## CHAPTER 4: BUSINESS REGULATIONS

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GENERAL PROVISIONS

§ 4.01 DEFINITIONS.

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

APPLICANT. Any person making an application for a license under this chapter.

APPLICATION. A form with blanks or spaces thereon, to be filled in and completed by the applicant as his or her request for a license, furnished by the city and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

BUSINESS. Any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both licensed and regulated, by the terms and conditions of this chapter.

LICENSE. A document issued by the City to an applicant permitting him or her to carry on and transact a business.

LICENSE FEE. The money paid to the city pursuant to an application and prior to issuance of a license to transact and carry on a business.

LICENSEE. An applicant who, pursuant to his or her application, holds a valid, current, unexpired and unrevoked license from the city for carrying on a business.
SALE, SELL and SOLD. All forms of barter and all manner or means of furnishing merchandise to persons.

(‘92 Code, § 4.01)

§ 4.02 APPLICATIONS.

All applications shall be made as follows:

(A) All applications shall be made at the office of the City Administrator upon forms which have been adopted by resolution of the Council.

(B) Unless otherwise provided for in this chapter, all applications must provide complete and accurate information as the Council deems necessary considering the nature of the business for which license application is made.

(C) It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in an application, or any willful omission to state any information called for on an application form, shall, upon discovery of the falsehood work an automatic refusal of license, or if already issued, shall render any license or permit issued pursuant thereto, void and of no effect to protect the applicant from prosecution for violation of this chapter, or any part hereof, and any license fee paid shall be forfeited by the applicant.

(D) The City Administrator’s office shall, upon receipt of each application completed in accordance herewith, investigate the truth of statements made therein and the moral character and business reputation of each applicant for license to the extent as he or she deems necessary. For the investigation, the City Administrator may enlist the aid of the Chief of Public Safety. The Council shall not consider an application before an investigation has been completed.

(E) Applications for renewal licenses may be made in an abbreviated form as the Council may by resolution adopt.

(‘92 Code, § 4.02) (Ord. 158, Third Series, eff. 12-1-87; Am. Ord. 98, Sixth Series, eff. 3-25-09) Penalty, see § 4.99

§ 4.03 ACTION ON APPLICATION FOR LICENSE.

(A) Granting. The Council may grant any application for the period of the remainder of the then current calendar year or for the entire ensuing license year. All applications, including proposed license periods, must be consistent with this chapter.

(B) Issuing. If an application is granted, the Mayor and City Administrator shall forthwith issue a license pursuant thereto in the form adopted by resolution of the Council and upon payment of the license fee. All licenses shall be on a calendar year basis unless otherwise specified. All license fees shall be prorated on an annual basis based upon the date the application is submitted.
(C) **Transfer.** No license shall be transferable between persons or location. No license shall be transferable to a different location without prior consent of the Council and upon payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this division.

(D) **Termination.** Licenses shall terminate only by expiration or revocation.

(E) **Refusal and revocation.** The Council may, in its sole discretion and for any reasonable cause, refuse to grant any application, or revoke any license. No license shall be granted to a person of questionable moral character or business reputation. In all cases of revocation the Council shall give notice to the licensee of its refusal to grant any license or revoke any license. The applicant may request a hearing on the denial or revocation of any license by providing a written request for hearing within ten (10) days of the date of notice to applicant. A written request for hearing delivered to the City Administrator’s office no later than ten (10) days of the date of notice to applicant shall entitle applicant to a hearing on the license denial or revocation. The Council shall provide a hearing within thirty (30) days of receiving a written request for hearing.

(F) **Duplicate license.** Duplicates of all original licenses may be issued by the City Administrator, without action by the Council.

("92 Code, § 4.03; Am. Ord. 98, Sixth Series, eff. 3-25-09) Penalty, see § 4.99

**§ 4.04 CARRYING OR POSTING.**

All transient merchants, peddlers and solicitors shall at all times when so engaged, carry their registration and/or license on their person. All other licensees shall post their licenses in their place of business near the licensed activity.

("92 Code, § 4.04; Am. Ord. 98, Sixth Series, eff. 3-25-09)

**§ 4.05 RESPONSIBILITY OF LICENSEE.**

The conduct of agents or employees of a person to whom a license or permit is issued, shall be deemed the conduct of the licensee himself or herself.

("92 Code, § 4.05)

**§ 4.06 POSTING AND DISTRIBUTING PRINTED MATTER.**

(A) **Posting.** It is unlawful for any person to attach any printed matter of any kind to any public building, vehicle, bridge, fence, railing, utility pole or billboard, or any other public property in the city, or private property of another without permission of the owner, or paint any advertising matter or sign upon any sidewalk or street.

("92 Code, § 4.06; Am. Ord. 98, Sixth Series, eff. 3-25-09) Penalty, see § 4.99

**§ 4.07 FIXING LICENSE FEES.**

All fees for licenses under this chapter shall be fixed and determined by the Council,
adopted by resolution, and uniformly enforced. License fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Administrator, and open to inspection during regular business hours.

(‘92 Code, § 4.07) (Ord. 75, Third Series, eff. 1-10-83; Am. Ord. 98, Sixth Series, eff. 3-25-09)

§ 4.08 INSURANCE REQUIREMENTS.

Whenever insurance is required by a section of this chapter, after approval by the Council, but before the license shall issue, the applicant shall file with the City Administrator a policy or certificate of public liability insurance showing:

(A) That the limits are at least as high as required;

(B) That coverage is effective for at least the license term approved; and

(C) That the insurance will not be cancelled or terminated without a 30-day written notice served upon the City Administrative offices. Cancellation or termination of the coverage shall be grounds for license revocation.

