

Chapter 3. Licenses and Regulations

Section 300 - Junk Dealers and Junkyards

300.01 License Required. No person shall engage in or carry on the business of a junk dealer in the City without first obtaining a license as provided by this Section.

300.02 Where Application for License Made; Contents of Application.

- A. An application for a license required by this Section shall be made in writing to the Council on a form provided by the City.
- B. The application shall state the place where the proposed business is to be carried on, the nature of the business and the name of the person who is to engage in or carry on the business.

300.03 Authority to Issue License upon Payment of Fee, Filing Bond. The Council may, at its discretion, direct the issuance of a license required by this Section on compliance by the applicant with the following requisites:

- A. Paying the Clerk-Administrator the fee set in the fee schedule adopted from time to time by the council.
- B. Filing with the Clerk-Administrator a bond running to the City with two (2) sufficient sureties, to be approved by the Mayor, in the penal sum of one thousand dollars (\$1,000.00) conditioned that the applicant shall conduct his or her business fairly and without fraud or deceit and shall conform to all Code provisions or other ordinances of the City regulating the business licensed.

300.04 Licenses to Be Signed, Attested. Licenses issued in accordance with this Section shall be signed by the Mayor and attested by the Clerk-Administrator.

300.05 Expiration of License. All licenses issued in accordance with this Section shall expire in one (1) year from the date of its issuance.

300.06 Licensee to Maintain Register; Contents of Register; Penalty.

- A. Every person who may be licensed as a junk dealer shall keep at his or her place of business a register in which he or she shall enter in writing a minute description of each article of personal property purchased by him or her.
- B. The register shall be kept clean and legible and without erasure or defacement of any proof of the entries made therein.
- C. Any person licensed under this Section who violates or fails to comply with any

provision of this Section, shall upon conviction thereof, be subject to the penalty provisions of Chapter 1 dealing with violations of this Code.

300.07 Exhibition of Register, Personal Property Required; Penalty.

A. Every person licensed in accordance with this Section shall, at any time during business hours, when required by officers of the city’s designated law enforcement provider to exhibit to the officers the register required in subsection 300.06 and the entries therein, and shall also exhibit to the officers when required any article of personal property which the licensed person may have received by purchase.

B. Any licensee who refuses or neglects to exhibit the register or articles when required as aforesaid shall, upon conviction thereof, be subject to the penalty provisions of Chapter 1 of this Code.

300.08 Location of Junk Restricted. Any person licensed to carry on the business of a junk dealer under the provisions of this Section shall keep all junk on the property where the business is carried on and shall not allow any junk to be placed in or upon any public street, alley or public grounds.

300.09 Fencing Requirements.

A. All property where junk is kept or stored shall be enclosed by a tight fence not less than eight (8) feet high, and the fence shall be kept painted at all times.

B. Advertising matter shall not be allowed on fences required by Subsection A.

300.10 Materials Causing Stench Not to Be Kept. No hides, pelts or other materials creating or causing any odor or stench, so as to be a nuisance to any of the surrounding property, shall be kept on the premises of a business licensed in accordance with this Section.

Section 310 - Peddlers, Solicitors, Transient Merchants

310.01 Definitions and Interpretation. 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 the neuter, and vice-versa. The term “shall” means mandatory and the term “may” is permissive. The following terms shall have the definitions given to them:

Subd. 1 Person. The term “person” shall mean 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.

Subd. 2 Peddler. The term “peddler” shall mean 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. The term shall also apply to any person offering for sale any service that the person can immediately provide.

Subd. 3 Solicitor. The term “solicitor” shall mean 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 solicitor shall mean the same as the term canvasser.

Subd. 4 Transient Merchant. The term “transient merchant” shall mean 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 ten (10) consecutive days.

(Am. Ord. 2005-6, passed 6-28-05)

310.02 Exceptions to Definitions. For the purpose of the requirements of this Section, 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 item(s) 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. 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 peddlers, solicitors, and transient merchants, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court ordered sale. The terms also shall not apply to non-profit organizations such as Girl Scouts of America or Boy Scouts of America.

(Am. Ord. 2005-6, passed 6-28-05)

310.03 Prohibited Activities.

Subd. 1 Nuisance Declared. The practice of going in and upon private residences or residents' properties in the City by peddlers, solicitors and transient merchants not having been requested or invited to do so by the owner or owners, occupant or occupants of such private residences, for the purpose of soliciting orders for the sale of goods, wares and merchandise, or for the purpose of disposing of or peddling the same, is hereby declared to be a nuisance.

Subd. 2 Misdemeanor. Any person who violates any provision of this Section shall be guilty of a misdemeanor.
(Am. Ord. 2005-6, passed 6-28-05)

Section 320 - Conducting Dances

320.01 Scope and Definition. All dances held in the City after the enactment of this Code shall be conducted in accordance with the provisions of this Section. The term "public dancing place" shall mean any place in which dancing may be or is carried on, other than a private residence; and the term "public dance" shall mean any dance held in a public dancing place, whether an admission fee is charged or not.

320.02 Permits. No person shall conduct a public dance in the City unless a permit shall have been procured therefor from the Clerk-Administrator. The fee for the permit shall be as set in the fee schedule adopted from time to time by the city council.

Provided, the City Council may grant a permit without charge where it shall be satisfied that the giving of the dance shall be for the benefit of a non-profit organization .

