Anatomical Areas as defined herein.
- B. Adult Book and/or Media Store. An establishment which has ten percent (10%) or greater of its current store stock in merchandise, videos, slides, books, magazines, and/or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein.
- C. Adult Cabaret. An establishment which provides dancing, modeling, or other live entertainment, if such dancing or modeling is distinguished by an emphasis on the presentation, display, depiction, or description of Specified Sexual Activities or Specified Anatomical Areas as defined herein.

- D. Adult Car Wash. A wash facility for any type of motor vehicle that allows employees, independent contractors, or any other person, to appear in a state of partial or total nudity, in terms of Specified Anatomical Areas as defined herein.
- E. Adult Companionship Establishment. A companionship establishment which provides a service for a fee of engaging in or listening to conversation, talk, or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas as defined herein.
- F. Adult Conversation/Rap Parlor. A business or establishment that provides the services of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas as defined herein.
- G. Adult Entertainment Facility. A building space wherein an admission is charged for entrance, or food or alcoholic and nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment including nude dancing, modeling, or nudity, or which include other parties distinguished or characterized by an emphasis on matters depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein.
- H. Adult Establishment. Any business which offers its patrons services, entertainment, or the sale of merchandise characterized by an emphasis on matter depicting, exposing, describing, discussion, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein. Specifically included in this term, but without limitation, are adult book and media stores, adult cabarets, adult hotels or motels, adult mini-picture theaters, adult modeling studios, adult motion picture arcades, adult motion picture theaters, and adult novelty businesses.
- I. Adult Health/Sport Club. A health/sport club that is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas as defined herein.
- J. Adult Hotel or Motel. Any hotel or motel wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein.
- K. Adult Massage Parlor/Health Club. A massage parlor or health club that provides massage services distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas as defined herein.
- L. Adult Mini-Motion Picture Theater.
 - a. A building or space with a capacity for less than 50 persons used for presenting motion pictures, including but not limited to film and videotape, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein.
 - b. Any business which presents motion pictures, films and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein, for viewing on the premises, including but not limited to private booths, viewing by means of coin operated or other mechanical devices, and the viewing of excerpt of motion pictures offered for sale or rent.
- M. Adult 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 as defined herein while being observed, painted, painted upon, sketched, drawn, sculpted, photographed, or other otherwise depicted by such customers.

- N. Adult Motion Picture Arcade. Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are used to show images to five or fewer persons per machine at any one time, and where the images are so displayed are distinguished or characterized by an emphasis on depicting or describing Specified Sexual Activities or Specified Anatomical Areas as defined herein.
- O. Adult Motion Picture Theater. A building or space with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matters depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as defined herein, for observations by patrons therein.
- P. Adult Novelty Business. A business which sells, offers to sell, or displays devices which simulate human genitals or devices which are designed for sexual stimulation.
- Q. Adult Sauna. A sauna 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 by the sauna is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- R. Places of Worship. A building or space that is principally used as a place where people of the same faith or religion regularly assemble for worship or religious educational purposes.
- S. Public Library. Any library that provides the access to all residents of a city or county without discrimination, received at least half of its financial support from public funds, and is organized under the provisions of Minnesota Statutes Chapter 134.
- T. Public Park and Playground. A park, reservation, open space, playground, beach, or recreation center in the City, which is owned, leased, or housed, wholly or in part, by a City, County, State, School District, or the Federal Government for recreation purposes.
- U. School. A building or space that is principally used as a place where persons receive a full course of educational instruction. Any post-secondary or post-high school educational building, including any college or any vocational-technical college, shall not be deemed a school for purposes of this Ordinance.
- V. Sexually-Oriented Business. An adult body painting studio, adult book and/or media store, adult cabaret, adult car wash, adult companionship establishment, adult conversation/rap parlor, adult health/sport club, adult entertainment facility, adult establishment, adult massage parlor/health club, adult motel or hotel, adult mini-motion picture theater, adult modeling studio, adult motion picture arcade, adult motion picture theater, adult novelty business, and adult sauna as herein defined, or any other type of business which meets any of the following criteria:
- a. As measured on a daily, weekly, monthly, or yearly basis:
 - i. Has more than 25% of its inventory, stock-in-trade, or publicly displayed merchandise in sexually oriented materials.
 - ii. Devotes more than 25% of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to sexually oriented materials; or
 - iii. Derives more than 10% of its gross revenues from sexually oriented materials.
 - b. A business that engages for any length of time in sexually oriented use as defined in this section or any other use that has an emphasis on specified sexual activities or specified anatomical areas.

