

## CHAPTER VIII

### LICENSES AND BUSINESS REGULATIONS

#### **Section 800: TOBACCO, TOBACCO PRODUCTS, TOBACCO-RELATED DEVICES, ELECTRONIC DELIVERY DEVICES, AND NICOTINE OR LOBELIA DELIVERY PRODUCTS.**

*(Deleted, Ord. 99-06; Added, Ord. 99-06)*

**Section 800:00. PURPOSE.** The city recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco related devices, electronic delivery devices and nicotine and lobelia products, and such sales, possession, and use are violations of both state and federal laws. Studies have shown that most smokers begin smoking before they have reached the age of 21 years and that those persons who reach the age of 21 years without having started smoking are significantly less likely to begin smoking. Smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government. This chapter is intended to regulate the sale, possession and use of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia products, for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the use of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia products, to further the official public policy of Minnesota in regard to preventing young people from starting to smoke, as stated in Minnesota Statutes, section 144.391. *(Added, Ord. 99-06, Amended, Ord. 2021-01)*

**Section 800:05. DEFINITIONS AND INTERPRETATIONS.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following terms shall have the definitions given to them:

**Compliance Checks**, shall mean the system used by the city or any other jurisdiction to investigate and ensure that those licensed to sell licensed products are complying with the requirements of this chapter or any state or federal law or regulation. Compliance checks shall involve the use of minors as authorized by this chapter. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products or tobacco related devices for educational, research and training purposes as authorized by state or federal law.

**Electronic Delivery Device**, shall mean any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery devices includes, but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, e-cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

**Individually Packaged**, shall mean the practice of selling any licensed products wrapped individually for sale. Individually wrapped licensed 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 subdivision shall not be considered individually packaged.

**Licensed products**, shall means, collectively, any tobacco, tobacco products, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery products.

**Loosies**, shall mean a single or individually packaged cigarette.

**Minor**, shall mean any natural person who has not yet reached the age of 21 years.

**Moveable Place of Business**, shall refer to any business operated out of a truck, van, automobile or other vehicle or transportable shelter and not at a fixed address, store front or other permanent structure authorized for sales transactions.

**Nicotine or lobelia delivery products**, shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this chapter; except, it does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as drugs, devices or combination products as defined in the Federal Food, Drug, and Cosmetic Act.

**Retail Establishment**, shall mean any place of business in which licensed products are available for sale to the general public, including but not be limited to, grocery stores, convenience stores and restaurants.

**Sale**, shall mean any transfer of goods for money, trade, barter or other consideration, including giving goods away for free alone or in conjunction with other goods or products.

**Self-Service Merchandising**, shall mean open displays of licensed products in any manner in which any person may have access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

**Smoking**, shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product, or the use of any electronic delivery device, such as e-cigarettes. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

**Tobacco or Tobacco Products**, shall mean 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, or any component, part, or accessory of a tobacco product including but not limited to cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

**Tobacco-Related Devices**, shall mean cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

**Vending Machine**, shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco related device.

*(Added, Ord. 99-06, Amended, Ord. 2021-01)*

**Section 800:10. LICENSE.** No person shall sell or offer to sell any licensed products without first having obtained a license to do so from the city in compliance with this section. *(Added, Ord. 99-06, Amended, Ord. 2021-01).*

**Subd. 1. Application.** An application for a license to sell licensed products shall be made on a form provided by the city. The application shall contain the full name of the applicant, the 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 clerk shall forward the application to the city council for action at its next regularly scheduled meeting. If the clerk determines that an application is incomplete, the clerk shall return the application to the applicant with notice of the information necessary to make the application complete. *(Added, Ord. 99-06, Amended Ord. 2021-01)*

**Subd. 2. Action.** The city council may either approve or deny the license, or it may delay action for such reasonable period of time as may be necessary to complete any investigation of the application or the applicant. If the city council approves the license, the clerk shall issue the license to the applicant. If the city council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the city council's decision. *(Added, Ord. 99-06)*

**Subd. 3. Term.** Each license shall be issued for a period of one calendar year. If the application is made during the license year, a license may be issued for the remainder of the licensed year on a pro rata basis. Any unexpired fraction of a month shall be counted as a complete month. Every license shall expire on December 31 of the license year. *(Added, Ord. 99-06)*

**Subd. 4. Revocation or Suspension.** Any license issued under this chapter may be revoked or suspended as provided in sections 800.50 and 800.55 of this chapter. *(Added, Ord. 99-06)*

**Subd. 5. Transfers.** All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the city council. *(Added, Ord. 99-06)*

**Subd. 6. Moveable Place of Business.** No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this chapter. *(Added, Ord. 99-06)*

**Subd. 7. Display.** All licenses shall be posted and displayed in plain view of the general public on the licensed premise. *(Added, Ord. 99-06)*

**Subd. 8. 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 by the licensee at least 30 days but no more than 60 days before the expiration of the current license. The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the licensee to an automatic renewal of the license. *(Added, Ord. 99-06)*

**Subd. 9. Fees.** No license shall be issued under this chapter until the appropriate license fee has been paid in full. The fee for a license under this chapter shall be established from time to time by ordinance of the city council. *(Added, Ord. 99-06; Ord. 2003-08)*

**Section 800:15. BASIS FOR DENIAL OF LICENSE.** If a license is mistakenly issued or renewed to a person, it may be revoked upon the discovery that the person was ineligible for the license under this chapter. The following shall be grounds for denying the issuance or renewal of a license under this chapter; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city council must deny the license: *(Added, Ord. 99-06)*

**Subd. 1.** The applicant is under the age of 21 years; *(Added, Ord. 99-06, Amended, Ord 2021-01)*

**Subd. 2.** The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision or other regulation relating to licensed products; *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 3.** The applicant has had a license to sell licensed products revoked within the 12 months preceding the date of application; *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 4.** The applicant fails to provide any information required on the application, or provides false or misleading information; or *(Added, Ord. 99-06)*

**Subd. 5.** The applicant is prohibited by federal, state, or other local law, ordinance or other regulation from holding such a license. *(Added, Ord. 99-06)*

**Section 800:20. PROHIBITED SALES.** It shall be a violation of this chapter for any person to sell or offer to sell any licensed products: *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 1.** To any person under the age of 21 years; *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 2.** By means of any type of vending machine, except as may otherwise be provided in this chapter; *(Added, Ord. 99-06)*

**Subd. 3.** By means of self-service merchandising; *(Added, Ord. 99-06)*

**Subd. 4.** By means of loosies; *(Added, Ord. 99-06)*

**Subd. 5.** Containing opium, morphine, kimson weed, belladonna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process; or *(Added, Ord. 99-06)*

**Subd. 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. *(Added, Ord. 99-06)*

**Section 800:25. VENDING MACHINES.** It shall be unlawful for any person licensed under this chapter to allow the sale of licensed products by the means of a vending machine unless minors are at all times prohibited by law from entering the licensed establishment. *(Added, Ord. 99-06, Amended 2021-01)*

**Section 800:30. SELF-SERVICE MERCHANDISING.** It shall be unlawful for a licensee under this chapter to allow the sale of licensed products through self-service merchandising. Any licensee selling licensed products at the time this chapter is adopted shall comply with this section within 60 days of its adoption and publication. *(Added, Ord. 99-06, Amended 2021-01)*

