

TITLE XI: BUSINESS REGULATIONS

Chapter

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CHAPTER 110: PEDDLERS AND SOLICITORS

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§ 110.01 DEFINITIONS.

For the purposes of this Chapter the words defined in this Section have the meanings ascribed to them.

PEDDLER. Any person with no fixed place of business who goes from house to house carrying or transporting goods, wares or merchandise and offering or exposing the same for sale, or making sales and deliveries to purchasers of the same.

SOLICITOR. Any person who goes from house to house soliciting or taking or attempting to take orders for 1) the purchase of any goods, wares, or merchandise, including magazines, books, periodicals, or personal property of any nature whatsoever for delivery in the future, or 2) services to be performed then or in the future.

§ 110.02 NOTICE PROHIBITING PEDDLERS OR SOLICITORS.

(A) Any resident of the City who wishes to exclude peddlers or solicitors from premises occupied by him may place upon or near the usual entrance to such premises a printed placard or sign bearing the following notice: "Peddlers and Solicitors Prohibited". Such placard shall be at least three and three-fourth inches (3 $\frac{3}{4}$ ") long and three and three-fourth inches (3 $\frac{3}{4}$ ") wide and the printing thereon shall not be smaller than forty eight (48) point type.

(B) No peddler or solicitor shall enter in or upon any premises or attempt to enter in or upon any premises, where such placard or sign is placed and maintained.

(C) No person other than the person occupying such premises shall remove, injure or deface such placard or sign.

§ 110.03 PENALTY.

Any person who violates any provision of this Chapter is guilty of a misdemeanor. (Ord. 516, 6-1-87, eff. 7-1-87)

CHAPTER 111: TOBACCO-RELATED PRODUCTS

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GENERAL PROVISIONS**§ 111.01 PREAMBLE.**

This chapter is an ordinance relating to the sale, possession and use of tobacco, tobacco products and tobacco-related devices in the city and to reduce the illegal sale, possession and use of these items to and by minors. The current Tobacco-Related Products ordinances listed in Chapter 111 for the City of Litchfield (ord. 631, passed 4-20-1998) shall be repealed and deemed no longer effective as of the effective date of the new ordinance provided below.

(Ord. 793, passed 4-15-2019)

§ 111.02 PURPOSE AND INTENT.

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

(Ord. 793, passed 4-15-2019)

§ 111.03 DEFINITIONS

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

CIGARS. Any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in M.S. § 297F.01, subd. 3 as amended from time to time.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices are following and complying with the requirements of this ordinance. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this ordinance. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic cigarettes,

electronic delivery device or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by state and federal laws. **COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices.

ELECTRONIC DELIVERY DEVICE AND ELECTRONIC CIGARETTE. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

HOOKAH. "HOOKAH." shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.

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

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

LOOSIES. The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "**LOOSIES**" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

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

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

NICOTINE OR LOBELIA DELIVERY DEVICES. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

PUBLIC PLACE. Any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings.

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

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

SAMPLING. The lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic cigarettes in a retail establishment by a customer or potential customer for the purpose of ***SAMPLING*** the product or device before a purchase.

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

SMOKING. Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product or exhaling vapor from any electronic delivery device, such as vaping. ***SMOKING*** also includes carrying a lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco or plant product intended for inhalation.

SMOKING LOUNGE. A tobacco products shop which allows customers to be seated.

TOBACCO or TOBACCO RELATED PRODUCTS. Tobacco and tobacco products includes cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including by vaping, or any component, part, or accessory of a tobacco product; cigars; pipe tobacco, cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; dipping tobaccos; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

TOBACCO PRODUCTS SHOP: A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of tobacco, tobacco related products, tobacco related devices and in which the sale of other products is

merely incidental. "**TOBACCO PRODUCTS SHOP** " does not include a tobacco products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

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

VAPOR LOUNGE. A vapor products shop which allows customers to be seated.

VAPOR PRODUCTS SHOP: A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of electronic delivery devices, electronic cigarettes and related products and in which the sale of other products is merely incidental. "**VAPOR PRODUCTS SHOP** " does not include a vapor products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

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

(Ord. 793, passed 4-15-2019)

LICENSES

§ 111.15 LICENSE.

(A) *License required.* No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery device without first having obtained a license to do so from the city. All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid.

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

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

given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

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

(E) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in Section 13.

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

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

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

(I) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 60 days before the expiration of the current license. The applicant must provide proof that an employee training program on tobacco sales has been provided during the license year by submitting records supporting that training at the time of their license renewal each year.

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

(K) *Proximity to youth-oriented facilities.* No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices within 1,000 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling such products in that location for at least one year before the date this section was enacted into law. For the purpose of this section, a youth-oriented facility includes any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products consumed or used primarily by persons under the age of 21.

(L) *Proximity to other tobacco retailers.* No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices within two thousand feet of any other establishment holding such a license, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year.

(M) *Smoking*. Except as allowed under Minn. Stat. § 144.414, smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products generally is prohibited.

(N) *Penalty*, see § 111.50.
(Ord. 793, passed 4-15-2019)

§ 111.16 FEES.

No license shall be issued under this chapter until the appropriate license fee is paid in full. The fee for a license under this chapter shall be established in the city's Ordinance Establishing Fees and Charges, as amended from time to time.
(Ord. 793, passed 4-15-2019) Penalty, see § 111.50

§ 111.17 BASIS FOR DENIAL OF LICENSE.

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

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

(2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices.

(3) The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices revoked within the preceding 12 months of the date of application.

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

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

(B) Except as may otherwise be provided by law, the existence of any particular ground for denial, however, does not mean that the city must deny the license.

(C) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery of the ineligibility of the applicant for the license under this chapter.

(D) Penalty, see § 111.50.
(Ord. 793, passed 4-15-2019)

PROHIBITION

§ 111.30 PROHIBITIONS*(A) Prohibited Sales.*

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device:

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

(2) By means of any type of vending machine.

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

(4) By means of loosies as defined in Section 2.

(5) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.

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

(B) Smoking and Sampling Prohibitions.

(1) Except for exceptions listed in Minn. Stat. § 144.4167, smoking generally shall be prohibited and no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. Other than provided for in 144.4167, subd. 4, tobacco sampling, including sampling of electronic delivery devices and products used in electronic delivery devices, is specifically prohibited in the city.

(2) To ensure that tobacco smoke or vapor electronic delivery devices does not enter public places and places of work and that persons entering such places are not exposed involuntarily to smoke or vapor, smoking and the use of electronic delivery devices are prohibited within twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public places and places of work. This prohibition does not apply to entrances and exits used solely in the event of an emergency and appropriately signed for that purpose.

(C) *Smoking Lounges*

Smoking lounges, hookah lounges and vapor lounges are prohibited.

(D) *Cigars*

No person shall sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. This restriction shall not apply to any sales, offer to sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$2.60 per cigar and after any price promotions or discounts are taken into account and before the imposition of sales tax, but excluding retail sales tax, and tobacco product shops only accessible to those 18 years or older.

(1) This section shall not apply to premium cigars as defined in Minnesota Statutes 297F.01 subd. 13a.

(2) The minimum pricing established in this section shall be adjusted periodically for inflation at least every three years.

(E) *Penalty*, see § 111.50.

(Ord. 793, passed 4-15-2019)

§ 111.31 SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices by any means where by the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter. A license holder who operates an establishment or fully enclosed portion of an establishment that sells at least 90 percent of its products in tobacco, or tobacco products, tobacco-related devices, electronic delivery devices or electronic cigarettes, is exempt from the self-service merchandising provision if the license holder prohibits anyone under 18 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under 18 years of age from entering the establishment.

(Ord. 793, passed 4-15-2019) Penalty, see § 111.50

ADMINISTRATION; ENFORCEMENT

§ 111.45 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.
(Ord. 793, passed 4-15-2019) Penalty, see § 111.50

§ 111.46 COMPLIANCE CHECKS AND INSPECTIONS.

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

(Ord. 793, passed 4-15-2019) Penalty, see § 111.50

§ 111.47 OTHER ILLEGAL ACTS.

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

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

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

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device.

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

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

(Ord. 793, passed 4-15-2019) Penalty, see § 111.50

§ 111.48 EXCEPTIONS AND DEFENSES

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

(Ord. 793, passed 4-15-2019)

§ 111.49 SEVERABILITY

If any section or provision of this ordinance is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

(Ord. 793, passed 4-15-2019)

§ 111.50 VIOLATIONS AND PENALTY

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

(B) *Violations.*

(1) *Notice.* A person violating this chapter may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) Upon issuance of a citation, a person accused of violating this chapter may request

in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the Assistant City Administrator or other designated city officer. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The Assistant City Administrator or other designated city officer shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) *Costs.* If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within ten (10) business days.

(6) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(C) *Administrative penalties.*

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

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

(3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic

delivery device or nicotine or lobelia delivery devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(4) *Statutory penalties.* If the administrative penalties authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.
(Ord. 793, passed 4-15-2019)

§ 111.51 EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.
(Ord. 793, passed 4-15-2019)

CHAPTER 112: LIQUOR REGULATIONS

Section

Private On-Sale Liquor Premises

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PRIVATE ON-SALE LIQUOR PREMISES**§ 112.01 DEFINITIONS.**

(A) The term "intoxicating liquor" shall mean and include ethyl alcohol and include distilled, fermented, spirituous, vinous and malt beverages containing in excess of three and two-tenths percent (3.2%) of alcohol by weight.

(B) The term "on-sale" means the sale of intoxicating liquor by the glass, or by the drink for consumption on the premises only.

(C) The terms "package" or "original package" mean any corked or sealed container or receptacle holding intoxicating liquors.

(D) As used in this Ordinance the term "person" includes a natural person of either sex, co-partnership, corporation and association of persons and the agent or manager of any of the aforesaid. The singular number includes the plural and the masculine pronoun includes the feminine and neuter.

(E) "Sale" and "sell" and "sold" means all barter and all manners of furnishing intoxicating liquor including such furnishing in violation or evasion of law.

(F) The term "wholesale" means and includes any sale for purposes of resale. The term "wholesaler" means any person engaged in the business of selling intoxicating liquor to retail dealers.

(G) The term "manufacturer" includes every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials, prepares or produces intoxicating liquors for sale.

(H) The term "off-sale" means the sale of intoxicating liquor in the original package in retail stores for consumption off or away from the premises where sold.

(I) Sunday sales of intoxicating liquors between the hours of twelve o'clock (12:00) noon to twelve o'clock (12:00) midnight on Sunday only in conjunction with the serving of food in dining facilities.

§ 112.02 LICENSE REQUIRED.

No person, except wholesalers or manufacturers, to the extent authorized under State license, shall directly or indirectly deal in, sell or keep for sale any intoxicating liquor for "on-sale" sale without first having received a license to do so as provided in this Ordinance. There shall be one class of license known as an on-sale retail license. Special Sunday on-sale license for sale of intoxicating liquors is required of qualified applicants.

