

**CHAPTER 6**  
**LICENSES**

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**SECTION 1**  
**RESERVED**



**SECTION 2**  
**RESERVED**



## SECTION 3

### INTOXICATING AND 3.2 PERCENT MALT LIQUOR

Section:

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**6-3-1: ADOPTION OF STATE LAW BY REFERENCE:** The provisions of M.S. Ch. § 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Section as if set out in full. It is the intention of the City Council that all future amendments to M.S. Ch. § 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Section is adopted. (Ordinance #26, adopted August 11, 2009)

**6-3-2: CITY MAY BE MORE RESTRICTIVE THAN STATE LAW:** The City 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 Section, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in

M.S. Ch. § 340A, as it may be amended from time to time. (Ordinance #26, adopted August 11, 2009)

**6-3-3: 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 Section:

**Liquor:** As used in this Section, without modification by the words “intoxicating” or a “3.2 percent malt” includes both intoxicating liquor and 3.2 percent malt liquor.

**Restaurant:** An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by M.S. § 157.16, as it may be amended from time to time, and meet the definition of either a “small establishment,” “medium establishment” or “large establishment” as defined in M.S. § 157.16, subd. 3d, as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this Section unless it meets the definitions of a “small establishment”, “medium establishment” or “large establishment”. (Ordinance #26, adopted August 11, 2009)

**6-3-4: PROHIBITED ACTS ON THE PREMISES OF LICENSED ESTABLISHMENTS:**

- A. The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the city that nudity is prohibited as provided in this section on the premises of any establishment licensed under this section. This is to protect and assist the owners, operators, and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The City Council especially intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The City Council also finds that the prohibition of nudity on the premises of any establishment licensed under this Section, as set forth in this section, reflects the prevailing community standards of the city.
- B. It is unlawful for any licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material. It is unlawful for any person to be on the licensed premises when the person does not have his or

her buttocks, anus, breasts, and genitals covered with a non-transparent material.

- C. A violation of this Section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or any other license issued under this Section or the imposition of a civil penalty under the provisions of Section 24(B). (Ordinance #26, adopted August 11, 2009)

**6-3-5: CONSUMPTION IN PUBLIC PLACES:** No person shall consume intoxicating liquor or 3.2 percent malt liquor 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 Section, in a municipal liquor dispensary if one exists in the city, or where the consumption and display of liquor is lawfully permitted. (Ordinance #26, adopted August 11, 2009)

**6-3-6: NUMBER OF LICENSES WHICH MAY BE ISSUED:** State law establishes the number of liquor licenses that a City may issue. The City Council in its sound discretion may provide by ordinance that a larger number of licenses may be issued up to the number of licenses authorized by M.S. Ch. § 340A, as it may be amended from time to time. The City Council is not required to issue the full number of licenses that it has available. (Ordinance #26, adopted August 11, 2009)

**6-3-7: 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. (Ordinance #26, adopted August 11, 2009)

**6-3-8: KINDS OF LIQUOR LICENSES:** The City Council shall have the authority to issue the following types of liquor licenses:

- A. 3.2 Percent Malt Liquor On-Sale Licenses which may be issued only to golf courses, restaurants, hotels, clubs, bowling centers, and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.
- B. 3.2 Percent Malt Liquor Off-Sale Licenses.
- C. Temporary 3.2 Percent Malt Liquor Licenses which may be issued only to a club, charitable, religious, or nonprofit organization.

- D. Off-Sale Intoxicating Liquor Licenses which may be issued only to exclusive liquor stores. The fee for an off-sale intoxicating liquor license established by the City Council under Section 6-3-9 shall not exceed the amount provided for by M.S. § 340A.408, subd. 3, as it may be amended from time to time.
- E. On-Sale Intoxicating Liquor Licenses, which may be issued to the following establishments as defined by M.S. § 340A.101, as it may be amended from time to time, and this Section: hotels, restaurants, bowling centers, theaters, clubs or congressionally chartered veterans organizations, theaters and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the City Council under Section 6-3-9 of this Section shall not exceed the amounts provided for in M.S. § 340A.408, subd. 2b, as it may be amended from time to time. The City 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 City Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the City, under the provisions of M.S. § 340A.404, subd. 4a, as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.
- F. Combination On-Sale/Off-Sale Licenses may be issued so long as the City's population remains under five thousand (5,000) residents. The City Council shall not issue any further licenses under this provision once the City's population surpasses five thousand (5,000) residents.
- G. 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 (4) consecutive days, and the City shall issue no more than twelve (12) days worth of temporary licenses to any one (1) organization in one (1) calendar year.
- H. On-Sale Wine Licenses, with the approval of the Commissioner of Public Safety to: theaters, restaurants that have facilities for seating at least twenty five (25) guests at one time and meet the criteria of M.S. §340A.404, subd. 5, as it may be amended from time to time, and which meet the definition of restaurant in section 3; 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 and to theaters that meet the criteria of M.S. § 340A.404(b), as it may be amended from time to time The fee for an on-sale wine license established by the City Council under the

provisions of Section 6-3-9 of this Section, 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.

