

TITLE XI: BUSINESS REGULATIONS

Chapter

110.GENERAL LICENSING PROVISIONS

111.RESERVED

112.LIQUOR REGULATIONS

113.RESERVED

114.BODY ART

115.RESERVED

116.RESERVED

117.RESERVED

118.PUBLIC DANCES AND SPECIAL EVENTS

119.SEXUALLY ORIENTED BUSINESSES

120.LODGING TAX

Section

- 110.01 Licenses required to engage in certain businesses
- 110.02 Application **CHAPTER 110: GENERAL LICENSING PROVISIONS**
- 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 Clerk-Treasurer 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 Clerk-Treasurer 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;

Ottertail - 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; and

(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) above must be reported to the City Clerk-Treasurer 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 Clerk-Treasurer 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 Clerk-Treasurer, shall deposit the fee in the General Fund of the city and issue to the applicant a proper license certificate signed by the City Clerk-Treasurer.

§ 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 Clerk-Treasurer 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 Clerk-Treasurer or, if his or her license has been suspended or revoked by the City Clerk-Treasurer, 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 Clerk-Treasurer or other authorized official. Notice of appeal shall be filed in writing with the City Clerk-Treasurer. 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

Ottertail - Business Regulations

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: RESERVED

Section

General Provisions

CHAPTER 112: LIQUOR REGULATIONS

- 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
- 112.06 Raffles, silent auctions and fund raising events for charitable purposes of wine, beer or intoxicating liquors

Licensing

- 112.20 Number of licenses allowed
- 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

- 112.99 Penalty

Cross-reference:

Sexually Oriented Businesses, see Ch. 119

Zoning, see Ch. 151

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

The provisions of M.S. Ch. 340A, as it 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% 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, as it may be amended from time to time, 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% malt”, includes both **INTOXICATING LIQUOR** and **3.2% 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”, “medium establishment” or “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% 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% 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

§ 112.06 RAFFLES, SILENT AUCTIONS AND FUND RAISING EVENTS FOR CHARITABLE PURPOSES OF WINE, BEER OR INTOXICATING LIQUORS.

No person shall conduct a silent auction, raffle or other fund raising event pursuant to M.S. § 340A.7, as it may be amended from time to time, with prizes or awards of wine, beer or intoxicating liquors without notifying the City Clerk-Treasurer of the event at least ten days prior to the occurrence of the event. The event holder shall provide the city with the event, type of fund raising event (silent auction, raffle or otherwise), type and amount of wine, beer, intoxicating liquor to be awards as prizes, and the charitable purposes to which the event proceeds will be donated.
Penalty, see § 112.99

*LICENSING***§ 112.20 NUMBER OF LICENSES ALLOWED.**

State law establishes the number of liquor licenses that a city may issue. This Section expressly permits an exclusive liquor store as defined by M.S. § 340A.101, Subd. 10. The exclusive liquor store shall also be subject to and must comply with all provisions of Section 112 of the XI Business Regulations of the Ottertail City Code of Ordinances. The Council may issue the number of on-sale intoxicating liquor licenses as permitted by M.S. §§ 340A.413 and 340.601 as amended. Within any limits established by law, the Council may, by resolution, limit the number of any other kind of license which may be issued.

(Am. Ord. 2016-04, passed 9-15-2016; Am. Ord. 2018-01, passed 5-17-2018)

§ 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 herein.

(A) 3.2% 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% malt liquor with the incidental sale of tobacco and soft drinks.

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

(C) Temporary 3.2% malt liquor licenses which may be issued only to a club, charitable, religious or non-profit 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 non-profit 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.405, Subd. 5, 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% malt liquor license is authorized to sell malt liquor with a content over 3.2% (strong beer) without an additional license.

Ottertail - Business Regulations

(J) One day consumption and display permits with the approval of the Commissioner of Public Safety to a non-profit 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.414, 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 division (M) authorizes the sale of only vintage wine of a brand and vintage that is not commonly being offered for sale by any wholesaler in the state. 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 they 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) (1) 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 they 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.

(2) 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) (1) The Council may establish from time to time in § 11.01 the fee for any of the liquor licenses it is authorized to issue.

(2) 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.

(3) 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. Annual fees shall be paid one-half at the time of renewal and the remaining one-half before July 1 of each year.

(D) All license fees shall be paid 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) (1) Off-sale intoxicating liquor licensees may request a reduction in their annual license fee by the amount specified in M.S. § 340A.408, as it may be amended from time to time, if at the time of initial application or renewal they:

(a) 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;

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

(c) 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.

(2) Failure to abide by the provisions of this division (F) 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 date of birth, 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.

(A) At least 60 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.

(B) 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 or the Bureau of Criminal Apprehension (BCA) 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 or BCA 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 \$500, 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 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.
Penalty, see § 112.99

§ 112.33 HOURS AND DAYS OF SALE.

(A) (1) 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.

(2) No delivery of alcohol to an off-sale liquor licensee by a wholesaler or accepted by an off-sale licensee on a Sunday and no order solicitation or merchandising may be made by a wholesaler on Sunday as defined by M.S. § 340A.504, Subd. 4.

(B) No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2% 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% 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.
(Am. Ord. 2017-02, passed 5-18-2017) 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% 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% 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 that 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% 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 (\$500);

(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 (\$1,000);

(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 (\$2,000); and

(d) For a fourth violation within any three-year period, the license shall be revoked (\$2,000, plus revocation).

(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 Clerk-Treasurer, a hearing before the Council shall be granted within ten days. Any suspension under division (B) above 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

§ 112.99 PENALTY.

(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 license 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; and
- (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.

CHAPTER 113: RESERVED

Section

114.01 Adoption by reference

CHAPTER 114: BODY ART

§ 114.01 ADOPTION BY REFERENCE.

Body art regulations as established by M.S. Ch. 146B, are hereby adopted by reference.
(Ord. 2013-08, passed 10-17-2013)

[Text continues on page 31.]