There shall be a class of license know as an "on-sale" wine license, with the approval of the Commissioner of Public Safety to: restaurants that have facilities for seating of 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. The fee for an on-sale wine license established by the Council under the provisions of this Chapter shall not exceed one-half (1/2) of the license fee charged for on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license. (Ord. 747, passed 7-19-2010)

§ 112.03 APPLICATION FOR LICENSE TO BE VERIFIED.

Every application for an "on-sale" license to sell intoxicating liquor shall be verified and filed with the Assistant City Administrator.

§ 112.04 CONTENTS OF APPLICATION.

In addition to the information which may be required by the State Liquor Control Commissioner the application shall contain the following:

(A) Whether the applicant is a natural person, corporation, partnership or other form of organization.

(B) If the applicant is a natural person, the following information:

(1) True name, place and date of birth, and street residence address of applicant.

(2) Whether applicant has ever used or been known by a name other than his true name and, if so, what was such name, or names and information concerning dates and places where used.

(3) The name of the business if it is to be conducted under a designation, name or style other than the full individual name of the applicant; in such case a copy of the certification as required by chapter 333, Minnesota Statutes, certified by the Clerk of the District Court, shall be attached to the application.

(4) Whether applicant is married or single. If married, true name, place and date of birth and street residence address of applicant's present spouse.

(5) Whether applicant and present spouse are registered voters and if so, where.

(6) Street addresses at which applicant and present spouse have lived during the preceding ten (10) years.

(7) Kind, name and location of every business or occupation applicant and present spouse have been engaged in during the preceding ten (10) years.

(8) Names and addresses of applicant's and spouse's employers and partners, if any, for the preceding ten (10) years.

(9) Whether applicant or his spouse, or a parent, brother, sister or child of either of them, has ever been convicted of any felony, crime or violation of any ordinance, other than traffic. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.

(10) Whether applicant or his spouse, or a parent, brother, sister or child of either of them, has been engaged as an employee or in operating a saloon, hotel, restaurant, cafe, tavern or other business of a similar nature. If so, applicant shall furnish information as to the time, place and length of time.

(11) Whether applicant has ever been in military service. If so, applicant shall, upon request, exhibit all discharges.

(12) The name, address and business address of each person who is engaged in Minnesota in the business of selling, manufacturing or distributing intoxicating liquor and who is nearer of kin to the applicant or his spouse than second cousin whether of the whole or half blood, computed by the rules of civil law, or who is a brother-in-law or sister-in-law of the applicant or his spouse.

(C) If the applicant is a partnership, the names partners and all information concerning each of a single application. A managing partner, and addresses of all partner as is required or partners, shall be designated. The interest of each partner in the business shall be disclosed. A true copy of the partnership agreement shall be submitted with the application, and if the partnership is required to file a certificate as to a trade name under the provisions of chapter 333, Minnesota Statutes, a copy of such certificate certified by the Clerk of District Court shall be attached to the application.

(D) If the applicant is a corporation or other organization and is applying for an "on-sale" license, the following:

(1) Name, and if incorporated, the state of incorporation.

(2) A true copy of Certificate of Incorporation. Articles of Incorporation or Association Agreement and By-Laws and, if a foreign corporation, a Certificate of Authority as described in chapter 303, Minnesota Statutes.

(3) The name of the manager or proprietor or other agent in charge of the premises to

be licensed, giving all the information about said person as is required of a single applicant.

(4) Notwithstanding the definition of interest as given in Section 4-6-1-1, the application shall contain a list required by the City Council of all persons who, singly or together with their spouse, or a parent, brother, sister or child or either of them, own or control any interest in said corporation or association or who are officers of said corporation or association, together with their addresses and all information as is required of a single applicant.

(E) The exact legal description of the premises to be licensed together with a plot plan of the area showing dimensions, location of buildings, street access, parking facilities and the locations of and distances to the nearest church building and school grounds.

(F) The floor number and street number where the sale of intoxicating liquors is to be conducted and the rooms where liquor is to be sold or consumed. An applicant for an "on-sale" license shall submit a floor plan of the dining room, or dining rooms, which shall be open to the public, shall show dimensions and shall indicate the number of persons intended to be served in each of said rooms.

(G) If a permit from the Federal Government is required by the Laws of the United States, whether or not such permit has been issued, and if so required, in what name issued and the nature of the permit.

(H) The amount of the investment that the applicant has in the business, building, premises, fixtures, furniture, stock in trade, etc., and proof of the source of such money.

(I) The names and addresses of all persons, other than the applicant, who have any financial interest in the business, building, premises, fixtures, furniture, stock in trade, the nature of such, interest, amount thereof, terms for payment or other reimbursement. This shall include, but not be limited to, any lessees, lessors, mortgagees, mortgagors, lenders, lien holders, trustees, trustors and persons who have co-signed notes or otherwise loaned, pledged, or extended security for any indebtedness of the applicant.

(J) The names, residences and business addresses of three (3) persons, residences of Meeker County, of good moral character, not related to the applicant or financially interested in the premises or business, who may be referred to as to the applicant's character or, in the case where information is required of a manager, the manager's character.

(K) Whether or not all real estate and personal property taxes for the premises to be licensed have been paid, and if not paid, the years for which delinquent.

(L) Whenever the application for an "on-sale" license to sell intoxicating liquor, or for a transfer thereof, is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans or design are on file with the Building Inspector, no plans need be filed with the Assistant City Administrator.

(M) Such other information as the City Council shall require.

(N) A release authorizing the City to obtain all financial information that may be appropriate.

§ 112.05 RENEWAL APPLICATIONS.

Applications for the renewal of an existing license shall be made at least sixty (60) days prior to the date of the expiration of the license and shall be made in such abbreviated form as the City Council may approve. If, in the judgment of the City Council, good and sufficient cause is shown by any applicant for his failure to file for a renewal within the time provided, the City Council may, if the other provisions of this Ordinance are complied with, grant the application.

At the earliest practicable time after the application is made for a renewal of any "on-sale" license, and in any event prior to the time that the application is approved, the City Council may require the applicant to file with the Assistant City Administrator a statement made by a certified public accountant that shows the total gross sales and the total food sales of the restaurant for the twelve (12) month period immediately preceding the date for filing renewal applications. A foreign corporation shall file a current Certificate of Authority.

§ 112.06 EXECUTION OF APPLICATION.

If the application is by a natural person, it shall be signed and sworn to by such person; if by a corporation, by an officer thereof; if by a partnership, by one of the partners; if by an unincorporated association, by the manager or managing officer thereof. If the applicant is a partnership, the application, license and bond and insurance policy shall be made and issued in the name of all partners.

§ 112.07 LICENSE FEES.

(A) The annual license fee for an "on-sale" license shall be One Thousand Dollars (\$1,000.00); the annual license fee for Sunday sales of intoxicating liquor shall be Two Hundred Dollars (\$200.00); the annual license fee for an "on-sale" wine license shall be Three Hundred Fifty Dollars (\$350.00) and all licenses shall expire on June 30 of each year. The fee for a license granted after the commencement of the license shall be prorated on a monthly basis for each part of a month and shall constitute a full month. (Ord. 747, passed 7-19-2010)

(B) All of the license fee shall be paid upon application, except that the City Council may by resolution accept partial payments. All fees shall be paid into the general fund of the City and shall be paid in cash or by certified check. Upon rejection of any application for a license or upon withdrawal of an application before approval of the issuance by the City Council, the license fee shall be refunded to the applicant. Failure to pay any portion of a fee when due shall be cause for revocation.

(C) When the license is for premises where the building is not ready occupancy, the time fixed for computation of the license fee for initial license period shall be the date the building is ready occupancy.

(D) No part of the fee paid for any license shall be refunded except in accordance with this Ordinance.

(E) At the time of each original application for a license, the applicant shall pay in full an investigation fee. For a single natural person, the investigating fee shall be One Hundred Dollars (\$100.00). For a partnership, the investigating fee shall be Two Hundred Dollars (\$200.00). For a corporation or other association, the investigating fee shall be Three Hundred Dollars (\$300.00). No investigating fee shall be refunded.

(F) At any time that an additional investigation is required because of a change in the ownership or control of a corporation or because of an enlargement, alteration or extension of premises previously licensed, the licensee shall pay an additional nonrefundable investigating fee in the amount of One Hundred Dollars (\$100.00). Where a new application is filed as a result of incorporation by an existing licensee and the ownership control and interest in the license are unchanged, no additional license fee will be required.

(G) No part of the fee paid for any license issued under this Ordinance shall be refunded except in the following instances upon application to the City Council within thirty (30) days from the happening of the event. The City Council may, in its judgment, refund a prorated portion of the fee for the unexpired period of the license, computed on a monthly basis, when operation of the licensed business ceases because of:

- (1) Destruction or damage of the licensed premises by fire or other catastrophe.
- (2) The licensee's death.

§ 112.08 GRANTING OF LICENSES:

(A) In order to assist the City Council in investigating the facts set out in the application, and in order to determine the eligibility of the applicant for a license pursuant to the provisions of this Ordinance and of the State law, the City Council may appoint a Liquor Committee of the City Council. In the event that such Liquor Committee is established, it shall be organized in such a manner as the City Council shall determine by resolution.

(B) All applications for a license shall be referred to the Liquor Committee for verification and investigation of the facts set forth in the application. The Chief of Police shall cause to be made such investigation of the information requested in Section 4-6-1-d as shall be necessary and shall make a written recommendation and report to the Liquor Committee, or to the City Council, as the case may be, which shall include a list of all violations of Federal or State law or municipal ordinance. The Liquor Committee, or City Council, may order and conduct such additional investigation as it shall deem necessary.

(C) Each license shall be issued to the applicant only. Each license shall be issued only for the premises described in the application. No license may be transferred to another person or to another place without the approval of the City Council and without a new application having been filed.

(D) The Assistant City Administrator shall, within ten (10) days after the issuance of any license under this Ordinance, submit to the Liquor Control Commissioner, the full name and address of each person granted a license, the trade name, the effective license date, and the date of expiration of the license. He shall also submit to the Liquor Control Commissioner any change of address, transfer, cancellation or revocation of any license by the Council during the license period.

(E) Where a license is granted for premises where the building is under construction or otherwise not ready for occupancy, the Assistant City Administrator shall not issue the license until notified by Building Inspector that a certificate of occupancy has been issued and the building is ready for occupancy.

§ 112.09 PERSONS INELIGIBLE FOR LICENSE.

No license shall be granted to or held by any persons:

(A) Under twenty-one (21) years of age.

(B) Who is not of good moral character.

(C) Who, if an individual, is an alien.

