

## 500 REGULATION AND LICENSING

**501 LICENSING AND PERMIT PROVISIONS.** Except as otherwise provided in this code, all licenses and permits granted by the City shall be governed by the provisions of this part.

**501.1 Requirements.** No person shall conduct any activity or use any property for which a license or permit is required by law or this code without a currently valid license or permit for such activity or use.

**501.2 Application.** Every application for a license shall be made to the City Clerk on a form provided by the City Clerk. It shall be accompanied by payment to the City Clerk of the prescribed fee. If, after investigation, the City Clerk is satisfied that all requirements of law and this code have been met, the City Clerk shall present the application to the Council for action, or if the license or permit does not require Council approval, the City Clerk shall issue the license or permit.

**501.3 Bond.** Where a bond is required for a license or permit, the bond shall be a corporate surety bond executed on a form approved by the City Attorney and shall be filed with the City Clerk before the license or permit is issued. Except where otherwise provided, a bond, as established by the City Council, or by Statute, shall be conditioned that the licensee or permittee shall comply with the applicable Ordinance and laws pertaining to the licensed or permitted activity and that the licensee or permittee will indemnify the City and hold it harmless from all loss or damage by reason of inadequate work performed by him or by reason of accident caused by the negligence of the licensee or permittee, his agents or employees.

**501.4 Insurance.** When a licensee or permittee is required to have in force a policy of insurance, the policy shall be approved as to substance and form by the City Attorney. The policy shall provide that it is non-cancelable without fifteen (15) day notice to the City, and the coverage shall be for the term of the license or permit. Satisfactory evidence of coverage by insurance shall be filed with the City Clerk before the license or permit is issued. Each license or permit shall terminate upon termination of the required insurance coverage. Unless otherwise provided, a required policy of liability insurance shall provide for coverage consistent with the maximum liability limits for municipalities as set forth in Minnesota Statutes Section 466.04. or any successor to that statute. For injuries including death therefrom sustained by any one person, Five Hundred Thousand and no/100 Dollars (\$500,000.00). For injuries including death resulting therefrom sustained by two or more persons as the result of any one occurrence, One Million and no/100 Dollars (\$1,000,000.00). For property damage involving one claimant, Five Hundred Thousand and no/100Dollars (\$500,000.00). For property damage involving multiple claimants as a result of any one occurrence, One Million and no/100 Dollars (\$1,000,000.00). Where required by State and Federal law, proof of workers compensation insurance shall be provided to the City.

**501.5 Fees.** License fees are in the amounts established as provided in this code. The compilation of all fees in Appendix A is maintained for convenience and reference only. The license and permit fees are set forth in the various Sections of this code are the official and controlling provisions. License fees shall not be prorated unless otherwise specified by this code or by law. License fees shall not be refunded in whole or in part unless otherwise specified by this code or by law.

**501.6 Duration and Transfers of License.** Unless otherwise specified, a license shall be valid for a calendar year or the part of the year for which it is issued and shall expire on December 31. No license issued under this code may be transferred to any other person. Where a license relates to specific premises, the license shall not be changed to another location without approval of the Council or other licensing authority.

**501.7 Inspections.** Any City official or employee having a duty to perform with reference to a license under this code and any police officer may inspect and examine any licensee, his business, or premises to enforce compliance with applicable provisions of this code. Subject to the provision of Subdivision 2, he may, at any reasonable time enter any licensed premises or premises for which a license is required, in order to enforce compliance with this code. - If the licensee objects to the inspection of his premises, the City official or employee charged with the duty of enforcing the provisions of this code shall procure a valid search warrant before conducting the inspection.

**501.8 Duties of Licensee.** Every licensee and permittee shall have the duties set forth in this Section. He/she shall permit at reasonable times inspections of his business and examination of his books and records by authorized officers or employees. He/she shall comply with laws, Ordinances and regulations applicable to the licensed business, activity or property. He/she shall display the license or other insignia given him as evidence of the license in a conspicuous place on the premises, vehicle, or device to which the license relates. If the license is not so related, the license shall be carried on the licensee's person whenever he is carrying on the licensed activity. The licensee shall not lend or give to any other person his license or license insignia.

**501.9 Suspension or Revocation.** The Council may suspend for a period not exceeding sixty (60) days or revoke any license or permit for violation of any provision of law, Ordinance or regulation applicable to the licensed or permitted activity or property. Except where mandatory revocation is provided by law without notice and hearing and except where suspension may be made without a hearing, the holder of the license or permit shall be granted a hearing upon at least ten (10) days notice before revocation or suspension is ordered. The notice shall state the time and place of the hearing and the nature of the charges against the licensee.

## **502 GARBAGE AND RUBBISH**

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

*Garbage.* Organic refuse resulting from the preparation of food, and decayed and spoiled food from any source.

*Recyclables.* Includes paper, plastic, tin cans, aluminum, motor oil, glass and other metal goods, each separated or otherwise prepared so as to be acceptable to the recycling center where they are to be deposited.

*Recycling Center.* Means premises used for the receipt, storage or processing of recyclables and approved as such by the Council when the premises are in the City or by the governing body of the local government unit having jurisdiction when the premises are outside the City.

*Refuse.* Includes garbage and rubbish.

*Rubbish.* All inorganic refuse matter such as tin cans, glass, paper, ashes and the like.

**502.2 Sanitation Collection Service Required.** Every person owning, managing, operating, leasing or renting any premises or any place where garbage or rubbish accumulates shall subscribe to a sanitation collection service.

**502.3 Container Required; Placement.**

502.3.1 Container. It shall be the duty of every person whose garbage and refuse is collected by the sanitation collection service to provide a container or containers for garbage and refuse, sufficient in size and number to accommodate and securely keep all garbage and refuse that may accumulate between collections. Garbage containers shall be watertight and constructed of a solid and durable grade of metal, plastic, or paper material.

502.3.2 Placement of Container. It shall be the duty of every person whose garbage and refuse is collected by the sanitation collection service to place their garbage containers directly behind the curblines of the street abutting their property or in the absence of a curb directly behind the ditch line abutting their property. In no event shall containers be placed in the street or on the sidewalk or in any manner placed where the containers will interfere with vehicular or pedestrian traffic.

**502.4 Meddling or Tampering With Trash Receptacles Prohibited.** It shall be unlawful to meddle or tamper with garbage cans, trash or rubbish receptacles or in any way pilfer, search or scatter contents of garbage cans or rubbish receptacles in or upon any street or alley within the city limits. This section shall not apply to persons authorized by the city or persons authorized by state or federal law to search or otherwise meddle with trash receptacles.

**502.5 Containers to Be Kept Sanitary and Secure.** All containers shall be kept clean and free from accumulation of any substance remaining attached to the inside of the container which would attract or breed flies, mosquitoes, or other insects. The area surrounding garbage containers shall be maintained in a clean and sanitary condition. The contents of all receptacles shall be protected so that the wind cannot scatter the contents over the streets, alleys or other property within the city. All containers shall be securely closed in a manner as to prevent the scattering of the contents and to make them inaccessible to insects, rodents and other animals.

**502.6 Unauthorized Private Collections Prohibited.** It shall be unlawful for any person to transport garbage or refuse for hire which has been collected from any premises within the city over any public street within the city. This section shall not apply to any person who at the time of the activity is operating under a valid contract or franchise granted by the city which authorizes that person to use the public streets to conduct that activity.

**502.7 Sanitation Service: City Options.** The City Council may provide for sanitation collection services within the city by use of city employees and vehicles, or it may grant licenses, or it may contract with one or more contractors for the provision of these services under the terms and conditions negotiated with the contractors.

**502.8 Removal of Building Materials.** Waste from building operations, rock waste, building materials or other refuse resulting from building or remodeling operations or resulting from a general cleanup of vacant or improved property shall be removed by the building contractor, owner or occupant of the building at his or her own expense. It shall be unlawful for any person to place those materials in any dumpster or other trash receptacle for disposal by the city or any agent or contractor of the city.

**502.9 Prohibited Acts.**

502.9.1 Depositing Debris on Public and Private Property. It shall be unlawful for any person to sweep, throw or deposit any garbage, trash, debris, stagnant water, industrial/commercial waste or byproduct, or dead animal into, upon or along any public property or private property of another, except as may be specifically provided by this chapter.

502.9.2 Depositing Debris in Waterways. It shall be unlawful for any person to sweep, throw or deposit any garbage, trash, debris, stagnant water, industrial/commercial waste or byproduct, or dead

animal into, upon or along any stream or body of water, except as may be specifically provided by this chapter.

502.9.3 Permitting Conditions Not Allowed. It shall be unlawful for any person owning or otherwise in control of any premises within the city to permit any of the conditions described in 502.9.1 to exist upon property owned or controlled by him or her after having actual or constructive notice thereof.

502.9.4 Not Using Approved Containers. It shall be unlawful for any person to place in any container any material other than as specifically provided in this chapter.

502.9.5 Unapproved Actions. It shall be unlawful for any person to deposit or maintain garbage or trash except as provided for by this chapter.

502.9.6 Smoldering Material. It shall be unlawful for any person to deposit any burning or smoldering match, charcoal, ember, or other material in any container used for the disposal of garbage.

502.9.7 Burning Debris. It shall be unlawful for any person to burn any garbage, trash, debris, industrial/commercial waste or byproduct, or dead animal, except as may be specifically provided by this chapter. This section does not apply to wood, corn, or similar items burned in an furnace or fireplace for the primary purpose of generating heat for a residence.

502.9.8 Burying Debris and Composting. No person shall bury any refuse, trees, stumps, or brush in the City except in an approved sanitary landfill, but leaves, grass clippings and easily bio-degradable, non-poisonous garbage may be composted on the premises where such refuse has been accumulated. Garbage may be composted only in a rodent-proof structure and in an otherwise sanitary manner and only after the Council (or designated health officer) gives its approval to such composting following a finding that the composting will be done in accordance with the standards.

#### **502.10 Nonresidential Customers; Container Types; Collection Schedules.**

502.10.1 Multi-Family, Institutional, or Industrial Premises. It shall be the duty of the owner or person otherwise in charge of multi-family, institutional or industrial premises within the city to cause all garbage and trash accumulated on the premises to be placed in disposal containers, or commercial-type containers. Commercial-type containers may be used and may be placed at a location on the premises as arranged between the customer and the collector, but subject to review by the city at any time.

502.10.2 Readily Accessible. Disposal containers shall be placed at a location on the premises which is readily accessible to the collector.

502.10.3 Size of Container and Frequency of Pickup. The amount and character of garbage shall be considered in establishing size of commercial containers and frequency of pickup. The city shall have final authority to establish the size and frequency based on the history of amount and type of garbage generated by the customer. The collection and removal of garbage and trash from premises used for commercial, institutional, or industrial purposes shall be made as often as necessary in order to maintain the premises free of accumulations. Garbage, except dry trash in contractor-supplied containers, shall be collected not less than one time each week, except for roll-off containers which shall not be subject to this provision so long as they are used solely for brush and dry trash.