320.03 Application. Any person or persons desiring a permit to hold or conduct a public dance in the City shall make application therefor on forms furnished by the Clerk-Administrator. The application shall set forth the name and address of the person, persons, committee, or organization which is to conduct the dance and the time and place where the dance is to be held.

320.04 Granting of a Permit. The Clerk-Administrator shall refer the application to the City Council, which in its discretion may grant or refuse to grant the permit applied for.

320.05 Penalty. Any person violating any provision of this Section shall be guilty of a misdemeanor.

Section 330 - Gambling

330.01 Purpose. The purpose of this Section is to closely regulate and control the conduct of gambling and to prohibit commercialization of gambling.

330.02 Provisions of State Law Adopted. The provisions of Minnesota Statutes, Chapter 349 relating to the definition of terms, licensing, and restrictions of gambling shall be adopted and made a part of this Section as if set out here in full.

330.03 License Requirement. No person shall directly or indirectly operate a gambling device or conduct a raffle without a license to do so as provided in this State law.

330.04 Profits. Profits from the operation of gambling devices or the conduct of raffles shall be used for lawful purposes only. The term “lawful purposes” shall be those purposes described in Minnesota Statutes, Section 349.12, Subdivision 25.

330.05 Conduct of Gambling. The operation of gambling devices and the conduct of raffles shall be under the supervision of a single gambling manager to be designated by the organization. The gambling manager shall be responsible for gross receipts and profits from gambling devices and raffles and further operation. The gambling manager shall be responsible for the use of profits for a proper purpose.

330.06 Bond. The gaming manager shall provide a fidelity bond as required by Minn. Stat. § 349.167.

330.07 Qualifications of Gambling Manager. The gambling manager shall be an active member of the organization, and shall qualify under State law.

330.08 Compensation. No compensation shall be paid to any person in connection with the operation of a gambling device or the conduct of a raffle by a licensed organization. No person who is not an active member of an organization, or the spouse or surviving spouse of an active member, shall participate in the organization’s operation of a gambling device or conduct of a raffle.

330.09 Reporting Requirements. Each organization licensed to operate gambling devices shall keep records of its gross receipts, expenses and profits for each single gathering or occasion at which gambling devices are operated or a raffle is conducted. All deductions from gross receipts for each single gathering or occasion shall be documented with receipts or other records indicating the amount, a description of the purchased item or service or other reason for the deduction, and the recipient. The distribution of profits shall be itemized as to payee, purpose, amount, and date of payment.

330.10 Separation of Funds. Gross receipts from the operation of gambling devices and the conduct of raffles shall be segregated from other revenues of the organization, and placed in a separate account. The person who accounts for gross receipts, expenses, and profits from the operation of gambling devices or the conduct of raffles shall not be the same person who accounts for other revenues of the organization.

330.11 Monthly Reports. Each organization licensed to operate gambling devices or to conduct raffles shall report monthly to its membership, its gross receipts, expenses, and profits from gambling devices or raffles, and the distribution of profits. The licensee shall preserve the records for three years and shall make available their records relating to operation of gambling devices and the conduct of raffles for public inspection at reasonable times and places. A copy of the monthly and annual reports shall be made available to the Council upon request.

330.12 Eligible Premises. Gambling devices shall be operated and raffles conducted by a licensed organization only upon premises which it owns or leases, except that tickets for raffles may be sold off the premises. Leases shall be in writing and shall be for a term of at least 12 months. No lease shall provide that rental payment be based on a percentage of receipts. A copy of the lease shall be filed with the Clerk-Administrator.

330.13 Prizes. Total prizes awarded during any single day, and cumulatively within a calendar year by any organization shall not exceed the corresponding maximum daily and yearly limits imposed by State law.

330.14 Penalties.

Subd. 1 Criminal Penalty. Violation of any provisions of this Section shall be a misdemeanor. A person convicted of violating any provision of this Section shall be subject to a fine of not more than \$700.00 or imprisonment for a term not to exceed 90 days or both, plus in either case the costs of prosecution.

Section 340 - Tobacco

340.01 License Required. No person shall keep for retail sale, sell at retail, or otherwise dispose of any tobacco related product as defined in this Section, at any place in the City without a license issued under this Section. Application for a license shall be made to the City Clerk-Administrator on a form supplied by the City. Upon filing of the application and payment of the required fee as set in the fee schedule adopted from time to time by the council, the application shall be presented to the City Council for consideration.

340.02 Definitions.

Subd. 1 Tobacco Related Products. “Tobacco Related Products” shall mean cigarettes; cigars, cheroots; stogies; perique, granulated, plug cut, crimp cut, ready, rubbed, and other smoking tobacco; snuff; snuff flower; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shots, refuse scrips, clippings, cuttings, and sweepings of tobacco prepared in such a manner as to be suitable for chewing, sniffing, or smoking in a pipe, rolling paper, or other tobacco related device.

Subd. 2 Self-Service Merchandising. “Self-Service Merchandising” shall mean any open display of tobacco products that the public has access to without the intervention of an employee.

Subd. 3 Individually Packaged. “Individually Packaged” shall mean any package containing only one individually wrapped item. This definition shall include single packs of cigarettes; and single bags or cans of tobacco for rolling, smoking, chewing or sniffing.