(D) Who, within five (5) years prior to the application for such license, has been convicted of any wilful violation of any law of the United States, the State of Minnesota, or any other state or territory, or of any ordinance regarding the manufacture, sale, distribution or possession for sale or distribution of intoxicating liquor, or whose liquor license has been revoked for any willful violation of any law or ordinance.

(E) Who is a manufacturer or wholesaler of intoxicating liquor and no manufacturer or wholesaler shall either directly or indirectly own or control or have any financial interest in any retail business selling intoxicating liquor.

(F) Who is directly or indirectly interested in any other establishment in the City of Litchfield to which either an "on-sale" or "off-sale" license has been issued under any ordinance. No person shall own an interest as defined in subdivision (I) herein in more than one establishment or business for which either an "on-sale" or "off-sale" license has been granted to any person if such person, or any person who owns an interest in the establishment or business for which an "on-sale" or "off-sale" license application is being filed, owns an interest in a business or establishment licensed under this Ordinance.

(G) Who, if a corporation, does not have a manager who is eligible pursuant to the provisions of this Section.

(H) Who is the spouse of a person ineligible for a license pursuant to the provision of subsections (D), (E) or (F) of this Section, or who, in the judgment of the City Council, is not the real party in interest or beneficial owner of the business operated, or to be operated, under the license.

(I) The term "interest" as used in this Section includes any pecuniary interest in the ownership, operation, management or profits of a retail liquor establishment, but does not include: Bona fide loans; bona fide fixed sum rental agreements; bona fide open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to such establishment; or an interest of ten percent (10%) or less in any corporation holding; a license. A person who receives monies from time to time directly or indirectly from a licensee, gifts or donations, shall be deemed to have a pecuniary interest in such retail

license. In determining "bona fide" the reasonable value of the goods or things received as consideration for any payment by the licensee and all other facts reasonably tending to prove or disprove the existence of any purposeful scheme or arrangement to evade the prohibitions of this Section shall be considered.

(Ord. 760, passed 4-16-2012)

§ 112.10 PLACES INELIGIBLE FOR LICENSE.

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

(B) No license shall be granted for premises prohibited from holding a license by State law.

(C) No license shall be issued for the premises owned by a person to whom a license may not be granted under this Ordinance, except any owner who is a minor, alien, or a person who has been convicted of a crime other than a violation of Minnesota Statutes, section 340A. 10 1 through 3 40A. 60 1.

(D) No "on-sale" license shall be granted to a hotel or motel that does not have a dining area open to the general public.

(E) No license shall be granted for any place for which either an "on-sale" or an "off sale" license has been granted. For the purposes of this subsection, the term place shall be construed to mean the confines for which the license was granted.

(F) No license shall be granted for any place which has a common entrance or exit between any two (2) establishments except that a public concourse or public lobby shall not be construed as a common entrance or exit.

(G) No license shall be granted unless the licensee shall own or occupy licensed premises of the Fair Market Value of Seventy Five Thousand Dollars (\$75,000.00) including buildings, fixtures and equipment, but excluding land.

§ 112.11 CONDITIONS OF LICENSE.

(A) Every license shall be granted subject to the conditions of tile following subdivisions and all other subdivisions of this Ordinance and of any other applicable ordinance of the City or State law.

(B) The license shall be posted in a conspicuous place in the licensed establishment at all times.

(C) Every licensee shall be responsible for the conduct of his place of business and the conditions of sobriety and order in the place of business and on the premises.

(D) No "on-sale" licensee shall sell intoxicating liquor "off sale".

(E) No license shall be effective beyond the space named in the license for which it was granted.

(F) No intoxicating liquor shall be sold or furnished or delivered to any intoxicated person, to any habitual drunkard, to any person under twenty-one (21) years of age, or to any person to whom sale is prohibited by State law.

(G) No person under eighteen (18) years of age shall be employed in a room where "on-sales" are made and no such person shall be allowed to be or remain in such room unless accompanied by his parent or guardian, except that persons under eighteen (18) years of age may be employed to perform the duties of a bus boy or dishwashing services.

(H) No licensee shall knowingly permit the licensed premises or any room in those premises or any adjoining building directly or indirectly under his control to be used as a resort of prostitutes.

(I) No equipment or fixture in any licensed place shall be owned in whole or in part by any manufacturer or distiller of intoxicating liquor except such as shall be expressly permitted by State law.

(J) Any police officer, building inspector, or any properly designated officer or employee of the City shall have the unqualified right to enter and inspect the premises of the licensee during business hours.

(K) No licensee shall sell, offer for sale, or keep for sale, intoxicating liquors in any original package which has been refilled or partly refilled. No licensee shall directly or through any other person dilute or in any manner tamper with the contents of any original package so as to change its composition or alcoholic content while in the original package. Possession on the premises by the licensee of any intoxicating liquor in the original package differing in composition or alcoholic content in the liquor when received from the manufacturer or wholesaler from whom it was purchased, shall be prima facie evidence that the contents of the original package have been diluted, changed or tampered with.

(L) No licensee shall apply for or possess a Federal Wholesale Liquor Dealer's special tax stamp or a Federal gambling stamp.

(M) No licensee shall keep ethyl alcohol or neutral spirits on any licensed premises or permit their use on the premises as a beverage or mixed with a beverage.

(N) The business records of the licensee, including Federal and State tax returns, shall be available for inspection by duly authorized representatives of the City of the City Council at all reasonable times.

(O) Changes in the corporate or association officers, corporate charter, articles of incorporation, by-laws or partnership agreement, as the case may be, shall be submitted to the Assistant City Administrator within thirty (30) days after such changes are made. Notwithstanding the definition

of interest as given in Section 4-6-1-1(J), in the case of a corporation, the licensee shall notify the Assistant City Administrator when a person not listed on the application acquires an interest which, together with that of his spouse, parent, brother, sister or child, exceeds five percent (5 %) and shall give all information about said person as required of a person pursuant to the provisions of Section 4-6-1-d(C) of this Code.

(I) At the time a licensee submits his application for renewal of a license, he shall state the nature or amount of any contribution he has made during the past five (5) years for campaign or political purposes, the person to whom the contribution was made and the person or organization for whom intended.

§ 112.12 HOURS OF OPERATION.

No “on-sale” sale of intoxicating liquor shall be made:

- (A) Between 1:00 A.M. and 8:00 A.M. on the days of Monday thru Saturday;
- (B) on Sunday except between 12:00 Midnight and 1:00 A.M. and between 12:00 Noon and 12:00 Midnight, provided, however, a restaurant, club, bowling center, or hotel with a seating capacity for at least thirty (30) persons and which holds an “on-sale” intoxicating liquor license may sell intoxicating liquor for consumption on the premises in conjunction with the sale of food on Sundays between the hours of 10:00 A.M. and 12:00 Midnight.

(Ord. 759, passed 4-16-2012)

§ 112.13 PUBLIC CHARACTER OF LIQUOR SALES.

No sale of intoxicating liquor shall be made to or in guest rooms of hotels, unless the rules of such hotel provide for the service of meals in guest rooms; nor unless the sale of such intoxicating liquor is made in the manner "on-sales" are required to be made; nor unless such sale accompanies and is incident to the regular service of meals to guests therein; nor unless the rules of such hotel and the description, location and number of such guest rooms are fully set out in the application for a license.

§ 112.14 RESTRICTIONS INVOLVING MINORS.

(A) No licensee, his agent or employee shall serve or dispense upon the licensed premises any intoxicating liquor to any person under the age of twenty-one (21) years; nor shall such licensee, or his agent or employee, permit any person under the age of twenty-one (21) years to be furnished or consume any such liquors on the licensed premises; nor shall such licensee, his agent or employee, permit any person under the age of twenty-one (21) years to be delivered any such liquors.

(B) No person under twenty-one (21) years of age shall misrepresent his age for the purpose of obtaining intoxicating liquor nor shall he enter any premises licensed for the retail sale of intoxicating liquor for the purpose of purchasing or having served or delivered to him for consuming any such intoxicating liquor nor shall any such person purchase, attempt to purchase, consume, or have another person purchase for him any intoxicating liquor.

(C) No person under twenty-one (21) years of age shall receive delivery of intoxicating liquor.

(D) No person shall induce a person under the age of twenty-one (21) years to purchase or procure or obtain intoxicating liquor.

(E) Any person who may appear to the licensee, his employees or agent to be under the age of twenty-one (21) years shall, upon demand of the licensee, his employee or agent, produce and permit to be examined an identification certificate issued by the Clerk of the District Court in the State of Minnesota pursuant to sections 626.311 through 626.318 Minnesota Statutes, Laws 1958, chapter 508.

(F) In every prosecution for a violation of the provisions of this Ordinance relating to the sale or furnishing of intoxicating liquor to persons under the age of twenty-one (21) years, and in every proceeding before the City Council with respect thereto, the fact that the minor involved has obtained and presented to the licensee, his employee or agent, a verified identification card issued by the Clerk of any District Court in the State of Minnesota, from which it appears that said person was twenty-one (21) years of age and was regularly issued such identification card shall be prima facie evidence that the licensee, his agent or employee is not guilty of a violation of such a provision and shall be conclusive evidence that a violation, if one has occurred, was not wilful or intentional.

(G) Any person who may appear to the licensee, his employee or agent to be under twenty-one (21) years of age and who does not have in his possession any identification certificate as above described, may sign and execute a statement in writing as follows:

**READ CAREFULLY
BEFORE SIGNING**

The following are excerpts from the Law of the State of Minnesota, chapter 483, Laws of Minnesota for 1953, section 340A.503 Minnesota Statutes, Minors, Forbidden Acts or Statements:

"It shall be unlawful for: Any person to misrepresent or misstate his or her age, or the age of any other person for the purpose of inducing any licensee, or any employee of any licensee, or any employee of any municipal liquor store, to sell, serve or deliver any alcoholic beverage to a minor; a minor to have in his possession any intoxicating liquor with intent to consume same at a place other than the household of his parent or guardian.

Section 340A.503 Minnesota Statutes, Laws of Minnesota for 1985, chapter 483:

"It shall be unlawful for: Any minor to misrepresent his age for the purpose of obtaining nonintoxicating malt liquor:

Any minor to have in his possession any nonintoxicating malt liquor with intent to consume same at a place other than the household of his parent or guardian.

Any person who shall violate any of the foregoing provisions of law shall be punished accordingly ".

VIOLATION OF THE ABOVE MINNESOTA LAW IS A MISDEMEANOR PUNISHABLE BY A FINE OF \$300.00 OR A 90-DAY SENTENCE OR BOTH.

- My age is
- Date of Birth date
- Place of birth
- My address is
- Type of Identification
- Witness:
- Signed:

The above form shall be furnished at the expense of all licensees desiring to use the same and when properly executed may be considered as evidence in any prosecution and by the City Council in any proceeding before the Council or a committee thereof relating to the business or operations of the licensee. Such forms after execution shall be kept on file by the licensee for a period of one year.