**502.11 Manner of Collection and Transportation.** The collection, removal and disposal of all garbage, trash and brush shall be carried on in a systematic, efficient manner to keep the city in a clean and sanitary condition. All vehicles used for the collection and transportation of garbage and trash shall be equipped with suitable covers which shall be used to prevent blowing or scattering of refuse while garbage and trash are being transported for disposal.

#### **502.12 Licensing for Collection.**

502.12.1 Purpose. In order to provide for a continuous system of refuse collection and disposal in a manner which meets the needs and conveniences of the residents of the city and in order to protect the area from the problems of uncoordinated, unsanitary and improper solid waste disposal, the City Council may determine that it is in the best interests of the residents of the city to require licenses of persons

collecting or hauling garbage and rubbish for hire, reserving to the city the right and authority to contract with one or more operators to provide these services.

502.12.2 Licensing. No person may collect or haul garbage or rubbish within the city without first obtaining a written license from the City Council. An application for a license shall be submitted in writing to the City Clerk, and shall contain the following information:

- A Name and address of the applicant;
- B Description of the equipment which will be used within the city by the applicant;
- C A schedule of the rate that will be charged by the applicant for the various categories of customers within the city;
- D Evidence of compliance with the other applicable sections of this chapter; and
- E Insurance.

502.12.3 Franchise. The City Council may exercise its reserved right to contract with one or more operators for the collection of garbage and rubbish within the city. The City may, upon resolution, impose a franchise fee to be collected from licensed garbage collectors and haulers.

502.12.4 Suspension of License or Contract. A contract or license issued under the provisions of this section may be revoked or suspended for a violation of this chapter or other applicable regulations of law upon a showing that the contractor or licensee has failed to comply with that regulation.

502.12.5 Financial Responsibility. The licensee or contractor shall show financial responsibility or a certificate of insurance coverage prior to obtaining the license or franchise whereby each vehicle to be used by the licensee or contractor shall be covered against loss or injury in the following amounts: \$300,000 when the claim is one for death by wrongful act or omission and \$300,000 to any claimant in any other case; \$1,000,000 for any number of claims arising out of a single occurrence. The licensee or contractor shall hold the city harmless and agrees to defend and indemnify the city, and the city's employees and agents, for any claims, damages, losses, and expenses related to the work under the license or contract. The city shall be named as an additional insured under that insurance for the services provided under the license or contract. The licensee's or contractor's insurance shall be the primary insurance for the city and the licensee or contractor shall provide a certificate of insurance on the city's approved form which verifies the existence of the insurance required, including provisions to hold the city harmless and defend and indemnify the city. The licensee or contractor shall also provide evidence of workers compensation insurance for employees. These insurance policies shall be for the full term of the license or franchise and shall provide for the giving of ten days prior notice to the city of the termination or cancellation of these policies. In case any policies are terminated or cancelled, the license or contract shall be automatically revoked upon receipt by the City Clerk of the termination or cancellation.

502.12.6 Design of Equipment. All trucks or motor vehicles used by the licensee or contractor shall be water-tight so as not to allow the leakage of liquids or refuse while hauling the same and shall be covered with a covering to prevent the scattering of its contents upon the public streets or private properties in the city.

502.12.7 Inspections. All vehicles used for garbage or rubbish shall be made available for inspection within the city at the times and places as the City Council may designate.

502.12.8 Insurance. The contractor or licensee may be required to furnish proof of insurance in an amount as the City Council deems necessary running to and approved by the City Council, guaranteeing the franchisee's or licensee's faithful and continuous performance of the terms of the franchise, license or contract and of this chapter.

**502.13 Collection of Leaves, Trees, or Tree Limbs.** Nothing in this chapter shall be construed to prevent the collection for hire by other persons of leaves, trees or tree limbs.

## **503 ANIMALS**

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

*ANIMAL.* Any mammal, reptile, amphibian, fish, bird (including all fowl and poultry) or other member commonly accepted as a part of the animal kingdom. Animals shall be classified as follows:

*DOMESTIC ANIMALS.* Those animals commonly accepted as domesticated household pets. Unless otherwise defined, domestic animals shall include dogs, cats, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.

*FARM ANIMALS.* Those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, farm animals shall include members of the equine family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (ducks, geese), swine (including Vietnamese pot-bellied pigs), goats, bees, and other animals associated with a farm, ranch, or stable.

*NON-DOMESTIC ANIMALS.* Those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety, and welfare of people. Unless otherwise defined, non-domestic animals shall include:

- A Any member of the large cat family (family felidae) including lions, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly accepted domesticated house cats.
- B Any naturally wild member of the canine family (family canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.
- C Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.
- D Any member or relative of the rodent family including any skunk (whether or not descended), raccoon, squirrel, or ferret, but excluding those members otherwise defined or commonly accepted as domesticated pets.
- E Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators.
- F Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this section, including but not limited to bears, deer, monkeys and game fish.

*ANIMAL CONTROL OFFICER.* The person responsible for capturing, seizing and delivering to any designated pound any animal running at large or considered a nuisance to the general public. All Plainview Police Officers are to be considered Animal Control Officers.

*AT LARGE.* Off the premises of the owner and not under the custody and control of the owner or other person, either by leash, cord, chain, or otherwise restrained or confined.

*CAT.* Both the male and female of the felidae species commonly accepted as domesticated household pets.

*DOG.* Both the male and female of the canine species, commonly accepted as domesticated household pets, and other domesticated animals of a dog kind.

*OWNER.* Any person or persons, firm, association or corporation owning, keeping, or harboring an animal.

*RELEASE PERMIT.* A permit issued by the Animal Control Officer or Police Officer or other person in charge of the pound for the release of any animal that has been taken to the pound. A release permit may be obtained upon payment of a fee to the City Clerk in accordance with the regular license requirement if the animal is unlicensed, payment of a release fee, and any maintenance costs incurred in capturing and impounding the animal.

## **503.2 Domestic Animals**

503.2.1 Running At Large Prohibited. It shall be unlawful for the dog or cat, or any other domestic animal, of any person who owns, harbors, or keeps such an animal, to run at large. A person, who owns, harbors, or keeps a dog or cat, or other domestic animal, which runs at large shall be guilty of a misdemeanor.

503.2.2 Dogs on Leash. Dogs on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person, so as to be effectively restrained by command as by leash, shall be permitted on streets or on public land unless the city has posted an area with signs reading "Dogs Prohibited"

### 503.2.3 License Required, Dogs.

- A All dogs over the age of six months kept, harbored, or maintained by their owners in the city, shall be licensed and registered with the city. Dog licenses shall be issued by the City Clerk upon payment of the license, as established by the City Council. The owner shall state, at the time application is made for the license and upon forms provided, his or her name and address and the name, breed, color, and sex of each dog owned or kept by him or her. No license shall be granted for a dog that has not been vaccinated against distemper and rabies, as evidenced by a certificate by a veterinarian qualified to practice in the state in which the dog is vaccinated. Upon issuance of a dog license, City staff shall also distribute a copy of the Animal Control Ordinance to the dog license applicant.
- B It shall be the duty of each owner of a dog subject to this section to pay to the City Clerk the license fee established
- C Upon payment of the license fee, the Clerk shall issue to the owner a license certificate and metallic tag for each dog licensed. The tag number shall correspond with the number on the certificate. Every owner shall be required to provide each dog with a collar to which the license tag must be affixed, and shall see that the collar and tag are constantly worn. In case a dog tag is lost or destroyed, a duplicate shall be issued by the City Clerk. A charge shall be made for each duplicate tag. Dog tags shall not be transferable from one dog to another and no refunds shall be made on any dog license fee or tag because of death of the dog or the owners leaving the city before the expiration of the license period.
- D The licensing provisions of this section shall not apply to dogs whose owners are nonresidents temporarily (30 days) within the city, nor to dogs brought into the city for the purpose of participating in any dog show. If the animal owned is a service animal which is capable of being properly identified as from a recognized school for seeing eye, hearing ear, service or guide animals, and the owner is a blind or deaf person, or a person with physical or sensory disabilities, then no license shall be required.
- E The funds received by the City Clerk from all dog licenses and metallic tags shall first be used to defray any costs incidental to the enforcement of this section; including, but not restricted to, the costs of licenses, metallic tags, and impounding and maintenance of the dogs.

**503.2.4 Cats and other Domestic Animals.** Cats and other Domestic Animals shall be included as controlled by this division insofar as running-at-large, pickup, impounding, boarding, licensing and proof of anti-rabies vaccine is concerned. All other provisions of this section shall also apply to cats and other Domestic Animals unless otherwise provided.

**503.2.5 Vaccination.** All dogs and cats kept harbored, maintained, or transported within the city shall be vaccinated at least once every two years by a licensed veterinarian for:

- A Rabies - with a live modified vaccine; and
- B Distemper.

A certificate of vaccination must be kept on which is stated the date of vaccination, owner's name and address, the animal's name (if applicable), sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand made by the City Clerk, the Animal Control Officer or Police Officer or a police officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have seven days in which to present the certificate(s) to the City Clerk or officer. Failure to do so shall be deemed a violation of this section.

**503.3 Non Domestic Animals.** It shall be illegal for any person to own, possess, harbor, or offer for sale, any non-domestic animal within the city. Any owner of a non-domestic animal at the time of adoption of this code shall have 30 days in which to remove the animal from the city after which time the city may impound the animal as provided for in this section. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled, and for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

**503.4 Farm Animals.** Farm animals shall only be kept in an agricultural district of the city, or on a residential lot of at least ten acres in size provided that no animal shelter, such as a barn or shed, shall be within 300 feet of an adjoining piece of property. An exception shall be made to this section for those animals brought into the city as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

**503.5 Impounding.**

**503.5.1 Running at large.** Any unlicensed animal running at large is hereby declared a public nuisance. Any Animal Control Officer or Police Officer may impound any dog or other animal found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of the dog or other animal, if known. The Animal Control Officer or Police Officer shall not enter the property of the owner of an animal found running at large or the owner of an unlicensed animal unless the officer has first obtained the permission of the owner to do so or has obtained a warrant issued by a court of competent jurisdiction to search for and seize the animal.

In case the owner is unknown, the officer shall post notice at the City Hall that if the dog or other animal is not claimed within the time specified, it will be sold or otherwise disposed of. The notice shall set forth: (1) where and when the animal was seized, (2) the animal's gender, color, breed, and approximate age, (3) the name of owner (if known), and (4) the date and approximate time that the animal will be sold or destroyed unless claimed and redeemed. Except as otherwise provided in this section, it shall be unlawful to kill, destroy, or otherwise cause injury to any animal, including dogs and cats running at large.