- W. Sign. A name, identification, description, display, or illustration which is affixed to, painted, or represented directly or indirectly upon a building or other outdoor surface or piece of land which directs attention to an object, project, place, activity, person, institution, organization, or business. However, a “sign” shall not include any display or official court or government office notices nor shall it include the flag, emblem, or insignia for a nation, political unit, school, or religious group. A “sign” shall not include a sign located completely within an enclosed building unless the context shall so indicate. Each display surface of a sign shall be considered a “sign”.
- X. Specified Anatomical Areas. Any of the following conditions:
- a. Less than completely and opaquely covered:
 - i. human genitals, pubic region, or pubic hair;
 - ii. buttock, anus; and
 - iii. female breast below a point immediately above the top of the areola; and
 - b. Human male genitals in a discernible turgid state, completely or opaquely covered.
- Y. Specified Sexual Activities. Any of the following conditions:
- a. An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.
 - b. Sadoomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed.
 - c. Masturbation, actual or simulated, or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ clothed or unclothed.
 - d. Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or breasts of a female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.
 - e. Human male genitals in a discernable state of sexual stimulation or arousal.
 - f. Excretory functions (i.e., human excretion, urination menstruation, or vaginal or anal irrigation) regardless of whether they are a part of or in connected in any way with the activities set forth in Paragraphs 1 through 5 of this definition.
 - g. The presentation, display, or depiction of any matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.
- Z. State Licensed Family Day Care Home, State Licensed Group Family Dare Care Home, State Licensed Child Care Center. A facility holding a license from the State of Minnesota pursuant to Minnesota Statutes Chapter 245A, and/or Minnesota Rules 9502 or Chapter 9503, as amended.

§119.03 APPLICATION OF THIS ORDINANCE.

- A. Except as specifically provided for in this Ordinance, 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 Ordinance.
- B. No Sexually-Oriented Business 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 of Browns Valley, the laws of the State of Minnesota, or the United States of America. Nothing in this Ordinance shall be construed as authorizing or permitting conduct which 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,

§119.04 LOCATION.

- A. During the term of this Ordinance, no Sexually-Oriented Businesses shall be located less than 1500 feet from:
 - a. Any residential home or site used for residential purposes.
 - b. Any place of religious worship.
 - c. Any school site.
 - d. Any public library.
 - e. Any day care or child care facility.
 - f. Any public theater.
 - g. Any airport.
 - h. Any interstate highway.
 - i. Any public park or recreational area site under the control, operation, or management of the city.
 - j. Any establishment licensed to sell alcoholic beverages
 - k. Any state or federal governmental building.
 - l. Any other Sexually-Oriented Business.
- B. For purposes of this Ordinance, this distance shall be a horizontal measurement made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually-oriented business is conducted, to the nearest existing property line of the premises of a use listed in Section 119.04 A above.

§119.05 HOURS OF OPERATION.

No Sexually-Oriented Business site shall be open to the public from the hours of 11:00 p.m. to 10:00 a.m.

§119.06 OPERATION.

- A. Off-site Viewing. An establishment operating as a Sexually-Oriented Business shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of Minnesota Statutes Chapter 617 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 visible 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. Movie Rentals/Magazines/Books. Display areas for movies/magazines/books that are distinguished or characterized by an emphasis on Specified Anatomical Areas or Specified Sexual Activities shall be restricted from general view and shall be located within a separate room, the access or entrance to which is in clear view and under the control of the persons responsible for the operation. Such items shall not be accessible to minors, and all such magazines and books shall be covered with a wrapper or other means to prevent display of any materials other than the publication title.
- E. Illumination. Illumination of the premises exterior shall be adequate to observe the location and activities of all person on the exterior premises.
- F. Signs. In order to protect children from exposure to lurid signs and materials and in order to preserve the value of property surrounding sexually-oriented businesses, the following sign regulations shall apply to all sexually-oriented businesses in the City, superseding any other sign regulations contained in the Browns Valley City Ordinances.
 - a. All signs shall be flat wall signs. No signs shall be freestanding, located on the roof, or contain any flashing lights, moving elements, or electronically or mechanically changing messages. No sign shall contain any message or image which identifies specified sexual activities or specified anatomical areas as defined herein.
 - b. The amount of allowable sign area shall be one (1) square foot of sign area per foot of lot frontage on a street, not to exceed eighty (80) square feet.
 - c. No merchandise, photos, or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or public right-of-way adjoining the building or structure in which the sexually-oriented business is located.
 - d. No signs shall be placed in any window. A one (1) square foot sign may be placed on the door to state hours of operation and admittance to adults only.