§ 112.15 OTHER RESTRICTIONS ON PURCHASE OR CONSUMPTION.

(A) No person shall give, sell, procure or purchase intoxicating liquor to or for any person to whom the sale of intoxicating liquor is forbidden by law.

(B) No person shall mix or prepare intoxicating liquor for consumption, or consume, in any public place not licensed in accordance with the ordinances of the City of Litchfield and the State of Minnesota.

§ 112.16 LIABILITY INSURANCE.

(A) Insurance Required: Prior to the issuance of an " on-sale " liquor license, the applicant shall file with the Assistant City Administrator a liability insurance policy which shall be subject to the approval of the City Council. The Insurer on such liability insurance policy shall be duly licensed to do business in the State of Minnesota, and the insurance policy shall be for the term of the license and

shall be approved as to form and execution by the City Attorney. Such liability insurance policy shall be in the amount of not less than Fifty Thousand Dollars (\$50,000.00) coverage because of bodily injury to any one person and any one occurrence, One Hundred Thousand Dollars (\$100,000.00) because of bodily injury to two or more persons in any one occurrence, Ten Thousand Dollars (\$10,000.00) because of injury to or destruction of property of others in any one occurrence, Fifty Thousand Dollars (\$50,000.00) for loss of means of support of any one person in any occurrence and One Hundred Thousand Dollars (\$100,000.00) for loss of means of support of two or more persons in any one occurrence, and shall specifically provide for the payment by the insurance company on behalf of the insured of such sums within the above-stated liability limits which the insured shall become obliged to pay by reason of liability imposed upon him by law for injuries or damages to persons other than employees, including the liability imposed upon the insured by reason of Section 340A.801, Minnesota statutes.

(B) Such liability insurance policy shall further provide that no cancellation or material change for any cause can be made either by the insured or the insurance company without first giving ten (10) days' notice to the City in writing of intention to cancel or materially change the same, addressed to the Assistant City Administrator. Such policy shall be conditioned that the insurer shall pay, to the extent of the principal amount of the policy, any damages for death or injury caused by, or resulting from the violation of any law relating to the business for which such license has been granted.

§ 112.17 REVOCATION.

The City Council may suspend or revoke an "on-sale" license for the violation of any provisions or conditions of the Ordinance or of any State law or Federal law regulating intoxicating liquor and shall revoke such license for any wilful violation which, under the laws of the State, is grounds for mandatory revocation, and shall revoke for failure to keep the insurance required by this Ordinance in full force and effect. Licensee shall not be entitled to a hearing.

§ 112.18 ENLARGEMENT, ALTERATIONS OR EXTENSION OF PREMISES.

Proposed enlargement, alteration or extension of premises previously licensed shall be reported to the City Council at or before the time application is made for a building permit for any such change and the licensee shall also give such information as is required by the City Code.

§ 112.19 PENALTIES.

Any person violating any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine: of not more than Three Hundred Dollars (\$300.00) and imprisonment for not more than ninety (90) days.

NONINTOXICATING MALT LIQUOR

§ 112.20 DEFINITION.

"Nonintoxicating Malt Liquor" within the meaning of this Chapter shall be held to be any malt liquor or beverage which contains one-half of one percent (.05 %) or more of alcohol by volume and not more than three and two-tenths percent (3.2%) of alcohol by weight.

§ 112.21 PROVISIONS OF STATE LAW ADOPTED.

The provisions of Minnesota Statutes, chapter 340A, relating to the definition of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution and consumption of nonintoxicating malt liquor are adopted and made a part of this Chapter as if set out in full.

§ 112.22 LICENSE REQUIRED:

No person shall vend, deal in or dispose of, by gift, sale or otherwise any nonintoxicating malt liquor without first having obtained a license to do so from the Council.

§ 112.23 APPLICATION.

Any person desiring to sell nonintoxicating malt liquors under license as hereinafter defined shall make application in writing to the Council, which written application shall contain the name and residence of the applicant, the legal description of the premises where sale is to be conducted; the name and address of any and every person who will have charge, management or control of the place and such other information as the Council may from time to time require. Such application shall be signed and sworn to by the applicant.

§ 112.24 INVESTIGATION OF PREMISES; ISSUANCE.

The Council shall cause an investigation to be made of the facts stated in said application in regard to the premises where the business is to be conducted, and the character, reputation and fitness of the applicant or applicants for the purpose of ascertaining whether the same are represented in said application, and whether the license applied for should be granted. Opportunity shall be given to anyone who wishes to be heard in the matter of why a license should or should not be granted. After such investigation, the Council may grant or refuse such license, provided that the granting thereof does not violate any other provision of this Chapter.

§ 112.25 CLASSIFICATION OF LICENSES.

Licenses granted under this Chapter shall be of three (3) kinds:

(A) "On-Sale" licenses shall permit the licensee to sell nonintoxicating malt liquor for consumption on the premises of the licensee described in the license.

B) An "Off-Sale" license shall permit the licensee to sell such nonintoxicating malt liquor in original packages not to be consumed on the premises described in the license.

C) "Temporary On-Sale" licenses shall permit the licensee to sell nonintoxicating malt liquor at locations as specifically approved by the City Council. Said temporary licenses shall not be granted for periods of time in excess of three (3) consecutive days.

§ 112.26 LICENSE FEE.

The annual license fee for an "on-sale" license shall be One Hundred Fifty Dollars (\$150.00), for an "off-sale" the license fee shall be Twenty Five Dollars (\$25.00) and the annual license fee for sale at wholesale to holders of an "on or off-sale" retail license shall be Ten Dollars (\$10.00). "On-sale" and "off-sale" licenses for the sale of nonintoxicating malt liquor shall be issued for a period of one year, except for the purpose of coordinating the time of expiration of licenses in general, such licenses may be issued for a shorter time to expire at a given period of the year, in which case a pro rata fee shall be charged. The license fee for "temporary on-sale" licenses shall be Ten Dollars (\$10.00) per occasion.

§ 112.27 ON-SALE LICENSE REGULATIONS.

The following restrictions shall apply to all holders of "on-sale" licenses:

(A) No "on-sale" license shall be issued to an applicant unless he be the actual owner or proprietor of the place where he intends to sell such malt liquor and a citizen of the United States.

(B) No "on-sale" license shall be issued to permit the sale of malt liquor at or upon any premises not properly equipped with duplicate modern and sanitary lavatory facilities.

(C) "On-sale" licenses and "temporary on-sale" licenses shall be granted only to restaurants, hotels and bonafide clubs and no manufacturer of non-intoxicating malt liquor shall have any ownership in whole or part directly or indirectly in the business of any licenses holding an "on-sale" license.

(D) No "on-sale" license shall be granted to any applicant to permit the sale of nonintoxicating malt liquor on any premises outside the nonintoxicating malt liquor zone as described in Section 4-6-2-r hereof.

§ 112.28 HOURS OF OPERATION.

No sale of nonintoxicating malt liquor shall be made:

(A) Between 1:00 A.M. and 8:00 A.M. on the days of Monday thru Saturday;

(B) on Sunday except between 12:00 Midnight and 1:00 A.M. and between 12:00 Noon and 12:00 Midnight.

§ 112.29 NUMBER OF LICENSES.

No more than nine (9) "on-sale" licenses shall be issued within the City; provided, however, that this provision shall not operate to deny an "on-sale" license to an applicant who is the holder of an "on-sale" license at the time of making application or to an applicant who is the purchaser of a business within the said nonintoxicating malt liquor zone, the owner or proprietor of which was the holder of an "on-sale" license at time of said purchase.

§ 112.30 MINORS, SALE TO.

No person shall sell nonintoxicating malt liquor to any person under twenty-one (21) years of age, or to any intoxicated person.

§ 112.31 RESTRICTED PREMISES.

No such malt liquor shall be sold, served at or in any theater, picture show, ball park, dance hall or other public place for the purpose of entertainment or amusement except at the sole discretion of the City Council, a "temporary on sale license may be issued.

Nothing contained in this Section shall prohibit the City Council, at their sole discretion, to designate by motion, public places within the City where the consumption of nonintoxicating malt liquor is permitted.

§ 112.32 INSPECTION; CLEAR VIEW.

The premises named in any license shall at all times to while open to the public be also open to inspection and examination by any police, health officer or peace officer of the City.

§ 112.33 ORDERLY CONDUCT REQUIRED.

Any owner or proprietor who does not conduct his place of business in a quiet and orderly manner shall forfeit his license to sell malt liquor for a period of not exceeding one year.

§ 112.34 LIABILITY INSURANCE.

(A) Insurance Required: Prior to the issuance of an "on-sale" liquor license, the applicant shall file with the Assistant City Administrator a liability insurance policy which shall be subject to the approval of the City Council. The insurer on such liability insurance policy shall be duly licensed to do business in the State of Minnesota and the insurance policy shall be for the term of the license and shall be approved as to form and execution by the City Attorney. Such liability insurance policy shall be in the amount of not less than Fifty Thousand Dollars (\$50,000.00) of coverage because of bodily injury to any one person and any one occurrence, One Hundred Thousand Dollars (\$100,000.00.) because of bodily injury to two or more persons in any one occurrence, Ten Thousand Dollars (\$10,000.00) because of injury to or destruction of property of others in any one occurrence, Fifty Thousand Dollars (\$50,000.00) for loss of means of support of any one person in any occurrence and One Hundred Thousand Dollars (\$100,00.00) for loss of means of support of two or more persons in any one occurrence, and shall specifically provide for the payment by the insurance company on behalf of the insured of such sums within the above-stated liability limits which the insured shall become obliged to pay be reason of liability imposed upon him by law for injuries or damages to persons other than employees, including the liability imposed upon the insured by reason of Section 340A. 80 1, Minnesota Statutes.

(B) Such liability insurance policy shall further provide that no cancellation or material change for any cause can be made either by the insured or the insurance company without first giving ten (10) days' notice to the City in writing of intention to cancel or materially change the same, addressed to the Assistant City Administrator. Such policy shall be conditioned that the or injury caused by, or resulting from the violation of any law relating to the business for which such license has been granted.

(C) Those licensees who by affidavit established that they are a nonintoxicating malt liquor licensee with sales less than Ten Thousand Dollars (\$10,000.00) of nonintoxicating malt liquor for the preceding year are exempt from the requirements of Section 4-6-2-o(A).

§ 112.35 PENALTIES.

Any person violating any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) and imprisonment for not more than ninety (90) days.

§ 112.36 REVOCATION.

The license of any person who shall be found guilty of any violation of law relating to liquor, whether the offense be committed on the premises named in his license or elsewhere, and the license of any person, who shall have, sell, keep, manufacture or possess intoxicating liquor at or upon the premises named in his license, contrary to the law relating to liquor, shall be revoked by the Mayor or Council.

§ 112.37 MALT LIQUOR ZONE.

All that territory embraced within the corporate limits of the City shall constitute the nonintoxicating malt liquor zone.