**503.5.2 Biting animals.** Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the city pound for a period of not less than ten days, at the expense of the owner. The animal may be released at the end of the time if healthy and free from symptoms of rabies, and by the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for the confinement by the officer to voluntarily and

immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing, not outside of the county in which this city is located, and provide immediate proof of confinement in the manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property.

**503.5.3 Reclaiming.** All animals conveyed to the pound shall be kept, with humane treatment and sufficient food and water for their comfort, at least five regular business days, unless the animal is a dangerous animal, in which case it shall be kept for seven regular business days, and except if the animal is a cruelly-treated animal in which case it shall be kept for ten regular business days, unless sooner reclaimed by their owners or keepers as provided by this section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required, unless otherwise provided for in this code or established from time to time by resolution of the City Council:

- A Payment of the release fee and receipt of a release permit as established by the City Council
- B Payment of maintenance costs, as provided by the pound, per day or any part of day while animal is in the pound; and
- C If a dog is unlicensed, payment of a regular license fee and valid certificate of vaccination for rabies and distemper shots is required.

**503.5.4 Unclaimed animals.** If an animal has not been reclaimed within the time allotted in accordance with the provisions of this section, the officer appointed to enforce this section may let any person claim the animal by complying with all provisions in this section, or the officer may sell the animal to the University of Minnesota, or cause the animal to be destroyed in a proper and humane manner and shall properly dispose of the remains thereof. Any money collected under this section shall be payable to the City Clerk.

### **503.6 Nuisances**

**503.6.1 Habitual barking.** It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. Habitual barking shall be defined as barking for repeated intervals of at least five minutes with less than one minute of interruption. The barking must also be audible off of the owner's or caretaker's premises.

**503.6.2 Damage to property.** It shall be unlawful for any person's dog or other animal to damage any lawn, garden, or other property, whether or not the owner has knowledge of the damage.

**503.6.3 Cleaning up litter.** The owner of any animal or person having the custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing of the feces in a sanitary manner whether on their own property, on the property of others or on public property.

**503.6.4 Entering Premises.** An Animal Control Officer or Police Officer may enter a property of the owner of an animal described in this section if it is deemed necessary to search for and seize the animal.

**503.6.5 Other.** Any animals kept contrary to this section are subject to impoundment.

**503.7 Seizure of Animals.** Any police officer or Animal Control Officer or Police Officer may enter upon private property and seize any animal with or without the permission of the owner of the property, if that person is also the owner of the animal, provided that the following exist:

- A There is an identified complainant other than the police officer or Animal Control Officer or Police Officer making a contemporaneous complaint about the animal.
- B The officer reasonably believes that the animal meets either the barking dog criteria or the criteria for an at large animal.
- C The officer can demonstrate that there has been at least one previous complaint of a barking dog; inhumane treatment of the animal; or that the animal was at large at this address on a prior date.

- D The officer has made a reasonable attempt to contact the owner of the animal and the property to be entered and those attempts have either failed or have been ignored.
- E Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the animal is not possible.

**503.8 Animals Presenting a Danger to Health and Safety of City.** If, in the reasonable belief of any person or the Animal Control Officer or Police Officer or police officer, an animal presents an immediate danger to the health and safety of any person, or the animal is threatening imminent harm to any person, or the animal is in the process of attacking any person, the person or officer may destroy the animal in a proper and humane manner whether or not the animal is on the property of its owner. Otherwise, the person or officer may apprehend the animal and deliver it to the pound for confinement. If the animal is destroyed, the owner or keeper of the animal destroyed shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examination. If the animal is found not to be a danger to the health and safety of the city, it may be released to the owner or keeper.

**503.9 Diseased Animals.**

503.9.1 Running at large. No person shall keep or allow to be kept on his or her premises, or on premises occupied by them, nor permit to run at large in the city, any animal which is diseased so as to be a danger to the health and safety of the city, even though the animal be properly licensed under this section, and a warrant to search for and seize the animal is not required.

503.9.2 Confinement. Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in the pound by any person, the Animal Control Officer or Police Officer. The officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in a manner so as to be a danger to the health and safety of the city, the officer shall cause the animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this section shall be liable to the city for the cost of maintaining and disposing of the animal, plus the costs of any veterinarian examinations.

503.9.3 Release. If the animal, upon examination, is not found to be diseased the animal shall be released to the owner or keeper free of charge.

**503.10 Dangerous Animals.**

503.10.1 Attack by an Animal. It shall be unlawful for any person's animal to inflict or attempt to inflict bodily injury to any person or other animal whether or not the owner is present. This section shall not apply to an attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home with criminal intent.

503.10.2 Destruction of Dangerous Animal. The Animal Control Officer or Police Officer shall have the authority to order the destruction of dangerous animals in accordance with the terms established by this chapter.

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

*DANGEROUS ANIMAL.* An animal which has:

- A Caused bodily injury or disfigurement to any person on public or private property;
- B Engaged in any attack on any person under circumstances which would indicate danger to personal safety;
- C Exhibited unusually aggressive behavior, such as an attack on another animal;
- D Bitten one or more persons on two or more occasions; or
- E Been found to be potentially dangerous and/or the owner has personal knowledge of the same, the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals.

*POTENTIALLY DANGEROUS ANIMAL.* An animal which has:

- A Bitten a human or a domestic animal on public or private property;
- B When unprovoked, chased or approached a person upon the streets, sidewalks, or any public property in an apparent attitude of attack; or
- C Has engaged in unprovoked attacks causing injury or otherwise threatening the safety of humans or domestic animals.

*PROPER ENCLOSURE.* A structure with securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal from the elements. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the animal from exiting. The enclosure shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

- A Have a minimum overall floor size of 32 square feet.
- B Sidewalls shall have a minimum height of five feet and be constructed of 11 gauge or heavier wire. Openings in the wire shall not exceed two inches, support posts shall be 13-inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground.
- C A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and shall also have no openings in the wire greater than two inches.
- D An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

*UNPROVOKED.* The condition in which the animal is not purposely excited, stimulated, agitated or disturbed.

503.10.4 Designation as potentially dangerous animal. The Animal Control Officer or Police Officer shall designate any animal as a potentially dangerous animal upon receiving evidence that the potentially dangerous animal has, when unprovoked, bitten, attacked, or seriously threatened the safety of a person or a domestic animal. When an animal is declared potentially dangerous, the Animal Control Officer or Police Officer shall cause one owner of the potentially dangerous animal to be notified in writing that the animal is potentially dangerous.

503.10.5 Evidence justifying designation. The Animal Control Officer or Police Officer shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:

- A That the animal has, when unprovoked, bitten, attacked, or threatened the safety of a person or domestic animal.
- B That the animal has been declared potentially dangerous and the animal has then bitten, attacked, or seriously threatened the safety of a person or domestic animal.

503.10.6 Authority to order destruction. The Animal Control Officer, upon finding that an animal is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the animal be destroyed based on a written order containing one or more of the following findings of fact:

- A The animal is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or

- B The owner of the animal has demonstrated an inability or unwillingness to control the animal in order to prevent injury to persons or other animals.

503.10.7 Procedure. The Animal Control Officer, after having determined that an animal is dangerous, may proceed in the following manner: the Animal Control Officer or Police Officer shall cause one owner of the animal to be notified in writing or in person that the animal is dangerous and may order the animal seized or make orders as deemed proper. This owner shall be notified as to dates, times, places and parties bitten, and shall be given 14 days to appeal this order by requesting a hearing before the City Council for a review of this determination.

If no appeal is filed, the Animal Control Officer or Police Officer shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction, unless the animal is already in custody or the owner consents to the seizure and destruction of the animal.

If an owner requests a hearing for determination as to the dangerous nature of the animal, the hearing shall be held before the City Council, which shall set a date for hearing not more than three weeks after demand for the hearing. The records of the Animal Control or City Clerk's office shall be admissible for consideration by the Animal Control Officer or Police Officer without further foundation. After considering all evidence pertaining to the temperament of the animal, the City Council shall make an order as it deems proper. The City Council may order that the Animal Control Officer or Police Officer take the animal into custody for destruction, if the animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the Animal Control Officer. If the owner does not immediately make the animal available, the Animal Control Officer or Police Officer shall obtain an order or warrant authorizing the seizure and the destruction of the animal from a court of competent jurisdiction.

No person shall harbor an animal after it has been found by to be dangerous and ordered into custody for destruction.

503.10.8 Stopping an attack. If any police officer or Animal Control Officer or Police Officer is witness to an attack by an animal upon a person or another animal, the officer may take whatever means the officer deems appropriate to bring the attack to an end and prevent further injury to the victim.

503.10.9 Notification of new address. The owner of an animal which has been identified as dangerous or potentially dangerous shall notify the Animal Control Officer or Police Officer in writing if the animal is to be relocated from its current address or given or sold to another person. The notification shall be given in writing at least 14 days prior to the relocation or transfer of ownership. The notification shall include the current owner's name and address, the relocation address, and the name of the new owner, if any.

### **503.11 Dangerous Animal Requirements**

503.11.1 Requirements. If the City Council does not order the destruction of an animal that has been declared dangerous, the City Council may, as an alternative, order any or all of the following:

- A That the owner provide and maintain a proper enclosure for the dangerous animal
- B Post the front and the rear of the premises with clearly visible warning signs, including a warning symbol to inform children, that there is a dangerous animal on the property as specified in Minnesota State Statute 347.51 as may be amended from time to time;
- C Provide and show proof annually of public liability insurance in the minimum amount of \$300,000;
- D If the animal is a dog and is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash (not to exceed six feet in length) and under the physical restraint of a person 16 years of age or older. The muzzle must be of a design as to prevent the dog from biting any person or animal, but will not cause injury to the dog or interfere with its vision or respiration;
- E If the animal is a dog, it must have an easily identifiable, standardized tag identifying the dog as dangerous affixed to its collar at all times as specified in M.S. 347.51 as it may be

amended from time to time, and shall have a microchip implant as provided by M.S. 347.151, as it may be amended from time to time;

- F All animals deemed dangerous by the Animal Control Officer or Police Officer shall be registered with the county in which this city is located within 14 days after the date the animal was so deemed and provide satisfactory proof thereof to the Animal Control Officer.
- G If the animal is a dog, the dog must be licensed and up to date on rabies vaccination. If the animal is a cat or ferret, it must be up to date with rabies vaccination.

**503.11.2 Seizure.** As authorized by M.S. 347.54, as it may be amended from time to time, the Animal Control Officer or Police Officer shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within 14 days after the date notice is sent to the owner that the animal is dangerous. Seizure may be appealed to district court by serving a summons and petition upon the city and filing it with the district court.