§119.07 LICENSE REQUIRED.

No person shall own or operate a sexually-oriented business within the City unless such person is currently licensed under this Ordinance.

§119.08 LICENSE APPLICATION.

This application for a license under this Ordinance shall be made on a form supplied by Issuing Authority and shall require the following information:

- A. All Applicants. For all applicants:
- a. Where the applicant is a natural person, corporation, partnership, or other form of organization.
 - b. The legal description of the premises to be licensed, along with a floor plan of the premises. The floor plan of the premises shall detail all internal operations and activities, including a statement of the total floor space occupied by the business. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimension of the interior of the premises to an accuracy of plus or minus six (6) inches.
 - c. The name and street address of the business. If the business is to be conducted under a designated name, or style other than the name of the applicant, a certified copy of the certificate required by Minnesota Statutes Section 333.01 shall be submitted.
 - d. Whether all real estate and personal property taxes are due and payable for the premises to be license have been paid, and if not paid, the years and amounts that are unpaid.
- B. Applicants Who Are Natural Persons. If the applicant is a natural person:
- a. The name, place, and date of birth, street and city address, and phone number of the applicant.
 - b. Whether the applicant is married or single. If married, the name, place, and date of birth, street and city address, and phone number of the applicant's spouse.
 - c. Where the applicant or spouse has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places where used.
 - d. The street and city addresses at which the Applicant or spouse has lived during the preceding ten (10) years.
 - e. The type, name, and location of every business or occupation in which the applicant or his spouse has been engaged during the preceding ten (10) years and name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding ten (10) years.
 - f. Whether the applicant or spouse has ever been convicted of any crime, be it a felony, gross misdemeanor, or misdemeanor, or violation of any ordinance other than a petty misdemeanor traffic ordinance. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.
 - g. Whether the applicant or spouse has ever been engaged as an employee or in operating a Sexually-Oriented Business, massage business, or other business of a similar nature. If so, the applicant must furnish information as to the time, place, and length of time.
 - h. Whether the applicant or spouse has ever been in military service. If so, the applicant must, upon request, exhibit all discharges.

- C. Applicants That Are Partnerships. If the applicant is a partnership:
- a. The name(s) and address(es) of all general partners and all of the information concerning each general partner that is required of applicants in paragraph B of this section.
 - b. The name(s) of the managing partner(s) and the interest of each partner in the business.
 - c. A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to Minnesota Statutes Section 333.01, a certified copy of such certificate shall be attached to the application.
- D. Corporate or Other Applicants. If the applicant is a corporation or other organization:
- a. The name of the corporation or business form, and if incorporated, the state of incorporation.
 - b. A true copy of the Certificate of Incorporation, Articles of Incorporation or Association Agreement and By-laws shall be attached to the application. If the applicant is a foreign corporation, a Certificate of Authority as required by Minnesota Statutes Section 303.06, shall be attached.
 - c. The name of the manager(s), proprietor(s), or other agent(s) in charge of the business and all of the information concerning each manager, proprietor or agent that is required of the applicants in paragraph B of this section.
 - d. A list of all persons who, single or together with their spouse, own or control an interest in said corporation or association in excess of 5%, or who are officers of said corporation or association, together with their addresses and all information as is required for a single applicant in paragraph B of this section.

§119.09 LICENSE APPLICATION EXECUTION.

If the application is that of a natural person, the application shall be signed and sworn to by that person; if of a corporation, by an officer thereof; if of a partnership, by one of the general partners; if of an unincorporated association, by the manager or managing officer thereof.