CHAPTER 115: RESERVED

CHAPTER 116: RESERVED

CHAPTER 117: RESERVED

Section

Public Dances

CHAPTER 118: PUBLIC DANCES AND SPECIAL EVENTS

- 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 Prohibitions; clean-up
- 118.14 Noise

Special Events

- 118.25 Purpose
- 118.26 Definitions
- 118.27 Permit required
- 118.28 Permit application
- 118.29 Application information
- 118.30 Permit review
- 118.31 Permit denial
- 118.32 Permit conditions
- 118.33 Permit issuance
- 118.34 Indemnification agreement
- 118.35 Insurance requirements
- 118.36 Revocation of permit
- 118.37 Exceptions to the permit

118.99 Penalty

Cross-reference:

Damage to property; graffiti, see 130.01

Discharging firearms, see 130.02

Fireworks, see 130.04

PUBLIC DANCES

§ 118.01 REGULATION OF PUBLIC DANCES.

All public dances held in the city shall be conducted in accordance with the provisions of this subchapter.

Penalty, see § 118.99

§ 118.02 DEFINITIONS.

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

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 the city unless a permit has been obtained from the City Clerk-Treasurer 30 days prior to the holding of the dance. The fees for a permit shall be as established by § 11.01, as that section 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 the city shall submit an application for a permit on the form provided by the City Clerk-Treasurer, submitted to the City Clerk-Treasurer 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 (site plan), 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 \$1,000,000 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 Clerk-Treasurer 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.

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

Ottertail - Business Regulations

(B) The area of dispensing and consumption of all alcohol shall be fenced off with approved temporary fencing with area described and supplied to the city. For an area with no walled perimeter approved (patio), fencing is required, minimum of four feet. Snow fencing best (no tape). Monitoring of the fence is required to prevent handing of alcohol over the fence to underage drinkers. If no monitoring is provided, a double fence with minimum of four feet, six feet apart is required.

(C) Proof of dram shop education is required for all employees and/or servers.
Penalty, see § 118.99

§ 118.09 LICENSED PEACE OFFICER PRESENCE.

(A) 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.

(B) Notification shall be given to county law enforcement of the date, times and description. Proof of notification shall be provided to law enforcement.

(C) Plain clothes private security shall be provided for the duration of dance, alcohol dispensing and until attendees have gone.
Penalty, see § 118.99

§ 118.10 HOURS.

(A) No public dance shall occur between the hours of 1:00 a.m. and 12:00 noon.

(B) Dispensing of alcohol and music shall end at 12:01 a.m.
Penalty, see § 118.99

§ 118.11 MINORS PROHIBITED.

(A) 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.

(B) Accepted procedures shall be in place to prohibit underage drinking. Wrist bands, hand stamps, carding of at entrance. Only one ingress and egress point is allowed.
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 PROHIBITIONS; CLEAN-UP.

(A) No glass containers are allowed.

(B) Arrangements shall be made for clean-up of site.

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

SPECIAL EVENTS

§ 118.25 PURPOSE.

(A) The following policy sets forth the procedure for the time, place and manner of holding certain special events on city streets, on city property and on private property when an event's impact upon the health, fire, law enforcement, transportation or other services exceeds those regularly provided to that property.

(B) This policy is enacted in order to promote the health, safety and welfare of all residents and visitors of the city by ensuring that special events do not create disturbances, become nuisances, menace or threaten life, health and property, disrupt traffic or threaten or damage private or public property. It is not the intent of the City Council by enacting this policy to regulate in any manner the content of speech or infringe upon the right to assemble, except for regulating the time, place and manner of speech and assembly and this policy should not be interpreted or construed otherwise.
(Ord. passed 4-17-2011)

§ 118.26 DEFINITIONS.

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

SPECIAL EVENT. Any festival, rally, street dance, sports event or other attended outdoor gathering, entertainment or celebration that is to be held in whole or in part upon publicly-owned property or public right-of-way, or, if held wholly upon private property, will affect or impact the ordinary and normal use by the general public of public property or public rights-of-way within the vicinity of the event.

(Ord. passed 4-17-2011)

§ 118.27 PERMIT REQUIRED.

Any person or organization desiring to conduct or sponsor a special event in the city shall first obtain a special event permit from the city.

(Ord. passed 4-17-2011)

§ 118.28 PERMIT APPLICATION.

Any person or organization desiring to sponsor a special event must apply to the city for a special event permit. The special event permit application must be filed not less 30 days in advance of the date in which the event is to occur if the special event requires the closure of any street, any detouring of traffic or any significant impact on city services.

(Ord. passed 4-17-2011)

§ 118.29 APPLICATION INFORMATION.

Special event applications must include the following information:

(A) Description of the event and list of all activities to take place, whether food or alcohol is being served or sold, admission fees/camping and the like;

(B) Name of the applicant or sponsor with contact information.

(C) Proposed date(s) of the special event, together with the beginning and ending times for each date;

(D) Proposed location of the special event;

(E) Any public health plans, including supplying water to the site, solid waste collection and provision of toilet facilities;

(F) Assistance requested from any city departments;

(G) Liability information if required with agency and contact; and

(H) Signature of the applicant.

(Ord. passed 4-17-2011)

§ 118.30 PERMIT REVIEW.

The City Clerk-Treasurer, by authority of the Council, shall review the permit application and make a determination on whether to issue the permit or request for further Council review.

(Ord. passed 4-17-2011)

§ 118.31 PERMIT DENIAL.