**503.11.3 Reclaiming animals.** A dangerous animal seized may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to animal control that each of the requirements under 503.11.1 is fulfilled. An animal not reclaimed under this section within 14 days may be disposed of as provided, and the owner is liable to the city for costs incurred in confining and impounding the animal.

**503.11.4 Subsequent offenses.** If an owner of an animal has subsequently violated the provisions with the same animal, the animal must be seized by animal control. The owner may request a hearing. If the owner is found to have violated the provisions for which the animal was seized, the Animal Control Officer or Police Officer shall order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the person is found not to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of 503.11.3 If the animal is not yet reclaimed by the owner within 14 days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of and the owner is liable to the animal control for the costs incurred in confining, impounding and disposing of the animal.

**503.12 Basic Care.** All animals shall receive from their owners or keepers kind treatment, housing in the winter, and sufficient food and water for their comfort. Any person not treating their pet in a humane manner will be subject to the penalties provided in this section.

**503.13 Breeding Moratorium.** Every female dog or female cat in heat shall be confined in a building or other enclosure in a manner that it cannot come in contact with another dog or cat except for planned breeding. Upon capture and failure to reclaim the animal, every dog or cat shall be neutered or spayed prior to being transferred to a new owner.

**503.14 Enforcing Officer.** The Council is hereby authorized to appoint an animal control officer(s) to enforce the provisions of this section. In the officer's duty of enforcing the provisions of this section, he or she may from time to time, with the consent of the City Council, designate assistants.

**503.15 Pound.** Every year the Council shall designate an official pound to which animals found in violation of this chapter shall be taken for safe treatment, and if necessary, for destruction.

**503.16 Interference with Officers.** No person shall in any manner molest, hinder, or interfere with any person authorized by the City Council to capture dogs, cats or other animals and convey them to the pound while engaged in that operation. Nor shall any unauthorized person break open the pound, or attempt to do so, or take or attempt to take from any agent any animal taken up by him or her in compliance with this chapter, or in any other manner to interfere with or hinder the officer in the discharge of his or her duties under this chapter.

**503.17 Multiple Pets.** In order to own three or more of any one species, a multiple pet permit is required. In addition to the Multiple Pet Permit, the owner must obtain a regular license for each animal as required by other City Code Provisions. Applications for Multiple Pet Permits shall be processed and approved through the City Clerk.

503.17.1 Issuance Of Multiple Pet Permits. An annual Multiple Pet Permit shall be issued at a fee as determined by the City Council pursuant to resolution. Permits shall be pro-rated monthly. If an owner acquires a new pet, which would require obtaining a Permit, then the owner will only be charged for the number of months remaining in the year including the month within which the Permit is being obtained.

503.17.2 Stipulations. All premises with Multiple Pet Permits shall be maintained areas where animals are kept free of all contamination and diseases, shall provide sufficient enclosures and housing, so as to keep the pets on the owner's premises, shall be kept in a clean and sanitary manner, devoid of rodents and vermin and free from objectionable odors, noises and other nuisances effecting the public.

503.17.3 Maximum Number of Animals. Because the keeping of four or more dogs on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of four or more dogs on the premises is hereby declared to be a nuisance. The exception to the maximum number of animals allowed is that a fresh litter of pups may be kept for a period of up to four months.

503.17.4 Revocation. The City Council may revoke a Multiple Pet Permit for violation of any of the requirements contained in section 503 or the violation of any other City Code Provision pertaining thereto. Before revoking any such permit, the City shall notify the owner of its intention to do so stating the grounds upon which the permit is being revoked and giving the permit holder the right to a hearing before the City Council. Any request for hearing by a permit holder must be submitted in writing to the City Clerk no later than ten days following receipt of the Notice of Revocation. If the permit holder within said ten days requests a hearing in compliance with the provisions established herein, a hearing shall be held before the City Council to determine whether the Permit should be revoked. Following said hearing, the City Council shall, by resolution, make a determination whether the revocation should occur and the basis for it. If no request for hearing is received by the City Clerk within the ten days as set forth above, then the revocation shall be effective on the tenth day following receipt of the Revocation Notice.

**503.18 Penalty.** Separate offenses. Each day a violation of this chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable under this section.

503.18.1 Misdemeanor. Unless otherwise provided, violation of this chapter shall constitute a misdemeanor punishable as provided in Minnesota State Statute 10.99.

503.18.2 Petty misdemeanor. Violations of 503.2, 503.7, 503.12 and 503.13 are petty misdemeanors punishable as provided in Minnesota State Statute 10.99.

## **504 GARAGE AND RUMMAGE SALES**

**504.1 Definitions.** The following term, as used in this chapter, shall have the meaning stated:

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

**504.2 Restrictions and Prohibitions.** The following restrictions apply to all garage and rummage sales:

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

- B Any garage or rummage sale (community or neighborhood sale) shall be conducted solely within the boundaries of the property owned or occupied by the occupant who is conducting the sale.
- C There shall be no more than six garage or rummage sales conducted at any one premises during any period of 12 calendar months.
- D No garage or rummage sale shall be conducted during any part of more than four consecutive days.
- E No garage or rummage sale may be conducted before 7:00 a.m. or after 8:00 p.m.
- F Any related signage shall be limited to the premises and to other residential property, provided permission from the property owner is obtained, and shall be removed at the termination of the sale. Signs shall be limited to four square feet. All signs shall be kept off of the public right of way.

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

## **505 TATTOO AND BODY PIERCING SERVICES**

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

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

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

*BUSINESS.* Any entity that provides services for compensation.

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

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

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

**505.2 Prohibitions.** No person shall do any of the following:

- A Operate a business that offers tattooing or body piercing services unless the City Council issues it a license to do so;
- B Perform a tattooing or body piercing procedure in a manner that does not meet the safety and sanitation standards established by this chapter and any federal, state or local laws, rules or regulations;
- C Perform a tattooing procedure, body piercing procedure, or ear piercing procedure with an ear piercing gun in a manner that does not meet the standards for appropriate disinfection and sterilization of invasive equipment or parts of equipment used in performing the procedures established by this chapter and any federal, state or local laws, rules or regulations.

### **505.3 Application for License; Fees; Insurance**

505.3.1 Application. A person seeking approval to operate a business that offers tattooing or body piercing services shall apply to the city on forms the city or the Board of Health shall prescribe and provide. The applicant shall submit all information the city and the Board of Health determines is necessary to process the application. The applicant shall include the fee established by resolution of the City Council.

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

505.3.3 Approval Following an Inspection. If the Board of Health determines, following an inspection that a business meets the requirements for approval, it shall so advise the city. The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City 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. Approval remains valid for one year unless earlier suspended or revoked. A business's approval may be renewed. Approval is not transferable.

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

**505.5 Suspension or Revocation of License.** The City Council may suspend or revoke the approval of a business to offer tattooing or body piercing services at any time it determines that the business is being operated in violation of this chapter or any federal, state or local laws, rules or regulations. Proceedings for suspensions and revocations shall be conducted in accordance with rules adopted in Section 501 for the suspension or revocation of business licenses.

### **505.6 Procedures on Persons Under 18**

505.6.1 Consent Required. No person shall perform a tattooing procedure, body piercing procedure, or ear piercing procedure with an ear piercing gun on an individual who is under 18 years of age unless consent has been given by the individual's parent, guardian, or custodian in accordance with 505.6.2 of this section. The consent must include both the custodial and non-custodial parents, where applicable.

505.6.2 Additional Requirements. A parent, guardian or custodian of an individual under age 18 who desires to give consent to a business to perform on the individual under age 18 a tattooing procedure, body piercing procedure, or ear piercing procedure performed with an ear piercing gun shall do both of the following: appear in person at the business at the time the procedure is performed; and sign a document provided by the business that explains the manner in which the procedure will be performed and methods for proper care of the affected body area following performance of the procedure.

#### 505.6.3 Prohibitions Relating to Persons Under 18.

A Unless consent has been given, no individual who is under age 18 shall obtain or attempt to obtain a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

- B No individual who is under age 18 shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of obtaining a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.
- C No individual shall knowingly show or give any false information as to the name, age, or other identification of an individual who is under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.
- D No individual shall impersonate the parent, guardian or custodian of an individual who is under age 18 for the purpose of obtaining for the individual under age 18 a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun.

**505.7 Defenses to Violations.** An operator or employee of a business that performs tattooing services, body piercing services, or ear piercing services performed with an ear piercing gun may not be found guilty of a violation of 505.6.1 or any federal, state or local laws, rules or regulations in which age is an element of the provisions if:

- A The individual obtaining a tattooing service, body piercing service, or ear piercing service performed with an ear piercing gun, at the time of so doing, exhibited to the operator or employee of the tattooing, body piercing, or ear piercing business a driver's or commercial driver's license or an identification card issued under state law showing that the individual was then at least age 18;
- B The operator or employee made a bona fide effort to ascertain the true age of the individual obtaining a tattooing, body piercing, or ear piercing service by checking the identification presented, at the time of the service, to ascertain that the description on the identification compared with the appearance of the individual and that the identification had not been altered in any way; and
- C The operator or employee had reason to believe that the individual obtaining a tattooing, body piercing, or ear piercing service was at least age 18.

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

**505.8 Training Standards; Records; Safety and Sanitation; Equipment.** Each operator of a business that offers tattooing or body piercing services shall do all of the following:

- A Maintain procedures for ensuring that the individuals who perform tattooing or body piercing procedures are adequately trained to perform the procedures properly;
- B With respect to tattooing services, maintain written records that include the color, manufacturer and lot number of each pigment used for each tattoo performed;
- C Comply with the safety and sanitation requirements for preventing transmission of infectious diseases, as established in any federal, state or local laws, rules or regulations;
- D Require the individuals who perform tattooing and body piercing procedures to disinfect and sterilize all invasive equipment or parts of equipment used in performing the procedures by using methods that meet the disinfection and sterilization requirements established in any federal, state or local laws, rules or regulations;
- E Ensure that weekly tests of the business's heat sterilization devices are performed to determine whether the devices are functioning properly. In having the devices tested, the operator of the business shall use a biological monitoring system that indicates whether the devices are killing microorganisms. If a test indicates that a device is not functioning properly, the operator shall take immediate remedial action to ensure that heat sterilization is being accomplished. The

operator shall maintain documentation that the weekly tests are being performed. To comply with the documentation requirement, the documents must consist of a log that indicates the date on which each test is performed and the name of the person who performed the test or, if a test was conducted by an independent testing entity, a copy of the entity's testing report. The operator shall maintain records of each test performed for at least two years.

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

## **506    LAWFUL GAMBLING**

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

**506.2    City May Be More Restrictive Than State Law.** The Council is authorized by the provisions of M.S. ' 349.213, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on gambling within its limits beyond those contained in M.S. Ch. 349, as it may be amended from time to time.

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

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

*BOARD.* The State of Minnesota Gambling Control Board.

*LICENSED ORGANIZATION.* An organization licensed by the Board.