§119.10 LICENSE APPLICATION VERIFICATION.

Applications of licenses under this Ordinance shall be submitted to the City Council. Within twenty (20) calendar days of receipt of a complete application and payment of all license application fees, agents and/or employees of the City Council shall verify any and all of the information requested of the applicant in the application, including the ordering of criminal background checks, and conduct any necessary investigation to assure compliance with this Ordinance. Additionally, each licensee has the continuing duty to properly notify the City Council of a change in the information or facts required to be furnished on the application for a license. This duty continues throughout the period of the license. Failure to comply with this section will constitute cause for revocation or suspension of the license.

§119.11 LICENSE APPLICATION CONSIDERATION.

A. No license may be issued until the Police Department or the county Sheriff, if the city has no Police Department, has conducted an investigation of the representation set forth in this application, the applicant's moral character, and the applicant's financial status. All applicants must comply with this investigation.

B. No license, except for a renewed license, may be issued for a Sexually-Oriented Business until the City Council has held a public hearing. Notice of the hearing must be made in the same manner as that specified in Chapter 151 of this code, for a zoning ordinance amendment affecting district boundaries. The City Council must grant the license unless the applicant or the location does not meet the requirements of the city code, the application was incomplete, or the application contained false information or a material omission. If the application is denied, the city must notify the applicant with the reason(s) stated for denial. Notification must be sent certified, United States mail, return receipt requested, to the address provided on the license application. If the City Council fails to act on the application within 45 days after receipt of a complete application, the application will be deemed approved. An applicant wishing to appeal the action of the City Council may seek a Writ of Certiorari from the Minnesota Court of Appeals.

C. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises by the City Planning Department. During the application consideration process prescribed herein an applicant operating a business not previously subject to the license provisions of this Ordinance may remain operating pending the outcome of the application consideration by the City Council.

§119.12 LICENSE FEES.**A. Application Fee.**

- a. The license application fee shall be Five Hundred Dollars (\$500.00).
- b. The application license fee shall be paid in full before the application for a license is considered. All fees shall be paid to the Issuing Authority for deposit into the general fund of the City. Upon rejection of any application for a license or upon withdrawal of application before approval of the Issuing Authority the license fee shall be refunded to the applicant.
- c. When the license is for premises where the building is not ready for occupancy, the time fixed for computation of the license fee of the initial license period shall be ninety (90) days after approval of the license by the Issuing Authority or upon the date an occupancy permit is issued for the building.

B. Investigation Fee.

- a. An applicant for any license under this Division shall deposit with the Issuing Authority, at the time an original application is submitted, \$500.00 to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this Division. The investigation fee shall be nonrefundable.

§119.13 PERSONS AND LOCATIONS INELIGIBLE FOR A LICENSE.

The Issuing Authority shall issue a license under this division to an applicant unless one (1) or more of the following conditions exists:

- A. The applicant is not a citizen of the United States or a resident alien.
- B. The applicant, in the case of an individual, is not a resident of the state; in the case of a partnership, the managing partner is not a resident of the state; or in the case of a corporation, the manager is not a resident of the state. The required residency must be established by the time the license is issued and maintained throughout the existence of the license and all renewals. The time for establishing residency may, for good cause, be extended by the licensing authority.
- C. The applicant is not eighteen (18) years of age or older on the date the application is submitted to the Issuing Authority.
- D. The applicant failed to supply all of the information requested on the license application.
- E. The applicant gave false, fraudulent, or untruthful information on the license application.
- F. The applicant has had a sexually-oriented license revoked from the City or any other jurisdiction within a five (5) year period immediately preceding the date the application was submitted.
- G. The applicant has ever had a conviction for any felony-level offense, or had a gross misdemeanor or misdemeanor conviction relating to sex offenses as defined by Minnesota Statutes Sections 609.293 through 609.353 inclusive, obscenity offenses as defined by Minnesota Statutes Sections 617.23 through 617.299 inclusive, or adult uses in the past five (5) years.
- H. The sexually-oriented business does not meet the zoning requirements prescribed in this Ordinance.
- I. The premises to be licensed as a sexually-oriented business is currently licensed by the City as a tanning facility, tattoo establishment, pawnshop, therapeutic massage enterprise, or an establishment licensed to sell alcoholic beverages.
- J. The applicant has not paid the license and investigation fees required in Section 12.
- K. The applicant, in the judgment of the licensing authority, is not the real party in interest or beneficial owner of the business operated under the license.