The City Council may deny an application for a special event permit if it determines from a consideration of the application or other pertinent information, that:

(A) The applicant fails to supply information requested after having been notified by the City Clerk-Treasurer of additional information or documents needed;

(B) The applicant fails to agree to abide or comply with all of the conditions and terms of the special event permit;

(C) Another special event permit application has already been approved to hold another special event at the same time and place requested by the applicant;

(D) The location of the special event would cause undue hardship for adjacent businesses or residents;

(E) The special event would endanger public safety or health;

(F) The special event would seriously inconvenience the general public's use of public property, services or facilities;

(G) The applicant fails to comply with the liability insurance requirements or the applicant's insurance lapses or is canceled;

(H) The special event would create or constitute a public nuisance, or be likely to cause significant damage to public property or facilities;

(I) The special event would engage in or encourage participants to engage in illegal acts.
(Ord. passed 4-17-2011)

§ 118.32 PERMIT CONDITIONS.

The City Council may condition the issuance of a special event permit by imposing reasonable conditions concerning the time, place and manner of the special event, and such conditions are necessary to protect the safety of persons and property, and the control of traffic; provided that such conditions shall not unreasonably restrict the right of free speech. The conditions may include, but are not limited to:

- (A) Alteration of the date(s), time(s), route or location of the special event proposed;
 - (B) Requirements for the use of city personnel and equipment;
 - (C) Requirements for the provision of first aid or sanitary facilities at the special event;
 - (D) Requirements for the use of garbage containers and the cleanup and restoration of any public property;
 - (E) Restrictions on the use of amplified sound and compliance with noise ordinances, regulations and laws;
 - (F) Requirements to provide notice of the special event to surrounding property owners; and
 - (G) Restrictions on the sale or consumption of food and alcohol including licensing.
- (Ord. passed 4-17-2011)

§ 118.33 PERMIT ISSUANCE.

The City Clerk-Treasurer shall issue the special events permit once the application has been approved and the applicant has agreed to comply with the terms and conditions of the permit as well as the requirements and restrictions as outlined by the Council.

(Ord. passed 4-17-2011)

§ 118.34 INDEMNIFICATION AGREEMENT.

If the event, or any portion of the event is to be held on city property or right-of-way, prior to the issuance of a special event permit, the permit applicant and authorizing officer of the sponsoring organization, if any, must sign an agreement to indemnify, defend and hold the city, its officials, employees and agents harmless from any claim that arises in whole or in part out of the special event, except any claims arising solely out of the negligent acts or omissions of the city, its officials, employees and agents.

(Ord. passed 4-17-2011)

§ 118.35 INSURANCE REQUIREMENTS.

The following categories are established by the Council to determine the liability risk involved for the city in any event scheduled when there is use of city property (buildings and grounds). The City Clerk-Treasurer may request additional information regarding the insurability of the event and/or event sponsors.

(A) *Low risk.* Indoor and/or outdoor activities that guarantee a minimum risk to the city. Organizers are required to sign a release and indemnification agreement with the city.

(B) *High risk.* Outdoor activities involving motorized equipment, vehicles, animals or activity which would create a medium to high liability risk for the city.

(1) *Low risk.* Events that are categorized as low risk are not subject to general liability insurance as determined by the city. If desired, organizers have the opportunity to purchase low cost liability insurance through Tenant Use Liability Insurance Program (TULIP) available from the League of Minnesota Insurance Trust. Interested organizers would need to contact the City Clerk-Treasurer for events that are eligible for this type of liability insurance and an estimate of cost. Organizers deal directly with provider.

(2) *High risk.* General liability insurance is required. The applicant or sponsor of a special event must be required to possess or obtain a commercial general liability insurance policy in the amount of \$1,000,000 or as determined by the city to protect against loss from liability imposed by law for damages on account of bodily injury or property damage arising from the special event when the event is considered high-risk. A certificate of insurance will be required to be filed with the city prior to issuance of the special events permit. The certificate of insurance must name the city, its officials, employees and agents as additional insured. Insurance coverage must be maintained for the duration of the special event.

(3) *Alcohol liability insurance.* If alcoholic beverages are to be sold or distributed at any special event, an alcohol certificate of insurance is required. Any general liability insurance would include an endorsement for liquor liability. Additional endorsements depending upon the type of special event and proposed activities may be required.
(Ord. passed 4-17-2011)

§ 118.36 REVOCATION OF PERMIT.

Any permit issued may be revoked by a law enforcement officer or by any person appointed by the Council at any time when, by reason of disaster, public calamity, riot or other emergency, the law enforcement officer or other person appointed by the Council determines that the safety of the public or property requires the revocation. The City Clerk-Treasurer may revoke any special event permit issued pursuant to this policy if he or she finds that the permit has been issued based upon false information or when the permittee exceeds the scope of the permit. Notice of the action revoking a permit shall be delivered in writing to the permittee by personal service or certified mail at the address specified by the permittee in its application.
(Ord. passed 4-17-2011)

§ 118.37 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; and/or

(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 §§ 118.01 through 118.14.

(B) (1) Any person who violates any condition of a special event permit or any provision of §§ 118.25 through 118.37 shall be guilty of a misdemeanor punishable as prescribed by § 10.98.

(2) Enforcement of this division (B) 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; and

(d) Disbursement of persons gathered.

Section

- 119.01 Purpose
- 119.02 Findings **CHAPTER 119 SEXUALLY ORIENTED BUSINESSES**
- 119.03 Conclusion of City Council
- 119.04 Definitions
- 119.05 Zoning regulations; location prohibitions
- 119.06 Sign restrictions
- 119.07 License required; application and fees
- 119.08 Issuance of license
- 119.09 Inspections
- 119.10 Expiration of licenses
- 119.11 Regulation of sexually oriented businesses
- 119.12 Suspension or revocation
- 119.13 Transfer of license
- 119.14 Effective date

119.99 Penalty

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

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

Cross-reference:

Subdivisions, see Ch. 152

Zoning, see Ch. 151

§ 119.01 PURPOSE.

The purpose of this chapter is to prescribe licensing requirements and regulations of sexually oriented businesses in order to protect the general health, safety and welfare of the citizens of the city 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.

(Ord. 2006-03, passed 7-20-2006)

§ 119.02 FINDINGS OF CITY COUNCIL.