MUNICIPAL LIQUOR DISPENSARY

§ 112.38 DEFINITION OF TERMS.

INTOXICATING LIQUOR. The terms “intoxicating liquor” and “liquor” mean and include ethyl alcohol and include distilled, fermented, spirituous, vinous, and malt beverage containing in excess of three and two-tenths percent (3.2%) of alcohol by weight.

SELL. To “sell” includes all barter, gifts and other means of furnishing intoxicating liquor in violation or evasion of this Chapter.

§ 112.39 DISPENSARY ESTABLISHED.

A Municipal Liquor Dispensary is hereby established to be operated within this Municipality for the sale of liquor potable as a beverage and containing more than three and two-tenths percent (3.2%) of alcohol by weight in the sealed or closed receptacle or container for removal from the premises.

§ 112.40 LOCATION AND OPERATION.

The said Dispensary shall be located at such place as the Council shall determine by motion and may be either leased or owned by the Municipality. It shall be in charge of a person known as the Manager, who shall be appointed by the Council and who shall be paid such compensation as the Council shall determine. Said Manager shall have authority to purchase such supplies and stock of merchandise as may from time to time be necessary; provided, however, that all purchase orders shall be approved by the Municipal Liquor Dispensary Committee or some member of the Council designated by the Mayor or the Council and countersigned by the Clerk. The Manager may, with the

consent of the Council, employ such additional male help as may from time to time be needed in the operation of said Dispensary, at such compensation as shall be fixed by the Council and under such rules as the Council shall determine. The Manager and all employees subordinate to the Manager shall give surely bonds to be approved by the Council in such amount as the Council shall determine, conditioned that said Manager and employees shall abide by the rules and regulations established by the Council for the operation of said Dispensary and all laws of the State of Minnesota, relating to the sale of intoxicating liquor, and for the full and true accounting of all moneys and properties coming into their hands in the operation of said Dispensary, Premiums on all bonds furnished as hereinbefore provided shall be paid by the Municipality from the Liquor Dispensary Fund. No minor person shall be employed in the Municipal Liquor Dispensary.

The Manager shall operate the Dispensary under the Council's directions and shall perform such duties in connection with the Dispensary as may be imposed upon him by the Council. He shall be responsible to the Council for the conduct of the Dispensary in full compliance with this Chapter and with the laws relating to the sale of liquor.

§ 112.41 DISPENSARY FUND CREATED.

A Liquor Dispensary Fund is hereby set upon within the General Fund, into which all revenues received from the operation of the Dispensary shall be paid, and from which all operating expenses shall be paid, provided that the initial cost of rent, fixtures and stock may be paid for out of the General Fund of the Municipality, such amounts to be reimbursed to the General Fund out of the first moneys coming into the Liquor Dispensary Fund not needed for carrying on said business. Any surplus accumulating in this Fund may be transferred to the General Fund by resolution of the Council and expended for any Municipal purpose. (Ord. 291, passed 1-8-1954)

§ 112.42 HOURS OF OPERATION.

The Dispensary shall observe the following restrictions upon the hours of operation:

(A) No off-sale shall be made before eight o'clock (8:00) A.M. or after ten o'clock (10:00) P.M. of any day. No off-sale shall be made on New Year's Day, January 1; Memorial Day, May 30; Independence Day, July 4; Thanksgiving Day; or Christmas Day, December 25; and no off-sale shall be made after four o'clock (4:00) P.M. on December 24. (Ord. 294, 3-9-1954)

(B) The Dispensary shall not be open for business of any kind during the hours when sales of intoxicating liquor are prohibited.

(C) The Municipal Dispensary shall at all times observe the restrictions and limitations placed upon the hours for the sale of intoxicating liquor by the laws of the State of Minnesota as the same now are or may hereafter be amended, and such other and further restrictions and limitations as the Council may impose by resolution duly adopted therefor.

§ 112.43 SALE AND USE OF INTOXICATING LIQUOR.

(A) No person shall sell, barter, or otherwise dispose of intoxicating liquor outside of said Dispensary, nor shall any intoxicating liquor be sold, bartered, or otherwise disposed of by any person not employed in said Municipal Liquor Dispensary, except in such clubs as may lawfully be authorized by the Council.

(B) It shall be unlawful for any person, or persons, to mix or prepare liquor for consumption in any public place within said City or in any café, restaurant, or other place of business within the City or to consume or use intoxicating liquor in any such places, or for the owner, manager, or any employee of any café, restaurant or other place of business within the City to permit the mixing or preparing of liquor for consumption or the drinking of intoxicating liquor in any of such places.

(C) No intoxicating liquor shall be sold or consumed in any public park or on any public highway, street, avenue, or alley within the City, or in any automobile within the City. Nothing herein contained shall prohibit or preclude the sale of intoxicating liquor by any club holding an "On Sale" license duly issued, in conformity with any provision of this Code authorizing the same pursuant to the Statutes of the State of Minnesota now in force or which may hereafter be enacted.

§ 112.44 CONTITIONS; RESTRICTIONS.

No pool or billiard table shall be kept in the Dispensary or any rooms connecting therewith; nor shall anyone on such premises keep, possess or operate on such premises or in any rooms adjoining or connected therewith any slot machine, pinball machine, dice or any other gambling device or permit the same to be so kept or used. No playing cards of any kind shall be permitted on such premises or in any rooms connected therewith. No gambling shall be permitted on such premises; nor shall any person of a known immoral character or any disorderly person be permitted on such premises. No business other than the sale of liquors and such other merchandise as permitted by law shall be carried on by in the Dispensary or by the person employed therein during the time so employed and in conjunction therewith. No liquor shall be sold on credit. No liquor shall be sold to a person who is in an intoxicated condition. No liquor shall be sold to a minor directly or indirectly. No minor shall be permitted to remain on the Dispensary premises. No minor shall misrepresent his age for the purpose of obtaining liquor. The premises occupied by the Dispensary shall be duly inspected by the Health Officer of the City at least once a month and as many other times as he deems necessary to see that said premises are in a sanitary condition. No person shall be permitted to loaf or loiter about the Dispensary habitually.

§ 112.45 ENFORCEMENT.

It shall be the duty of all police officers of the City to enforce the provisions of this Chapter, and any person violating any provisions of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as in this Code provided. (Ord. 291, 1-8-1954)

§ 112.46 SPECIAL PROVISIONS.

The City Council may authorize the holder of a retail on-sale intoxicating liquor license issued by the City to dispense intoxicating liquor off premises at a community festival held within the municipality. The authorization shall specify the area in which the intoxicating liquor must be dispensed and consumed, and shall not be issued unless the licensee demonstrate that it has liability insurance as prescribed by Minnesota Statutes §340A.409 to cover the event.

(Ord. 780, 5-2-2016)

CHAPTER 113: ADULT-ORIENTED BUSINESSES

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GENERAL PROVISIONS**§ 113.01 PURPOSE AND INTENT.**

(A) *Research findings.* Research conducted by the Minnesota Attorney General, the American Planning Association and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Alexandria, Minnesota; Rochester, Minnesota; Phoenix, Arizona; Los Angeles, California; and Seattle, Washington have studied the impacts that adult establishments have in those communities. These studies have concluded that adult establishments have adverse impact on the surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. Based on these studies and findings, the City Council concludes:

(1) Adult establishments have adverse secondary impacts of the types set forth above;

(2) The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by locational requirements, licensing requirements and health requirements;

(3) It is not the intent of the City Council to prohibit adult establishments from having a reasonable opportunity to locate in the city;

(4) Statute M.S. § 462.357, as it may be amended from time to time, allows the city to adopt regulations to promote the public health, safety, morals and general welfare; and

(5) The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing adult establishments.

(B) *Additional findings.* The City Council of the city makes the following findings regarding the need to license sexually-oriented businesses. The findings are based upon the experiences of other cities where these businesses have located, as studied by city staff.

(1) Sexually-oriented businesses can contribute to an increase in criminal activity in the area in which the businesses are located, taxing city crime-prevention programs and law enforcement services;

(2) Sexually-oriented businesses can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of these businesses can, however, minimize this risk, provided the owner and operators of the facilities are regulated by licensing or other procedures;

(3) 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 these 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;

(4) 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; and

(5) The risk of criminal activity and/or public health problems can be minimized through a licensing and regulatory scheme as prescribed herein.

(C) *Purpose.*

(1) It is the purpose of this chapter to regulate adult-oriented businesses to promote the health, safety, morals and general welfare of the citizens of the city and to establish reasonable and uniform regulations to:

(a) Prevent additional criminal activity within the city;

(b) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;

(c) To locate adult-oriented business away from residential areas, schools, churches, parks and playgrounds; and

(d) Prevent concentration of adult-oriented businesses within certain areas of the city.

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

(Ord. 656, passed 1-3-2002)

§ 113.02 DEFINITIONS.

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

ADULT BOOK AND/OR MEDIA STORE. An establishment which excludes minors and which has a substantial portion of its stock in trade or stock on display 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.

ADULT CABARET. An establishment which provides dancing or other live entertainment, if the establishment 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 specified anatomical areas.

ADULT ESTABLISHMENT. Any business which offers its patrons services, entertainment or the sale of merchandise characterized by an emphasis on matter depicting, exposing, describing, discussion or relating to specified sexual activities or specified anatomical areas. Specifically included in the term but without limitation are adult book and media stores, adult cabarets, adult hotels or motels, adult mini-motion picture theaters, adult modeling studios, adult motion picture arcades, adult motion picture theaters, adult novelty businesses and other establishments.

ADULT HOTEL OR MOTEL. A hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ADULT MINI-MOTION PICTURE THEATER.

(1) A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity for less than 50 persons used for presenting motion pictures, including but not limited to film and videotape, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(2) Any business which presents motion pictures, from which minors are excluded from all or part of the establishment, including films and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or reliant on specified sexual activities or specified anatomical areas, for viewing on the premises, including but not limited to private booths, viewing by means of coin operated or other mechanical devices, and the viewing of excerpt of motion pictures offered for sale or rent.

ADULT MODELING STUDIO. An establishment, which excludes minors from all or part of the establishment, whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation to 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 ARCADE. Any place which excludes minors from all or part of the establishment wherein coin or token operated or electronically, electrically or mechanically controlled or operated still or motor picture machines, projectors or other image producing devices are maintained to show images to 5 or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

ADULT MOTION PICTURE THEATER. A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity of 50 or more persons used regularly and routinely for presenting live entertainment or motion pictures, including but not limited to film and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

ADULT NOVELTY BUSINESS. A business from which minors are excluded from all or part of the establishment, which sells, offers to sell or displays devices which simulate human genitals or devices which are designed for sexual stimulation.

ADULT USE. Any of the activities and businesses described below constitutes adult-oriented businesses which are subject to the regulation of this chapter.