§119.14 LICENSE RESTRICTIONS.

- A. Posting of License. A license issued under this Ordinance must be posted in a conspicuous place in the premises for which it is used.
- B. Effect of License. A license issued under this Ordinance is only effective for the compact and contiguous space specified in the approved license application.
- C. Maintenance of Order. A licensee under this Ordinance shall be responsible for the conduct of the business being operated and shall not allow any illegal activity to take place on or near the licensed premises including but not limited to prostitution, public indecency, indecent exposure, disorderly conduct, or the sale or use of illegal drugs. Every act or omission by an employee or independent contractor of the licensee constituting a violation of this Ordinance shall be deemed the act or omission of the licensee if such act or omission occurs either with the authorization, knowledge, or approval of the licensee or as a result of the licensee's negligent failure to supervise the employee's or independent contractor's conduct. Additionally, no owner, manager, or employee may allow sexually oriented materials or entertainment to be visible or perceivable in any matter, including aurally, at any time outside of the business.
- D. Distance Requirement for Live Adult Entertainment. All performers, dancers, and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed facility where such entertainment can be seen by patrons of the licensed facility shall remain at all times a minimum distance of ten (10) feet from all patrons, customers, or spectators and shall dance or provide such entertainment on a platform intended for that purpose, which shall be raised at least two (2) feet from the level of the floor on which patrons or spectators are located.
- E. Interaction with Patrons. No dancer, performer, or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas in the licensed facility or in areas adjoining the licensed facility where the entertainment can be seen by patrons of the licensed facility shall fondle or caress any spectator or patron.
- F. Gratuity Prohibition. No customers, spectator, or patron of a licensed facility shall directly pay or give any gratuity to any dancer or performer and no dancer or performer shall solicit any pay or gratuity from any patron or spectator.
- G. Adult Car Wash Requirements. Sexually-oriented businesses that are adult car washes shall meet all of the requirements of this Ordinance.

- H. Minors. No licensee shall allow minors to enter the licensed premises. The licensee shall request proof of age of all persons the licensee believes to be under the age of eighteen (18) years. Proof of age may be established only by: valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person; a valid military identification card issued by the United States Department of Defense; or in the case of a foreign national from a nation other than Canada, a valid passport.
- I. Criminal History. No owner, manager, or employee may have been convicted of a crime as defined in M.S.A. §§609.293 to 609.352; 609.746 to 609.749; 609.79; or 518B.01, as amended, or a similarly related statute from another state or jurisdiction dealing with sexual assault, sexual conduct, harassment, obscenity, or domestic abuse within the past five (5) years.
- J. Business Domain. No business may exceed 10,000 square feet in gross floor area. No business may have booths, stalls, partitioned portions of a room, or individual rooms, except as follows:
1. Restrooms are allowed as long as they are no larger than reasonably necessary to serve the purposes of a restroom, no other activities are provided or allowed in the rooms, and there are no chairs, benches, or reclining surfaces in the rooms; and
 2. Storage rooms and private offices are allowed, if the storage rooms and offices are used solely for running the business and no person other than the owner, manager, or employees is allowed in them.

§119.15 RESTRICTIONS REGARDING LICENSE TRANSFER.

- A. The license granted under this Ordinance is for the person and 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.
- B. When a sexually-oriented business licensed under this Ordinance is sold or transferred, the existing licensee shall immediately notify the Issuing Authority of the sale or transfer. If the new owner or operator is to continue operating the sexually-oriented business, the new owner or operator must immediately apply for a license under this Ordinance.
- C. In the case of the death of a licensee, the personal representative of a licensee may continue operation of the business for not more than 90 days after the licensee's death.

§119.16 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 a Sexually-Oriented Business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- B. Refusal to Permit Inspections. A person who operates an Sexually-Oriented Business or his/her agent or employee commits an offense if she or he 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 Section 11.
- 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.

§119.17 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 Section 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 one 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.

§119.18 SUSPENSION.