(A) The City Council makes the following findings regarding the need to license sexually oriented businesses. The findings are based upon the city's review and analysis of numerous studies, reports, articles, judicial decisions and the experience and legislative findings of other cities around the country concerning the impacts or "secondary effects" of sexually orientated businesses and the sale, distribution, and display of sexually orientated materials (collectively, "sexually oriented business activities") on the areas in which the activities are located or take place.

(B) Sexually oriented businesses can exert a dehumanizing influence on persons attending places of worship, children attending licensed family day care homes, state licensed group family day care homes and state licensed child care centers, clients attending state licensed developmental achievement centers, students attending school and people using public parks and recreational areas.

(C) Sexually oriented businesses can be used as fronts for prostitution and other criminal activity thereby taxing crime prevention, law enforcement and public health services. The experience of other cities indicates that the proper management and operation of the businesses can, however, minimize this risk; provided, the owners and operators of the facilities are regulated by licensing or other procedures.

(D) Sexually oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the character and quality of the residential housing in the area in which the businesses are located, thereby exacerbating the shortage of affordable and habitable housing for city residents.

(E) The concentration of sexually oriented businesses in one area can have a substantially detrimental effect on the area in which the 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 the 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 the businesses can have the overall effect of causing declining real estate values, which result can be exacerbated by the concentration of the businesses, which can erode the city's tax base and contribute to overall blight.

(F) Sexually oriented businesses can increase the risk of exposure to communicable diseases including, but not limited to, acquired immune deficiency syndrome (AIDS) for which currently there is no cure. Experiences of other cities indicate that the 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 the establishments, but also the general public.

(G) 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.
(Ord. 2006-03, passed 7-20-2006)

§ 119.03 CONCLUSION OF CITY COUNCIL.

In direct furtherance of the substantial goals of public health, safety and welfare, the City Council adopts the following provisions, recognizing that it has a great interest in the present and future character of the city's residential and commercial neighborhoods.
(Ord. 2006-03, passed 7-20-2006)

§ 119.04 DEFINITIONS.

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

ADULT ARCADE/MINI-MOTION PICTURE THEATER. Any place which excludes minors from all or part of the establishment wherein coin-operated, slug-operated or for any form of consideration, or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors, video or laser disc players, or other image producing devices (10% or more of the floor space) are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas, as defined herein.

ADULT BODY PAINTING STUDIO. An establishment or business which provides the service of applying paint or other substances (10% or more of the floor space), whether transparent or non-transparent, to or on the body of a patron when the body is wholly or partially nude in terms of specified anatomical area, as defined herein.

ADULT CABARET. A commercial establishment which provides dancing or other live entertainment (10% or more of the floor space), which excludes minors by virtue of age from all or part of the establishment and if the dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, depiction or description of specified sexual activities or by exposure of specified anatomical areas, for observation or participation by patrons therein.

ADULT CAR WASH. A wash facility for any type of motor vehicle (10% or more of the floor space), that allows employees, agents, independent contractors or persons to appear in a state of partial or total nudity in terms of specified anatomical areas.

ADULT CONVERSATION/RAP PARLOR. A commercial establishment which provides the service of engaging in listening to conversation, talk or discussion (10% or more of the floor space), which excludes minors by reason of age, if the service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas, for observation or participation by patrons therein.

ADULT ENTERTAINMENT CENTER. A commercial establishment which excludes minors by reason of age, and wherein (10% or more of the floor space) an admission is charged for entrance into the facility, or for food or beverages intended for consumption within the facility, wherein may be

observed or which contains one or more coin-operated mechanisms which when activated permit a customer to view one or more live persons unclothed or in attire, costume or clothing as to expose to view any specified sexual activities or specified anatomical areas.

ADULT HEALTH CLUB or **ADULT SPORTS CLUB.** A business or commercial enterprise that is named, signed, advertised or promoted as a facility or club providing health or sports related goods, services or equipment, from which minors are excluded by reason of age or that is distinguished or characterized (10% or more of the floor space) by an emphasis on specified anatomical areas or specified sexual activities.

ADULT HOTEL OR MOTEL. A hotel or motel or similar commercial establishment from which minors are specifically excluded from patronage and which:

(1) Offers accommodations to the public for any form of consideration, provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis on matter depicting, describing or relating to specified anatomical areas or specified sexual activities;

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

ADULT MASSAGE PARLOR. A commercial establishment which provides the service of “massage” (10% or more of the floor space), which excludes minors by reason of age, if the service is distinguished by an emphasis on specified sexual activities or specified anatomical areas for observation or participation by patrons therein.

ADULT MODELING STUDIO. An establishment, which excludes minors from all or part of the establishment, and whose major business (10% or more of the floor space) is the provision to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to those customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted by the customers.

ADULT MOTION PICTURE THEATER. A commercial establishment from which minors are excluded by reason of age, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown (10% or more of the floor space), which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT SAUNA. A commercial establishment which provides a steam bath or hot air bathing, and/or massage services (10% or more of the floor space), which excludes minors by reason of age

where the service(s) is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation or participation by patrons therein.

ADULT STEAMROOM/BATHHOUSE. An establishment providing a steam bath or heat bathing for the pleasure, bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent (10% or more of the floor space) which excludes minors by reason of age where the service(s) is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas, for observation or participation by patrons therein.

ADULT THEATER. A theater, concert hall, auditorium or similar commercial establishment from which minors are excluded from all or part of the establishment, (10% or more of the floor space), which regularly features live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities for observation or participation by patrons therein.

BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO AND/OR MEDIA STORE. A commercial establishment which excludes minors and which has a substantial portion of its stock in trade or stock (10% or more of the floor space) displayed as instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities or displayed as books, magazines, films, videotape or other media which are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined herein.

MINOR. Any person under the age of 18 years.

NUDITY. The showing of the human male or female genitals or pubic area with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering below a point immediately above the top of the areola; or the depiction of showing of the covered male genitals in a discernibly turgid state.