**Section 800:35. RESPONSIBILITY.** All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises. The sale of any such item by an employee shall be considered a sale by the license holder and shall subject the license holder to the provisions of sections 800:50 and 800:55 of this chapter. Nothing in this section shall be construed as prohibiting the city council from also subjecting the employee to appropriate penalties under this chapter, state or federal law, or other applicable law or regulation. *(Added, Ord. 99-06, Amended 2021-01)*

**Section 800:40. 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 minors over the age of 18 years but less than 21 years to enter the licensed premise to attempt to purchase licensed products. 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 licensed products when such items are obtained as a part of the compliance check. No minor engaged in a compliance check shall use or attempt to use false identification to misrepresent the minor's age. Minors engaged in a compliance check shall answer truthfully all questions about the minor's age asked by the licensee or licensee's employee and shall produce any identification, if any exists, for which the minor 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. *(Added, Ord. 99-06, Amended 2021-01)*

**Section 800:45 OTHER ILLEGAL ACTS.** Unless otherwise provided, the following acts shall be a violation of this chapter: *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 1. Sales.** For any person to sell or otherwise provide any licensed products to any minor; *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 2. Possession.** For any minor to have in minor's possession any licensed products, excluding any minor lawfully involved in a compliance check; *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 3. Use.** For any minor to smoke, chew, sniff, vape, or otherwise use any tobacco, tobacco product or tobacco related device; *(Added, Ord. 99-06, Amended 2021-01)*



**Subd. 4. Procurement.** For any minor to purchase or attempt to purchase or otherwise obtain any licensed products; for any person to purchase or otherwise obtain any such item on behalf of a minor; or for any person to coerce or attempt to coerce a minor to purchase or otherwise obtain or use any licensed products in a manner contrary to law, excluding any minor lawfully involved in a compliance check; and *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 5. Use of False Identification.** For any minor to attempt to disguise minor's 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. *(Added, Ord. 99-06)*

**Subd. 6. Minor employees.** For any licensee to allow an employee who is under the age of 18 to handle sales transactions involving tobacco products, unless the licensee has obtained the written consent of the minor employee's parent or guardian. *(Added, Ord. 99-06, Amended 2021-01)*

**Section 800:50. VIOLATIONS.** *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 1. Notice.** The city shall issue a notice of violation to any licensee suspected of violating any provision of this chapter. The notice of violation shall be served on the licensee personally or by mail. The notice shall contain the alleged violation and a statement concerning the licensee's right to a hearing. *(Added, Ord. 99-06)*

**Subd. 2. Hearing.** If a person accused of violating this chapter so requests, a hearing shall be scheduled before a hearing officer at a time and place which shall be published and provided to the accused violator. *(Added, Ord. 99-06)*

**Subd. 3. Hearing Officer.** The city council shall serve as the hearing officer in any hearing requested under this section. *(Added, Ord. 99-06)*

**Subd. 4. Decision.** Following the hearing, if the city council determines by a preponderance of the evidence that a violation of this chapter occurred, that decision, along with the city council's reasons for finding a violation and the administrative penalty to be imposed under section 800:55 of this chapter, shall be recorded in writing, a copy of which shall be provided to the accused violator. If the city council finds that no violation occurred or finds grounds for not imposing any administrative penalty, such finding shall be recorded and a copy provided to the accused violator. *(Added, Ord. 99-06)*

**Subd. 5. Appeals.** Any final decision by the city council under this section may be appealed to Hennepin County district court. *(Added, Ord. 99-06)*

**Subd. 6. Continued Violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense under this chapter. *(Added, Ord. 99-06)*

**Subd. 7. Misdemeanor Prosecution.** Nothing in this section shall prohibit the city from seeking misdemeanor prosecution for any alleged violation of this chapter in addition to the administrative penalties specified herein, with the exception of any alleged violation by minors, which are subject to alternative civil penalty, as provided in Minn. Stat. § 609.685, subd. 2 & 2a.. *(Added, Ord. 99-06, Amended 2021-01)*

**Section 800:55. ADMINISTRATIVE PENALTIES.** *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 1. Licensees.** Any licensee who sells licensed products to a minor or whose employee sells licensed products to a minor shall be charged an administrative fine of \$500 for a first violation, \$750 for a second violation at the same licensed premises within a 36 month period and \$1,000 for a third or subsequent violation at the same licensed premises within a 36 month period. Any licensee who sells licensed products to a minor or whose employee sells licensed products to a minor may also have their license suspended for up to ten days for a first violation, up to 20 days for a second violation at the same licensed premises within a 24 month period, and up to 30 days for a third or subsequent violation at the same licensed premises within a 24 month period. *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 2. Employees of Licensees.** Any employee of a licensee who sells licensed products to a minor shall be charged an administrative fine of up to \$100 for a first violation, up to \$300 for a second violation within a 24 month period and up to \$500 for a third or subsequent violation within a 24 month period. *(Added, Ord. 99-06)*

**Subd. 3. Minors.** Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, licensed products, shall be required to attend an appropriate education session concerning their violation and be required to serve up to 100 hours of community service, as determined by the city council, in accordance with Minn. Stat. § 609.685, subd. 2 & 2a. *(Added, Ord. 99-06, Amended 2021-01)*

**Subd. 4. Other Individuals.** Any individual other than a licensee or employee of a licensee who sells licensed products to a minor shall be charged an administrative fee of up to \$100 for a first violation, up to \$300 for a second violation within a 24-month period and up to \$500 for a third or subsequent violation with a 24-month period, subject to the right to a hearing before the city council as provided in section 800:50 of this chapter. Nothing in this section shall prohibit the city or other jurisdiction from seeking criminal prosecution for any alleged violation of this chapter by any individual other than a licensee or employee of a licensee, who sells, furnishes, or otherwise provides licensed products to a minor. If the city or other jurisdiction seeks criminal prosecution under this subdivision, no administrative penalty shall be imposed. *(Added, Ord. 99-06, Amended 2021-01)*

**Section 800:60. EXCEPTIONS AND DEFENSES.** Nothing in this chapter shall prevent the providing of licensed products to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to a charge of violating this chapter for a person to have reasonably relied on proof of age as described by state law. *(Added, Ord. 99-06, Amended 2021-01)*

**Section 800:65. SEVERABILITY AND SAVINGS CLAUSE.** If any section or portion of this chapter shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this chapter. *(Added, Ord. 99-06)*

**Section 805. LICENSING AND REGULATING MECHANICAL AMUSEMENT DEVICES.**

**Section 805:00. DEFINITION OF TERMS.** The term "mechanical amusement device" as used herein includes games of skill and music machines. The term "games of skill" means any amusement device other than a music machine which may be operated by the public generally upon the insertion of a coin or token. The term "music machine" means any device for playing music which is set in operation by the insertion of a coin or token.