Multiple packaged packs of cigarettes or similar packages containing multiple cans or other containers of tobacco suitable for smoking, chewing, or sniffing, shall not be considered individually packaged.

340.03 License to be Displayed. Every license issued under this Section shall be kept conspicuously posted in the place for which the license is issued and shall be exhibited to an person upon request.

340.04 License Restrictions. A license shall be issued subject to the following restrictions:

- A. No license shall be issued to any applicant for the sale of tobacco related products at any place other than the licensee’s established place of business.
- B. No license shall be issued for the sale of tobacco related products at a moveable place of business.
- C. A separate license shall be required for each place of business where tobacco or tobacco related products shall be sold, but nothing in this Section shall prohibit a person from obtaining more than one license provided the person is eligible for any license.
- D. No person shall sell or dispense any tobacco product through the use of a vending machine, except a vending-type machine equipped with a switch that dispenses the product only when the licensee causes the switch to be briefly activated for each individual sale. Remotely activated vending machines shall only be located in licensed on-sale or off-sale liquor establishments. Said remotely activated vending-type machines shall be located within 25 feet of the cash register and shall be in plain sight of said cash register.

E. No person shall offer for sale any individually packaged tobacco product by means of self-service merchandising. Any other form of self-service merchandising shall be made in accordance with applicable State and Federal laws.

F. Every licensee shall be responsible for the conduct of his or her employees on the licensed premises and any sale or other disposition of tobacco related products by an employee to a person under the age of eighteen (18) years shall be considered an act of the licensee for the purpose of imposing an administrative fine, or suspending or revoking the license issued under this Section.

(Am. Ord. passed 5-25-99)

340.05 Sales To Minors. No person shall sell any tobacco related product to any person under the age of twenty-one (21) years.

(Am. Ord. 2019-3, passed 10-8-19)

340.06 Compliance Checks and Inspections. All licensed premises shall be open to inspection by the Olmsted County Sheriff’s Department 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 15 years but less than 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 Olmsted County Sheriff’s Department 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.

(Am. Ord. 2005-2, passed 2-22-05)

340.07 Violations.

A. 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.

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

- C. Hearing Officer. The City Council shall serve as the hearing officer.
- D. Decision. If the hearing officer (the City Council) determines that a violation of this chapter did occur, that decision, along with the hearing officer’s reasons for finding a violation and the penalty to be imposed under the following 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 finding shall be recorded and a copy provided to the acquitted violator.
- E. Appeals. Appeals of any decision made by the hearing officer (the City Council) shall be filed in the District Court for the city in which the alleged violation occurred.
- F. Misdemeanor prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Section.
- G. Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
(Am. Ord. 2005-2, passed 2-22-05)

340.08 Penalty.

- A. Licensees and employees. Any licensee, and any employee of an licensee, found to have violated this Section shall be charged an administrative fine of \$75 for a first violation of this section; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than 7 days. The penalty shall be set each year as part of the City Fee Schedule.
- B. Misdemeanor. Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this section.
(Am. Ord. 2005-2, passed 2-22-05)

Section 350 - Fireworks

350.01 Purpose. Due to the inherent risks of fire and injury to persons and property associated with the sale, possession and use of fireworks, the City Council has determined that it is necessary and in the interest of public health, safety and welfare to establish reasonable regulations concerning fireworks.
(Ord. 2003-19, passed 12-23-03)

350.02 Consumer Fireworks. For purposes of this section, “consumer fireworks” are defined as: wire or wood sparklers of not more than 100 grams of mixture per item, other sparkling items which are non-explosive and non-aerial and contain 75 grams or less of chemical mixture per tube

or a total of 200 grams or less for multiple tubes, snakes, and glow works, smoke devices, or trick noisemakers which include paper streamers, paper poppers, string poppers, snappers, and drop pops, each consisting of not more than twenty-five hundredths grains of explosive mixture. (Ord. 2003-19, passed 12-23-03)

350.03 License Provisions.

Subd. 1 Sale of Fireworks. It is unlawful for any person to sell, offer for sale, expose for sale, or sell at retail or wholesale any consumer fireworks in the city without a license.

Subd. 2 Provisions of State Law Adopted. The sale, use and possession of all fireworks in violation of Minn. Stat. §§ 624.20 through 624.25 inclusive, which are adopted herein by reference, is prohibited.

Subd. 3 License Application. The applicant shall completely fill out and submit an application form for a consumer fireworks license prepared by the city in conjunction with the Stewartville Fire Dept. and Olmsted County Sheriff's Dept. Information to be submitted as part of the license application includes, but is not necessarily limited to the following information: name, address and telephone number of the applicant; address of location where the fireworks will be sold; a description of the fireworks to be sold; estimated quantity of the fireworks that will be stored on the premises; description of the premises and facility from which the fireworks are proposed to be sold; approval of the property owner, if different from the applicant. Prior to the issuance of a license, the premises must be inspected and approved by the Stewartville Fire Dept. and Olmsted County Sheriff's Dept.

(Ord. 2003-19, passed 12-23-03)

350.04 Conditions of License. A license to sell consumer fireworks shall be issued subject to the following conditions:

- A. The license is non-transferable, either to a different person or location.
- B. The license must be publicly displayed on the licensed premises.
- C. The premises are subject to inspection by the Stewartville Fire Dept. and Olmsted County Sheriff's Dept. during normal business hours.
- D. The premises for which a license will be issued must be located in a zoning district permitting retail sales.
- E. Storage of consumer fireworks on the premises must be in compliance with the International Fire Code.
- F. The licensee shall keep two 2.5 gallon water type portable fire extinguishers within 15 feet of the storage and display areas.