- I. One-Day Consumption and Display Permits with the approval of the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the City Council on a person who has been issued a consumption and display permit under the provisions of Section 6-3-9 of this Section shall not exceed three hundred (\$300) dollars, 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.
- J. Culinary Class Limited On-Sale Licenses, which may be issued to a business establishment not otherwise eligible for an on-sale intoxicating liquor license that, as part of its business, conducts culinary or cooking classes for which payment is made by each participant or advance reservation required. The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six (6) ounces of wine or twelve (12) ounces of intoxicating malt liquor, during and as part of the class, for consumption on the licensed premises only.
- K. Temporary Off-Sale Wine Licenses, with the approval of the Commission of Public Safety, may be issued for the off-sale of wine at an auction. A license issued under this subdivision authorizes the sale of only vintage wine of a brand and vintage that is not commonly being offered for sale by any wholesaler in Minnesota. The license may authorize the off-sale of wine for not more than three (3) consecutive days provided not more than six hundred (600) cases of wine are sold at any auction. The licenses are subject to the terms, including license fee, imposed by Section 6-3-9 of this Section.
- L. Brew Pub On-Sale Intoxicating Liquor or On-Sale 3.2 Percent Malt Liquor Licenses, with the approval of the Commissioner of Public Safety, may be issued to brewers who operate a restaurant in their place of manufacture and who meet the criteria established at M.S. §340A.301 subd. 6(d) and 7(b), as it may be amended from time to time. Sales under this license at on-sale may not exceed three thousand five hundred (3,500) barrels per year. If a brew pub licensed under this section possesses a license for off-sale under Section 8 (M) below, the brew pub's total combined retail sales at on-sale or off-sale may not exceed three thousand five hundred (3,500) barrels per year, provided that off-sales may not total more than five hundred (500) barrels.
- M. Brewer Off-Sale Intoxicating Liquor Licenses, with the approval of the Commissioner of Public Safety, may be issued to a brewer that is a licensee under Section 8(L) above or that produces fewer than three thousand five

hundred (3,500) barrels of malt liquor in a year and otherwise meets the criteria established at M.S. § 340A.301 subd. 6(d) and 7(b), as it may be amended from time to time. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the City. Malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. All malt liquor sold under this license shall be packaged in the manner required by M.S. § 340A.301 subd. 7, as it may be amended from time to time. Sales under this license may not exceed five hundred (500) barrels per year. If a brewer licensed under this section possesses a license under Section 8(L) above, the brewer's total retail sales at on-sale or off-sale may not exceed three thousand five hundred (3,500) barrels per year, provided that off-sales may not total more than five hundred (500) barrels.

- N. Brewer Temporary On-Sale Intoxicating Liquor Licenses may be issued, with the approval of the Commissioner of Public Safety, to brewers who manufacture fewer than three thousand five hundred (3,500) barrels of malt liquor in a year for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer. (Ordinance #26, adopted August 11, 2009)

**6-3-9: LICENSE FEES; PRO RATA:**

- A. No license fee established by the city shall exceed any limit established by M.S. Ch. 340A, as it may be amended from time to time, for a liquor license.
- B. The City Council may establish from time to time in Section 1-2-2 of the City Code 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 Section. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least thirty (30) days before the hearing.
- C. The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.
- D. All license fees shall be paid in full at the time the application is filed with the City. If the application is denied, the license fee shall be returned to the applicant.
- E. A refund of a pro rata share of an annual license fee may occur only if authorized by M.S. § 340A.408, subd. 5, as it may be amended from time to time. (Ordinance #26, adopted August 11, 2009)

**6-3-10: COUNCIL DISCRETION TO GRANT OR DENY A LICENSE:** The City 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 Section. (Ordinance #26, adopted August 11, 2009)

**6-3-11: APPLICATION FOR LICENSE:**

- A. Form. Every application for a license issued under this Section 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 City 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 City Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this Section. The form shall be verified and filed with the City. No person shall make a false statement in an application.
  
- B. Financial responsibility. Prior to the issuance of any license under this Section, 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 Section without having on file with the City at all times effective proof of financial responsibility is a cause for revocation of the license. (Ordinance #26, adopted August 11, 2009)

**6-3-12: 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. (Ordinance #26, adopted August 11, 2009)

**6-3-13: APPLICATIONS FOR RENEWAL:** At least 90 days before a license issued under this Section 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 City Council. No licensee has a right to have the license renewed. (Ordinance #26, adopted August 11, 2009)

**6-3-14: TRANSFER OF LICENSE:** No license issued under this Section may be transferred without the approval of the City 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 City 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 Section applying to applications for a license shall apply. (Ordinance #26, adopted August 11, 2009)

**6-3-15: INVESTIGATION:**

- A. Preliminary background and financial investigation. On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the City 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 five hundred (\$500) dollars which shall be in addition to any license fee. If the cost of the preliminary investigation is less than five hundred (\$500) dollars, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.
  
- B. Comprehensive background and financial investigation. If the results of a preliminary investigation warrant, in the sound discretion of the City Council, a comprehensive background and financial investigation, the City 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 five hundred (\$500) dollars, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and ten thousand (\$10,000) dollars, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license. (Ordinance #26, adopted August 11, 2009)

**6-3-16: HEARING AND ISSUANCE:** The City Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. A hearing shall be held in front of the City Council regarding all new on-sale and off-sale liquor licenses. A hearing may be held at the discretion of the City Council regarding all license renewals, and any other license listed in Section 6-3-8 of this Section. After any investigation and/or hearing, the City

Council shall in its sound discretion grant or deny the license application or renewal. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety. (Ordinance #26, adopted August 11, 2009)

**6-3-17: RESTRICTIONS ON ISSUANCE:**

- A. For purposes of this subdivision, "person" means one of the following: i) a holder of an off-sale intoxicating liquor license; ii) an officer, director, agent, or employee of a holder of an off-sale intoxicating liquor license; or iii) an affiliate of a holder of an off-sale intoxicating liquor license, regardless of whether the affiliation is corporate or by management, direction, or control.
- B. Each license shall be issued only to the applicant for the premises described in the application.
- C. Not more than one (1) off-sale intoxicating liquor license shall be issued to any one (1) person or for any one (1) place.
- D. No licensee shall use the same business name for more than one (1) of its off-sale intoxicating liquor licenses.
- E. 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.
- F. No license shall be issued for any place or any business ineligible for a license under state law.
- G. No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing on the effective date of this Section or to the renewal of an existing license.
- H. No license shall be granted within five hundred (500) feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold. (Ordinance #26, adopted August 11, 2009)