**Section 805:05. LICENSE REQUIRED.** No person, firm or corporation shall operate or keep for operation any mechanical amusement device without a license therefor. Application for such license shall be made to the city clerk upon a form to be supplied by the city and shall give the name and address of the owner and applicant, the place where such device is to be kept for operation, what business is conducted at that place, the name, number and description of the device to be licensed, the fee for operating the machine and the prize, if any, returnable to the player on operation, and such other information as the council may require. Every such application shall be accompanied by the annual license fee for each device to be licensed. Such application shall be considered by the council at its next regular meeting and granted or rejected. The license shall be for a term of one year and may be transferred to another location in the city upon filing notice with the clerk of such transfer and paying a transfer fee. Upon application to the clerk, accompanied by the applicable fee, any license issued hereunder may be reissued for the expiration of the term of the original license for a mechanical amusement device to be maintained in place of the device originally licensed, if all provisions of the chapter are otherwise complied with in reissuance of the license. All fees shall be established from time to time by resolution of the city council. *(Amended, Ord. 99-07)*

**Section 805:10. LICENSE TO BE DISPLAYED.** Every license granted hereunder shall be posted in a conspicuous place on or near the mechanical amusement device so licensed and shall identify the same by number or description.

**Section 805:15. RESTRICTION ON GAMES OF SKILL.** No license shall be issued under this chapter for any gambling device. No person shall use any device licensed under this chapter for gambling and no license shall permit any person to use any game licensed hereunder. The operation of any lottery shall permit any person to so use any game licensed hereunder. The operation of any lottery or gambling device is declared to be contrary to this chapter. No minor under the age of 18 years, nor any minor enrolled in a public school, shall be permitted to play any such device.

**Section 805:20. PENALTY.** Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction for the violation of any law relating to gambling involving the operation of any device licensed under this chapter, the license shall be forthwith revoked.

**Section 810. BINGO, REGULATING AND LICENSING.**

**Section 810:00. STATUTE INCORPORATED.** The provisions of Minnesota Statutes, sections 349.11 through 349.23 relating to the game of bingo are adopted and made a part of this chapter as if set out in full. In addition, the regulations of this chapter apply to the conduct of bingo within the city.

**Section 810:05. LICENSE REQUIRED.** The unlicensed conduct of bingo within the city is prohibited. Any organization authorized by law to conduct bingo occasions may do so only after applying for and receiving a license from the council.

**Section 810:10. APPLICATION.** The application shall state where the games will be played and the dates and hours for which permission to play the game is requested. The application shall be verified by a duly authorized officer of the organization and by the designated bingo manager. No application shall be accepted by the city unless accompanied by the full annual license fee. Applications shall be prepared on forms available from the city clerk, shall be signed by the applicant and accompanied by any required attachments and submitted to the city clerk for consideration by city council.

**Section 810:15. LICENSE FEE.** The annual license fee shall be established from time to time by resolution of the city council. At the option of the city council the permit may be issued for a portion of the year, at a prorated fee in order to coincide with the annual permit period of the city. (*Amended, Ord. 99-07*)

**Section 810:20. FIDELITY BOND.** No bingo license shall be issued until the bingo manager furnishes a fidelity bond in the sum of \$10,000 in favor of the organization. The bond shall be conditioned on the faithful performance by the manager of manager's duties. The bond shall not be cancellable except upon 30 days written notice to the city. The council may by unanimous vote agree to waive the fidelity bond requirement. If such waiver is granted, the license must be endorsed to indicate such action.

**Section 810:25. REVOCATION.** No license shall have a vested right in any bingo license and such licenses may be suspended or revoked by the council at any time upon a showing that (1) any misrepresentation has been made in the license application or any report required of the license, or (2) the licensee has violated or caused to be violated any provisions of this chapter or the state bingo law. Prior to the revocation of any license the council shall publish a notice of such intent and hold a public hearing with respect to the basis for revocation of the license.

## **Section 815. GAMBLING, REGULATING AND LICENSING.**

**Section 815:05. STATUTE INCORPORATED.** The provisions of Minnesota Statutes related to gambling and gambling devices, sections 609.75 through 609.762 and sections 349.26 through 349.40 relating to gambling and licensing of certain kinds of gambling are adopted and made a part of this chapter as if set out in full. In addition, the regulations imposed by this chapter apply to the conduct of gambling so licensed.

**Section 815:10. LICENSE REQUIRED.** No person shall directly or indirectly operate a gambling device or conduct a raffle without a license to do so as provided in this chapter.

**Section 815:20. APPLICATION.** The application for a license shall state where the gambling device will be used or the lottery conducted and the dates and hours for which the activity to be licensed will be conducted. The application shall be verified by a duly authorized officer of the organization and by the designated gambling manager. No application shall be accepted by the city unless accompanied by the full annual license fee. Applications shall be prepared on forms available from the city clerk, shall be signed by the applicant and accompanied by any required attachments and submitted to the city clerk for consideration by city council.

**Section 815:25. LICENSE FEE.** The annual license fee shall be established from time to time by resolution of the city council. At the option of the city council the permit may be issued for a portion of the year, at a pro rated fee in order to coincide with the annual permit period of the city. (*Amended, Ord. 99-07*)

**Section 815:30. FIDELITY BOND.** No license shall be used under this part until the gambling manager furnishes a fidelity bond in the sum of \$10,000 in favor of the organization. The bond shall not be cancelable except upon 30 days written notice to the city. The council may, by unanimous vote agree to waive the fidelity bond requirement.

**Section 815:35. REVOCATION.** No licensee shall have a vested right in any license under this part and the license may be suspended or revoked by the council at any time upon showing that (1) any misrepresentation has been made in the license application or in any report required of the licensee, or (2) the licensee has violated or caused to be violated any provision of this chapter or the state law. Prior to the revocation of any license the council shall publish a notice of such intent to hold a public hearing with respect to the basis for revocation of the license.

## **Section 820. PEDDLERS, SOLICITORS, TRANSIENT MERCHANTS AND DOOR-TO-DOOR ADVOCATES**

**Section 820:05. DEFINITIONS.** For the purpose of this ordinance, the following definitions shall apply:

**DOOR-TO-DOOR ADVOCATE.** A person who goes door-to-door for the primary purpose of disseminating religious, political, social or ideological materials or advocating such beliefs. For purposes of this ordinance, door-to-door advocate includes door-to-door canvassing and pamphleting for non-commercial purposes.

**PEDDLER.** A person who goes from house to house, place to place or street to street conveying or transporting goods, wares or merchandise or offering or exposing the same for sale or making sales and delivering articles to purchasers.

**PERSON.** Any individual, partnership, corporation, organization, society or association acting as a peddler, solicitor, transient merchant or door-to-door advocate.

**PROFESSIONAL FUNDRAISER.** Any person who, for compensation, performs any solicitation for a religious, political, social or charitable organization.

**SOLICITOR.** Any person who goes from house to house, place to place, or street to street soliciting or taking orders for the sale of goods, wares or merchandise of any nature for future delivery, or for services to be performed in the future, regardless of whether such individual has, carries or exposes for sale a sample of the subject of such order or whether advance payment on such orders is collected. Solicitation shall include any effort to obtain orders even though such may not initially purport to be the case.

**TRANSIENT MERCHANT.** Any person who engages in, does or transacts any temporary and transient business in the city, either in one locality or in traveling from place to place in the city selling goods, wares or merchandise, and who, for the purpose of carrying on such business, hires, leases, occupies or uses a building, structure, tent, vacant lot, vehicle or railroad car for the exhibition and sale of such goods, wares or merchandise.

**Section 820:10. LICENSE REQUIRED.** Except as provided in section 820:35, no person shall engage in or follow the business of a peddler, solicitor or transient merchant without first having obtained a license therefor from the city.