- G. Material Safety Data Sheets (MSDA) for all consumer fireworks must be kept on the premises and shall be available for inspection at all time.
- H. The Licensee shall prominently post at least two “No Smoking” signs.
- I. Consumer fireworks shall not be sold to persons under the age of 18.
- J. Consumer fireworks shall not be used on public property.
- K. Consumer fireworks shall not be used indoors.
(Ord. 2003-19, passed 12-23-03)

350.05 License Bond. Applicant shall file with the application a certificate of insurance, showing liability insurance coverage in the amount of \$1,000,000 per occurrence to cover licensee’s intentional and negligent acts relative to the sale, possession or use of fireworks. Such insurance certificate shall indicate that the city shall receive notice at least 30 days prior to cancellation or termination of the coverage.
(Ord. 2003-19, passed 12-23-03)

350.06 License Fee. The license fee for the sale of fireworks shall be set by the annual fee schedule.
(Ord. 2003-19, passed 12-23-03)

350.07 License Denial, Suspension and Revocation. A consumer fireworks license may be denied, suspended or revoked by the City Council if a provision of the chapter is violated.
(Ord. 2003-19, passed 12-23-03)

Section 360 - Garbage

360.01 Purpose. It is the intent of the city to register any solid waste hauler who serves the city by picking up weekly residential and commercial solid waste.
(Ord. 2004-2, passed 1-13-04)

360.02 License Application. The applicant shall completely fill out and submit a Solid Waste Registration Form prior to initiating services and must maintain said registration at all times that said solid waste is being hauled.
(Ord. 2004-2, passed 1-13-04)

360.03 Registration Fee. Fees for registration shall be set annually by the City Council.
(Ord. 2004-2, passed 1-13-04)

360.04 General Terms.

- A. Vehicles used will meet Minnesota Department of Public Safety standards.
- B. Vehicles will only use transportation routes with appropriate weight limits, given the vehicles gross weights.
- C. Vehicle operators will have appropriate drivers license.
- D. The company will maintain insurance coverage levels required by state and county law.
(Ord. 2004-2, passed 1-13-04)

Section 370 - Fire Department Repository Unit

370.01 Fire Department Repository Unit - Required.

- A. The owner or person in control of the following types of buildings shall install and maintain a Fire Department Repository Unit of a type approved by the Chief:
 - 1. Any apartment building or other rental building containing four (4) or more residential living units and in which access to the building or to common areas or mechanical or electrical rooms within the building is denied through locked doors.
 - 2. Any non-residential building where a fire detection or suppression system is monitored by an alarm company or has an external audible alarm.
 - 3. Any building or facility containing a quantity of hazardous materials which would require compliance with Title III of SARA (Superfund Amendment Reauthorization Act).
- B. Persons or entities who own existing buildings or structures which are subject to the requirements of this chapter shall have one (1) year from the effective date of this section to comply with the requirements. Persons or entities who construct buildings or structures which would be subject to the requirements of this chapter shall comply with the requirements at the time of construction.

(Ord. 2014-2, passed 3-25-14)

370.02 Keys Required. The owner or person in control of buildings or facilities described in Section 370.01 required to have a Fire Department Repository Unit shall cause to be placed in such Repository Unit a key to the following areas:

- A. Locked points of access in the exterior of the building or facility;

- B. Locked points of access to common areas, such as hallways or utility rooms, contained within such buildings or facilities;
- C. Locked mechanical rooms;
- D. Locked electrical rooms;
- E. All other locked areas, other than individual apartments or rented rooms, as directed by the Chief.

(Ord. 2014-2, passed 3-25-14)

370.03 Access to Fire Department Repository Unit. The owner or person in control of any building or facility described in Section 370.01 required to have a Fire Department Repository Unit shall be present, himself or through his agent, during access to such Repository Unit by the Fire Department except when the Fire Department has responded to an emergency at the property. (Ord. 2014-2, passed 3-25-14)

370.04 Rules and Regulations. The Chief may establish rules and regulations for the placement and maintenance of Fire Department Repository Units within the City, including approved types of Fire Department Repository Units. Proposed rules and regulations will be submitted to the City Council and filed with the City Clerk and shall become effective immediately after submission to the City Council. (Ord. 2014-2, passed 3-25-14)

370.05 Update of Keys and Information. The owner or person in control of any building or facility described in Section 370.01 required to have a Fire Department Repository Unit shall do the following:

- A. Provide keys capable of access to such Fire Department Repository Unit at all times to the Fire Department.
- B. Maintain current information of hazardous materials stored in the building or facility in the Fire Department Repository Unit or, if the volume of material is too large to place in the repository unit, shall file said information with the Chief.