**6-3-18: 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 ninety (90) days after employment, every person selling or serving liquor in an establishment which has an on-sale or off-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 City 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 Section 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 City 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 Section is a continuing condition of any license. (Ordinance #26, adopted August 11, 2009)

**6-3-19: HOURS AND DAYS OF SALE:**

- A. The hours of operation and days of sale shall be those set by M.S. § 340A.504, as it may be amended from time to time, except that the City Council may, by resolution or ordinance, provide for more restrictive hours than state law allows.
- B. No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than thirty (30) minutes after the time when a sale can legally occur.
- C. No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than thirty (30) minutes after the time when a sale can legally occur.
- D. No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than thirty (30) minutes after the time when a sale can legally occur.
- E. Any violation of any condition of this section may be grounds for revocation or suspension of the license. (Ordinance #26, adopted August 11, 2009)

**6-3-20: MINORS ON PREMISES:**

- A. No person under the age of eighteen (18) years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of eighteen (18) years may be employed as musicians or to perform the duties of a bus person, host or dishwashing services in places defined as a restaurant, hotel, motel or other multi-purpose building serving food in rooms in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale.
- B. No person under the age of twenty-one (21) years may enter a licensed on-sale 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. No person under the age of twenty-one (21) years may enter a licensed off-sale establishment except to work, or when accompanied by a parent or legal guardian. (Ordinance #26, adopted August 11, 2009)

**6-3-21: RESTRICTIONS ON PURCHASE AND CONSUMPTION:** No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. § 340A.414, as it may be amended from time to time, which has been approved by the City Council, and no person shall consume liquor in any such place. (Ordinance #26, adopted August 11, 2009)

**6-3-22: SUSPENSION AND REVOCATION:**

- A. The City Council shall either suspend for a period not to exceed sixty (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 Section 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 City Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.
- B. The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this Section or M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:
  - 1. For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of

intoxicating liquor where the only license is for 3.2 percent malt liquor, or violation of Section 6-3-4 of this Section, the license shall be revoked.

2. The license shall be suspended by the City Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this Section for at least the minimum periods as follows:
    - a. For the first violation within any three (3) year period, at least one (1) day suspension in addition to any criminal or civil penalties which may be imposed.
    - b. For a second violation within any three (3) year period, at least three (3) consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
    - c. For the third violation within any three (3) year period, at least seven (7) consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
    - d. For a fourth violation within any three (3) year period, the license shall be revoked.
  3. The Council shall select the day or days during which the license will be suspended.
- C. Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this Section or state law without further action of the City 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 City Council shall be granted within ten (10) days. Any suspension under this division (B) shall continue until the City Council determines that the financial responsibility requirements of state law and this Section have again been met.
- D. The provisions of Section 6-3-23 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this Section. (Ordinance #26, adopted August 11, 2009)

**6-3-23: PENALTIES:**

- A. Any person violating the provisions of this Section or M.S. Ch. 340A as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time is guilty of a misdemeanor and upon conviction shall be punished as provided by law.
  
- B. The City Council shall impose a civil penalty of up to \$2,000 for each violation of M.S. Ch. 340A, as it may be amended from time to time, and of this Section. Conviction of a violation in a court of law is not required in order for the City 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 City Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the license is revoked:
  - 1. For the first violation within any three (3) year period: \$500
  - 2. For the second violation within any three (3) year period: \$1,000
  - 3. For the third and subsequent violations within any three (3) year period: \$2,000.
  
- C. The term “violation” as used in Section 6-3-22 includes any and all violations of the provisions in this Section, or of M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period. Revocation shall occur within sixty (60) days following a violation for which revocation is imposed. (Ordinance #26, adopted August 11, 2009)



## SECTION 4

### TOBACCO PRODUCTS

Section:

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6-4-12	Other Remedies
6-4-13	Severability and Saving Clause

**6-4-1: PURPOSE AND INTENT:** 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; because such sales, possession and use are a violations of both State and Federal laws; because numerous studies have shown that most smokers begin smoking before they have reached the age of eighteen (18) years and that persons who reach the age of eighteen (18) years without having started smoking are significantly less likely to do so thereafter; and because smoking has been shown to cause several serious health problems which place a financial burden on all levels of government and result in excessive medical care costs; this Section is 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, protecting minors against the serious effects associated with the 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 set forth in Minnesota Statute §144.39. (Ordinance #30, adopted June 9, 2009)

**6-4-2: DEFINITIONS:** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

**Compliance checks:** means 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 Section. Compliance checks shall involve the use of minors as authorized by this Section. 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.

**Loosies:** means the common term used to refer to a single individually packaged cigarette.

**Minor:** means any natural person who has not yet reached the age of eighteen (18) years.

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

**Retail establishment:** means 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.

**Sale:** means any transfer of goods for money, trade, barter, or other consideration.

**Self-Service Merchandising:** means 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.

**Tobacco or Tobacco products:** means any substance or item containing tobacco leaf, including but not limited to cigarettes; cigars; pipe tobacco; snuff; fine cut and 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:** means any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

**Vending machine:** means 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. (Ordinance #30, adopted June 9, 2009)

**6-4-3: LICENSE:** No person shall keep for retail sale, sell at retail or otherwise dispose of any tobacco product at any place in the City without first obtaining a license from the City. Retail establishments holding a license issued by Anoka County which is valid and in force as of the effective date of this Section may continue to operate under such license until January 1, 2010, or until said license is no longer in effect, whichever is sooner.