SPECIFIED ANATOMICAL AREAS. Any of the following conditions:

- (1) Less than completely and opaquely covered;
 - (a) Human genitals, pubic region or pubic hair;
 - (b) Buttock, anus; and
 - (c) Female breast below a point immediately above the top of the areola.
- (2) Human male genitals in a discernible turgid state, completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES. Any of the following conditions:

- (1) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital or oral-genital intercourse, whether between human beings or between a human being and an animal;
- (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 or lewd exhibitions of the genitals, including any explicit, close-up representation of a human genital organ clothed or unclothed; and/or
- (4) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or breasts of a female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(Ord. 656, passed 1-3-2002)

§ 113.03 APPLICATION.

(A) Except as in this chapter specifically provided, no structure shall be erected, converted, enlarged, reconstructed or altered, and no structure or land shall be used for any purpose nor in any manner, which is not in conformity with this chapter.

(B) No adult-oriented business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the City of Litchfield, the laws of the State of Minnesota or the United States of America. Nothing in this chapter shall be construed as authorizing or permitting conduct which prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale or distribution of obscene material generally, or the exhibition, sale or distribution of specified materials to minors.

(Ord. 656, passed 1-3-2002)

§ 113.04 LOCATION.

(A) During the term of this chapter, adult-oriented businesses shall be located only in zoning district B-2, subject to the following limitations. Within any B-2 zoning district, no adult-oriented business shall be located less than:

- (1) Two hundred feet from any residential zoning district;
- (2) Two hundred feet from any public park;
- (3) Five hundred feet from any church or religious site; or
- (d) Five hundred feet from another adult-oriented business.

(B) For purposes of this chapter, the distance shall be a horizontal measurement on a map from the adult-oriented business to the limiting element or elements as listed.

(Ord. 656, passed 1-3-2002)

§ 113.05 HOURS OF OPERATION.

No adult-oriented business site shall be open to the public from the hours of 11:00 p.m. to 9:00 a.m.

(Ord. 656, passed 1-3-2002)

§ 113.06 OPERATION.

(A) *Off-site viewing.* An establishment operating as an adult-oriented business shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of M.S. Chapter 617, as it may be amended from time to time, or other applicable federal or state statutes or local ordinances.

(B) *Entrances.* All entrances to the business, with the exception of emergency fire exits, which are not useable by patrons to enter the business, shall be visible from a public right-of-way, excluding alleyways.

(C) *Layout.* The layout of the display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the store can observe all patrons while they have access to any merchandise offered for sale or viewing, including but not limited to books, magazines, photographs, video tapes or any other material.

(D) *Illumination.* Illumination of the premises exterior shall be adequate to observe the location and activities of all person on the exterior premises.

(E) *Signs.* Signs for adult-oriented businesses shall comply with the city's ordinance for signs addressed in this chapter and in addition signs for adult-oriented businesses shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the operation. (Ord. 656, passed 1-3-2002)

§ 113.07 EFFECTIVE DATE.

The effective date of this chapter is January 18, 2002.
(Ord. 656, passed 1-3-2002)

LICENSES**§ 113.15 REQUIRED.**

No person shall own or operate a sexually-oriented business within the city unless the person is currently licensed under this chapter.
(Ord. 656, passed 1-3-2002)

§ 113.16 APPLICATION.

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

(A) *All applicants.* For all applicants where the applicant is a natural person, corporation, partnership or other form of organization:

(1) The legal description of the premises to be licensed, along with a floor plan of the premises. The floor plan of the premises shall detail all internal operations and activities, including a statement of the total floor space occupied by the business. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimension of the interior of the premises to an accuracy of plus or minus 6 inches; and

(2) The name and street address of the business. If the business is to be conducted under a designated name, or style other than the name of the applicant, a certified copy of the certificate required by M.S. § 333.01, as it may be amended from time to time, shall be submitted.

(B) *Applicants who are natural persons.* If the applicant is a natural person:

(1) The name, place and date of birth, street and city address, and phone number of the applicant;

(2) Where the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places where used;

(3) The street and city addresses at which the applicant has lived during the preceding 2 years;

(4) The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding 2 years and name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding 2 years; and

(5) Whether the applicant has ever been convicted of a felony, crime or violation of any ordinance other than a petty misdemeanor traffic ordinance. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.

(C) *Applicants that are partnerships.* If the applicant is a partnership:

(1) The name(s) and address(es) of all general partners and all of the information concerning each general partner that is required of applicants in division (B) of this section;

(2) The name(s) of the managing partner(s) and the interest of each partner in the business; and

(3) A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to M.S. § 333.01, as it may be amended from time to time, a certified copy of the certificate shall be attached to the application.

(D) *Corporate or other applicants.* If the applicant is a corporation or other organization:

(1) The name of the corporation or business form, and if incorporated, the state of incorporation;

(2) A true copy of the certificate of incorporation, articles of incorporation or association agreement and bylaws shall be attached to the application. If the applicant is a foreign corporation, a certificate of authority as required by M.S. § 303.06, as it may be amended from time to time, shall be attached; and

(3) The name of the manager(s), proprietor(s) or other agent(s) in charge of the business and all of the information concerning each manager, proprietor or agent that is required of the applicants in division (B) of this section.

(Ord. 656, passed 1-3-2002)

§ 113.17 APPLICATION EXECUTION.

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

(Ord. 656, passed 1-3-2002)

§ 113.18 APPLICATION VERIFICATION.

Applications of licenses under this chapter shall be submitted to the City Council (hereinafter referred to as the Issuing Authority). Within 20 calendar days of receipt of a complete application and payment of all license application fees, agents and/or employees of the Issuing Authority shall verify any and all of the information requested of the applicant in the application, including the ordering of criminal background checks, and conduct any necessary investigation to assure compliance with this chapter.

(Ord. 656, passed 1-3-2002)

§ 113.19 CONSIDERATION.

No later than 10 calendar days after the completion of the license application verification and investigation by the Issuing Authority or its agents and employees, as prescribed in § 115.18, the Issuing Authority shall accept or deny the license application in accordance with this chapter. If the application is denied, the Issuing Authority shall notify the applicant of the determination in writing. The notice shall be mailed by certified and regular mail to the applicant at the address provided on the application form and it shall inform the applicant of the applicant’s right within 20 calendar days of receipt of the notice by the applicant, to request an appeal of the determination for reconsideration by the City Council or to immediately challenge the determination in a court of law. If an appeal to the

City Council is timely received, the hearing before the City Council shall take place within 20 calendar days of the receipt of the appeal. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises by the City Planning Department. During the application consideration process prescribed herein, an applicant operating a business not previously subject to the license provisions of this chapter may remain operating, pending the outcome of the application consideration by the Issuing Authority.

(Ord. 656, passed 1-3-2002)

§ 113.20 FEES.

(A) *Application fee.*

(1) The license application fee shall be \$1,000.

(2) The application license fee shall be paid in full before the application for a license is considered. All fees shall be paid to the Issuing Authority for deposit into the General Fund of the city. Upon rejection of any application for a license or upon withdrawal of application before approval of the Issuing Authority, the license fee shall be refunded to the applicant.

(3) When the license is for premises where the building is not ready for occupancy, the time fixed for computation of the license fee of the initial license period shall be 90 days after approval of the license by the Issuing Authority or upon the date an occupancy permit is issued for the building.

(B) *Investigation fee.* An applicant for any license under this division shall deposit with the Issuing Authority, at the time an original application is submitted, \$1,000 to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this division. The investigation fee shall be nonrefundable.

(Ord. 656, passed 1-3-2002)

LICENSE REGULATIONS

§ 113.30 PERSONS AND LOCATIONS INELIGIBLE.

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

(A) The applicant is not 18 years of age or older on the date the application is submitted to the Issuing Authority;

(B) The applicant failed to supply all of the information requested on the license application;

(C) The applicant gave false, fraudulent or untruthful information on the license application;

(D) The applicant has had a sexually-oriented license revoked from the city or any other jurisdiction within a one-year period immediately preceding the date the application was submitted;

(E) The applicant has had a conviction of a felony or gross misdemeanor or misdemeanor relating to sex offenses, obscenity offenses or adult uses in the past 5 years;

(F) The sexually-oriented business does not meet the zoning requirements prescribed in this chapter;

(G) The premises to be licensed as a sexually-oriented business is currently licensed by the city as a tanning facility, tattoo establishment, pawnshop, therapeutic massage enterprise or an establishment licensed to sell alcoholic beverages; or

(H) The applicant has not paid the license and investigation fees required in § 115.20.
(Ord. 656, passed 1-3-2002)

§ 113.31 RESTRICTIONS.

(A) *Posting of license.* A license issued under this chapter must be posted in a conspicuous place in the premises for which it is used.

(B) *Effect of license.* A license issued under this chapter is only effective for the compact and contiguous space specified in the approved license application.

(C) *Maintenance of order.* A licensee under this chapter shall be responsible for the conduct of the business being operated and shall not allow any illegal activity to take place on or near the licensed premises including but not limited to prostitution, public indecency, indecent exposure, disorderly conduct or the sale or use of illegal drugs. Every act or omission by an employee or independent contractor of the licensee constituting a violation of this chapter shall be deemed the act or omission of the licensee if the act or omission occurs either with the authorization, knowledge or approval of the licensee or as a result of the licensee's negligent failure to supervise the employee's or independent contractor's conduct.

(D) *Distance requirement for live adult entertainment.* All performers, dancers and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed facility where the entertainment can be seen by patrons of the licensed facility shall remain at all times a minimum distance of 10 feet from all patrons, customers or spectators, and shall dance or provide entertainment on a platform intended for that purpose, which shall be raised at least 2 feet from the level of the floor on which patrons or spectators are located.

(E) *Interaction with patrons.* No dancer, performer or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas in the licensed facility, or in areas adjoining the licensed facility where the entertainment can be seen by patrons of the licensed facility, shall fondle or caress any spectator or patron.

(F) *Gratuity prohibition.* No customer, spectator or patron of a licensed facility shall directly pay or give any gratuity to any dancer or performer and no dancer or performer shall solicit any pay or gratuity from any patron or spectator.

(G) *Adult car wash requirements.* Sexually-oriented businesses that are adult car washes shall meet all of the requirements of this chapter.
(Ord. 656, passed 1-3-2002)

§ 113.32 RESTRICTIONS REGARDING LICENSE TRANSFER.

(A) The license granted under this chapter is for the person and the premises named on the approved license application. No transfer of a license shall be permitted from place to place or from person to person without complying with the requirements of an original application.

(B) When a sexually-oriented business licensed under this chapter is sold or transferred, the existing licensee shall immediately notify the issuing authority of the sale or transfer. If the new owner or operator is to continue operating the sexually-oriented business, the new owner or operator must immediately apply for a license under this chapter.
(Ord. 656, passed 1-3-2002)

§ 113.33 INSPECTIONS.