(Ord. 2014-2, passed 3-25-14)

370.06 Limitation of Liability. The City assumes no liability for any of the following:

- A. Any defects in the operation of the Repository Unit, of any of the keys contained within such repository unit or any information stored within the repository unit or otherwise provided to the City;
- B. The failure or neglect to respond appropriately upon receipt of an alarm from an alarm system;

C. The failure or neglect of any owner or person in control of a building or facility required to have a repository unit to provide access to the repository unit; or

D. The security of any property required to have a repository unit due to access to the repository unit by any person.

(Ord. 2014-2, passed 3-25-14)

370.07 Compliance. All businesses must comply with this section within one (1) year of approval of the section.

(Ord. 2014-2, passed 3-25-14)

Section 380 - Massage Therapist and Massage Therapy License

380.01 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accredited institution means an educational institution holding accredited status from a regional accrediting agency approved by the United States Department of Education presently or at the time the applicant obtained his diploma or certificate of graduation. The term "accredited institution" also includes a state-licensed institution or state-approved massage apprenticeship program.

Applicant means any person filing an application with the city clerk seeking a massage therapist or massage therapy business license pursuant to this chapter.

Clean means the absence of dirt, rubbish, garbage and other offensive, unsightly or extraneous matter.

In good repair means free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions and similar defects.

Issuing authority means the city clerk or designee.

Licensed premises means the premises described in the application for a massage therapy business license issued pursuant to this chapter.

Licensee means any person issued a massage therapist or massage therapy business license pursuant to this chapter.

Massage therapist means a person who practices or provides therapeutic massage to another for a fee or other consideration paid either directly or indirectly. A massage therapist does not include

a medical doctor, chiropractor, osteopath, podiatrist, licensed nurse, physical therapist, athletic doctor or trainer, or beautician (cosmetologist) or barber who confines their treatment to the scalp, face and neck or the lower leg and feet in the case of a pedicure.

Massage therapy or therapeutic massage means the scientific health care or health maintenance techniques or procedures carried out by a massage therapist involving the rubbing, tapping, pounding or kneading of a person's skin, muscles, and tissues or the stretching of body limbs (e.g., Thai massage) for the purpose of easing mental and physical tension, the breaking up of fatty tissues, relaxing muscles, or alleviating muscle spasms, pain relief, aiding in the healing process, promoting health and wellness, and the improvement of circulation through the body.

Massage therapy business

- (1) The term "massage therapy business" means any enterprise, establishment, or operation, whether under the control of an individual or legal entity, providing or offering to provide massage therapy within the city for a fee or other consideration paid either directly or indirectly, that:
 - a. Has one or more massage therapists, including the owner, employed or contracted to provide massage therapy for the massage therapy business; and
 - b. Is located in a fixed location in a zoning district which permits massage therapy.
- (2) A massage therapy business does not include a health or medical facility, office or clinic operated by a state-licensed medical professional, or any health or medical-related business operated by a state licensed medical professional, which provides therapeutic massage to its patients.

Sanitize means to reduce or eliminate pathogenic agents (such as bacteria) on a surface with a cleaner using bleach, peroxides, isopropyl alcohol, iodine or chlorine as an active ingredient.

State-licensed institution means a private educational institution (apprenticeship, collegiate or career school) holding licensed status, registration and financial aid eligibility approved through the state in which it is located, presently or at the time the applicant obtained their diploma or certificate of graduation.

Student of massage therapy means a person who is enrolled in and attends classes at an accredited institution or at a state-licensed institution.

(Ord. 2024-2, passed 1-23-24)

380.02 License Required

- A. *Massage therapist license.* No person may act as a massage therapist within the city without a license issued by the city.

B. Massage therapy business license. No person may operate a massage therapy business within the city without a license issued by the city.

(Ord. 2024-2, passed 1-23-24)

380.03 Exceptions to Licensure

A. Does not apply to, and no massage therapist license shall be required of, a student of massage therapy provided:

(1) The massage therapy is provided during and as part of a course or clinical component of an accredited program or course work; and

(2) The massage therapy student is supervised by an instructor or participating in a school-sponsored externship or internship while providing or performing massage therapy. A notice, advising the public that the person who may provide massage therapy is a student of massage therapy and is not licensed by the city, shall be posted in a conspicuous location in a public area of the school.

B. No massage therapist license is required if the massage therapist is hired or employed by, and exclusively provides treatment on the premises of persons duly licensed by the state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, or professional practices licensed under Minn. Stat. Ch. 147 or 148 or registered by the state and regulated by a governmental body with a board where concerns and complaints could be directed, provided the massage is administered in the regular course of the medical business and not provided as part of a separate and distinct massage business.

C. Does not apply to, and no massage therapy business license shall be required for:

(1) A health care office, clinic or facility owned by a municipality, the state or its agencies or licensed by the state;

(2) A business or entity owned and operated by a state-licensed medical professional through whom therapeutic massage is provided to its patients as a secondary health care treatment;

(3) Hospitals, hospice facilities, nursing homes or other approved institutions established for the hospitalization or care of human beings that are duly licensed under Minn. Stat. Ch. 144;

(4) A health or sport establishment allowing persons of all ages on the premises and which meet the following criteria:

a. The primary purpose of the establishment is health and fitness, and the massage therapy is secondary;

- b. No more than 20 percent of the establishment revenue is derived from massage therapy; and
 - c. Massage therapy does not occupy more than ten percent of the establishment's public floor space; or
- (5) An accredited institution which provides an accredited program of study or course work in massage therapy or therapeutic massage provided:
- a. The massage therapy is provided during and as part of a course or clinical component of the school's program or course work; and
 - b. The massage therapy student is supervised by an instructor or participating in a school-sponsored externship or internship while providing or performing massage therapy.