**Section 820:15. APPLICATION.** Application for a peddlers, solicitor or transient merchant license shall be made to the city clerk on forms provided by the city. The application shall contain at least the following information and shall be signed by the applicant:

- (a) name and physical description of the applicant, along with valid photo identification;
- (b) any other names under which the applicant has or does conduct business;
- (c) complete permanent home and local address of the applicant and, for transient merchants, the local address from which proposed sales will be made;
- (d) permanent and local telephone numbers of the applicant and the cellular phone number at which the applicant may be reached while working;
- (e) a brief description of the nature of the business and the goods to be sold;



(f) the name and address of the employer, principal or supplier of the applicant, together with credentials therefrom establishing their relationship;

(g) a Minnesota Tax Identification Number or Federal Tax Identification Number or a sufficient explanation to why one is not required;

(h) the dates and hours of the day during which the business will be carried on;

(i) the source of supply of the goods or property proposed to be sold, or orders taken for the sale thereof, the location of such goods or products at the time of the application, and the proposed method of delivery;

(j) if a transient merchant, written permission of the owner of the property from which sales will be conducted;

(k) a photograph of the applicant taken within the previous six months, which shall be approximately 2" by 2" and show the head and shoulders of the applicant in a clear and distinguishable manner;

(l) a statement as to whether the applicant has been convicted of any misdemeanor, gross misdemeanor or felony for violation of any statute, law, or ordinance, other than traffic violations, the date and nature of the offense and the punishment or penalty assessed therefore;

(m) the names of other municipalities, not to exceed five in number, where the applicant carried on similar business immediately preceding the date of application and the address from which such business was conducted in those municipalities;

(n) if a transient merchant, a copy of the license issued by Hennepin County;

(o) if a vehicle is to be used, a description of the vehicle, together with state of registration and license number or other means of identification;

(p) the required fee; and

(q) any other information reasonably required by the city in order to conduct an investigation of the applicant.

**Section 820:20. APPLICATION FEE.** The application fee for a peddler, solicitor or transient merchant license shall be set by ordinance in the city fee schedule. The fee shall be non-refundable regardless of whether the license is issued or denied and shall not be prorated even if the license is issued for less than the remainder of the calendar year.

**Section 820.25. ISSUANCE OF LICENSE.**

**Subd. 1.** Upon receipt of a complete application for a peddler, solicitor or transient merchant license, including the required fee, the city clerk shall transmit a copy of the application to the chief of police and such other public officials as the city clerk may deem appropriate, who shall conduct an investigation. The chief of police or designee has authority to conduct a criminal history and driver's license check on the applicant through the State of Minnesota, Bureau of Criminal Apprehension.

**Subd. 2.** Within five days of receipt of a report from the chief of police and other public officials recommending approval of the license application the city clerk shall issue the license. The license shall have one copy of the applicant's photograph attached to it, which shall be exhibited by the applicant upon request by a police officer or any person in the city contacted by the applicant in connection with the licensed activity. Licenses shall be valid for the period of time stated thereon but shall expire no later than December 31 of the year of issuance. The city clerk shall maintain a record of all licenses issued hereunder.

**Subd. 3.** Within five days of receipt of a report from the chief of police or other public official recommending denial of a license application, the city clerk shall deny the application and notify the applicant in writing of the denial. Any person aggrieved by a decision of the city clerk to deny a license may appeal such denial to the city council by submitting a written request and the administrative appeal fee to the city clerk within 15 business days of receipt of notification of the denial. The city council shall hear the applicant's appeal at its next regular meeting occurring no sooner than 7 days after receipt of the appeal by the city.

**Section 820:30. GROUNDS FOR DENIAL OF LICENSE.** The following shall be grounds for denial of an application for a peddler, solicitor or transient merchant license:

- (a) omission or misrepresentation of any material fact or information on the application;
- (b) revocation or suspension within the previous five years of any peddler, solicitor or transient merchant license in any jurisdiction;
- (c) failure or refusal to consent to a background check;
- (d) conviction within the previous 10 years of any crime involving fraud, deceit or misrepresentation in any trade or business or of any crime which reflects adversely on the applicant's suitability to conduct business or of any crime involving any form of actual or threatened physical harm to another;
- (e) intent to sell or take orders for the sale of any goods, wares, merchandise or services which are illegal or injurious to the public health, safety or welfare; or
- (f) revocation or suspension by any jurisdiction of any other license or permit required to conduct business.

**Section 820:35. EXEMPTIONS.** This ordinance shall not apply to the following:

- (a) sale of personal property at wholesale to dealers in such articles;
- (b) sale or delivery of newspapers or making contact for the purpose of establishing a delivery route for newspapers;
- (c) delivery by merchants of goods purchased in the regular course of business;
- (d) sale of the products of the farm or garden occupied or cultivated by the seller;
- (e) sale to dealers by commercial travelers or selling agents in the usual course of business;
- (f) sale or delivery of items of food or drink to householders on a regular route;
- (g) a sale required by statute or by order of any court, or a bona fide auction sale pursuant to law;

(h) a garage, rummage or similar sale involving household or other items owned and used by the seller;

(i) solicitation by an organization, society, association or corporation solely of its own members;

(j) non-commercial door-to-door advocates not engaged in the sale of any goods or services; or

(k) distribution of materials door to door free of charge.

(l) soliciting money, donations or financial assistance for a political, religious or non-profit tax-exempt organization, or selling or distributing literature or merchandise for which a fee is charged or solicited on behalf of such an organization.

Exemption from the requirements of this ordinance does not include exemption from any other applicable provision of the code of ordinances unless an exemption under such other provision also applies.

**Section 820:40. DOOR-TO-DOOR ADVOCATES.**

**Subd. 1.** No license shall be required under this ordinance for any person going door-to-door for the purpose of advocating any religious, political, social or other position or belief protected by the federal or state constitution. This exemption does not apply and such person is required to obtain a license if the exercise of the person's constitutional rights is merely incidental to a commercial activity.

**Subd. 2.** A professional fundraiser working on behalf of an otherwise exempt door-to-door advocate is not exempt from the licensing requirements of this ordinance.

**Section 820:45. PROHIBITED ACTIVITIES.** No peddler, solicitor, transient merchant or door-to-door advocate shall conduct business or activities in any of the following manners:

(a) calling attention to any goods or services by means of blowing a horn or whistle, ringing a bell, crying out, using amplified sound or any other noise in an unreasonably audible manner;

(b) obstructing vehicular or pedestrian traffic on any street or other right-of-way;

(c) stating, implying or doing anything to suggest that the license issued by the city is or constitutes an endorsement by the city or any of its officers or employees of the goods, services or activities being offered;

(d) conducting business or activities other than during permitted hours;

(e) failing to produce a license and identification when requested by a police officer or any person in the city contacted by the license or certificate holder in connection with the business or activity;

(f) using the license of another person or a false license;

(g) making false or misleading statements or claims about the goods or services being offered;

(h) remaining on the property of another after being requested to leave;

(i) failing to heed any no solicitation or similar notice posted on the property;

(j) selling or taking orders for the sale of any goods or services which are illegal or injurious to the public health, safety or welfare; or

(k) conducting business or activities in any manner which a reasonable person would find threatening, intimidating or abusive.