(A) *Access.* An applicant or licensee shall permit health officials and representatives of the Police Department, Fire Department and Building Inspection Division to inspect the premises of an adult-oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(B) *Refusal to permit inspections.* A person who operates an adult-oriented business or his or her agent or employee commits an offense if she or he refuses to permit a lawful inspection of the premises by health officials, representatives of the Police Department, Fire Department and Building Inspection Division at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license as provided in § 115.35.

(C) *Exceptions.* The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.
(Ord. 656, passed 1-3-2002) Penalty, see § 10.99

§ 113.34 EXPIRATION AND RENEWAL.

(A) *Expiration.* Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in this chapter. Application for renewal must be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.

(B) *Denial of renewal.* When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(Ord. 656, passed 1-3-2002)

§ 113.35 SUSPENSION.

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

(1) Violated or is not in compliance with any provision of this chapter;

(2) Engaged in the use of alcoholic beverages while on the adult-oriented business premises other than at an adult hotel or motel;

(3) Refused to allow an inspection of the adult-oriented business premises as authorized by this chapter;

(4) Knowingly permitted gambling by any person on the adult-oriented business premises; or

(5) Demonstrated inability to operate or manage an adult-oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(B) *Notice.* A suspension by the city shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least 10 days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof.

(Ord. 656, passed 1-3-2002)

§ 113.36 REVOCATION.

(A) *Suspended licenses.* The city may revoke a license if a cause of suspension in § 115.35 occurs and the license has been suspended within the preceding 12 months.

(B) *Causes of revocation.* The city shall revoke a license if it determines that:

(1) A licensee gave false or misleading information in the material submitted to the city during the application process;

(2) A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;

(3) A licensee or an employee has knowingly allowed prostitution on the premises;

(4) A licensee or an employee knowingly operated the adult-oriented business during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in this chapter, for which the time period required therein has not elapsed;

(6) On 2 or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in this chapter, for which a conviction has been obtained, and the person or person were employees of the adult-oriented business at the time the offenses were committed; or

(7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

(C) *Appeals.* The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(D) *Exceptions.* Division (B)(7) of 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.

(E) *Granting a license after revocation.* When the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult-oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under division (B)(7) above, an applicant may not be granted another license until the appropriate number of years required under this chapter has elapsed.

(F) *Notice.* A revocation by the city shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least 10 days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof.

(Ord. 656, passed 1-3-2002)

§ 113.37 TRANSFER OF LICENSE.

A licensee shall not transfer this license to another, nor shall a licensee operate an adult-oriented business under the authority of a license at any place other than the address designated in the application.

(Ord. 656, passed 1-3-2002)

CHAPTER 114: LAWFUL GAMBLING

Section

- 114.01 Purpose
- 114.02 Definitions
- 114.03 Lawful gambling permitted
- 114.04 Council approval
- 114.05 Application
- 114.06 Local approval of premises permits
- 114.07 Local permits
- 114.08 Permit Conditions
- 114.09 Lawful gambling at on-sale establishments
- 114.10 License and permit display
- 114.11 Notification of material changes to application
- 114.12 Records and reporting

§ 114.01 PURPOSE.

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

§ 114.02 DEFINITIONS.

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

BOARD. The State of Minnesota Gambling Control Board.

LICENSED ORGANIZATION. An organization licensed by the Board.

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

§ 114.03 LAWFUL GAMBLING PERMITTED.

Lawful gambling is permitted within the City if the Council, by resolution adopted by a

majority of its members authorizes lawful gambling to occur, provided it is conducted in accordance with M.S. §§ 609.75 to 609.763, inclusive, as they may be amended from time to time; M.S. §§ 349.11 to 349.23, inclusive, as they may be amended from time to time, and this chapter and other applicable provisions of the City ordinances.

§ 114.04 COUNCIL APPROVAL.

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

Penalty, see § 116.99

§ 114.05 APPLICATION.

Every organization shall file an application for issuance or renewal of a lawful gambling license with the Assistant City Administrator. City staff shall review the application and, if necessary, report findings and recommendations to the City Council. A copy of the resolution approved by the Council will be made available to the license applicant.

§ 114.06 LOCAL APPROVAL OF PREMISE PERMITS.

Lawful gambling under license issued by the Board may be conducted only at the following locations:

(A) In the licensed organization's hall where it has its regular meetings. No organization shall rent, lease, or occupy, directly or indirectly, any other property for the purpose of conducting gambling, except an on-sale establishment as permitted in this chapter;

(B) In licensed on-sale liquor, wine, and beer establishments;

(C) Not with standing subsection (A) and (B) above, raffle only or pull tab only license may be approved for any proper location. The provisions of 114.09 shall also apply to licenses issued under this subsection in the event a proper location is determined to be a site that is not licensed for on-sale liquor, wine or beer.

(D) No location shall be approved for gambling unless it complies with the applicable zoning, building, fire, and health codes of the City.

§ 114.07 LOCAL PERMITS.

Every organization seeking to conduct lawful gambling which is exempt from state licensing

shall obtain a permit issued by the Council, subject to the following conditions:

(A) Permits for all classes of gambling activities may be approved;

(B) Lawful gambling by an organization exempt from licensing under Minnesota Statutes, may be conducted on the premises of a licensed on-sale liquor, wine, or 3.2 beer establishment or a bottle club subject to the restrictions in this chapter relating to the conduct of gambling in on-sale establishments and bottle clubs;

(C) Except as provided in subsection (C) above, the sale, consumption, and possession of intoxicating liquor at a gambling event by an exempt organization shall be prohibited, however, 3.2 beer may be served and consumed only under a valid temporary on-sale beer license;

(D) The organization shall comply with all statutory requirements for an exempt organization, including the thirty (30) day notice requirement to the City. The Council, when granting a permit to an exempt organization, may waive the thirty (30) day notice requirement.

§ 114.08 PERMIT CONDITIONS.

The conduct of lawful gambling under license issued by the Board shall be subject to the following conditions in the City:

(A) No sale, consumption, or possession of liquor, wine, or 3.2 beer shall be permitted during gambling conducted by a licensed organization, except as permitted under a valid on-sale liquor, wine or 3.2 beer license or a bottle club permit; provided further that no sale, consumption, or possession of liquor, wine, or 3.2 beer shall be permitted in the room where a bingo session is taking place;

(B) No organization shall be eligible for a gambling license and a premises permit unless, for the three (3) years immediately preceding the date of application, it has had an office, hold regular monthly meetings in the City, has fifteen (15) active members, and demonstrates that during that period it has performed substantial services within the City or on behalf of residents of the City;

(D) No organization shall hold more than one gambling license for any location in the City except an organization that holds gambling license for its own building may hold one additional gambling license for any location in the City;

(E) Before any person may serve as gambling manager for any organization licensed to conduct gambling in the City that person must have satisfactorily completed a course of instruction conducted by the board on the duties and responsibilities of the gambling manager, or be enrolled and take the first available course of instruction offered by the Board.

§ 114.09 LAWFUL GAMBLING AT ON-SALE ESTABLISHMENTS.

Lawful gambling at on-sale liquor, wine, and 3.2 beer establishments shall be conducted in compliance with the following regulations:

(A) Only licenses for lawful gambling and raffles may be issued, except where the licensed gambling organization also holds the on-sale liquor, wine, or 3.2 beer licenses for the premises, in which case any gambling license may be issued;

(B) On-sale establishments shall be limited to one licensed gambling organization at any one time in the licensed premises and any rooms adjoining the premises under the same management. No leases shall be made with one organization while another lease is in effect for the same on-sale establishment;

(C) Every agreement between a non-profit organization and an on-sale premises for gambling shall be in the form of a written lease. The written lease shall be the complete agreement between the parties, and there shall be no unwritten terms or conditions. The lease shall specifically provide that the lessee shall operate only after issuance of a license and shall be subject to the terms of this ordinance;

(D) A copy of any lease agreement between a non-profit organization and an on-sale licensee shall be filed with the Assistant City Administrator with the gambling license application;

(E) A lease agreement between a non-profit organization and an on-sale establishment shall not provide for rental payments based on a percentage of receipts of profits from lawful gambling. There shall be no other compensation paid to the on-sale establishment, directly or indirectly, other than the rental fee provided in the lease agreement. The maximum rental fee shall be six hundred dollars (\$600.00) per month or \$24 per square foot of leased premise, whichever is less;

(F) All gambling shall be conducted from a booth or other area properly segregated from the rest of the licensed premises. The physical layout of the area set aside for gambling shall be subject to the approval of the Board;

(G) The gambling booth shall be constructed and maintained by the organization licensed to conduct gambling and shall be under the exclusive control of that organization. The organization licensed to conduct gambling shall prominently display its name and license number at its gambling booth and shall indicate that all profits from gambling are for the benefit of the organization;

(H) No employees or agents of the on-sale establishment shall handle gambling devices, gambling money, prizes, or gambling records, nor shall they record winners, replays, or free games, nor shall they otherwise conduct, or assist the licensed gambling organizations in conducting the gambling operation;

(I) No person shall be jointly employed by both the non-profit organization and the on-sale establishment;

(J) The gambling booth shall be separate from the liquor service bar. No gambling shall be conducted from the liquor service bar;

(K) The organization licensed to conduct gambling shall have exclusive control over all gambling devices, money, and records. Whenever the organization is not present, all gambling devices, money, and records shall be securely locked and shall be inaccessible to employees of the on-sale establishment.

(L) No gambling funds shall be commingled with funds of the on-sale establishment.

(M) No food, drink, or entertainment discounts or other promotions shall be offered in conjunction with the sale of gambling devices or chances;

(N) The on-sale establishment shall allow the organization to conduct gambling at any time during its lawful business hours and shall prohibit gambling at any time other than its lawful business hours;

(O) The on-sale licensee shall make no agreements with any gambling equipment distributor requiring the use of his or her gambling equipment in the establishment;

(P) Subsection 114.09 (f), (g), (h), (i), (j), and (k) shall not apply when the licensed gambling organization is also the holder of the on-sale license for the establishment where the gambling is conducted;

(Q) The City Council may disapprove a gambling license application for an on-sale establishment in which gambling violations have previously occurred;

(R) Sixty (60) percent of the lawful purpose gambling funds shall be spent within the Litchfield trade area (all of Meeker County). (Ord. 548, 6-17-91. eff. 7-2-91)

§ 114.10 LICENSE AND PERMIT DISPLAY.

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

§ 114.11 NOTIFICATION OF MATERIAL CHANGES TO APPLICATION.

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

§ 114.12 RECORDS AND REPORTING.