(Ord. 2024-2, passed 1-23-24)

State law reference(s)—Municipal licensing of certain massage therapists prohibited, Minn. Stat. § 471.709.

380.04 License Ineligibility

A. An application for a massage therapy business license can be denied upon any of the following grounds:

- (1) The proposed fixed location or premises in which the massage therapy business proposes to provide massage therapy services is not located in a properly zoned district in which a business, or medical or health care facilities or uses are permitted by the zoning ordinances of this Code;
- (2) The owner, operator, or any person who has a five percent financial interest in the proposed massage therapy business or the appointed on-site manager or agent of the applicant has, within ten years of the date of application, a conviction for, or was charged with, but convicted of a lesser charge of, a crime directly related to the massage therapy business license. These crimes shall include, but not be limited to, any of the crimes listed at Minn. Stat. §§ 146A.08, subd. 1(b), 609.321, 609.322, 609.324, 609.3243, 609.33, or a felony crime involving Minn. Stat. Ch. 152, or a crime committed in another state under a statute in conformity with any of the statutes listed above. The council must consider evidence of rehabilitation as provided in Minn. Stat. § 364.03, subd. 3;
- (3) The owner, operator, or any person who has a five percent financial interest in the proposed massage therapy business had a massage therapist or massage therapy

business-related license in this or another jurisdiction that was suspended or revoked within ten years preceding the date of application;

(4) The application was incomplete or failed to comply with all of the requirements of this chapter;

(5) The applicant provided false or misleading information on the application form, or has failed to pay the applicable fees;

(6) The proposed licensed premises is the subject of delinquent or unpaid taxes, assessments, or other financial claims by the state, county or city and the applicant has any interest or legal duty to pay those taxes, assessments or claims;

(7) The applicant has been denied a license under this chapter within the previous 12 months.

(8) Is not the real party of interest for the establishment.

(9) The applicant does not have insurance coverage in effect as required by this Section.

B. An application for a massage therapist license can be denied upon any of the following grounds:

(1) The applicant has, within ten years of the date of application, a conviction for, or was charged with, but convicted of a lesser charge of, a crime directly related to the massage therapy license. These crimes shall include, but not be limited to, any of the crimes listed at Minn. Stat. §§ 146A.08, subd. 1(b), 609.321, 609.322, 609.324, 609.3243, 609.33, 609.52, 609.527, 609.528, 609.582, 609.74, or 617.23 or a felony crime involving Minn. Stat. Ch. 152, or a crime committed in another state under a statute in conformity with any of the statutes listed above. The council must consider evidence of rehabilitation as provided in Minn. Stat. § 364.03, subd. 3;

(2) The applicant had a massage therapist or massage therapy business-related license in this or another jurisdiction that was suspended or revoked within ten years preceding the date of application;

(3) The applicant is not 18 years of age or older;

(4) The applicant is not a United States citizen and is not legally permitted to be in the United States;

(5) The application was incomplete or failed to comply with all of the requirements of this chapter;

(6) The applicant provided false or misleading information on the application form, or has failed to pay the applicable fees;

(7) The applicant has been denied a license under this chapter within the previous 12 months.

(8) The applicant does not have insurance coverage in effect as required by this Section. (Ord. 2024-2, passed 1-23-24)

380.05 Investigation, Granting and Denial of License Application

Every license application must be reviewed by the Olmsted County Sheriff's department, planning department and such other entities as the city clerk deems necessary, to determine whether the application satisfies all applicable legal requirements. The Sheriff's department must conduct a review of the applicant's criminal history. If warranted by the Sheriff's department's review of the applicant's criminal history, the department may require the applicant to provide fingerprints or a photograph.

The license application, along with any referral department comments, shall be delivered to the common council for its review and action. The council must approve a license application only if it satisfies all of the requirements of this chapter. (Ord. 2024-2, passed 1-23-24)

380.06 Restrictions and Regulations

A. A massage therapy business license may only employ a massage therapist licensed under this chapter to perform massage therapy. A massage therapy business license allows the licensee to operate the business only at the licensed premises except as otherwise provided in this subsection. A massage therapist employed or contracted by a massage therapy business licensee may provide massage therapy:

- (1) To a client at the client's residence;
- (2) In a long-term or short-term care facility, such as a hospital, nursing home, or convalescence facility;
- (3) In connection with a special event or function whereby the massage therapist provides massage therapy to attendees of the event or function;
- (4) At a place of business (provided the license designates off-site therapeutic massage);
or
- (5) In a hotel/motel room (provided the license designates off-site therapeutic massage).

B. The licensed premises shall, during operating hours, be open to inspection by any building, health, zoning, code, licensing or law enforcement officer to determine whether the licensed premises are in compliance with applicable laws and ordinances. As a condition to being issued a massage therapy business license, the licensee consents to these inspections by these officers. It is unlawful for any licensee, its agent, or employee to hinder or prevent these inspections by these officers. Those performing the inspections shall make every reasonable effort to honor and protect the privacy of the client.

C. The act of any employee of the licensee is deemed to be the act of the licensee. The licensee shall be responsible for all acts and conduct attributable to and in connection with massage therapy services provided by the licensee or occurring on the licensed premises; however, the licensee's good faith actions taken in the operation of the massage therapy business and in response to the acts or conduct of licensee's employees shall be considered in determining whether the licensee has acted responsibly.