SEXUALLY ORIENTED BUSINESS/ADULT ESTABLISHMENT. Any business which offers its patrons services, entertainment or the sale of merchandise characterized by an emphasis on matter depicting, exposing, describing, discussing, or relating to specified sexual activities or specified anatomical areas. Specifically included in the term, but without limitation, are adult arcade/mini-motion picture theater, adult body painting studio, adult book store, novelty store or video/media store, adult cabaret, adult car wash, adult conversation/rap parlor, adult entertainment center, adult health club/sports club, adult hotel or motel, adult massage parlor, adult modeling studio, adult motion picture theater, adult sauna, adult steam room/bathhouse, adult theater and any other sexually oriented business/adult establishments.

SPECIFIED ANATOMICAL AREAS.

(1) Less than completely and opaquely covered human genitals, pubic region, pubic hair, buttocks, anus or female breast(s) below a point immediately above the top of the areola; and

(2) Human male genitals in a discernable turgid state even if completely and opaquely covered.

SPECIFIED CRIMINAL ACTIVITY. Any of the following offenses: any unlawful lewd or immoral conduct, including specifically, but without limitation, any of the lewd, indecent or immoral criminal acts specified in any of the following statutes:

(1) M.S. §§ 609.293 to 609.365, as they may be amended from time to time, of the State Criminal Code (Sex Offenses);

(2) M.S. §§ 617.23 to 617.299, as they may be amended from time to time (Obscenity Statute); and

(3) M.S. §§ 152.01 to 152.21, as they may be amended from time to time (Controlled Substances Law).

SPECIFIED SEXUAL ACTIVITY. The following:

(1) An act of sexual intercourse, normal or perverted, actual or simulated, including genital to genital, anal to genital, or oral to genital intercourse, whether between human beings or between a human being and an animal;

(2) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound or otherwise physically restricted on the part of one so clothed;

(3) Masturbation, actual or simulated, or lewd exhibitions of the genitals including any explicit close-up representation of a human genital organ clothed or unclothed;

(4) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breast 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; and

(5) Excretory function as part of or in connection with any of the activities set forth in divisions (1), (2), (3) or (4) above of this definition.
(Ord. 2006-03, passed 7-20-2006)

§ 119.05 ZONING REGULATIONS; LOCATION PROHIBITIONS.

(A) Sexually oriented businesses shall be prohibited in all of the city's zoning districts, except in the Agricultural District, as defined and regulated in the zoning ordinance, where the businesses shall be permitted; provided, the conditions specified in the zoning ordinance and in this chapter are met.

(B) In the Agricultural District, in which sexually oriented businesses are permitted uses, the following conditions shall be met prior to a sexually oriented business being allowed.

(1) Sexually oriented businesses shall be at least 1,500 feet from any other sexually oriented business. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point of the actual business premises to the sexually oriented business to the nearest point of the actual business premises of any other sexually oriented business.

(2) (a) Sexually oriented business shall be located no less than 1,500 feet from:

1. Any zoned residential area, whether R-1, R-M or Shoreline Residential, as defined in the zoning ordinance;

2. Mobile home parks;

3. Commercial district;

4. Any lake or river;

5. Governmental buildings;

6. City/public parks, recreational areas;

7. Schools, public or private;

8. Licensed family day care homes, licensed group family day care homes, licensed child-care or day care centers, licensed developmental achievement centers and senior housing complexes; and

9. On-sale liquor establishments and sexually oriented business shall be located no less than 2,800 feet from places of worship.

(b) Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point of the actual business premises of the sexually oriented business to the nearest boundary of the residential use district of the boundary of a mobile home park, or to the nearest property line of the premises used as a school, place of worship, governmental building, city/public park, recreational area, commercial district, any lake or river, licensed family day care home, licensed group family day care home, licensed child-care or day care center, licensed developmental achievement center, senior housing complex or on-sale liquor establishment.

(3) The operation, establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof, or in the increase of the floor area of any sexually oriented business in any building, structure or portion thereof is prohibited.
(Ord. 2006-03, passed 7-20-2006) Penalty, see § 119.99

§ 119.06 SIGN RESTRICTIONS.

In order to protect children from exposure to lurid signs and materials and in order to preserve the value of property surrounding sexually oriented business, the following sign regulations shall apply to all sexually oriented businesses in the city in lieu of the provisions of the sign ordinance of the city.

(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. The maximum allowable sign area shall be one square foot of sign area per foot or lot frontage on a street, but in no event exceeding 32 square feet. The maximum number of signs shall be one per lot frontage. Signs otherwise permitted pursuant to this chapter shall contain only:

- (1) The name of the sexually oriented business; and/or
- (2) The specific type of sexually oriented business conducted on the licensed premises.

(B) Temporary signage shall not be permitted in connection with any sexually oriented business.

(C) No signs shall be placed in any window.

(D) A one-square foot sign shall be placed on the door to state hours of operation and admittance is restricted to adults only.

(Ord. 2006-03, passed 7-20-2006) Penalty, see § 119.99

§ 119.07 LICENSE REQUIRED; APPLICATION AND FEES.

(A) All establishments, including any business operating at the time this chapter becomes effective, operating or intending to operate a sexually oriented business, shall apply for and obtain a license from the city. A person is in violation of this chapter if he or she operates a sexually oriented business without a valid license, issued by the city.

(B) An application for a license must be made on a form provided by the city.

(C) All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide information (including fingerprints) as to enable the city to determine whether the applicants meet the qualifications established in this chapter.

(D) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as an applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each applicant who has a 20% or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

(E) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(a) An individual, the individual shall state his or her legal name and any aliases and submit proof that he or she is 18 years of age;

(b) A partnership, the partnership shall state its complete name, and the names and dates of birth of all partners, whether the partnership is general or limited, and a true copy of the partnership agreement; and

(c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of the state of incorporation, the names, dates of birth and capacities of all officers, directors and principal stockholders, and the name and date of birth of the registered corporate agent(s), manager(s), proprietor(s) or other agent(s) in charge of the business and the address of the registered office for service of process.