- A. Causes of Suspension. The City may suspend a license for a period not to exceed 60 days if it determines that licensee or an employee of a licensee has:
1. Violated or is not in compliance with any provision of this chapter.
 2. Engaged in the use of alcoholic beverages while on the Sexually-Oriented Business premises other than at an Adult Hotel or Motel.
 3. Refused to allow an inspection of the Sexually-Oriented Business premises as authorized by this chapter.
 4. Knowingly permitted gambling by any person on the Sexually-Oriented Business premises.

City of Browns Valley Code - Business Regulations

5. Demonstrated inability to operate or manage a Sexually-Oriented Business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
 6. Taxes, assessments, or other financial claims of the city or other government agency for the operation or premises of the Sexually-Oriented Business are delinquent or unpaid, unless the non-payment is not under the control of the Sexually-Oriented Business.
- B. 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.

§119.19 REVOCATION.

- A. Suspended Licenses. The City may revoke a license if a cause of suspension in Section 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:
1. A licensee gave false or misleading information in the material submitted to the City during the application process.
 2. A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises.
 3. A licensee or an employee has knowingly allowed prostitution on the premises.
 4. A licensee or an employee knowingly operated the Sexually-Oriented Business during a period of time when the licensee's license was suspended.
 5. A licensee has been convicted of an offense listed in Section 13(E), for which the time period required in Section 13(E), has not elapsed.
 6. On two 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 Section 13(E), for which a conviction has been obtained, and the person or person were employees of the Sexually-Oriented Business at the time the offenses were committed.
 7. 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.

- C. Appeals. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- D. Exceptions. Section 19(B)(7) 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.
- E. Granting a License After Revocation. When the City revokes a license, the revocation shall continue for one year and the licensee shall not be issued a Sexually-Oriented Business license for one year from the date revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under Section 12, Subdivision 2(e), an applicant may not be granted another license until the appropriate number of years required under Section 7, Subdivision 3(g), has elapsed.
- F. 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.

§119.20 SEVERABILITY.

Every section, provision, or part of this Ordinance or any permit issued to this ordinance is declared severable from every other section, provision, or part thereof, to the extent that if any section, provision, or part of this Ordinance or any permit issued pursuant to this ordinance shall be held invalid by a court of competent jurisdiction. It shall not invalidate any other section, provision, or part thereof.

§119.21 EFFECTIVE.

This Ordinance shall be effective upon its passage and publication.

§119.99 PENALTY.

A violation of this Ordinance shall be a misdemeanor under Minnesota law, and shall be subject to a penalty of 90 days in jail and/or \$1000 fine for each violation. Each day that a prohibited violation occurs or exists will constitute a separate violation. A fine or sentence imposed does not affect the right of the city to suspend or revoke the license of the licensee as the City Council deems appropriate.

APPENDIX I

**RESOLUTION ADOPTING THE FINDINGS OF THE *REPORT*
OF THE ATTORNEY GENERAL'S WORKING GROUP ON
THE REGULATION OF SEXUALLY ORIENTED BUSINESSES**

WHEREAS because of its small size, the city lacks the resources to investigate and research the impact sexually oriented businesses would have on the character of the city's neighborhoods; and

WHEREAS the city intends to rely on the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*, dated June 6, 1989, which is included as Appendix II to Chapter 119 of the City of Browns Valley Code, as a basis for regulating sexually oriented businesses in this city; and

WHEREAS the members of the City Council have reviewed this Report;

NOW THEREFORE, the City Council of this City hereby accepts the recommendations and conclusions of this Report and adopts the recommendations and conclusions by reference of the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*, dated June 6, 1989; and by passage of this resolution implements the provisions of City of Browns Valley Code Chapters 119 and 153.

Signed: _____
Mayor

Attest: _____
City Administrator

Note: If this resolution is being adopted only to implement the provisions of City of Browns Valley Code §150.05, then the words “and by passage of this resolution implements the provisions of City of Browns Valley Code Chapters 119 and 153” in the last paragraph above should be deleted from the resolution.

APPENDIX II

***REPORT OF THE ATTORNEY GENERAL'S WORKING GROUP
ON THE REGULATION OF SEXUALLY ORIENTED BUSINESSES***

See separate file on the CD.

City of Browns Valley Code - Business Regulations
Residential Rental Property