**Section 820:50. LICENSES NOT TRANSFERABLE.** No license or certificate issued pursuant to this ordinance shall be transferable. Each individual shall be separately licensed or certified when more than one individual is involved in a sales or advocacy activity.

**Section 820:55. USE OF PROPERTY.** No person licensed or certified under this ordinance has an exclusive right to any specific location on public property, nor shall a stationary location thereon be permitted. No person licensed or certified under this ordinance shall operate in a congested area or where he or she may impede or interfere with traffic. Nothing in this ordinance shall be deemed to permit persons licensed or certified hereunder to use private property without the consent of the owner thereof.

**Section 820:60. EXCLUSION FROM PREMISES.** Any person who wishes to exclude peddlers, solicitors, transient merchants and door-to-door advocates from premises he or she occupies may place upon or near the usual entrance to such premises a conspicuous printed placard or sign bearing a notice that peddlers, solicitors and door-to-door advocates are prohibited. No peddler, solicitor, transient merchant or door-to-door advocate shall enter in or upon any premises or attempt to enter in or upon any premises where such a placard or sign is placed and maintained notwithstanding the fact that he or she may have obtained a license or certificate under the provisions of this ordinance. No person other than the occupant shall remove, damage or deface such placard or sign.

**Section 820:65. SUSPENSION AND REVOCATION.** Any license may be suspended or revoked by the City upon reasonable evidence the person is or has become ineligible for a license under section 820:30 or for any violation of section 820:45. The city clerk shall notify the person of the suspension or revocation in writing at the person's permanent address or place of business and by attempting to contact the person by telephone at the addresses and telephone numbers provided under section 820:15. Any person aggrieved by the suspension or revocation of a license under this section may appeal the suspension or revocation to the city council in the manner specified in section 820.25, subd.3.

**Section 820:70. HOURS.** Peddlers, solicitors and door-to-door advocates may engage in sales or activities daily between the hours of 9:00 a.m. to 7:00 p.m., or until sundown, whichever occurs first.

**Section 820:75. VIOLATIONS.** Any person violating any provision of this ordinance shall be guilty of a misdemeanor.

**Section 830. ADULT ESTABLISHMENTS.**

*(Added, Ord. 2003-02)*

**Section 830:00. Purpose and Intent.**

**Subdivision 1. Purpose and Intent.** Studies conducted by the Minnesota Attorney General, the American Planning Association and cities such as St. Paul; Indianapolis; Alexandria, Minnesota; Rochester, Minnesota; Phoenix, Arizona; Los Angeles, California; Seattle, Washington; have studied the impacts that adult establishments have in those communities. These studies have concluded that adult establishments have an adverse impact on the surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. The city council of the city of Loretto makes the following findings regarding the need to regulate adult establishments. The findings are based upon the experiences of other cities where such businesses have located, as studied by the city council and city staff. Based on these studies and findings, the city council concludes:

(a) Adult establishments have adverse secondary impacts of the types set forth above.

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

(c) It is not the intent of the city council to prohibit adult establishments from having a reasonable opportunity to locate in the city.

(d) Minnesota Statutes, section 462.357, allows the city to adopt regulations to promote the public health, safety, morals and general welfare.

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

(f) Adult establishments can contribute to an increase in criminal activity in the area in which such businesses are located, taxing city crime-prevention programs and law enforcement services.

(g) Adult establishments can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of such businesses can, however, minimize this risk, provided the owners and operators of such facilities are regulated by licensing or other procedures.

(h) Adult establishments 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 such businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of such establishments but also the general public.

(i) Adult establishments 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.

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

**Subd. 2. Purpose.** It is the purpose of this section to regulate adult establishments to promote the health, safety, morals, and general welfare of the citizens of the city and to establish reasonable and uniform regulations to:

- (a) Prevent additional criminal activity within the city,
- (b) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;
- (c) To locate adult establishments away from residential areas, schools, churches, libraries, parks, and playgrounds;
- (d) Prevent concentration of adult establishments within certain areas of the city.



**Subd. 3.** The provisions of this section 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 section 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.

**Section 830:05. DEFINITIONS.** For purposes of this section the terms defined in this section have the following meanings:

**Subdivision 1. "Adult Establishment"** means:

(a) any business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise, or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from, items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to specified sexual activities or specified anatomical areas; or

(b) any business that engages in any adult use as defined in subdivision 2 of this section.

**Subd. 2. Adult Use.** Any of the activities and businesses described below:

(a) "Adult body painting studio" means an establishment or business that provides the service of applying paint, ink, or other substance, whether transparent or non-transparent, to the body of a patron when the person is nude.

(b) "Adult bookstore" means an establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, movies, or motion picture film if a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise consists of, or if a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) is devoted to, or if substantial or significant portion of its gross revenues is derived from items, merchandise, devices or materials that are distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to specified sexual activities or specified anatomical areas.

(c) "Adult cabaret" means a business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on: (1) the depiction of nudity, specified sexual activities or specified anatomical areas; or (2) the presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.

(d) "Adult companionship establishment" means a business or establishment that provides the service of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(e) "Adult conversation/rap parlor" means a business or establishment that provides the services of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(f) "Adult health/sport club" means a health/sport club that is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(g) "Adult hotel or motel" means a hotel or motel that presents material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

(h) "Adult massage parlor/health club" means a massage parlor or health club that provides massage services distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(i) "Adult mini-motion picture theater" means a business or establishment with a capacity of less than 50 persons that as a prevailing practice presents on-premises viewing of movies, motion pictures, or other material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(j) "Adult modeling studio" means a business or establishment that provides live models who, with the intent of providing sexual stimulation or sexual gratification, engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted.

(k) "Adult motion picture arcade" means any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are used to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

(l) "Adult motion picture theater" means a motion picture theater with a capacity of 50 or more persons that as a prevailing practice presents material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.

(m) "Adult novelty business" means an establishment or business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from items, merchandise, or devices that are distinguished or characterized by an emphasis of material depicting or describing specified sexual activities or specified anatomical areas, or items, merchandise or devices that simulate specified sexual activities or specified anatomical areas, or are designed for sexual stimulation.

(n) "Adult sauna" means a sauna that excludes minors by reason of age, and that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(o) "Adult steam room/bathhouse facility" means a building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, if the building or portion of a building restricts minors by reason of age and if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**Subd. 3. "Nude" or "Specified Anatomical Areas" means:**

(a) Less than completely and opaquely covered human genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Subd. 4. "Specified Sexual Activities" means:**

(a) Actual or simulated: sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation of unclothed genitals; flagellation or torture in the context of a sexual relationship; the use of excretory functions in the context of a sexual relationship; anilingus; coprophagy; coprophilia; cunnilingus; fellatio; necrophilia; pedophilia; piquerism; or zooerastia;

(b) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;

(c) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;

(d) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts;

(e) Situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding, or other physical restraint of any person;

(f) Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or

(g) Human excretion, urination, menstruation, or vaginal or anal irrigation.

**Subd. 5. “Booths, Stalls, or Partitioned Portions of a Room or Individual Room”** means:

(a) enclosures specifically offered to persons for a fee or as an incident to performing high-risk sexual conduct; or

(b) enclosures which are part of a business operated on the premises that offers movies or other entertainment to be viewed within the enclosure, including enclosures in which movies or other entertainment are dispensed for a fee; but not including;

(c) private offices that are used by the owners, managers, or persons employed by the premises for attending to the tasks of their employment, and that are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing movies or other entertainment for a fee, and are not open to any persons other than employees.