(2) The name of the owner of the property where the sexually oriented business is to be located; if a corporation, then the names of the principal owners of the corporation;

(3) The type, name and location of every business or occupation in which the applicant has been engaged during the preceding two years and the names(s) and address(es) of the applicant's employee(s) and partner(s), if any, for the preceding two years;

(4) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state:

(a) The sexually oriented business's fictitious name; and

(b) Submit the required registration documents.

(5) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity, as defined in § 119.04, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each;

(6) Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter or other similar sexually oriented business ordinances from another city, county or state denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this

Ottertail - Business Regulations

chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation;

(7) Whether the applicant or a person residing with the applicant holds any other licenses under this chapter or other similar sexually oriented business ordinance from another city, county or state and, if so, the names and locations of the other licensed businesses;

(8) The location of the proposed sexually oriented business, including a legal description or the property, street address and telephone, if any;

(9) The applicant's mailing address, residential address and phone number;

(10) The applicant's driver's license number, Social Security number and/or his or her state or federally issued tax identification number;

(11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;

(12) A straight-line drawing prepared within 30 days prior to application depicting the property lines and the structures containing any existing sexually oriented businesses within 1,500 feet of the property to be licensed; school or public park or recreation area within 1,500 feet of the property to be licensed and 2,800 feet from all places of worship. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted. The drawing shall be reviewed by the City Council for accuracy. In the event of a dispute between the applicant and the city as to the accuracy of the drawing, the city may order the applicant or provide a drawing with the information required under this division (E)(12) prepared by registered land surveyor;

(13) Copy of lease and all financing documents, all business related contracts for supply of material and consulting management;

(14) The name, address and phone number of two persons who shall be residents of the state and who may be called upon to attest to the applicant's character; and

(15) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a non-refundable application and investigation fee which shall be set by Council resolution and amended from time to time.

(F) All license applications and fees shall be submitted to the City Clerk-Treasurer.
(Ord. 2006-03, passed 7-20-2006)

§ 119.08 ISSUANCE OF LICENSE.

(A) Upon the filing of the application for a sexually oriented business license, the application shall be referred to the appropriate city departments for an investigation to be made on the information as is contained in the application. The application process shall be completed within 60 days from the date the completed application is filed with the city. If the application is deficient, the Council shall act on the application within 120 days from the date that the deficiency has been corrected. After the investigation, the city shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) An applicant is not 18 years of age or older on the date the application is submitted to the city;

(2) An applicant or a person with whom the applicant is residing is overdue in payment to the city of taxes, fees, fines or penalties assessed against or imposed upon him or her in relation to any business or residence;

(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(4) An applicant, or a person with whom the applicant is residing, has been denied a license by the city or any other jurisdiction, to operate a sexually oriented business within the preceding 12 months or whose license to operate a sexually oriented business has been revoked within the preceding 12 months;

(5) (a) An applicant or a person with whom the applicant is residing, has been convicted of a specified criminal activity as defined in § 119.04; for which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a gross misdemeanor or felony offense; and

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

(b) The fact that a conviction of applicant or a person with whom the applicant is residing, is being appealed shall have no effect on disqualification of the applicant.

(6) The license fee required by this chapter has not been paid; and

(7) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

(B) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to § 119.04. All licenses shall be posted in a conspicuous, unobstructed place, at or near the entrance to the sexually oriented business so that they may be easily read at any time.

(Ord. 2006-03, passed 7-20-2006)

§ 119.09 INSPECTIONS.

(A) An applicant or licensee shall permit representatives of any department of the city or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with this chapter, at any time it is open for business and/or occupied.

(B) A person who operates a sexually oriented business or his or her agent or employee commits a violation of this section if he or she refuses to permit the lawful inspection of the premises at any time it is open for business and/or occupied. Refusal to permit inspections may result in the suspension of the license as provided in § 119.12.

(C) 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.

(Ord. 2006-03, passed 7-20-2006)

§ 119.10 EXPIRATION OF LICENSES.

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided herein. Application for renewal shall be made at least 30 days before the expiration date.

(B) (1) When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

(2) 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.

(Ord. 2006-03, passed 7-20-2006)

§ 119.11 REGULATION OF SEXUALLY ORIENTED BUSINESSES.

(A) All licensed sexually oriented businesses shall comply with the provisions of this chapter, all other applicable city ordinances, and all other applicable federal, state and local laws.

(B) No sexually oriented business shall be maintained or operated in any manner that causes, creates or allows public viewing of any adult material or any entertainment depicting, describing or relating to specified sexual activities or specified anatomical areas, from any sidewalk, public or private right-of-way, or any property other than the lot on which the licensed premises is located. No portion of the exterior of a sexually oriented business shall utilize or contain any flashing lights, search lights or spotlights, or any other similar lighting systems, or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner, except to the extent specifically allowed herein. This division (B) shall apply to any advertisement, display, promotional material, decoration or sign; to any performance or show; and to any window, door or other opening.

(C) No sexually oriented business, except for an adult motel, may be open on Christmas Eve Day, Christmas Day, Thanksgiving or Sundays, or remain open at any time between the hours of 1:00 a.m. and 10:00 a.m. on weekdays and Saturdays.

(D) No sexually oriented business shall have on- or off-sale licenses and/or consume liquor on the premises or operate in the same building as a business that does.

(E) All performers, dancers and persons providing live entertainment shall be a minimum of ten feet from patrons and on a platform at least two feet high.

(F) There shall be no physical contact (including caressing or fondling) between patrons and dancers/performers.

(G) No customer, patron or spectator 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.

(H) Individual motion picture viewing booths must be without doors and the occupant must be visible from the room in which the booth is located. Only one person at a time is allowed in a viewing booth and the booth must be clean and sanitary.

(I) Walls separating booths must be such that an occupant cannot engage in sexual activity with an occupant of another booth.