D. The person receiving massage therapy shall at all times have his anus, intergluteal cleft (buttocks crease) and genitals covered with clothing or properly draped with nontransparent material. The person who is receiving massage therapy of the breast or buttocks (gluteal) shall have the breast or buttock (gluteal muscle) that is not then immediately receiving massage therapy properly covered and draped with nontransparent material.

E. No alcoholic beverage, narcotic drug or controlled substance, as such terms are defined by state law or this Code, shall be used, ingested or present during any massage therapy session.

F. The licensee shall not knowingly bring or possess, or knowingly allow another person to bring or possess, a contraceptive device or obscene material.

G. Only a massage therapy licensee shall practice or provide therapeutic massage for:

(1) A massage therapy business licensee;

(2) A health care office, clinic or facility owned by a municipality, the state or its agencies or licensed by the state;

(3) A business or entity owned and operated by a state-licensed medical professional through whom therapeutic massage is provided to its patients as a secondary health care treatment;

(4) Hospitals, hospice facilities, nursing homes or other approved institutions established for the hospitalization or care of human beings that are duly licensed under Minn. Stat. Ch. 144;

(5) A health or sport establishment allowing persons of all ages on the premises;

(6) Athletic directors and trainers who perform massage therapy in the course of any athletic program or event which is sponsored by a local unit of government or an educational institution that complies with all applicable state and local regulations; or

(7) Nonprofit corporations or associations duly organized under the laws of the state for civic, fraternal, social or business purposes.

H. The licensee, its agents and employees must comply with all applicable ordinances, regulations and statutes.

I. A massage therapist licensee shall not provide any massage therapy and the licensed premises shall not be open between the hours of 10:00 p.m. and 6:00 a.m. of any day, except for those applying for and receiving an off-site designation on their license.

J. If the licensee is a partnership or corporation, the licensee must designate a person to be manager and responsible for the conduct and operation of the licensee's business establishment. Such person shall remain responsible for the conduct of the business until another suitable person has been designated in writing by the licensee. The licensee shall promptly notify the Sheriff's department in writing of any such change indicating the name, address and telephone number of the new manager, and the effective date of the change in management.

K. A massage therapist licensee shall have the city-issued license in their possession or posted in a conspicuous location while providing massage therapy. A massage therapy business shall conspicuously post its city-issued license upon the licensed premises where it is easily viewable by the general public.

L. No license issued under this chapter may be transferred. A massage business therapy license shall terminate upon any change in the licensee's officers or ownership interests unless the change is approved by the common council, in which case, the license shall continue in force until the end of the license term.

M. The licensee must have obtained, from an insurance company authorized to do business in the state, a general liability insurance policy providing minimum coverage of \$300,000.00 combined single limit per occurrence as well as workers' compensation insurance as may be required by state law. The licensee must provide a certificate of insurance evidencing the insurance coverage required by this subsection. No cancellation of any insurance policy will be valid except upon 30 calendar days prior written notice to the City. Failure to keep in full force and effect the insurance is grounds for suspension or revocation of the license.

N. A massage therapist shall be employed by, affiliated with, or own a massage therapy business licensed by the city, unless a person or place is specifically exempted from obtaining a therapeutic massage business license as outlined in § 380.03.

O. All licensees shall comply with all health and sanitation laws and ordinances.
(Ord. 2024-2, passed 1-23-24)

380.07 Restrictions and Regulations Regarding Sanitation, Health & Safety

A. *Toilet room requirements.* Restrooms used in connection with the massage therapy business shall be provided with mechanical ventilation with two (2) cfm per square foot of floor area, a minimum of twenty (20) foot candles of illumination, a hand-washing sink equipped with hot and cold running water under pressure, single-use paper towels or other approved drying device and a soap dispenser.

B. *Paper/linen requirements.* A massage therapy business shall provide single-service disposal paper or clean linens to cover the massage therapy equipment on which the patron receives the massage; or in the alternative, if the massage therapy equipment on which the patron receives the massage is made of material impervious to moisture, such massage therapy table or, chair shall be properly sanitized after each massage.

C. *Washing of hands required.* The massage therapist shall wash his or her hands and arms with water and soap, anti-bacterial scrubs, alcohol, or other disinfectants prior to and following each massage service performed.

D. *Equipment.* Massage tables, chairs, and other furniture on which massages are performed must have surfaces that can be readily disinfected after each massage. These surfaces must be disinfected following each massage performed.

E. *Habitation.* Massage businesses shall not contain nor allow the use by any person of sleeping quarters or living spaces of any kind intended for habitation, including but not limited to beds, cots, or mattresses. Futons as used in the course of massage therapy sessions are permitted. Home-based massage businesses shall not contain nor allow the use by any person of sleeping quarters or living spaces of any kind intended for habitation, including but not limited to beds, cots, or mattresses in any area where massage is performed.

F. *Illness.* A massage therapy business must be able to describe or provide an employee illness policy.

G. *Bodily Fluids.* Surfaces must be clean and routinely disinfected. Evidence of bodily fluids (blood, saliva, semen, sweat, etc.) will be treated as a failure of sanitary practices and can be grounds for administrative actions such as citation, probation, suspension or revocation.