**Subd. 6. “Doors, Curtain or Portal Partitions”** means: Full, complete, non-transparent closure devices through which activity taking place within the enclosure cannot be seen.

**Subd. 7. “Hazardous Site”** means: Any commercial premises, building or structure, or any part thereof, that is a site of high-risk sexual conduct as defined herein.

**Subd. 8. “High-Risk Sexual Conduct”** means: fellatio, anal intercourse and vaginal intercourse with a person who engages in sexual acts in exchange for money.

**Subd. 9. “Open To and Adjacent Public Room So That the Area Inside is Visible to Persons in the Adjacent Public Room”** means: Either the absence of any entire door, curtain or portal partition, or a door or other device that is made of transparent material such as glass, plexi-glass, or other similar material that meets building code and safety standards. And that allows the activity inside the enclosure to be entirely seen by a person outside the enclosure.

**Subd. 10. “Public Health Official”** means: An agent or employee of the city, county, or state charged with enforcement of the state or local health laws.

**Subd. 11. “Substantial or Significant Portion”** means: 25 percent or more.

### **Section 830:10. Application of this Section.**

#### **Subdivision 1. In General.**

(a) Except as this section specifically provides, 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 section.

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

**Section 830:15 Location.** Adult establishments are permitted uses in the “I” industrial district, subject to the following requirements:

(a) An adult use shall not be allowed within 600 feet measured in a straight line from the building or edge of a building site to another existing adult use.

(b) An adult use shall not be located within 100 feet measured in a straight line from the building or edge of a building site to the property line of any residential or traditional commercial zoned property.

(c) An adult use shall not be located within 600 feet measured in a straight line from the building or edge of a building site to the property line of any existing school, place of worship, library, day care, park or playground.

(d) An adult use shall not be located within 100 feet measured in a straight line from the building or edge of a building site to the property line of any city owned park and recreational property.

(e) An adult use shall be screened from public view where the building or edge of building site is located adjacent to traditional commercial or residential zoning districts. Screening must be a minimum of four feet at the time of installation and achieve a height of six feet within three years. Screening must be 75 percent solid at the time of installation.

**Section 830:20 Hours of Operation.** No adult establishment shall be open to the public from the hours of 10:00 p.m. to 10:00 a.m. weekdays and Saturdays, nor at any time on Sundays or national holidays.

**Section 830:25 Operation.**

**Subdivision 1. Off-site Viewing.** Any business operating as an adult establishment shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of Minnesota Statutes, chapter 617 or other applicable federal or state statutes or local ordinances.

**Subd. 2. Entrances.** All entrances to the business, with the exception of emergency fire exits that are not useable by patrons to enter the business, shall be visible from a public right-of-way.

**Subd. 3. Layout.** The layout of any 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, or any live dancers or entertainers.

**Subd. 4. Illumination.** Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises.

**Subd. 5. Signs.** Signs for adult establishments shall comply with the city's regulations for signs addressed in city code sections 420:40 and 435:00. Signs for adult establishments shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the operation.

**Subd. 6. Access by Minors.** No minor shall be permitted on the licensed premises. Adult goods or materials may not be offered, sold transferred, conveyed, given or bartered to a minor, or displayed in a fashion that allows them to be viewed by a minor, whether or not the minor is on the licensed premises.

**Subd. 7. Additional Conditions for Adult Cabarets.** The following additional conditions apply to adult cabarets:

- (a) No dancer, live entertainer or performer shall be under 18 years old.
- (b) All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least two feet from the level of the floor.
- (c) No dancer or performer shall perform any dance or live entertainment closer than ten feet to any patron.
- (d) No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
- (e) No patron shall pay or give any gratuity to any dancer or performer.
- (f) No dancer or performer shall solicit or receive any pay or gratuity from any patron.

**Section 830:30 Licenses.**

**Subdivision 1. Licenses Required.** All adult establishments, shall apply for and obtain a license from the city of Loretto. A person or entity is in violation of this section if the person or entity operates an adult establishment without a valid license, issued by the city.

**Subd. 2. Applications.** An application for a license must be made on a form provided by the city and must include:



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(a) If the applicant is an individual, the name, residence, phone number, and birth date of the applicant. If the applicant is a partnership, the name, residence, phone number, and birth date of each general and limited partner. If the applicant is a corporation, the names, residences, phone numbers, and birth dates of all persons holding more than five percent of the issued and outstanding stock of the corporation;

(b) The name, address, phone number, and birth date of the operator and manager of the adult establishment, if different from the owner's;

(c) The address and legal description of the premises where the adult establishment is to be located;

(d) A statement detailing any misdemeanor, gross misdemeanor, or felony convictions relating to sex offenses, obscenity, or the operation of an adult establishment or adult business by the applicant, operator, or manager, and whether the applicant, operator or manager has ever applied for or held a license to operate a similar type of business in another community. In the case of a corporation, a statement detailing any felony convictions by the owners of more than five percent of the issued and outstanding stock of the corporation, and whether or not those owners have ever applied for or held a license to operate a similar type of business in another community;

(e) The activities and types of business to be conducted;

(f) The hours of operation;

(g) The provisions made to restrict access by minors;

(h) A building plan of the premises detailing all internal operations and activities;

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

(j) A statement that the applicant is qualified according to the provisions of this section and that the premises have been or will be inspected and found to be in compliance with the appropriate state, county, and local law and codes by the health official, fire marshal, and building inspector;

(k) The names, addresses, phone numbers, dates of birth, of the owner, lessee, if any, the operator or manager, and all employees; the name, address, and phone number of two persons, who shall be residents of the state of Minnesota, and who may be called upon to attest to the applicant's, manager's, or operator's character; whether the applicant, manager, or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete and accurate information of the disposition thereof; the names and addresses of all creditors of the applicant, owner, lessee, or manager insofar as credit which has been extended for the purposes of constructing, equipping, maintaining, operating, or furnishing or acquiring the premises, personal effects, equipment, or anything incident to the establishment, maintenance and operation of the business;

(l) If the application is made on behalf of a corporation, joint business venture, partnership, or any legally constituted business association, it shall submit along with its application, accurate and complete business records showing the names, addresses, and dates of birth of all individuals having an interest in the business, including partners, officers, owners, and creditors furnishing credit for the establishment, acquisition, maintenance, and furnishings of said business and, in the case of a corporation, the names, addresses, and dates of birth of all officers, general managers, members of the board of directors as well as any creditors who have extended credit for the acquisition, maintenance, operation, or furnishing of the establishment including the purchase or acquisition of any items of personal property for use in said operation; and

(m) Complete and accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon which the building is proposed to be located or the furnishings thereof, personal property thereof, or the operation or maintenance thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements, and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise.