(J) All entrances to sexually oriented businesses, with the exception of emergency fire exits, which are not usable by patrons to enter the business, shall be visible from a public right-of-way.

(K) Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises.

(L) A person commits a violation of this chapter if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.
(Ord. 2006-03, passed 7-20-2006) Penalty, see § 119.99

§ 119.12 SUSPENSION OR REVOCATION.

(A) The city shall suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section 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; and/or
- (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.

(B) The city shall revoke a license if a cause of suspension occurs and the license has been suspended within the preceding 12 months.

(C) The city shall revoke a license if it determines that:

- (1) A licensee gave false or misleading information in the material submitted 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 defined herein as "specified criminal activity" for which the required time period listed in § 119.08 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 herein defined as “specified criminal activity” for which a conviction has been obtained, and the person or persons 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, masturbation or other sex act to occur in or on the licensed premises. This section 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; or

(8) A licensee is delinquent in payment to the city, county or state for any taxes or fees past due or issued NSF (non-sufficient funds) checks to the city, county or state.

(D) 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 the 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.

(E) Within 90 days after denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek judicial review of the administrative action in any court of competent jurisdiction.

(F) A revocation or suspension shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least ten days’ notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof.
(Ord. 2006-03, passed 7-20-2006)

§ 119.13 TRANSFER OF LICENSE.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.
(Ord. 2006-03, passed 7-20-2006)

§ 119.14 EFFECTIVE DATE.

This chapter shall be effective upon its passage and the publication summary of its contents according to law.
(Ord. 2006-03, passed 7-20-2006)

§ 119.99 PENALTY.

Except as otherwise provided by state law, a person violating a provision of this chapter is subject to the penalties established in § 10.98. A fine or sentence imposed does not affect the right of the city to suspend or revoke the license of the licensee as the Council deems appropriate.

**APPENDIX A: 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 App. B to Ch. 119 of the Ottertail Code, as a basis for regulating sexually oriented businesses in the city; and

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

NOW THEREFORE, the City Council 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 the Ottertail Code.

Signed:

Mayor

Attest:

City Clerk-Treasurer

Note: If this resolution is being adopted only to implement the provisions of the Ottertail Code's § 150.05, then the words "and by passage of this resolution implements the provisions of Ottertail Code's Ch. 119 and Ch. 153" in the last paragraph above should be deleted from the resolution. (Res. 2011-27, passed 11-17-2011)

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

The *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*, dated June 6, 1989, is hereby adopted by reference and incorporated herein as fully as if set out at length in this code of ordinances.
(Res. 2011-27, passed 11-17-2011)

Section

- 120.01 Definitions
- 120.02 Imposition of tax **CHAPTER 120: LODGING TAX**
- 120.03 Collections
- 120.04 Exemptions
- 120.05 Advertising no tax
- 120.06 Payments and returns
- 120.07 Examination of return, adjustments, notices and demands
- 120.08 Refunds
- 120.09 Failure to file a return
- 120.10 Administration of tax
- 120.11 Examining records
- 120.12 Violations
- 120.13 Use of proceeds
- 120.14 Appeals
- 120.15 Effective date

- 120.99 Penalty

§ 120.01 DEFINITIONS.

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

CITY. The City of Ottertail, Minnesota, acting by or through its duly authorized representative.

LODGER. The person obtaining lodging from an operator.

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

OPERATOR. Any person who has charge, care or control of a building in the city, or part thereof, in which dwelling units or rooming units are let.

PERSON. Includes all firms, partnerships, associations, corporations and natural persons.

RENT. The total consideration valued in money charged for lodging whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.
(Ord. 2011-01, passed 4-21-2011)

§ 120.02 IMPOSITION OF TAX.

Pursuant to M.S. § 469.190, as it may be amended from time to time, there is hereby imposed a tax of 3% on the rent charged by an operator for providing lodging to any person. The tax shall be stated and charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the city and shall be extinguished only by payment to the city. In no case shall the tax imposed by this section upon an operator exceed the amount of tax which the operator is authorized and required by this chapter to collect from a lodger.
(Ord. 2011-01, passed 4-21-2011)

§ 120.03 COLLECTIONS.

Each operator shall collect the tax imposed by this section at the time the rent is paid. The tax collection shall be deemed to be held in trust by the operator for the city. The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a receipt of payment from the operator.
(Ord. 2011-01, passed 4-21-2011)

§ 120.04 EXEMPTIONS.

An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the city to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected and the claim shall be made in writing and under penalty of perjury on forms provided by the city. All claims shall be forwarded to the city when the returns and collections are submitted as required by this chapter.
(Ord. 2011-01, passed 4-21-2011)

§ 120.05 ADVERTISING NO TAX.

It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or

that it will not be added to the rent or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than \$0.01 shall be considered an additional cent. (Ord. 2011-01, passed 4-21-2011) Penalty, see § 120.99

§ 120.06 PAYMENTS AND RETURNS.

(A) The taxes imposed by this chapter shall be paid by the operator to the city monthly not later than 20 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon those forms and continuing the information as the city may require. The return shall contain the following minimum information:

- (1) The total amount of rent collected for lodging during the period covered by the return;
- (2) The amount of tax required to be collected and due for the period;
- (3) The signature of the person filing the return or that of his or her agent duly authorized in writing;
- (4) The period covered by the return; and
- (5) The amount of uncollectible rental charges subject to the lodging tax.

(B) The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this chapter previously paid as a result of any transaction the consideration for which became uncollectible. (Ord. 2011-01, passed 4-21-2011)

§ 120.07 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS.

(A) The city shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness.

(B) The tax computed on the basis of the examination shall be the tax to be paid.

(C) If the tax due is found to be greater than that paid, the excess shall be paid to the city within ten days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return.

(D) If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the city within ten days after determination of the refund. (Ord. 2011-01, passed 4-21-2011)

§ 120.08 REFUNDS.