*LOCAL PERMIT.* A permit issued by the city.

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

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

- A Bingo conducted within a nursing home or a senior citizen housing project or by a senior citizen organization if: the prizes for a single bingo game do not exceed \$10; total prizes awarded at a single bingo occasion do not exceed \$200; no more than two bingo occasions are held by the organization or at the facility each week; only members of the organization or residents of the nursing home or housing project are allowed to play in a bingo game; no compensation is paid for any persons who conduct the bingo; and a manager is appointed to supervise the bingo.
- B Raffles, if the value of all prizes awarded by the organization in a calendar year does not exceed \$750.

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

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

**506.8 Application and Local Approval of Premises Permits.** Any organization seeking to obtain a premises permit or bingo hall license or renewal of a premises permit or bingo hall license from the Board shall file with the City Clerk an executed, complete duplicate application together with all exhibits and documents accompanying the application as filed with the Board.

506.8.1 Approval or Disapproval. The Council shall, by resolution, approve or disapprove the application within 60 days of receipt of the application

506.8.2 Disapproval. The City Council shall disapprove an application for issuance or renewal of a premises permit for any of the following reasons. Otherwise the Council shall pass a resolution approving the application.

- A Violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling within the last three years.
- B Violation by the on-sale establishment or organization leasing its premises for gambling of any state statute, state rule or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to alcoholic beverages, gambling, controlled substances, suppression of vice, and protection of public safety within the last three years.
- C Lawful gambling would be conducted at premises other than those for which an on-sale liquor license has been issued.
- D Lawful gambling would be conducted at more than one premises within the city. The city may limit the number of premises where lawful gambling may be conducted.
- E An organization would be permitted to conduct lawful gambling activities at more than one premises in the city.
- F More than one licensed organization would be permitted to conduct lawful gambling activities at one premises.
- G Failure of the applicant to pay any investigation fee provided by division (D) of this section within the prescribed time limit.
- H Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.

**506.9 Local Permits.**

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

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

- A Name and address of the organization requesting the permit.
- B Name and address of the officers and person accounting for receipts, expenses, and profits for the event.
- C Dates of gambling occasion for which permit is requested.
- D Address of premises where event will occur.
- E Copy of rental or leasing arrangement, if any, connected with the event, including rental to be charged to organization.

F Estimated value of prizes to be awarded.

506.9.3 Fee. The fee for a local permit shall be \$50. The fee shall be submitted with the application for a local permit. This fee shall be refunded if the application is withdrawn before the investigation is commenced.

506.9.4 Disapproval. The Council shall disapprove an application for issuance or renewal of a premises permit for any of the following reasons:

- A Violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling within the last three years.
- B Violation by the on-sale establishment or organization leasing its premises for gambling of any state statute, state rule or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to the operation of the establishment, laws relating to alcoholic beverages, gambling, controlled substances, suppression of vice, and protection of public safety within the last three years.
- C The organization has not been in existence in the city for at least three consecutive years prior to the date of application.
- D The organization does not have at least 20 active members.
- E Exempted or excluded lawful gambling will not take place at a premises the organization owns or rents.
- F Exempted or excluded lawful gambling will not be limited to a premises for which an on-sale liquor license has been issued.
- G An organization will have a permit to conduct exempted or excluded lawful gambling activities on more than one premises in the city.
- H More than one licensed, qualified organization will be conducting exempted or excluded lawful gambling activities at any one premises.
- I Failure of the applicant to pay permit fee provided by division (C) of this section within the prescribed time limit.
- J Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.

506.9.5 Approval. Local permits shall be valid for one year after the date of issuance unless suspended or revoked.

**506.10 Revocation and Suspension of Local Permit.** A local permit may be revoked or temporarily suspended for a violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling. However, a license shall not be revoked or suspended until notice and an opportunity for a hearing have first been given to the permitted person. The notice shall be personally served and shall state the provision reasonably believed to be violated. The notice shall also state that the permitted person may demand a hearing on the matter, in which case the permit will not be suspended until after the hearing is held. If the permitted person requests a hearing, the Council shall hold a hearing on the matter at least one week after the date on which the request is made. If, as a result of the hearing, the Council finds that an ordinance violation exists, then the Council may suspend or revoke the permit.

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

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

**506.13 Contribution of Net Profits to Fund Administered by City.** Each organization licensed to conduct lawful gambling within the city pursuant to M.S. 349.16, as it may be amended from time to

time, shall contribute 10% of its net profits derived from lawful gambling in the city to a fund administered and regulated by the city without cost to the fund. The city shall disburse the funds for lawful purposes as defined by M.S. 349.12, Subd. 25, as it may be amended from time to time. Payment under this section shall be made quarterly. The city's use of these funds shall be determined at the time of adoption of the city's annual budget or when the budget is amended.

**506.14 Designated Trade Area.** Each organization licensed to conduct gambling within the city shall expend 100% of its lawful purpose expenditures on lawful purposes conducted within the city's trade area. This section applies only to lawful purpose expenditures of gross profits derived from gambling conducted at a premises within the city's jurisdiction.

**506.15 Records and Reporting.** Organizations conducting lawful gambling shall file with the City Clerk one copy of all records and reports required to be filed with the Board, pursuant to M.S. Ch. 349, as it may be amended from time to time, and rules adopted pursuant thereto, as they may be amended from time to time. The records and reports shall be filed on or before the day they are required to be filed with the Board. Organizations licensed by the Board shall file a report with the city proving compliance with the trade area spending requirements. Such report shall be made on a form prescribed by the city and shall be submitted annually and in advance of application for renewal.

**506.16 Hours of Operation.** Lawful gambling shall not be conducted between 1:00 a.m. and 8:00 a.m. on any day of the week.

## **507 TOBACCO**

**507.1 Purpose.** Because the City recognizes that many persons under the age of eighteen (18) years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession and use are violations of both State and Federal laws; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minnesota Statute § 144.39 1.

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

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

*"Tobacco related devices"* shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

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

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

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

*"Loosies"* shall mean the common term used to refer to a single or individually packaged cigarette.

*"Minor"* shall mean any natural person who has not yet reached the age of eighteen (18) years.

*"Retail establishment"* shall mean any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

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

A *"sale"* shall mean any transfer of goods for money, trade, barter, or other consideration.

*"Compliance checks"* shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to tobacco, tobacco products, and tobacco related devices.

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

**507.3.1 Application.** An application for a license to sell tobacco, tobacco products, or tobacco related devices shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the

business for which the license is sought, and any additional information the City deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the council for action at its next regularly scheduled council meeting. If the clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

507.3.2 Action. The council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary.

507.3.3 Term. All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.

507.3.4 Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

507.3.5 Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the council.

507.3.6 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 ordinance.

507.3.7 Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

507.3.8 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 at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.

**507.4 Fees.** No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be set by resolution of the City Council.

**507.5 Basis for Denial of License.** If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section. The following shall be grounds for denying the issuance or renewal of a license under this ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City must deny the license: 1) The applicant is under the age of eighteen (18) years, 2) The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices, 3) The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked within the preceding twelve months of the date of application, 4) The applicant fails to provide any information required on the application, or provides false or misleading information, and 5) The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

**507.6 Prohibited Sales.** It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device: 1) to any person under the age of eighteen (18) years, 2) by means of any type of vending machine, except as may otherwise be provided in this ordinance, 3) by means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco product, or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco related device between the licensee or the licensee's employee, and the customer, except cartons and multipack units may be offered and sold through open displays accessible to the public, 4) by means of loosies as defined in Section 507, 5) containing opium, morphine, jimson weed, bella donna, strychnine, 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, and 6) by any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

**507.7 Vending Machines.** It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

**507.8 Self-Service Sales.** It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco related device between the licensee or his or her clerk and the customer, except cartons and multipack units may be offered and sold through open displays accessible to the public. All tobacco, tobacco products, and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public, except cartons and multipack units may be offered and sold through open displays accessible to the public..

**507.9 Responsibility.** All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the clerk to whatever penalties are appropriate under this ordinance, State or Federal law, or other applicable law or regulation.

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

**507.11 Other Illegal Acts.** Unless otherwise provided, the following acts shall be a violation of this ordinance.

**507.11.1 Illegal Sales.** It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor.

**507.11.2 Illegal Possession.** It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

**507.11.3 Illegal Use.** It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.

**507.11.4 Illegal Procurement .** It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf

of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

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

### **507.12 Violations**

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

507.12.2 Hearings. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

507.12.3 Hearing Officer. The City Council of Plainview shall serve as the hearing officer.

507.12.4 Decision. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 507.13 it shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

507.12.5 Appeals. Appeals of any decision made by the hearing officer shall be filed in the District Court for the City in which the alleged violation occurred.

507.12.6 Misdemeanor Prosecution. Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

507.12.7 Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

### **507.13 Penalties**

507.13.1 Licensees and Employees. Any licensee, and any employee of a licensee, found to have violated this ordinance shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

507.13.2 Other Individuals. Other individuals, other than minors regulated by this ordinance, found to be in violation of this ordinance shall be charged an administrative fee of \$50.

507.13.3 Minors. It shall be unlawful for any minor to be in possession of, purchase, or attempt to purchase, tobacco, tobacco products, or tobacco related devices.

507.13.4 Misdemeanor. Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this ordinance.

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

## **508 PUBLIC DANCES**

**508.1 Regulation of Public Dances.** All public dances held in this city shall be conducted in accordance with the provisions of this chapter.

**508.2 Definitions.** The terms stated below shall have the following meanings:

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

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

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

**508.4 Application for Permit.** Any person desiring a permit to hold a public dance in this city shall submit an application for a permit on the form provided by the City Clerk, submitted to the City Clerk at least three weeks before the date of the proposed dance. The application shall set forth the name and address of the applicant, who shall be the person responsible for conducting the public dance, and any business, committee or organization sponsoring the dance, the place where the dance is to be held, the date of the dance and the time of its beginning and end. Proof of all insurance required by this chapter shall be submitted with the application and no permit shall be issued until proof of insurance has been received. A request for any use of a city building or other city property shall be included with the permit application, and no permit shall be issued until the fees for the use of the city building or other city property have also been paid.

**508.5 Insurance.** All insurance policies required for the event, including any insurance required by law for the sale of alcoholic beverages, shall list the city as a named insured and provide a provision to defend, indemnify and hold harmless the city and any of its employees from any claims arising from the event.

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

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

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

**508.9 Licensed Peace Officer Presence.** No public dance shall occur without at least one licensed peace officer or more, if more are required under the criteria established by the Chief of Police, who shall be present at the public dancing place during the duration of the dance and after the dance, until all of the participants have left the public dancing place.