- A. Application. In order to obtain a license to sell tobacco or tobacco products an applicant must obtain and complete an application. Applications for a license to sell tobacco or tobacco products shall be made on a form provided by the City and shall be made to the City Clerk. The application shall specifically describe the compact and contiguous premises within which tobacco or tobacco products may be sold. The description may not include any parking lot or sidewalk. Upon receipt of the application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled meeting.
- B. Action. The City Council in its sound discretion may either grant or deny the application for a license to sell tobacco or tobacco products or for the transfer or renewal of such license. No applicant has a right to a license under this Section. The City Council may also delay action on the application for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary.
- C. Term. All retail tobacco licenses shall be valid until the December 31 of the year following their effective date.
- D. Revocation or Suspension. Any license issued under this Section may be revoked or suspended as provided in Section 6-3-9 of this Section.
- E. Transfers. All licenses issued under this Section shall be valid only on the licensed premises for which it was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.
- F. Renewal. Renewals of licenses shall be handled in the same manner as an original application. Application for a renewal license shall be made in the month of November of each year.

- G. Display. Every license shall be conspicuously posted on the licensed premises and shall be exhibited to any person upon request.
- H. Movable Place of Business. No license shall be issued to a moveable place of business.
- I. Education Requirements:
  - 1. Prior to the issuance, and/or reinstatement after revocation or suspension of a license under this Section, the licensee shall participate in a class or seminar designed to educate the licensee regarding State law pertaining to the sale of alcohol to minors.
  - 2. The licensee shall be required to educate each new employee who will be selling tobacco or tobacco products with regard to this Section and State law pertaining to the sale of tobacco products to minors. The licensee shall be required to keep on file evidence of completion of all employees' educational requirements. The licensee shall make said evidence available for review upon request by a licensed peace officer. (Ordinance #30, adopted June 9, 2009)

**6-4-4: FEES:** No license shall be issued under this Section until the appropriate license fee is paid in full.

- A. Fees set by ordinance. The license fee for a retail tobacco license shall be as set forth in Section 1-2-2 of the City Code, as periodically reviewed by the City Council. The fee shall take into account the actual cost of issuance of the license and the expense of the enforcement of this Section. The fee for licenses purchased for less than a one year period shall be prorated by a percentage arrived at by taking the number of months during any part of which the license is effective divided by 12.
- B. Fee reduction for use of age verification technology. The license fee for a retail tobacco license shall be reduced by an amount of one hundred (\$100.00) dollars if an applicant utilizes age verification technology that meets performance requirements as determined by the City Council. (Ordinance #30, adopted June 9, 2009)

**6-3-5: BASIS FOR DENIAL OF LICENSE:** The following shall be grounds for denying the issuance or renewal of a license under this Section; 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. 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:

- A. The applicant is under the age of eighteen (18) years.
- B. The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.
- C. The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked within the twelve months immediately preceding the date of application.
- D. The applicant fails to provide all information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license. (Ordinance #30, adopted June 9, 2009)

**6-4-6: PROHIBITED SALES:** It shall be a violation of this Section for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device:

- A. To any person under eighteen (18) years of age.
- B. By means of a vending machine.
- C. By means of self-service methods as defined by this Section
- D. By means of loosies as defined by this Section
- E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- F. By any other means, to any other person, or in any other manner or form prohibited by Federal, State or other local law, ordinance, or regulation. (Ordinance #30, adopted June 9, 2009)

**6-4-7: RESPONSIBILITY:** All licensees under this Section 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 employees to other penalties under this Section, State or Federal law, or other applicable law or regulation. (Ordinance #30, adopted June 9, 2009)

**6-4-8: COMPLIANCE CHECKS AND INSPECTIONS:** All licensed premises shall be open to inspection by the City police or other authorized City officials 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 premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when 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. (Ordinance #30, adopted June 9, 2009)

**6-4-9: VIOLATION:**

- A. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a written notice that sets forth the alleged violation and informs the alleged violator of his or her right to have a hearing on the accusation.
- B. Hearing. If a person accused of violating this Section so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. The hearing shall be conducted pursuant to the Administrative Procedures Act, M.S. §§ 14.57 to 14.70, as it may be amended from time to time.
- C. Hearing Officer. The City Council may act as the hearing body in these proceedings, or it may contract with the Office of Hearing Examiners for a hearing officer.
- D. Decision. If the hearing officer determines that a violation of this Section did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 6-4-10 of this Section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the accused violator.

- E. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense. (Ordinance #30, adopted June 9, 2009)

**6-4-10: PENALTIES:** No penalty shall be imposed under this Section unless the alleged violator has received notice of the alleged violation and an opportunity to be heard under Section 6-4-9. After said hearing or waiver of said hearing a licensee found to have committed a violation of Section 6-4-6 is subject to an administrative penalty. The City Council may impose the following administrative penalties:

- A. First Violation: A civil fine not to exceed five hundred (\$500) dollars and/or a license suspension of up to ten (10) days.
- B. Second Violation: A civil fine not to exceed seven hundred fifty (\$750) dollars and/or a license suspension of up to thirty (30) days.
- C. Third Violation: A civil fine not to exceed one thousand (\$1,000) dollars and/or a license suspension of up to one (1) year.
- D. Fourth Violation: A civil fine not to exceed two thousand (\$2,000) dollars and/or revocation of the violator's license. (Ordinance #30, adopted June 9, 2009)

**6-4-11: APPEALS:** Appeals of any decision made by the hearing officer shall be filed in the Anoka County District Court. (Ordinance #30, adopted June 9, 2009)

**6-4-12: OTHER REMEDIES:** Nothing in this Section shall be construed as prohibiting the subjection of any individual or retailer to whatever penalties are available under any other local, State or Federal law, or other applicable law or regulation. (Ordinance #30, adopted June 9, 2009)

**6-4-13: SEVERABILITY AND SAVINGS CLAUSE:** If any section or portion of this Section shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or affect the validity or enforceability of any other section or provision of this Section. (Ordinance #30, adopted June 9, 2009)



## SECTION 5

### EXCAVATION AND MINING (See also Section 11-4-10)

Section:

- 6-5-1 General Provisions
- 6-5-2 Application for Permit
- 6-5-3 Standards

#### **6-5-1: GENERAL PROVISIONS:**

- A. Purpose and Intent: The purpose of this Section is to promote the health, safety, and welfare of the community and to establish reasonable uniform limitation, standards, safeguards, and controls for excavation and mining within the City.
- B. Definitions:
  - 1. Excavation: Excavation shall mean the removal or displacement of the natural surface of the earth, whether sod, dirt, soil, sand, gravel, stone or other naturally deposited material and shall mean the depositing of any such materials with the intent to create mounds, berms or similar.
  - 2. Mine or Mining: Mine or mining shall mean an area or activity where the topsoil or overburden has been removed for the purpose of extracting earthy deposits or minerals and shall also mean the stockpiling, storage, and processing of sand, gravel, black dirt, clay and other minerals.
  - 3. Overburden: Those materials which lie between the surface of the earth and material deposit to be extracted.
  - 4. Rehabilitation: To renew land to self-sustaining long-term use which is compatible with contiguous land uses, present and future, in accordance with the standards set forth in this Section.
  - 5. Topsoil: That portion of the overburden which lies closest to the earth's surface and supports the growth of vegetation.
- C. Permit Required: Except as otherwise provided in this Section, it shall be unlawful for anyone to operate a mine or excavate without having first obtained a written permit from the City authorizing the same in accordance with this Section.
- D. Exemptions from Permit Requirements: The following activities do not require a permit under this Section:

1. Excavation for a foundation, cellar, or basement of a building if a building permit has been issued.
2. Grading a lot in conjunction with building if a building permit has been issued.
3. Excavation by the federal, state, county, or City government in connection with construction or maintenance of streets, highways, or utilities.
5. Curb cuts, utility hookups, or street openings for which another permit has been issued by the City
6. Excavation of less than one hundred (100) cubic yards.
7. Excavation or grading for agricultural purposes without removal from property.
8. Excavation or grading in accordance with a development contract approved under Chapter 10 of the City Code. If the development contract requires that a letter of credit or other security be posted, the letter of credit or other security must be posted before any excavation takes place. (Ordinance #4, Adopted November 17, 2006)

**6-5-2: APPLICATION FOR PERMIT:**

A. Application Process:

1. Application for excavation of 101 cubic yards to 1,000 cubic yards requires an excavation permit. All requests must be made on the forms available by the City and include the items listed in Section 6-5-2.B. After review by the building department, some items may be waived.
2. Application for a Mining permit for 1,001 cubic yards or more must be made on the forms available by the City and include all the items listed in Section 6-5-2.B and shall be processed in accordance with the same procedures and requirements for interim uses specified in the Zoning Ordinance.

B. Content of Application: An application for a mining permit or any other applicable permits shall contain:

1. Letters from the Army Corps of Engineers, the Minnesota Department of Natural Resources, and the Anoka Conservation District stating that the proposed project is acceptable.

2. The name and address of the operator and the owner of the land.
3. The correct legal description of the property where the activity is proposed to occur.
4. A listing of the names and addresses of all landowners owning property within one thousand three hundred twenty (1,320) feet of the boundary of the property described above.
5. Soil borings sufficient to approximate the number of yards that will be removed.
6. Specifications of the following, using appropriate maps, photographs, and surveys (minimum 100 scale or larger).
  - a. The physical relationship of the proposed designated site to the community and existing development.
  - b. Site topography and natural features including location of watercourses and water bodies.
  - c. The description and quantity of material to be excavated. Engineering information may be required (and shall be done at the expense of the applicant).
  - d. The depth of water tables throughout the area.
7. The purpose of the operation.
8. Description of the potential impact to adjacent properties.
9. The plan of operation, including processing, nature of the processing and equipment, location of the plant, source of water, disposal of water and reuse of water.
10. Travel routes to and from the site.
11. The plans for drainage, water erosion control, sedimentation, and dust control.
12. A rehabilitation plan provided for the orderly and continuing rehabilitation of all disturbed land. Such plan shall illustrate (using photographs, maps and surveys, where appropriate) the following:
  - a. The contour of land prior to excavation, if available, after completion of excavation, and after completion of rehabilitation.

- b. Those areas of the site to be used for storage of topsoil and overburden.
  - c. A schedule setting forth the timetable for excavation of land lying within the extraction facility.
  - d. A timetable for the rehabilitation of land lying within the excavation facility shall be submitted to the township well in advance of the completion of the excavation activities.
  - e. The degree of all slopes after rehabilitation, based upon proposed land uses, and description of the type and quantity of plantings where revegetation is to be conducted.
  - f. The criteria and standards to be used to achieve final rehabilitation as well as intermittent stabilization.
13. A statement identifying the applicant's program to ensure compliance with the permit conditions, method of response to complaints, and resolving conflicts that may arise as a result of complaints.

C. Review and Approval of Overall Plan:

- 1. The Planning Commission shall review the mining permit application and shall recommend approval of the permit if it is in compliance with this Section, the Zoning Ordinance, and other applicable laws, ordinances, and regulations. The Planning Commission may attach conditions to the recommendation for approval to promote safety and prevent nuisance conditions. The rehabilitation plan shall only be recommended for approval if it is consistent with the uses allowed in the Comprehensive Plan and Zoning Ordinance.
- 2. The City Council shall review the permit application and shall approve the permit if it is in compliance with this Section; the Zoning Ordinance, and other applicable laws, ordinances and regulations. The City Council may attach conditions to the permit approval to promote safety and prevent nuisance conditions. The rehabilitation plan shall only be approved if it is consistent with the uses allowed in the Comprehensive Plan and Zoning Ordinance.
- 3. Implementation of the overall plan shall be by means of annual reports submitted to the City indicating volume of extraction and restoration efforts completed to date. The purpose of the annual report is to assure compliance with stated conditions and with the longer-range overall plan.