(A) Every organization licensed to conduct gambling within the City shall file with the Assistant City Administrator copies of the monthly State gambling report and Schedule C required to be file with the Board pursuant to MS § 349 and the rules and regulations promulgated there under. The records and reports shall be due at the same time they are due to the Board;

(B) Every organization licensed to conduct gambling in the City shall file with the Assistant City Administrator an annual summary report of lawful purpose expenditures of gambling profits;

(C) Every gambling event in the City conducted by an organization under MS § 349 shall be open to inspection by officers of the Litchfield Police Department;

(D) Employees of the Litchfield Police Department may inspect, at any reasonable time without notice or search warrant, all gambling records of a licensed organization, required by the Board to be maintained and preserved.

CHAPTER 115: SALES ON PUBLIC PROPERTY

Section

115.01 Permit Required

115.02 Application for License

§ 115.01 PERMIT REQUIRED.

No person shall conduct sales of any merchandise whatsoever, for money or other consideration, upon the public streets, “sidewalks, parks or any other public property” without first having obtained a permit.

§ 115.02 APPLICATION FOR LICENSE.

Any person, partnership or corporation desiring to engage in or make retail sales upon public streets, “sidewalks, parks or any other public property: within the City shall file an application for a license for that purpose with the Assistant City Administrator, which application shall state the full name and residence of the person, firm or company by whom employed or for whom acting, the kind of items or services which he proposes to sell, and the times during which such sales shall be attempted. The application shall be on a form approved by the City Council and shall identify all vehicles which shall be used in the sales regulated herein. (Ord. 467, 8-1-83)

CHAPTER 116: LODGING TAX

Section

General Procedures

- 116.01 Definitions
- 116.02 Imposition of tax

Collection and Payment Procedures

- 116.15 Collection
- 116.16 Exceptions and exemptions
- 116.17 Advertising no tax prohibited
- 116.18 Payment; return submission
- 116.19 Examination of return; adjustments
- 116.20 Refunds
- 116.21 Failure to file return
- 116.22 Delinquent payment; penalties

Administration and Enforcement

- 116.35 Administration of tax
- 116.36 Examination of records
- 116.37 Violations
- 116.38 Disposition of proceeds
- 116.39 Appeals

- 116.99 Penalty

GENERAL PROCEDURES**§116.01 DEFINITIONS.**

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

LODGER. The person obtaining lodging from an operator.

LODGING. The furnishing for a consideration of lodging by a hotel, motel, bed and breakfast or public or private campground, except where that ***LODGING*** shall be for a continuous period of 30 days or more to the same lodger(s). The furnishing of rooms owned by religious, educational or non-

profit organizations for self-sponsored activities shall not constitute **LODGING** for purposes of this program.

OPERATOR. The person who is the proprietor of the lodging facility, whether in the capacity of owner, lessee, sublessee, licensee or any other capacity.

RENT. The total consideration valued in money charged for the 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.

§ 116.02 IMPOSITION OF TAX.

Pursuant to M.S. § 469.190, as it may be amended from time to time, a tax is imposed on the rent charged by an operator for providing lodging to any person. A tax of 3% shall be imposed. The tax collected by the operator 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 program to collect from a lodger.

COLLECTION AND PAYMENT PROCEDURES

§ 116.15 COLLECTION.

Each operator shall collect the tax imposed by this program at the time the rent is paid. The tax collections 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.

§ 116.16 EXCEPTIONS AND EXEMPTIONS.

(A) *Exceptions.* No tax shall be imposed on rent for lodging paid by any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

(B) *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 this claim shall be made in writing and under penalty of perjury on forms provided by the city. All these claims shall be forwarded to the city when the returns and collections are submitted as required by this chapter.

§ 116.17 ADVERTISING NO TAX PROHIBITED.

It is 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.

§ 116.18 PAYMENT; RETURN SUBMISSION.

(A) The taxes imposed by this program shall be paid monthly by the operator to the city 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 containing that information as the Assistant City Administrator, or his or her designee, 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 total amount of exceptions and exemptions;
- (3) The amount of tax required to be collected and due for the period;
- (4) The signature of the person filing the return or that of his or her agent duly authorized in writing;
- (5) The period covered by the return; and
- (6) 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 program previously paid as a result of any transaction, the consideration for which became uncollectible during that reporting period, but only in proportion to the portion of the consideration which became uncollectible.

§ 116.19 EXAMINATION OF RETURN; ADJUSTMENTS.

The Assistant City Administrator, or his or her designee, 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. The tax computed on the basis of this examination shall be the tax to be paid. 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. 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.

§ 116.20 REFUNDS.

Any person may apply to the Assistant City Administrator, or his or her designee, for a refund of taxes paid in excess of the amount legally due for that period, provided that no application for a refund shall be considered unless filed within one year after that tax was paid, or within one year from the filing of the return, whichever period is the longer. The Assistant City Administrator, or his or her designee, shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to the person at the address stated upon the return. If the claim is allowed in whole or in part, the Assistant City Administrator, or his or her designee, shall credit the amount of the allowance against any taxes due under this program from the claimant, and the balance of the allowance, if any, shall be paid by the Assistant City Administrator, or his or her designee, to the claimant.

§116.21 FAILURE TO FILE RETURN.

(A) If any operator required by this program 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 that return or corrected return within five days of receipt of 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 Assistant City Administrator, or his or her designee, shall make a return or corrected return for that person from that knowledge and information as the director 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 upon within five days of the receipt of written notice and demand for payment. Any thus described return or assessment made by the Assistant City Administrator, or his or her designee, shall be prima facie correct and valid, and the person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding with respect thereto.

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

(C) Upon a showing of good cause, the Assistant City Administrator, or his or her designee, 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 this period of extension shall be added to the taxes due at the rate of 10% per annum.

§ 116.22 DELINQUENT PAYMENT; PENALTIES.

(A) If any tax imposed by this chapter is not paid within the time herein specified for the payment, or any 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 this failure is not due to willful neglect, there shall be added to the tax, in addition to the 10% specific penalty provided in division (A) above, 10% if the failure is for not more than 30 days, with an additional 5% for each additional 30 days or fraction thereof during which failure continues, not exceeding 25% in the aggregate. If the penalty as computed does not exceed \$10, a minimum penalty of \$10 shall be assessed. The amount so added to any tax shall be collected at the same time and in the same manner and as a 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 make any payment required by this chapter, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat this tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50% of any tax (less amounts paid on the basis of the false or fraudulent return) found due for the period to which that return related. The penalty imposed by this division (C) 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.

ADMINISTRATION AND ENFORCEMENT

§ 116.35 ADMINISTRATION OF TAX.

The Assistant City Administrator, or his or her designee, shall administer and enforce the assessment and collection of the taxes imposed by this chapter. The director 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 and furnish them upon application; but failure to receive or secure them shall not relieve any person from any obligation required under this chapter.

§ 116.36 EXAMINATION OF RECORDS.

The Assistant City Administrator, or his or her designee, 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 program. Every operator is directed and required to give to the Assistant City Administrator, or his or her designee, the means, facilities and opportunity for the examinations and investigations as are hereby authorized.

§ 116.37 VIOLATIONS.

It is unlawful for any person to willfully fail to make a return required by this program, or to fail to pay the tax after written demand for payment, or to fail to remit the taxes collected or any

penalty or interest imposed by this chapter after written demand for payment, or to refuse to permit the Assistant City Administrator, or his or her designee, to examine the books, records and papers under his or her control or to willfully make an incomplete, false or fraudulent return.

§ 116.38 DISPOSITION OF PROCEEDS.

(A) The 95% proceeds obtained from the collection of taxes pursuant to this program shall be used in accordance with M.S. § 469.190, as the same may be amended from time to time, to fund a local convention and tourism bureau for the purpose of marketing and promoting the city as a tourist and convention center. The city may retain a maximum of 5% for administrative costs.

(B) The city by and through an agreement, entitled “Service Agreement between City of Litchfield and Litchfield Area Chamber of Commerce and Litchfield Visitors Bureau” (hereinafter “the agreement”), with the Litchfield Area Chamber of Commerce (hereinafter “Chamber of Commerce”) and Litchfield Visitors Bureau, hereby permits the Chamber of Commerce to create the Litchfield Visitors Bureau. The Litchfield Visitors Bureau will be funded by the tax set forth herein and pursuant to M.S. § 469.190, as it may be amended from time to time. The agreement sets forth the purpose and duties of the Litchfield Visitors Bureau and provides for its internal structure. Pursuant to the terms of the agreement, and specifically incorporated herein without limiting the effect of the agreement, are the following terms:

- (1) The Litchfield Visitors Bureau shall establish and maintain separate books and records;
- (2) The Litchfield Visitors Bureau shall establish separate bank accounts; and
- (3) The Litchfield Visitors Bureau shall not commingle its funds with the Chamber of Commerce or any other entity.

(C) Any and all employees of the Chamber of Commerce or the Litchfield Visitors Bureau, or any other persons, while engaged in the performance of any service required by the Chamber of Commerce shall not be considered employees of the city, and any and all claims that may or might arise under the Worker's Compensation Act of the state, being M.S. §§ 176.001 et seq., as it may be amended from time to time, on behalf of those employees or other persons while so engaged, and any and all claims made by the third party as a consequence of any act or omission on the part of the Chamber of Commerce, or its agents or employees or other persons while so engaged in any of the services provided to be rendered herein, shall in no way be the obligation or the responsibility of the city. In connection therewith, the Chamber of Commerce hereby agrees to indemnify, save and hold harmless, defend the city and all its agents and employees thereof, from any and all claims, demands, actions or causes of action of whatever nature or character arising out of or by reason of the execution or the performances of the services provided in accordance with this agreement, excepting therefrom City Administrator duties and city duties relating to the collection of taxes.

(D) The annual budget submitted by the Litchfield Visitors Bureau to the Council for its

approval may be approved or disapproved in total or modified at the Council's discretion.
(Ord. 796, passed 8-20-2019)

§ 116.39 APPEALS.

(A) Any operator aggrieved by any notice, order or determination made by the Assistant City Administrator, or his or her designee, under this chapter may file a petition for review of that notice, order or determination, detailing the operator's reasons for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order, notice or determination.

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

(C) Upon receipt of the petition, the City Administrator, or his or her designee, shall set a date for a hearing and give the petitioner at least five days' prior written notice of the date, time and place of the hearing.

(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. The petitioner may be represented by counsel of the petitioner's choosing at the petitioner's own expense.

(E) Any disputes shall be conducted in accordance with principles and rules of the American Arbitration Association.

(F) The hearing examiner conducting the hearing shall make written findings of fact and conclusions based upon the applicable provisions 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 Assistant City Administrator, or his or her designee.

(G) Any decision rendered by the hearing examiner pursuant to this section may be appealed to the Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the City Administrator within ten days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the Council agenda as soon as practicable. The Council shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the Council that findings and conclusions were incorrect, the Council may modify, reverse or affirm the decision of the hearing examiner or his or her designee upon the same standards as set forth above in division (F) above.

§ 116.99 PENALTY.

Any person who violates any provision of this Chapter is guilty of a misdemeanor.
(Ord. 792, 11-1-2018)