**508.10 Hours.** No public dance shall occur between the hours of 1:00 a.m. and 12:00 noon.

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

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

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

**508.14 Noise.** All public dances shall be subject to the provisions of this code regulating noise.

**508.15 Enforcement.** Any permit holder violating any of the provisions of this chapter relating shall be guilty of a misdemeanor and punished as provided in, and their permit is suspended immediately at the time of any arrest or citation for violating this chapter. Enforcement of this division may, at the Council's discretion, take any of the following forms:

- A Citation/criminal prosecution;
- B Injunctions, declaratory judgments or other civil remedies;
- C Permit revocation;
- D Disbursement of persons gathered.

## **509 SPECIAL EVENTS**

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

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

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

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

nature. Special events do not include noncommercial events held on private property, such as graduation parties or social parties.

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

**509.4 Application for Permit.** Written application for special event permits must be made at least 30 days in advance of the event's proposed date in a form prescribed by the City Council. This application period shall not begin to run until a complete application has been filed with the city. Application forms shall be made available in the office of the City Clerk. A fee, in the amount specified in the Ordinance Establishing Fees and Charges, shall be paid to the city along with the completed application form. In addition to the fee, the applicant shall pay all additional costs incurred by the city as a direct result of the special event. Failure to provide a complete application or to pay the fee, as herein required, is sufficient reason to deny the special event permit.

**509.5 Issuance of Permit, Conditions and Posting.** Special event permits will be issued upon City Council approval. The Council may attach reasonable conditions to the permit as are deemed necessary to protect the health, safety and welfare. Such conditions may pertain to any of the following:

- A Location and hours during which the event may be held;
- B Sanitation/availability of potable water;
- C Security/crowd management;
- D Parking and traffic issues;
- E Emergency and medical services;
- F Clean-up of premises and surrounding area/trash disposal;
- G Insurance;
- H Lighting;
- I Fire service/safety;
- J Temporary construction, barricades/fencing;
- K Removal of advertising/promotional materials;
- L Noise levels;
- M Alcohol consumption;
- N Any other conditions which the Council deems necessary.

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

**509.6 Exceptions to the Permit.** The permit requirement contained in this chapter does not apply to the following:

- A Special events sponsored and managed by the city;
- B Funerals and funeral processions;
- C The grounds of any school, playground, place of worship, hotel conference center, stadium, athletic field, arena, auditorium or similar permanent place of assembly when used for regularly established assembly purposes.

**509.7 Enforcement.** Any permit holder violating any of the provisions of this chapter relating shall be guilty of a misdemeanor and punished as provided in, and their permit is suspended immediately at the time of any arrest or citation for violating this chapter. Enforcement of this division may, at the Council's discretion, take any of the following forms:

- A Citation/criminal prosecution;
- B Injunctions, declaratory judgments or other civil remedies;

- C Permit revocation;
- D Disbursement of persons gathered.

## 510 PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS

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

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

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

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

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

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

### **510.2 Exceptions to Definitions.**

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

**510.2.2 Garage Sales, Estate Sales, and Flea Markets.** In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, as well as those persons participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of peddler, solicitor, and transient merchant, as shall be anyone conducting an auction as a properly licensed

auctioneer, or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

510.2.3 Door to Door Advocacy. Nothing in this chapter shall be interpreted to prohibit or restrict door to door advocacy. Persons engaging in door-to-door advocacy shall not be required to register as solicitors. The term door to door advocacy includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas.

### **510.3 Licensing; Exemptions.**

510.3.1 City License Required. Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. Solicitors need not be licensed, but are still required to register.

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

- A Applicant's full legal name.
- B All other names under which the applicant conducts business or to which applicant officially answers.
- C A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, and the like).
- D Full address of applicant's permanent residence.
- E Telephone number of applicant's permanent residence.
- F Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent.
- G Full address of applicant's regular place of business (if any).
- H Any and all business related telephone numbers of the applicant.
- I The type of business for which the applicant is applying for a license.
- J Whether the applicant is applying for an annual or daily license.
- K The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days).
- L Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.
- M A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses.
- N A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant.
- O Proof of any requested county license.
- P Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.
- Q A general description of the items to be sold or services to be provided.
- R All additional information deemed necessary by the City Council.
- S The applicant's driver's license number or other acceptable form of identification.
- T The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

510.3.3 Fee. All applications for a license under this chapter shall be accompanied by the fee established in the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

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

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

**510.3.6 City License exemptions.**

- A No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated, or raised on any farm. Any person selling or attempting so sell or take orders from produce may not do so on public right of way or public property without the consent of the City Council.
- B No license shall be required for a farmers markets, however, farmers markets are still required to obtain a permit from the County.
- C No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when the activity is for the purpose of exercising that person's State or Federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.
- D No license shall be required for an authorized school or youth program fundraisers.
- E Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.

**510.4 License Ineligibility.** The following shall be grounds for denying a license under this chapter:

- A The failure of the applicant to obtain and show proof of having obtained any required county license.
- B The failure of the applicant to truthfully provide any of the information requested by the city as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application.
- C The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner. Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
- D The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant.
- E The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar

business or consumer rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years.

**510.5 License Suspension and Revocation.**

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

- A Fraud, misrepresentation or incorrect statements on the application form.
- B Fraud, misrepresentation or false statements made during the course of the licensed activity.
- C Conviction of any offense for which granting of a license could have been denied.
- D Violation of any provision of this chapter.

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

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

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

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

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

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

**510.7 Registration.** All solicitors, and any person exempt from the licensing requirements of this chapter under 510.3, shall be required to register with the city. Persons engaging in door-to-door advocacy shall not be required to register. The term door to door advocacy includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Clerk shall issue to the registrant a Certificate of Registration as proof of the registration. Certificates of Registration shall be non-transferable.

**510.8 Prohibited Activities.** No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

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

- B Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way.
- C Conducting business in a way as to create a threat to the health, safety and welfare of any individual or the general public.
- D Conducting business before 7:00 a.m. or after 9:00 p.m.
- E Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person.
- F Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person.
- G Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.

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

**511 SIGNS AND OUTDOOR ADVERTISING.** The purpose and intent of this section is to protect and promote the public health, safety, and welfare by setting reasonable standards and regulations for signs and outdoor advertising devices, symbols, markings, and similar items intended for visual communication. The type of message contained on the sign or outdoor advertising device or who is stating the message shall not be a factor when granting or denying a permit.

**511.1 Size of Signs Permitted.** No sign, billboard, or exterior graphic display shall be permitted in any zoning district except as herein provided.

- a. In any zoning district a sign not exceeding eight (8) square feet in surface size is permitted which announces the name, address, or professional activity of the occupant of the premises on which said sign is located.
- b. A bulletin board not exceeding twenty-four (24) square feet is permitted in connection with any church, school, or similar public-use structure.
- c. A temporary real estate or construction sign, not exceeding eight (8) square feet is permitted on the property being sold, leased, or developed. Such sign shall be removed within ten (10) days after it has fulfilled its function. Temporary political campaign or special promotional signs, not exceeding thirty six (36) square feet in total area per lot, is permitted, and must be removed within ten (10) days after the event or election.

**511.2 Business Signs.** Business signs shall be permitted in connection with a legal business or industry when located on the same premises, and if they meet the requirements hereinafter provided.

- a. Signs shall not contain information or advertising for any product not sold on the premises.
- b. Signs shall not have a combined aggregate surface size greater than five (5) square feet for each foot of width of the principal structure on the premises. If building mounted, these signs shall not project above the roof line.
- c. No sign shall project beyond the property line, except in the C-1 Downtown Zoning District. In C-1 Districts, signs shall be allowed to overhang public sidewalks, provided that there is at least 10 feet of separation between the sidewalk and the lowest

part of the sign. No sign shall be permitted that obstructs the vision of a driver or pedestrian to see any crossroad, crosswalk, road sign, or road signal. No sign shall be distract the driver or pedestrian in an unsafe manner nor cause any confusion with any road signs or signals. No sign shall be allowed on a public sidewalk unless it allows at least six (6) feet of uninterrupted access for pedestrian travel. During snow emergency operations, public sidewalks must be kept clear of signs or other potential obstructions.

- d. Signs and structures shall not be illuminated in any manner which causes unsafe distraction, confusion, or hazard to vehicular or pedestrian traffic. Signs, if illuminated, shall have the lights covered or designed so as to not shine light into the sky. Signs with blinking or flashing lights shall be prohibited.
- e. Any sign in excess of fifty (50) square feet shall require City Council approval before installation is permitted. No signs shall exceed 250 square feet in size.
- f. All signs must be securely fashioned and attached.

**511.3 Existing Non-Conforming Signs.** Any non-conforming sign lawfully existing upon the effective date of this ordinance may be continued at the size and in the manner existing upon such date except as hereinafter provided.

- a. A non-conforming sign may not be changed to another non-conforming sign or structurally altered or expanded except to bring it into compliance with the provisions of this ordinance.
- b. A non-conforming sign may not be re-established after removal or after damage of more than fifty percent (50%) of sign replacement cost.

**511.4 Maintenance.** All signs shall be constructed to be safe and substantial and must be maintained in good repair. Signs deemed to be unsafe, in poor repair, or a hazard to pedestrian or vehicular traffic, or a nuisance as determined by the city council, shall be improved so as to comply with these provisions within thirty (30) days of notification from the council or they will be removed at the owner's expense.

**511.5 Penalties.** Any person, firm, corporation or entity who violates any of the provisions of this ordinance, shall be guilty of a misdemeanor. Each day that a violation is committed or permitted to exist shall constitute a separate offense. The imposition of any fine or sentence shall not exempt the offender from compliance with the requirements of this section, and the city may pursue, by appropriate actions or proceedings, any or all additional other remedies.

## **512 SEXUALLY OREINTED BUSINESSES**

**512.1 Background.** The State Attorney General has prepared a report entitled "Report of the Attorney General's Working Group on Regulation of Sexually Oriented Businesses", dated June 6, 1989, prepared by Hubert H. Humphrey III, Attorney General of the State of Minnesota. Other reports include the Olmsted County Planning Department "Adult Entertainment Report" dated March 2, 1988, "A 40-Acre Study" prepared by the St. Paul Division of Planning in 1987, a City of Ramsey Adult Uses Planning Report, and "The Impact of Pornography: A Decade of Literature", prepared for the Department of Justice Canada, all of which are hereafter collectively referred to as "Reports". The Reports considered evidence from studies conducted in Minneapolis and St. Paul and in other cities throughout the country relating to sexually oriented businesses.