**Subd. 3. Disqualifications.** The city will issue a license to an applicant within 30 days of the application unless one or more of the following conditions exist:

- (a) The applicant is under 21;
- (b) The applicant failed to supply all of the information requested on the license application;

**Loretto City Code**

**830:30, Subd. 3(c)**  
**(Rev. 2003)**

- (c) The applicant gives false, fraudulent, or untruthful information on the license application;
- (d) The applicant has been convicted of a gross misdemeanor or felony or of violating any law of this state or local ordinance relating to sex offenses, obscenity offenses, or adult establishments;
- (e) The adult establishment is not in full compliance with this code and all provisions of state and federal law;
- (f) The applicant has not paid the required license and investigation fees;
- (g) The applicant has been denied a license by the city or any other Minnesota municipal corporation to operate an adult establishment, or such license has been suspended or revoked, within the preceding 12 months;
- (h) The applicant is not the proprietor of the establishment for which the license is issued; or
- (i) The adult establishment premises holds an intoxicating liquor, beer or wine license.

**Subd. 4. Requalification.** An applicant may qualify for an adult establishment license:

- (a) After one year has elapsed in the case of a previous license revocation;
- (b) After two years have elapsed since the date of conviction or the date of release from confinement in the case of a misdemeanor offense;
- (c) After five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is later, in the case of a felony offense; or
- (d) After five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is later, if the conviction is of two or more misdemeanor offenses of combination of misdemeanor offenses occurring within any 24-month period.

**Subd. 5. Posting.** The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the adult establishment. The license shall be posted in a conspicuous place at or near the entrance to the adult establishment so that it may be easily read at any time.

**Section 830:35. Fees.**

**Subdivision 1.** The license fee for adult establishments are as follow:

- (a) The annual license fee shall be established by resolution of the city council.
- (b) An application for a license must be submitted to the city clerk and accompanied by payment of the required license fee. Upon rejection of an application for a license, the city will refund the license fee.
- (c) Licenses will expire on December 31 in each year. Each license will be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rated fee. In computing a pro rated fee, any unexpired fraction of a month will be counted as one month.
- (d) No part of the fee paid by any license will be refunded, except that a pro rata portion of the fee will be refunded in the following instances upon application to the city council within 30 days from the happening of one of the following events, provided that the event occurs more than 30 days before the expiration of the license:
  - (1) Destruction or damage of the licensed premises by fire or other catastrophe;
  - (2) The licensee's illness, if such illness renders the licensee unable to continue operating the licensed adult establishment;
  - (3) The licensee's death; or
  - (4) A change in the legal status making it unlawful for the licensed business to continue.

(e) An application must contain a provision in bold print indicating that withholding information or providing false or misleading information will be grounds for denial or revocation of a license. Changes in the information provided on the application or provided during the investigation must be brought to the attention of the city council by the applicant or licensee. If such a change takes place during the investigation, it must be reported to the city clerk in writing. A failure by an applicant or licensee to report such a change may result in a denial or revocation of a license.

**Subd. 2.** The one-time non-refundable background investigative fee for an adult establishment license will be established by resolution of the city council and shall be charged for each person identified on the application as an owner, operation, or manager of the business and for each successor, owner, operator or manager.

**Subd. 3.** The procedures for granting an adult establishment license are as follow:

(a) The city will conduct and complete an investigation within 30 days after the city clerk receives a complete application and all license and investigative fees.

(b) If the application is for a renewal, the applicant will be allowed to continue business until the city council has determined whether the applicant meets the criteria of this section for a renewal license.

(c) If, after the investigation, it appears that the applicant and the place proposed for the business are eligible for a license, the license must be issued by the city council within 30 days after the investigation is completed. If the city council fails to act within 30 days after the investigation is completed, the application will be deemed approved.

(d) A license will be issued to the applicant only and is not transferable to another holder. Each license will be issued only for the premises described in the application. A license may not be transferred to another premise without the approval of the city council. If the licensee is a partnership or a corporation, a change in the identity of any partner or holder of more than five percent of the issued and outstanding stock of the corporation will be deemed a transfer of the license. Adult establishments existing at the time of the adoption of this section must obtain an annual license.

## **Section 830:40 Inspection.**

**Subdivision 1. Access.** An applicant or licensee shall permit health officials, representatives of the police department, fire department, and building inspector, to inspect the premises of an adult establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. The licensee is at all times responsible for the conduct, activity and operation of the business.

**Subd. 2. Refusal to Permit Inspections.** A person who operates an adult establishment or their agent or employee commits an offense if they refuse to permit a lawful inspection of the premises by health officials, representatives of the police department, fire department, and building inspector at any time it is occupied or open for business. Refusal to permit inspections may result in nonrenewal, suspension or revocation of the license as provided herein.

**Subd. 3. 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. Temporary habitation is defined as a period of time of at least 12 hours.

**Subd. 4. Records.** The licensee must keep itemized written records of all transactions involving the sale or rental of all items or merchandise for at least one year after the transaction. At a minimum, those records must describe the date of the transaction, a description of the transaction, the purchase price or rental price, and a detailed description of the item or merchandise that is being purchased or rented. These written records must be provided to the city upon request.

## **Section 830:45. Expiration and Renewal.**

**Subdivision 1. Expiration.** Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in section 830:30. Application for renewal must be made at least 60 days before the expiration date.

**Subd. 2. 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.

## **Section 830:50. Suspension.**

**Subdivision 1. Causes of Suspension.** The city may suspend a license for a period not to exceed 30 days if it determines that the licensee or an employee of a licensee has:

- (a) Violated or is not in compliance with any provision of this section.
- (b) Engaged in the sale or use of alcoholic beverages while on the adult establishment premises other than at an adult hotel or motel.
- (c) Refused to allow an inspection of the adult establishment as authorized by this section.
- (d) Knowingly permitted gambling by any person on the adult establishment premises.
- (e) Demonstrated inability to operate or manage an adult establishment in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

**Subd. 2. Notice.** A suspension by the city shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least ten days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof, or by mailing the notice by U.S. Mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on its license application.

## **Section 830:55. Revocation.**

**Subdivision 1. Suspended Licenses.** The city may revoke a license if a cause of suspension in section 830:55 occurs and the license has been suspended at least once before within the preceding 12 months.

**Subd. 2. Causes of Revocation.** The city may revoke a license if it determines that:

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

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

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

(d) A licensee or an employee knowingly operated the adult establishment during a period of time when the licensee's license was suspended;

(e) A licensee has been convicted of an offense listed in section 830:30, subdivision 3(d), for which the time period required in section 830:30, subdivision 4, has not elapsed;

(f) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in section 830:30, subdivision 3(d) for which a conviction has been obtained, and the person or persons were employees of the adult establishment at the time the offenses were committed.

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

**Subd. 3. Appeals.** The fact that a conviction is being appealed shall have no effect on the revocation of the license.

**Subd. 4. Exceptions.** Section 830:55, subdivision 2(g), does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

**Subd. 5. 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 establishment 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 is revoked under section 830:55, subdivision 2 (e), an applicant may not be granted another license until the appropriate number of years required under section 830:30, subdivision 4 has elapsed.



**Subd. 6. Notice.** A revocation by the city shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least ten days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof or by mailing the notice by U.S. Mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on its license application.

**Section 830:60. Procedures and Right to Appeal.** Issuances, suspensions, revocations, and nonrenewals of adult establishment licenses are governed by the following provisions:

(a) In the event that the city council proposes not to renew, to revoke, or to suspend the license, the licensee must be notified in writing of the basis for such proposed revocation or suspension. The council will hold a hearing for the purpose of determining whether to revoke or suspend the license. The hearing must be within 30 days of the date of the notice. The city council must determine whether to suspend or revoke a license within 30 days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner. The council must notify the licensee of its decision within that period.