H. *Compliance with Building and Fire Codes.* Massage Business premises shall comply with all applicable fire and building code requirements.

(Ord. 2024-2, passed 1-23-24)

380.08 License Suspension, Revocation and Denial

A. Any license issued by the city pursuant to the provisions of this chapter may be suspended, revoked or placed on probation or, in connection with the application or renewal of a license, denied upon a finding that the licensee:

- (1) Failed to comply with any applicable state law, city ordinance or building, safety or health regulation relating to a massage therapist or massage therapy business.
- (2) Was arrested for a crime directly related to massage therapy or massage therapy business. These crimes shall include, but not be limited to, any of the crimes listed at Minn. Stat. §§ 146A.08, subd. 1(b), 609.321, 609.322, 609.324, 609.3243, 609.33, or 617.23 or a felony crime involving Minn. Stat. Ch. 152, or a crime committed in another state under a statute in conformity with any of the statutes listed above
- (3) Employed or contracted with a person to perform massage therapy who is required to be licensed by this chapter, but who was not so licensed at the time of employment or contract;
- (4) Violated or did not meet any relevant provision of this chapter;
- (5) Failed to comply with any condition set forth in the license, set forth in a council action regarding the license, set forth by the hearing officers or set forth as part of the placement of the license on probation;
- (6) Allowed the licensed business to be operated or maintained in a way that unreasonably annoyed, endangered or injured the safety, health, morals, comfort or repose of any considerable number of members of the public; or
- (7) Provided false or misleading information on the application.
- (8) In the event of licensees owning multiple massage business locations, any license revocation shall apply to all massage establishment locations within the city of Stewartville.

B. The filing of a criminal complaint against the licensee alleging a violation of Minn. Stat. §§ 609.321, 609.322, 609.324, 609.3242 or 609.3243 shall result in the immediate temporary suspension of the licensee's license. The temporary suspension shall terminate at

the time the complaint is dismissed, the licensee is acquitted or the criminal charge is otherwise resolved, and for which all rights to appeal to a state court have been exhausted or waived.

C. The city may issue a temporary suspension of a massage business license, if the licensee, or any person working on behalf of the licensee, is determined to be conducting business in an unlawful manner, or in any manner that constitutes a substantial hazard to the health, safety, or general welfare of the public. A written notice of the grounds for the suspension shall be delivered to the licensee. The licensee must be given a minimum of 24 hours' notice to suspend their business. A temporary suspension can last no longer than 30 days. Longer suspensions must be approved through the hearing process.

(Ord. 2024-2, passed 1-23-24)

380.09 Right of Appeal

If the city denies, suspends or revokes or chooses to not renew a license, written notice must be sent to the applicant or owner/licensee setting forth the alleged grounds for the potential action. To appeal the revocation, suspension, denial or non-renewal, the applicant or owner/licensee must file a written notice of appeal with the city clerk within fourteen business days after the city's determination. If the notice of appeal is not filed within fourteen business days, the right of appeal is terminated. A timely appeal from a suspension or revocation shall not stay the suspension or revocation.

(Ord. 2024-2, passed 1-23-24)

380.10 Hearing; Hearing Officer

A. The city clerk, or designee, the city attorney, or designee, a member of the public health department or designee, and the one member of the council shall act as the hearing officers. The city may also designate an external individual to act in this capacity. The hearing officers shall have authority to hear appeals from the following actions of the city:

- (1) The denial or refusal to renew a license.
- (2) The placing of a license on probation.
- (3) The revocation of a license.
- (4) The suspension of a license.

B. Where an external individual is designated to act as a hearing officer the administrative rules of § 1-2-6 shall so apply to the process.

C. The hearing officers may receive all evidence and hear witnesses on matters applicable to the appeal. The hearing officers shall afford the registrant, permittee, business, or applicant making the appeal an opportunity to present evidence, cross-examine witnesses, and be heard. The hearing officers may affirm, modify, or reverse the city's action by a majority vote rendered in writing.

D. Any person or business aggrieved by the hearing officers' determination may appeal to the common council. An appeal to the common council shall be taken within fourteen business days from the hearing officer's decision by filing with the city clerk a notice of appeal. The matter shall be placed on the common council's scheduled meeting agenda for a public hearing. The common council may affirm, modify, or reverse the hearing officer's decision. If the notice of appeal is not filed within fourteen business days, the right to appeal is terminated.

(Ord. 2024-2, passed 1-23-24)

380.11 Notice of Appeal

All notices shall be given either by personal service, mail or electronic mail to the address for service of notices as shown on the application form. Service by mail shall be deemed complete on the date of certified receipt. Failure of the applicant, licensee, or owner to receive such notice shall not invalidate the action taken pursuant to such notice.

(Ord. 2024-2, passed 1-23-24)

380.12 Notice of Hearing

Notice of any hearing involving the registrant, permittee, or the applicant shall be given by the city clerk in writing, setting forth specifically the purpose, time, and place of the hearing. Such notice shall be sent to the registrant, permittee, business, or applicant at least seven business days prior to the date set for hearing or shall be personally served at least three business days prior to the date set for hearing.

(Ord. 2024-2, passed 1-23-24)

380.13 Penalty

Any person violating any provision of this chapter shall be guilty of a misdemeanor.

(Ord. 2024-2, passed 1-23-24)