D. Termination of Permit:

1. The material extraction permit may be terminated for violation of this Section or any conditions of the permit. No permit may be terminated until the City Council has held a public hearing to determine whether the permit shall be terminated, Upon written notice, the City Council may terminate the mining permit if they find that the agreed upon conditions have not been met, at which time the permit holder shall be afforded an opportunity to contest the termination. The City Council may establish certain conditions, which, if not complied with, will result in immediate suspension of operations.
2. It shall be unlawful to conduct mineral extraction or excavation after a permit has been terminated.

E. Conditions for Granting/Renewing of Annual Permit:

1. Request for renewal of an annual permit shall be made to the V sixty (60) days prior to the expiration date. If application or renewal is not made within the required time, all operations shall be terminated, and reinstatement of the permit may be granted only upon compliance with the procedures set forth in this Section for an original application.
2. A permit may be approved or renewed subject to compliance with conditions in addition to those set forth in this Section when such conditions are reasonable and necessary to ensure compliance with the requirements and purpose of this Section. When such conditions are established, they shall be set forth specifically in the permit. Conditions may, among other matters, limit the size, kind or character of the proposed operation, require the construction of structures, require the staging of extraction over a time period, require the alteration of the site design to ensure compliance with the standards, require the provision of a security escrow by the operator to ensure compliance with these regulations in this article, or other similar requirements.

F. Issuance of Permit Imposes No Liability on City. Either the issuance of a permit under this section, nor compliance with the conditions thereof or with the provision of this section shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit under this section serve to impose any liability on the township, its officers or employees for any injury or damage to persons or property. A permit issued pursuant to this section does not relieve the permittee of the responsibility of securing and complying with any other permit which may be required by any other law, ordinance, or regulation.

G. Fees.

1. A schedule of fees for the examination and approval of application for r this section and the inspection of operations for compliance with the conditions of this section and the permit shall be established in Section 1-2-2 of the City Code.
2. Prior to the approval and issuance of any such permit under this section, any per yard fee on estimated yards to be removed for the first five thousand (5,000) cubic yards shall be paid to the township at the time of application and any additional per yard fees for permits are to be paid annually and submitted with your annual report.

H. Security Escrow. Prior to the approval and issuance of a permit, there shall be executed by the permit holder and submitted to the township, an agreement to construct such required improvements, to dedicate such property or easements, if any, to the City and to comply with such conditions as may have been established by the City Council. Such agreement shall be accompanied by a security deposit in an amount equal to one and one-half (1 ½) times the City Council's estimated cost of rehabilitation and a damage deposit in the amount determined by the City Council for the restoration of streets. The aforesaid security escrow shall be provided for guaranteeing completion and compliance with the conditions set forth in the permit within the time to be approved by the City Council. The adequacy, conditions, and acceptability of any security escrow hereunder shall be determined by the City. In the event the required rehabilitation is not being completed as per the conditions set forth, all the funds set forth in the security deposit shall be turned over and delivered to the City and applied by the City to the cost of the required rehabilitation. If the funds available are not sufficient to complete the required rehabilitation and/or repair streets, the necessary additional cost shall be assessed against the property. Any balance remaining in the security escrow or damage deposit shall be returned to the permit holder. (Ordinance #4, Adopted November 17, 2006)

**6-5-3: STANDARDS:**

- A. Extraction Site Location. Operations permitted under this section shall not be conducted within:
1. Fifty (50) feet from the public right of way of an existing street or highway.
  2. Fifty (50) feet of the right-of-way of an existing public utility or easement of record.
  3. Fifty (50) feet of the boundary of any zone where such operations are not permitted.

4. Fifty (50) feet of the boundary of an adjoining property not in mining use; or as directed by the City Council.
- B. Fencing. During operations permitted under this Section, any area where collections of water are one and one-half (1-1/2) feet in depth or more, or where excavation slopes are steeper than one foot vertical to one and one-half (1-1/2) feet horizontal, and any other areas where obvious danger to the public exists, shall be fenced when such a situation has existed or will exist for a period of five (5) working days or longer. The Building Official, at the permit holder's expense, may review such fencing to assure its adequacy. The Building Official may waive this requirement or require additional measures based on his judgment and the characteristics of the particular instances. As an alternative, the Building Official may require perimeter fencing of the entire extraction site.
- C. Appearance and Screening at the Extraction Site. The following standards are required at the extraction site of any operation permitted under this article:
1. Machinery shall be kept in good repair.
  2. Abandoned machinery, inoperable equipment, and rubbish shall be removed from the site regularly.
  3. All buildings and equipment that have not been used for a period of one year shall be removed from the site.
  4. All equipment and temporary structures shall be removed and dismantled not later than ninety (90) days after termination of the extraction operation and expiration of the permit.
  5. Where practical, stockpiles of overburden and materials shall be used to screen the extraction.
  6. The perimeter of the site shall be planted or otherwise screened when such is determined by the City Council to be necessary.
  7. Existing tree and ground cover shall be preserved to the extent feasible, maintained and supplemented by selective cutting, transplanting of trees, shrubs, and other ground cover along all setback areas.
- D. Operations, Noise, Hours, Explosives Dust, Water Pollution, Topsoil Preservation. The following operating standards shall be observed at the extraction site of any operation permitted under this section:
1. The maximum noise level at the perimeter of the site shall be within the limits set by the Minnesota Pollution Control Agency and the Federal Environmental Protection Agency.