(b) If the council determines to suspend or revoke a license, the suspension or revocation is not effective until 15 days after notification of the decision to the licensee. If, within that 15 days, the licensee files and serves an action in state or federal court challenging the council's action, the suspension or revocation is stayed until the conclusion of such action.

(c) If the city council determines not to renew a license, the licensee may continue its business for 15 days after receiving notice of such non-renewal. If the licensee files and serves an action in state or federal court within that 15 days for the purpose of determining whether the city acted properly, the licensee may continue in business until the conclusion of the action.

(d) If the city council does not grant a license to an applicant, then the applicant may commence an action in state or federal court within 15 days for the purpose of determining whether the city acted properly. The applicant may not commence doing business unless the action is concluded in its favor.

**Section 830:65. Transfer of License.** A licensee shall not transfer this license to another, nor shall a licensee operate an adult establishment under the authority of a license at any place other than the address designated in the application.

**Section 830:70. Premises Conducive to High-Risk Sexual Conduct.**

**Subdivision 1.** No commercial building, structure, premises, or part thereof or facilities therein may be constructed, used, designed, or operated in the city for the purpose of engaging in, or permitting persons to engage in, sexual activities that include high-risk sexual conduct.

**Subd. 2.** No person may own, operate, manage, rent, lease, or exercise control of any commercial building, structure, premises, or portion, or part thereof in the city that contains:

(a) Partitions between subdivisions of a room, portion, or part of a building, structure, or premises having an aperture that facilitate high-risk sexual activity.

(b) Booths, stalls, or partitioned portions of a room or individual room that have doors, curtains, or portal partitions unless they have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. Booths, stalls, and partitioned portions of a room that are open to an adjacent public room must be lighted in a manner that the persons in the area used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms, but the lighting need not prevent the viewing of the motion pictures or other offered entertainment.

**Subd. 3.** The regulations set forth in this subsection do not apply to premises, buildings, or structures that are lawfully operating and licensed as hotels, motels, apartment complexes, condominiums, townhomes, or boarding houses.

**Subd. 4.** In exercising powers conferred by this subsection relating to communicable diseases, the public health official will be guided by the instructions, opinions, and guidelines of the Center for Disease Control of the United States Department of Health and Human Services relating to the spread of infectious diseases.

**Subd. 5.** In order to ascertain the source of infection and reduce its spread, the public health official, and persons under the public health official's direction and control, have full power and authority to inspect, cause to be inspected, and issue orders regarding any commercial building, structure or premises, or any part thereof, which may be a site of high-risk sexual conduct. If the public health official determines that a hazardous site exists, the public health official will declare it to be a public health hazard and public health nuisance and:

- (a) Notify the manager, owner, or tenant of the premises;
- (b) Issue two written warnings at least ten days apart to the manager, owner, or tenant of the premises stating the specific reasons for the public health official's opinion that the premises, building, or structure is a hazardous site; and
- (c) Once the notices and warnings have been issued, the public health official or the public health official's appointee will proceed as follows:
  - (i) as to the basis of the public health official's determination, the manager, owner, or tenant has ten days from the date of the last warning to request a hearing before the public health official or the public health official's appointee. If the manager, owner, or tenant of the premises does not request a hearing within ten days of the date of the last warning notice, the public health official will then cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site, and will cause orders to be issued directing the manager, owner, or tenant of the premises constituting the hazardous site to take specified corrective measures to prevent high-risk sexual conduct from taking place within the premises.
  - (ii) If the manager, owner, or tenant of the premises requests a hearing, the hearing will be held before the public health official or the public health official's appointee at a date not more than 30 days after demand for a hearing. After considering all evidence, the public health official or the public health official's appointee will decide whether the premises are a hazardous site, and will issue a decision based upon all hearing evidence presented. If the public health official or the public health official's appointee makes a determination that the premises constitute a hazardous site, the public health official will then issue orders to the manager, owner, or tenant of the premises to take corrective measures to prevent high-risk sexual conduct from taking place within the premises and cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site.

(iii) If, within 30 days from issuance of the orders to the manager, owner, or tenant of the hazardous site, the public health official determines that corrective measures have not been undertaken, the public health official may order the abatement of the hazardous site as a public nuisance. The abatement order will be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction.

**Section 830:75. Severability.** Every section, provision, or part of this section is declared severable from every other section, provision, or part thereof to the extent that if any section, provision, or part of this section be held invalid by a court of competent jurisdiction it shall not invalidate any other section, provision, or part thereof.

**Section 835. FIREWORKS.** *(Added, Ord. 2003-06)*

**Section 835:05. PURPOSE AND INTENT.** Due to the inherent risks of fire and injury to persons and property associated with the sale, possession and use of fireworks, the city council has determined that it is necessary and in the interest of public health, safety and welfare to establish reasonable regulations concerning fireworks.

**Section 835.10. DEFINITION.** For purposes of this section, “consumer fireworks” are defined as:

Wire or wood sparklers of not more than 100 grams of mixture per item, other sparking items which are nonexplosive and nonaerial and contain 755 grams or less of chemical mixture per tube or a total of 200 grams or less for multiple tubes, snakes, and glow worms, smoke devices, or trick noisemakers which include paper streamers, party poppers, string poppers, snappers, and drop pops, each consisting of not more than twenty-five hundredths grains of explosive mixture.

**Section 835.15. SALE OF FIREWORKS.** It is unlawful to sell fireworks in the city of Loretto in violation of Minnesota Statutes, sections 624.20 through 624.25, inclusive, which are adopted herein by reference. “Consumer fireworks” as defined in this section may, however, be sold upon issuance of a license by the city.

**Section 835.20. LICENSE APPLICATION.**

**Subdivision 1. Application.** The application for a license shall contain the following information: name, address and telephone number of the applicant; the address of the location where the consumer fireworks will be sold; the type of consumer fireworks to be sold; the estimated quantity of the consumer fireworks that will be stored on the premises.

**Subdivision 2. Processing Application.** The application must be filed with the city clerk together with the license fee. Following an inspection of the premises proposed to be licensed, the city clerk shall issue the permit if the conditions for license approval are satisfied and the location is properly zoned. If the city clerk denies the application, the applicant may, within ten days, appeal the decision to the city council.

**Section 835:25. CONDITIONS OF LICENSE.** A license to sell consumer fireworks shall be issued subject to the following conditions:

- (a) The license is non-transferable, either to a different person or location.
- (b) The license must be publicly displayed on the licensed premises.
- (c) The premises are subject to inspection by city employees including police officers during normal business hours.
- (d) The sale of consumer fireworks must be an allowed use of the premises.
- (e) The premises must be in compliance with the National Fire Protection Association Standard 1124 (2003 edition), Uniform Fire Code and Uniform Building Code. (*Amended, Ord. 2003-09*)

**Section 835:30. LICENSE PERIOD AND LICENSE FEE.** Licenses shall be issued for a calendar year and will not be prorated. The fee will be established from time to time by ordinance of the city council.

**Section 835:35. LICENSE SUSPENSION AND REVOCATION.** A consumer fireworks license may be suspended, or revoked after notice and opportunity for hearing to the licensee. If a license is revoked, neither the applicant nor the licensed premises may obtain a license for 12 months.