**512.1.1 Impact of Sexually Orientated Businesses.** The Reports, based upon the above referenced studies and the testimony presented to it has concluded "that sexually oriented businesses are associated with high crime rates and depression of property values". In addition, the Attorney General's Working Group "...heard testimony that the character of a neighborhood can dramatically change when there is a

concentration of sexually oriented businesses adjacent to residential property.” The Reports conclude that:

- A Adult uses have an impact on neighborhoods surrounding them which is distinct from the impact caused by other commercial uses;
- B Residential neighborhoods located within close proximity to adult theaters, bookstores and other adult uses experience increased crime rates (sex-related crimes in particular), lowered property values, increased transiency, and decreased stability of ownership;
- C The adverse impacts which adult uses have on surrounding areas diminish as the distance from the adult uses increases;
- D Studies of other cities have shown that among the crimes which tend to increase either within or in the near vicinity of adult uses are rapes, prostitution, child molestation, indecent exposure, and other lewd and lascivious behavior;
- E The City of Phoenix, AZ study confirmed that the sex crime rate was on the average 500 percent higher in areas with sexually oriented businesses;
- F Many members of the public perceive areas within which adult uses are located as less safe than other areas which do not have such uses;
- G Studies of other cities have shown that the values of both commercial and residential properties either are diminished or fail to appreciate at the rate of other comparable properties when located in proximity to adult uses; and
- H The Indianapolis, Indiana study established that professional real estate appraisers believe that an adult bookstore would have a negative effect on the value of both residential and commercial properties within a one to three block area of the store.

512.1.2 City of Plainview Findings. The City Council finds the characteristics of the City of Plainview are similar to those of the cities cited by the Reports when considering the effects of adult uses. The City Council finds, based upon the Reports and the studies cited therein, that adult uses will have secondary effects upon certain pre-existing land uses within the City.

## **512.2 Definitions**

*Adult Establishments.* An adult establishment is any establishment in which an adult use comprises more than 10 percent of the floor area of the establishment in which it is located or which comprises more than 20 percent of the gross receipts of the entire business operation. Any business that derives a substantial or significant portion of its gross revenues from services, items, merchandise, devices or other materials distinguished or characterized by an emphasis on materials depicting, exposing, simulating, describing, or relating to specified sexual activities or specified anatomical areas.

*Adult Use.* An adult use is any of the activities and businesses described below:

*Adult Use – Bookstore* - an establishment or business or portion of a building used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such a building or portion of a building is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, and if a substantial or significant portion of such items are distinguished and characterized by an emphasis on the depiction or description of “specified sexual activities” or “specified anatomical areas”.

*Adult Use – Cabaret* - an establishment which provides dancing or other live entertainment which is distinguished or characterized by an emphasis: (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.

*Adult Use - Dance Club* - an establishment which provides dancing or other live entertainment, if such establishment excludes minors by virtue of age (including any business licensed under Section 600) or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, depiction, or description of specified sexual activities or specified anatomical areas.

*Adult Conversation/Rap Parlor*. A business or establishment that provides the services of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

*Adult Health/Sport Club*. A health/sport club that is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

*Adult Hotel or Motel*. 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.

*Adult Massage Parlor/Health Club*. A massage parlor or health club that provides massage services distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

*Adult Modeling Studio*. 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.

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

*Adult Motion Picture Theater*. A motion picture theater 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.

*Adult Novelty Business*. An establishment or business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly display 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.

*Adult Sauna.* A sauna 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.

*Adult Steam Room/Bathhouse Facility.* A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation or reducing 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.

*Erotic Dancer* - a person who dances or otherwise performs for or in a licensed premises or an adult cabaret and who seeks to arouse or excite the patrons' sexual desires.

*Fondle or Caress* - an affectionate touching, rubbing, or stroking with the intent to sexually arouse or excite.

*Licensed Premises* - any premises, for which a license to sell intoxicating liquor or wine, or non-intoxicating liquor has been issued, which provides dancing or other live entertainment which is distinguished or characterized by an emphasis on the performance, depiction, or description of specified sexual activities or specified anatomical areas.

*Nudity* - the showing of the human male or female genitals, pubic areas, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

*Patron* shall mean a customer of an adult establishment, such as an adult use – bookstore, adult use – dance club or an adult use - cabaret.

*Specified anatomical areas* - anatomical areas consisting of: a) Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) 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.

Specified sexual activities” - activities consisting of the following:

- a) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphis, zooerasty; or
- b) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or
- c) Clothed or unclothed use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
- d) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or breasts of a female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.
- e) Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons; or

- f) Erotic or lewd touching, fondling, or other sexually-oriented contact with an animal by a human being; or
- g) Human excretion, urination, menstruation, vaginal or anal irrigation.
- h) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed.

*Adult Body Painting Studio.* 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.

**512.3 Prohibited Conduct in Adult Use – Dance Clubs.** It is declared to be the purpose and intent of this ordinance to protect the public health, safety, welfare, and morals of the community at establishments featuring total nudity by curtailing the varied criminal offenses which are associated with total nudity and to protect societal order and morality.

512.3.1 Prohibited Conduct in Dance Club. No person, in an adult use - dance club, shall knowingly or intentionally engage in sexual intercourse, engage in specified sexual activities, appear in a state of nudity, or fondle the genitals of himself/herself or another person.

512.3.2 Prohibited Conduct, Other Places. No person, in a place other than an adult use - dance club, with the intent to be seen by persons other than invitees and occupants of that place, shall engage in sexual intercourse, appear in a state of nudity, engage in specified sexual activities, or fondle the genitals of himself/herself or another person.

512.3.3 Violations. Any person violating this section shall be guilty of a misdemeanor. Each day of violation shall constitute a separate offense. The City may enforce any provision of this ordinance by mandamus, injunction, or any other appropriate civil or criminal remedy in any court of competent jurisdiction.

512.3.4 Conflict With Any Law. If any term or provision of this ordinance is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected and the ordinance shall be construed and enforced as if the ordinance did not contain the particular term or provision held to be invalid.

**512.4 Prohibited Conduct in Adult Use – Dance Clubs and Cabarets.** It is declared to be the purpose and intent of this ordinance to protect the public health, safety, and welfare of the community at establishments featuring erotic dancing by curtailing the varied criminal offenses, which are associated with erotic dancing. The Plainview City Council has determined that erotic dancing may lead to an increase in prostitution, sexually-transmitted diseases, drug and alcohol offenses, and other criminal activity. However, in recognition of the protections afforded to the citizens under the First and Fourteenth Amendments, it is not the intent of this section to inhibit the freedom of speech component of erotic dancing. Instead, this section represents a balancing of competing interests: reduced criminal activity through the regulation of erotic dancing versus the protected rights of erotic dancers and their patrons. Thus, this section is designed to alleviate undesirable social problems that accompany erotic dancing without curtailing the constitutionally-protected expression (i.e., dancing).

- A All dancing at an adult use – dance club or an adult use - cabaret shall occur on a platform intended for that purpose which is raised at least two feet from the level of the floor.
- B No dancing at an adult use – dance club or an adult use - cabaret shall occur closer than six feet to any patron.
- C No erotic dancer shall fondle or caress any patron and no patron shall fondle or caress any erotic dancer.
- D No patron shall directly pay or give any gratuity to any erotic dancer and no erotic dancer shall solicit any pay or gratuity from any patron.

512.4.1 Violations. Any person violating this section shall be guilty of a misdemeanor. Each day of violation shall constitute a separate offense. The City may enforce any provision of this ordinance by mandamus, injunction, or any other appropriate civil or criminal remedy in any court of competent jurisdiction.

512.4.2 Conflict With Any Law. If any term or provision of this ordinance is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected and the ordinance shall be construed and enforced as if the ordinance did not contain the particular term or provision held to be invalid.

**512.5 Prohibited Conduct in Adult Use - Bookstores.** It is declared to be the purpose and intent of this ordinance to protect the public health, safety, and welfare of the community at adult use - bookstores by curtailing the varied criminal offenses, which are associated with sexual activity in and around these establishments. The Plainview City Council has determined that adult use - bookstores may lead to an increase in prostitution, sexually-transmitted diseases, indecent exposure and other criminal activity. However, in recognition of the protections afforded to the citizens under the First and Fourteenth Amendments, it is not the intent of this section to inhibit the freedom of speech component of adult media. Instead, this section represents a balancing of competing interests: reduced criminal activity through the regulation of conduct by patrons within adult use - bookstores versus the protected rights of owners of these establishments and their patrons. Thus, this section is designed to alleviate undesirable social problems that accompany sexual activity within adult use - bookstores without curtailing constitutionally-protected expression within these establishments.

512.5.1 Prohibited Conduct in Bookstore. No person, in an adult use - bookstore, shall knowingly or intentionally engage in sexual intercourse, engage in specified sexual activities, appear in a state of nudity, or fondle the genitals of himself/herself or another person.

512.5.2 Prohibited Conduct, Other Places. No person, in a place other than an adult use - bookstore, with the intent to be seen by persons other than invitees and occupants of that place, shall engage in sexual intercourse, appear in a state of nudity, engage in specified sexual activities, or fondle the genitals of himself/herself or another person.

512.5.3 Violations. Any person violating this section shall be guilty of a misdemeanor. Each day of violation shall constitute a separate offense. The City may enforce any provision of this ordinance by mandamus, injunction, or any other appropriate civil or criminal remedy in any court of competent jurisdiction.

512.5.4 Conflict With Any Law. If any term or provision of this ordinance is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected and the ordinance shall be construed and enforced as if the ordinance did not contain the particular term or provision held to be invalid.

**512.6 Additional Requirements.** In addition to any other requirements which may be specified by the City Council, adult establishments shall be subject to the following conditions:

512.6.1 Location. Adult establishments are permitted in the City, but must be located at least 700 feet from any residence, daycare, park, church, or another adult establishment. For purposes of this ordinance, this 700 foot distance shall be a measurement as the crow flies from the property line or lot line of any property in the City being used as a residence, park, daycare, church or adult establishment to the nearest point of the proposed adult establishment structure.

512.6.2 Display. No adult establishment shall depict any product or service on any display intended to be viewed by the public outside the establishment which constitutes "specified sexual activities" as defined in Section 512.

512.6.3 Hours of operation. No adult establishment shall be open to the public from the hours of 1200 p.m. to 10:00 a.m. weekdays and Saturdays, nor at any time on Sundays or national holidays.

512.6.4 Operations.

- a. 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.
- b. 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 the public right-of-way.
- c. Layout: The layout of all service and display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the establishment can observe all patrons while they have access to any service or 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.
- d. Illumination: Illumination of the premise's exterior shall be adequate to observe the location and activities of all persons on the exterior premises.
- e. Signs: Signs for adult establishments shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the operations. Signs located on the exterior of the establishment (not necessarily on the premises) shall not be located within 700 feet from any residence, daycare, park, church, or another adult establishment.
- f. Access by Minors: No minor shall be permitted on the premises of any adult establishment. 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 establishment's premises.
- g. Additional Conditions for Adult Cabarets: The following additional conditions apply to adult cabarets:
  - i. No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer of performer.
  - ii. No patron shall pay or give any gratuity to any dancer or performer.
  - iii. No dancer or performer shall solicit or receive any pay or gratuity from any patron.
- h. The provisions of this ordinance do not prohibit adult establishments from having a reasonable opportunity to locate in the city. This ordinance is not for the purpose of, nor is it intended to, impose 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 ordinance 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.