2. Extraction and hauling operations shall be performed during only those time established by the City Council as part of this permit.
  3. Operators shall utilize all practical means to eliminate vibration on adjacent property from equipment operation.
  4. Operators shall comply with all applicable city, county, state, and federal regulations for the protection of water quality, including the Minnesota Pollution Control Agency and Federal Environmental Protection Agency regulations for the protection of water quality. No waste products or process residue shall be deposited in any lake, stream, or natural drainage system. All waste water shall pass through a sediment basin before drainage into a stream.
  5. All topsoil shall be retained at the site until complete rehabilitation of the site has taken place according to the rehabilitation plan.
- E. Rehabilitation Standards. The following rehabilitation standards shall apply to the site of any operation permitted under this Section.
1. Permit holder shall provide a performance bond for restoration of the site.
  2. Permit holder shall provide a performance bond for restoration of road(s) if any City street(s) are to be used.
  3. Rehabilitation shall be a continuing operation occurring as quickly as possible after the extraction operation has moved sufficiently into another part of the extraction site.
  4. All banks and slopes shall be left in accordance with the rehabilitation plan submitted with the permit application.
  5. Slopes, graded areas, and backfill areas shall be surfaced with adequate topsoil to secure and hold ground cover. Such ground cover shall be tended as necessary until it is self-sustained.
  6. All water areas resulting from excavation shall be eliminated upon rehabilitation of the site. In unique instances where the City Council has reviewed proposals for water bodies at the time of approval of the overall plan and has determined that such would be appropriate as an open space or recreational amenity in subsequent reuse of the site, water bodies may be permitted. (Ordinance #4, Adopted November 17, 2006)

## SECTION 6

### ADULT ENTERTAINMENT USES

Section:

6-6-1	Statement of Findings
6-6-2	Definitions
6-6-3	Adult Uses
6-6-4	Non-Conforming Adult Uses – Principal or Accessory
6-6-5	Violation
6-6-6	Penalty

**6-6-1: STATEMENT OF FINDINGS:**

- A. The City Council finds it necessary to provide for the regulation of businesses or commercial enterprises which operate as massage parlors, saunas, rap parlors, conversation parlors, adult sensitivity groups, adult encounter groups, escort services, dancing services, hostess services, and similar adult oriented services operating under different names in order to protect the public health, safety, and welfare, and to guard against the inception and transmission of disease.
- B. The City Council further finds that commercial enterprises such as the type described herein, and all other similar establishments whose services include sessions offered to adults, conducted in private by members of the same or the opposite sex, and employing personnel with no specialized training, are susceptible to operation in a manner contravening, subverting, or endangering the morals of the community by being sites of acts of prostitution, illicit sex, and occurrences of violent crimes, thus requiring close inspection, licensing and regulation.
- C. The City Council finds that control and regulation of commercial enterprises of these types, in view of the abuses often perpetrated, require intensive police and public contracting with the City to provide such services. As a consequence, the concentrated use of such services in such control detracts from and reduces the level of services available to the rest of the community and thereby diminishes the ability of the City to promote the general health, welfare, morals, and safety of the community. The City Board finds that the regulations of this Ordinance will protect property values, eliminate or reduce blight, prevent deterioration of neighborhoods, prevent the exodus of residents and businesses from City neighborhoods, and prevent the increase of crime and juvenile delinquency. (Ord. #9, adopted February 13, 1996)

**6-6-2: DEFINITIONS:** The following words and terms, wherever they occur in this Section shall be construed as herein defined. Words not defined shall be interpreted in accordance with definitions in any standard dictionary.

**Adult Uses:** Adult uses include adult bookstores, adult motion picture theaters, Adult motion picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of “specified sexual activities” or “specified anatomical areas” (as such terms and phrases are defined below) which are capable of being seen by members of the public:

**Specified Anatomical Areas:**

- 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 discernible turgid state, even if completely and opaquely covered.

**Specified Sexual Activities:**

- 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 sexually relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty; or,
- B. Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or,
- C. Use of human or animal ejaculation, sodomy, oral copulation coitus, or masturbation; or,
- D. Fondling or touching of nude human genitals, public region, buttocks, or female breast; or,
- 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.

**Adult Uses – Accessory:** A use, business, or establishment having 10 percent or less of its stock in trade or floor area allocated to, or 20 percent or less of its gross receipts derived from movie rentals, magazine sales, or sales of other merchandise, in which there is an emphasis on “specified sexual activities” or “specified anatomical areas.”

**Adult Uses – Principal:** A use, business, or establishment having 10 percent of its stock in trade or floor area allocated to, or more than 20 percent of its gross receipts derived from, any adult use.

**Adult Use – Body Painting Studio:** An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of “specified anatomical areas.”

**Adult Use – Bookstore:** A building 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 building or portion of a building is not open to the public generally but only to one or more classes of the public extending any minor by reason or age and if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of “specified sexual activities” or “specified anatomical areas.”

**Adult Use – Cabaret:** A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age and if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of “specified sexual activities” or “specified anatomical areas.”

**Adult Use – Companionship Establishment:** A companionship establishment, which excludes minors by reason of age and which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment, and a customer, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

**Adult Use – Conversation/Rap Parlor:** A conversation/rap parlor which excludes minors by reason of age and which provides the service of engaging in or listening to

conversation, talk, or discussion, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

**Adult Use – Health/Sport Club:** A health sport club which excludes minors by reason of age and if such club is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

**Adult Use – Hotel or Motel:** Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to “specific sexual activities” or “specified anatomical areas.”

**Adult Use – Massage Parlor, Health Club:** A massage parlor or health club which restricts minors by reason of age and which provides the services of massage, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

**Adult Use – Mini-Motion Picture Theater:** A building or portion of a building with a capacity for less than 50 persons used for presenting material in such building or portion of a building as a prevailing practice excludes minors by virtue of age and if such material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

**Adult Use – Modeling Studio:** An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in “specified sexual activities” or display “specified anatomical areas” while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

**Adult Use – Motion Picture Arcade:** Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motor picture machines, projectors or other image-producing devices are maintained to show images to 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 Use – Motion Picture Theater:** A building or portion of a building with a capacity of fifty (50) or more persons used for presenting material if such building or portion of a building as prevailing practice excludes minors by virtue of age and if such material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

**Adult Use – Novelty Business:** A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.

**Adult Use – Sauna:** A sauna which excludes minors by reason of age and which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

**Adult Use – 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, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if such building or portion of a building restricts minors by reason of age and if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

**Church:** A building or structure, or group of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and associated accessory uses.