Any person may apply to the city for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period; provided that no application for refund shall be considered unless filed within one year after the tax was paid, or within one year from the filing of the return, whichever period is the longer. The city shall examine the claim and make and file written findings whereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to that person at the address stated upon the return. If the claim is allowed in whole or in part, the city shall credit the amount of the allowance against any taxes due under this chapter from the claimant and the balance of the allowance, if any, shall be paid by the city to the claimant.
(Ord. 2011-01, passed 4-21-2011)

§ 120.09 FAILURE TO FILE A RETURN.

(A) If any operator required by this chapter to file a return shall fail to do so within the time prescribed or shall make, willfully or otherwise, an incorrect, false or fraudulent return, the operator shall, upon written notice and demand, file the return or corrected return within ten days of receipt of the written notice and shall at the same time pay any tax due on the basis thereof. If the person shall fail to file the return or corrected return, the city shall make a return or corrected return for the person based upon the knowledge and information as the city can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by the return) shall be paid within ten days of the receipt of written notice and demand for the payment. Any return or assessment made by the city shall be prima facie correct and valid, and the burden of proving to the contrary rests with any person in any action or proceeding in respect thereto.

(B) If any portion of a tax imposed by this chapter, including penalties thereon, is not paid within 30 days after it is required to be paid, the city may institute the legal action as may be necessary to cover the amount due plus interest, penalties, the costs and disbursements of any action.

(C) Upon a showing of good cause, the city may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by this chapter; provided that, interest during the period of extension shall be added to the taxes due at the rate of 8% per annum.
(Ord. 2011-01, passed 4-21-2011)

§ 120.10 ADMINISTRATION OF TAX.

The city shall administer and enforce the assessment and collection of the taxes imposed by this chapter. The city shall cause to be prepared blank forms for the returns and other documents required by this chapter and shall distribute the same throughout the city. Failure to receive or secure the forms and documents shall not relieve any person from any obligation required of him or her under this chapter.
(Ord. 2011-01, passed 4-21-2011)

§ 120.11 EXAMINING RECORDS.

Persons acting on behalf of the city and authorized in writing by the city may examine the books, papers, and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this chapter. Every operator is directed and required to give to the city the means, facilities and opportunity for the examinations and investigations as are hereby authorized.

(Ord. 2011-01, passed 4-21-2011)

§ 120.12 VIOLATIONS.

Any person who shall willfully fail to make a return by this chapter, or who shall fail to pay the tax after written demand for payment, or who shall fail to remit the taxes collected or any penalty or interest imposed by this chapter after written demand for the payment, or who shall refuse to permit the city's authorized agents to examine the books, records and papers under his or her control, or who shall willfully make any incomplete, false or fraudulent return shall be guilty of a misdemeanor.

(Ord. 2011-01, passed 4-21-2011) Penalty, see § 120.99

§ 120.13 USE OF PROCEEDS.

Ninety-five percent of the proceeds obtained from the collection of taxes pursuant to this chapter shall be used in accordance with M.S. § 469.190, as the same may be amended from time to time, to fund a Convention and Visitors Bureau for the purpose of marketing and promoting the city as a tourist center. The city may use up to 5% of the proceeds obtained hereunder to defray the costs and expenses of collection and administration of the tax.

(Ord. 2011-01, passed 4-21-2011)

§ 120.14 APPEALS.

(A) Any operator aggrieved by any notice, order or determination made by the city under this chapter may file a petition for review of the notice, order or determination. The petition shall contain the name of petitioner, the petitioner's address and the location of the lodging subject to the notice, order or determination.

(B) The petition for review shall be filed with the city within ten days after the notice, order or determination for which review is sought has been mailed to or served upon the person requesting review.

(C) Upon receipt of the petition, the City Clerk-Treasurer shall set a date for a hearing and give the petitioner at least ten days prior written notice of the date, time and place of the hearing.

Ottertail - Business Regulations

(D) At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn.

(E) The hearing shall be conducted by the City Clerk-Treasurer or his or her authorized agent, and he or she shall make written findings of fact and conclusions based upon the applicable section of this chapter and the evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination made by the city.

(F) Any decision rendered by the city pursuant to this section may be appealed to the City Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the city within ten days after the decision has been mailed to the petitioner.

(G) The matter will thereupon be placed on the Council agenda as soon as is practical. The Council shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the Council that the findings and conclusions were incorrect, the Council may modify, reverse or affirm the decision of the City Clerk-Treasurer or authorized agent under the same standards as set forth in § 120.06.
(Ord. 2011-01, passed 4-21-2011)

§ 120.15 EFFECTIVE DATE.

This chapter shall become effective May 1, 2011 and shall remain in effect until rescinded or amended by action of the City Council.
(Ord. 2011-01, passed 4-21-2011)

§ 120.99 PENALTY.

(A) If any tax imposed by this chapter is not paid within the time herein specified for the payment, or an extension thereof, there shall be added thereto a specific penalty equal to 10% of the amount remaining unpaid.

(B) In case of any failure to make and file a return within the time prescribed by this chapter, unless it is shown that the failure is not due to willful neglect, there shall be added to the tax in addition the penalty provided in division (A) above, a penalty of 5% for each 30-day period or fraction thereof during which the failure continues, not exceeding 25% in the aggregate. There shall be a minimum penalty assessed of \$10 if penalties in the aggregate do not exceed that amount. The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(C) If any person willfully fails to file any return or makes any payment required by this chapter, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50% of any tax (less any amounts paid on the basis of the false or fraudulent return) found due for the period to which the return related. The penalty imposed by this section shall be collected as part of the tax, and shall be in addition to any other penalties provided by this chapter.

(D) All payments received shall be credited first to penalties, next to interest, and then to the tax due.

(E) The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the rate of 8% per annum from the time the tax should have been paid until payment is made. Any interest and penalty shall be added to the tax and be collected as part thereof.
(Ord. 2011-01, passed 4-21-2011)