## **513 LIQUOR LICENSES**

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

**513.2 City May Be More Restrictive Than State Law.** The Council is authorized by the provisions of M. S. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this ordinance, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M. S. Chapter 340A, as it may be amended from time to time.

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

*LIQUOR*, as used in this ordinance, without modification by the words "intoxicating" or "3.2 percent malt", includes both intoxicating liquor and 3.2 percent malt liquor.

*BAR/RESTAURANT* means a facility for which a primary purpose is the sale of food, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. In order to be a bar/restaurant as defined by this term in this ordinance, an establishment shall also have a license from the state as required by M. S. § 157.16, as it may be amended from time to time, and it shall have facilities for seating at least 25 guests at one time.

**513.4 Consumption in Public Places.** No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this ordinance, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted. The City Council may allow temporary exceptions to this section for special events, such as the annual Corn on the Cob Celebration, if it is deemed by the City Council to be in the best interests of the City and will not unduly impact the safety and welfare of the general public.

**513.5 Number of Licenses Which May Be Issued.** With respect to on sale intoxicating liquor licenses as defined in Section 513, the City shall have the right to issue one (1) such license for each 1,500 residents in the City's population. Therefore, once the City reaches 1,500 residents, it shall have the right to issue 1 license; once it reaches 3,000 residents, it shall have the right to issue 2 licenses and so on.

With respect to the following licenses: 3.2 percent malt liquor on-sale licenses; 3.2 percent malt liquor off-sale license; temporary 3.2 percent malt liquor licenses; Sunday on-sale intoxicating liquor licenses; temporary on-sale intoxicating liquor licenses; and on-sale wine licenses as defined in Section 513, the City shall have the right to issue one (1) such license for each 1,000 residents in the City's population. Therefore, once the City reaches 1,000 residents, it shall have the right to issue 1 license; once it reaches 2,000 residents, it shall have the right to issue 2 licenses and so on.

However, issuance of these licenses is discretionary and the City shall not be obligated to issue all of the licenses authorized under this section.

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

**513.7 Kinds of Liquor Licenses.** The City of Plainview became a "split liquor" city following an affirmative vote in a referendum held on November 2, 2004. The City is authorized to issue the following licenses and permits, up to the number specified in Section 513.5 of this ordinance.

A 3.2 percent malt liquor on-sale licenses, which may be issued only to bar/restaurants, hotels, clubs, bowling centers and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks. Licenses shall run from April 6<sup>th</sup> to April 6<sup>th</sup>.

B 3.2 percent malt liquor off-sale license. Licenses shall run from April 6<sup>th</sup> to April 6<sup>th</sup>.

- C Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious or nonprofit organization.
- D On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by this ordinance: bar/restaurants, bowling centers, clubs or congressionally chartered veterans organizations. As to bar/restaurants, bowling centers, clubs or congressionally chartered veterans organizations, any of these organizations issued an on-sale intoxicating liquor shall derive at least 35 % of their gross sales revenue from the sale of food. Club licenses may be issued only with the approval of the Commissioner of Public Safety (club licenses shall run from July 1<sup>st</sup> to July 1<sup>st</sup> as per State statute). The fee for club licenses established by the Council under Section 513.3 of this ordinance shall not exceed the amounts provided for in M. S. § 340A.408, subd. 2(b), as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of M. S. § 340A.404, subd. 4b, as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of 340A.404, subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.
- E Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by M. S. § 340A.504, subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to bar/restaurants, as defined in Section 513.3 of this ordinance, bowling centers, clubs or congressionally chartered veterans organizations, which hold an on-sale intoxicating liquor license, which serve liquor only in conjunction with the service of food, and which derive 35% of its annual gross sales revenues from the sale of food. The maximum fee for this license which shall be established by the Council, shall not exceed \$200, or the maximum amount provided by M. S. § 340A.504, subd 3(c) as it may be amended from time to time.
- F Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.
- G On-sale wine licenses, with the approval of the Commissioner of Public Safety to: restaurants that meet the criteria of M. S. 340A.404, subd 5, as it may be amended from time to time, which meet the definition of bar/restaurant in Section 513.3 of this ordinance, and which derive at least 60% of its annual gross sales revenue from the sale of food; and to licensed bed and breakfast facilities which meet the criteria in M. S. § 340A.401, subd 1 as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of this ordinance shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on sale 3.2 percent malt liquor license is authorized to sell malt liquor

with a content over 3.2 percent (strong beer) without an additional license. Licenses shall run from July 1<sup>st</sup> to July 1st.

- H One day consumption and display permits with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.
- I Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of this ordinance shall not exceed \$300, or the maximum amount permitted by M. S. §340A.14, subd 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.

### **513.8 License Fees; Pro Rata**

513.8.1 License or Fee Limit. No license or other fee established by the city shall exceed any limit established by M. S. § 340A, as it may be amended from time to time, for a liquor license.

513.8.2 Costs Associated With License. The Council may establish from time to time by ordinance or resolution the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this ordinance. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

513.8.3 Prorated Fees. The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis. A refund of a pro rata share of an annual license fee may occur only if authorized by M. S. § 340A.408, subd. 5.

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

**513.9 Council Discretion to Grant or Deny a License.** The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this ordinance.

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

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

file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

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

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

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

**513.14 Investigation.** On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of to be set by resolution of the City Council which shall be in addition to any license fee. If the cost of the preliminary investigation is less than the investigation fee, the unused balance shall be returned to the applicant. At the earliest practicable time after application is made for renewal of an on-sale license or on-sale wine license, and in any event prior to the time that the application is approved by the Council, the applicant shall file with the City Clerk copies of State of Minnesota sales tax returns that show the total gross sales revenues and the total gross food sales revenues of the restaurant for the 12 month period immediately preceding the date of filing of the application. A foreign corporation shall file a current certificate of authority. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

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

**513.15 Hearing and Issuance.** The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sound discretion grant or deny the application. No

license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

**513.16 Restrictions on Issuance.** Each license shall be issued only to the applicant for the premises described in the application. Not more than one license shall be directly or indirectly issued within the city to any one person or business, other than the City of Plainview. No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges or other financial claims of the city are delinquent and unpaid. No license shall be issued for any place or any business ineligible for a license under state law. No license shall be issued to any person who is not a resident of the state; if the applicant is a corporation, all of the shareholders shall be residents of the state (this provision shall not apply to any existing license existing on the effective date of this chapter or to the renewal of an existing license). No license shall be granted within 500 feet of any school or church; the distance is to be measured from the closest side of the school or church to the closest side of the structure on the premises within which liquor is to be sold.

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

- A Within 90 days after employment, every person selling or serving liquor in an establishment which has an "on-sale" license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.
- B Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this ordinance and the law equally with the employee.
- C Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.
- D No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.
- E Compliance with financial responsibility requirements of state law and of this ordinance is a continuing condition of any license.

**513.18 Hours and Days of Sale.** The hours of operation and days of sale shall be those set by M. S. § 340A.504, as it may be amended from time to time, with the exception that all establishments that serve intoxicating liquor within the City shall not serve liquor Monday through Saturday between the hours of 1:00 a.m. to 8:00 a.m. or at any time on Sundays, except for temporary licensees.

- A No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
- B No on-sale licensee shall permit any glass, bottle or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool or other

place where customers are served, more than 30 minutes after the time when a sale can legally occur.

- C No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.
- D Any violation of any condition of this section may be grounds for revocation or suspension of the license.

**513.19 Minors on Premises.** No person under the age of 18 years employed in any rooms where intoxicating liquors, wine or 3.2 percent malt liquor are sold at retail on sale shall handle any such products containing alcohol, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person or dishwashing services or wait staff in places defined as a bar/restaurant, restaurant, hotel, motel or other multipurpose building serving food in rooms in which intoxicating liquors, wine or 3.2 percent malt liquor are sold at retail on sale.

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

**513.20 Restrictions on Purchases and Consumption.** No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M. S. § 3401.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.

**513.21 Suspension and Revocation.**

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

513.21.2 Minimum Periods of Suspension or Revocation. The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or M. S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time. Revocations shall occur within 60 days following a violation for which the revocation is imposed. The council shall select the day or days during which the license will be suspended.

- A For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of § 112.04, the license shall be revoked.
- B The license shall be suspended by the Council after a finding under (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows:

- C For the first violation within any three year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.
- D For a second violation within any three year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
- E For the third violation within any three year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
- F For a fourth violation within any three year period, the license shall be revoked.

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

513.21.4 Cumulative Penalties. The provisions of Section 513 pertaining to administrative penalties may be imposed in addition to or in lieu of any suspension or revocation under this ordinance.

**513.22 Existing Municipal Stores Continued.** The existing municipal liquor store for the sale of intoxicating liquor which the city has in existence on the effective date of this ordinance is continued. The conditions of operation of the municipal liquor store shall be governed by Sections 513.23-513.25 as set forth below, but except for the requirements set forth in those sections and any other requirements mandated by state law, the municipal liquor store shall be exempt from all other requirements set forth in these ordinances.

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

**513.24 Municipal Liquor Store Operation.**

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

513.24.2 Other Employees. The Council may also appoint additional employees as may be required and shall fix their compensation. All employees, including the Manager, shall hold their positions at the pleasure of the Council. No person under the age of 18 shall be employed in the store. The Council may require the employees to furnish surety bonds conditioned for the faithful discharge of their

duties in a sum as specified by the Council. The premium on the bond may be paid by the city or the employees, as the Council determines.

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

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

513.24.5 Hours of Operation. The hours during which the sale of intoxicating liquor may be sold shall be as provided in Section .513.18 No person, other than the Manager or a store employee, may remain in the municipal liquor store longer than one half hour after the time when the sale of intoxicating liquor must cease.

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

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

513.26.1 Civil Penalties. The Council shall impose a civil penalty of up to \$2,000 for each violation of M. S. Chapter 340A and of this ordinance as provided by the minimum schedule of presumptive civil penalties. These civil penalties shall be in addition to any criminal penalties imposed under (A) or any suspension or revocation imposed under Section 513. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A hearing under the Administrative Procedures Act, M. S. § 14.57 to 14.70, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties in addition to any suspensions which must be imposed unless the license is revoked:

- A For the first violation within any three year period, \$500.
- B For the second violation within any three year period, \$1,000.
- C For the third and subsequent violations within any three year period, \$2,000 for each violation.

513.26.2 Terms. The term “violation” as used in this section and in Section 513.21 includes any and all violations of the provisions of this chapter, or of M. S. Chapter 340A, as it may be amended from time to time or any rules promulgated under that Chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three year period.