**School:** A public school as defined in Minnesota Statutes, Section 120.05 or a non-public school or a nonsectarian non-public school as defined in Minnesota Statutes, Section 123.932.

**Youth Facility:** A public playground, park, public swimming pool, public Library or licensed day care facility. (Ord. #9, adopted February 13, 1996)

**6-6-3: ADULT USES:**

A. Purpose.

1. The nature of adult uses is such that they are recognized as having adverse secondary characteristics, particularly when they are accessible to minors and located near residential property or related residential uses such as schools, day care centers, libraries, or parks.
2. Furthermore, the nature of adult uses requires that they not be allowed within certain zoning districts, or within minimum distances from each other or residential uses.
3. Special regulation of adult uses is necessary to ensure that the adverse secondary effects do not contribute or enhance criminal activity in the area

of such uses nor contribute to the blighting or downgrading of the surrounding property and lessening of its value.

B. General. Adult uses as defined in this Section shall be subject to the following general provisions:

1. Adult uses, either principal or accessory, shall be prohibited from locating in any building which is also utilized for residential purposes.
2. Adult uses, either principal or accessory, shall be prohibited from locating in any place which is also used to dispense or consumer alcoholic beverages.
3. An adult use which does not qualify as an accessory use pursuant to Section 6-6-3.D of this Section shall be classified as an adult use-principal.

C. Adult Use – Principal:

1. Adult use-principal shall be located at least one thousand (1,000) feet, as measured in a straight line from the closest point of the property line of the building upon which the adult use-principal is located, from the property line of:
  - a. A licensed day care center.
  - b. A public or private educational facility classified as a preschool, or an elementary, junior high or senior high school.
  - c. A public library.
  - d. A public park.
  - e. Another adult use-principal.
  - f. An on-sale liquor establishment.
  - g. Any church, or church related facility or organization.
2. Adult Use – Principal shall be located at least five hundred (500) feet, as measured in a straight line, from a residential home.
3. Adult use –principal activities, as defined by this Section, shall be classified as one (1) use. No two (2) adult uses-principal shall be located in the same building or upon the same property and each use shall be subject to this Section.

4. Adult use-principal shall adhere to the following signing regulations:
  - a. Sign messages shall be generic, not graphic in nature and shall only identify the type of business which is being conducted.
  - b. Sign messages shall not contain material classified as advertising.
  - c. Signs shall comply with the requirements of size and number for the district in which they are located.
5. Adult use-principal shall be limited to 7:00 a.m. to 12:00 p.m. for its hours of operation. A differing time schedule may be approved by the City Council if it can be satisfactorily demonstrated by the operator to the City that extended operation hours:
  - a. Will not adversely impact or affect uses or activities within one thousand (1,000) feet.
  - b. Will not result in increased policing and related service calls.
  - c. Are critical to the operation of the business.

D. Adult Uses – Accessory:

1. Adult Use – Accessory shall:
  - a. Comprise no more than ten (10%) percent of the floor area of the establishment in which it is located.
  - b. Comprise no more than twenty (20%) percent of the gross receipts of the entire business operation.
  - c. Not involve or include any activity except the sale or rental of merchandise.
2. Adult use-accessory shall be restricted from and prohibit access to minors by the physical separation of such items from areas of general public access:
  - a. Movie Rentals. Display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view and under the control of the person responsible for the operation of the business.
  - b. Magazines. Publications classified or qualifying as adult use shall not be physically accessible to minors and shall be covered with a

wrapper or other means to prevent display of any material other than the publication title.

- c. Other use. Adult Uses-Accessory not specifically cited shall comply with the intent of this Section, subject to the approval of the City Council.
3. Adult Use-Accessory shall be prohibited from both internal and external advertising and signing of adult materials and products. (Ord. #9, adopted February 13, 1996)

**6-6-4: NONCONFORMING ADULT USE-PRINCIPAL OR ACCESSORY:**

- A. Adult uses which do not conform to the requirements, restrictions and prohibitions of this Section shall be classified as legal nonconforming uses and may be continued in operation until February 21, 1996.
- B. After February 21, 1996, all nonconforming uses shall be terminated and become illegal unless brought into conformance with this Section.
- C. The City shall attempt to identify all such uses which become classified as nonconforming under the provisions of this Section and shall notify the property owners and operators of such uses in writing of the change in status of such property under this Section.
- D. The owner of any property on which an adult use is located may apply to the City Council for an extension of the termination date. The applicant shall have the burden for proving hardship based upon the established termination date. In making its decision, the City Board may consider any factor relevant to the issue, including, but not limited to:
  1. The degree of magnitude of threat to the public health, safety and general welfare posed by the secondary impacts of the nonconforming operation.
  2. The length of time that the adult use has been operating.
  3. The ease by which the property could be converted to a conforming use.
  4. The nature and character of the surrounding neighborhood.
  5. The value and condition of the improvements on the property.
  6. The amount of the applicant's investment in the business.
  7. The amount of investment already realized.

8. The cost of relocating the adult use. (Ord. #9, adopted February 13, 1996)

**6-6-5: VIOLATION:** The City may enforce any provision of this Section by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction. (Ord. #9, adopted February 13, 1996)

**6-6-6: PENALTY:** Any violation of this ordinance is a misdemeanor. (Ord. #9, adopted February 13, 1996)