(‘92 Code, § 4.08) (Ord. 101, Third Series, eff. 5-30-84)

§ 4.09 RESERVED.

SPECIFIC BUSINESS REGULATIONS

§ 4.10 RESERVED.

§ 4.11 RESERVED.

§ 4.12 RESERVED.

§ 4.13 RESERVED.

§4.14. POSSESSION AND SALE OF TOBACCO ANDRELATED DEVICES AND THE USE OF ELECTRONIC DELIVERY DEVICES.

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

Unregulated electronic delivery devices, commonly referred to as electronic cigarettes, or e-cigarettes, closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine or other substances created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA’s testing also suggested that quality control processes used to manufacture these products are inconsistent or non-existent. (“Summary of results: Laboratory analysis of electronic cigarettes conducted by FDA, “Food and Drug Administration (FDA), July 22, 2009. E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.


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

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. COMPLIANCE CHECKS shall involve the use of minors as authorized by this ordinance. COMPLIANCE CHECKS shall also mean the use of minors who attempt to purchase licensed products 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 licensed products.

ELECTRONIC DELIVERY DEVICES. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol or vapor from the product. ELECTRONIC DELIVERY DEVICES includes any component part of a product, whether or not marketed or sold separately. ELECTRONIC DELIVERY DEVICES does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose. ELECTRONIC DELIVERY DEVICES includes any such devices, whether they are manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, or under any other product name or descriptor.

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

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A standard (0.011 gauge with an 18 by 16 mesh count) window screen is not considered a wall.

LICENSED PRODUCTS. The term that collectively refers to tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products,
**BUSINESS REGULATIONS**

**LOOSIES.** The common term used to refer to a single or individually packaged cigar or cigarette, or any other licensed product that has been removed from its intended retail packaging and sold individually. **LOOSIES** does not include individual cigars with a retail price, after any discounts are before any sales taxes are imposed, of more than $1.00 per cigar.

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

**MOVEABLE PLACE OF BUSINESS.** Any form of business operated out of a kiosk, 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.

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

**RETAIL ESTABLISHMENT.** Any place of business where licensed products are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, gasoline service stations, bars, and restaurants.

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

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

**SMOKE OR SMOKING.** Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product, or inhaling or exhaling aerosol or vapor from an electronic delivery device. **SMOKE OR SMOKING** includes being in possession of a lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product intended for inhalation, or an electronic delivery device that is turned on or otherwise activated.

**TOBACCO.** Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigarettes; cigars; cheroots; stogies; perique;
granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. **Tobacco** does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

**Tobacco-related Devices.** Any pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. **Tobacco-related devices** includes components of tobacco-related devices which may be marketed or sold separately.

**Use.** Smoking, inhaling or exhaling of any licensed product including tobacco and tobacco-related devices and aerosol or vapor from any electronic delivery device. Use shall also mean being in possession of an electronic delivery device that is turned on or otherwise activated.

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

**(C) License.**

(1) **License required.** No person shall sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the city.

(2) **Application.** An application for a license to sell shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(3) **Action.** The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the
applicant's right to appeal the City Council's decision.

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

(5) **Revocation or suspension.** Any license issued may be revoked or suspended as provided in Section 13.

(6) **Transfers.** All licenses issued shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid.

(7) **Moveable place of business.** No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed.

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

(9) **Renewals.** The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

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

(11) **Smoking prohibited.** Use of any licensed product shall not be permitted and no person shall smoke or use any licensed product within the indoor area of any establishment licensed under this ordinance. Smoking for the purposes of sampling licensed products is prohibited.

(D) **FEES.** No license shall be issued under this ordinance until the appropriate license fee is paid in full. The fee shall be established by the city's fee schedule and may be amended from time to time.

(E) **BASIS FOR DENIAL OF LICENSE.**

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

(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 licensed products.
(c) The applicant has had a license to sell licensed products suspended or revoked within the preceding twelve (12) months of the date of application.

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

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

(2) 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.

(3) 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 ordinance.

(F) PROHIBITED SALES.

(1) In general. It shall be a violation of this ordinance for any person to sell or offer to sell any licensed product:

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

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

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

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

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

(2) Self-service sales. It shall be unlawful for any person licensed under this ordinance to allow the sale of licensed products by any means where by the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed product between the licensee or his or her clerk and the customer. All licensed products shall either be stored behind the sales counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted shall comply with this
section within 90 days of the effective date of this ordinance.

(3) **Liquid packaging.** It shall be a violation of this ordinance for any person to sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

(G) **RESPONSIBILITY.** Any person licensed under this ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

(H) **COMPLIANCE CHECKS AND INSPECTIONS.** All licensed premises shall be open to inspection by law enforcement or other authorized city official during regular business hours. The City shall conduct compliance checks in accordance to State Law 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 premise to attempt to purchase licensed products. Minors used for the purpose of compliance checks shall be supervised by law enforcement or other designated personnel. Minors used for compliance checks shall not be guilty of illegal possession when those 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.

(I) **OTHER ILLEGAL ACTS.**

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

(1) **Illegal sales.** It shall be a violation of this ordinance for any person to sell or otherwise provide any licensed product to any minor.

(2) **Illegal possession.** It shall be a violation of this ordinance for any minor to have in his or her possession any licensed product. This shall not apply to minors lawfully involved in a compliance check.

(3) **Illegal use as prohibited by the Minnesota Clean Indoor Act.** It shall be a
violation of this ordinance for any person to smoke or use any licensed product, including
any electronic delivery device, anywhere smoking is prohibited by the Minnesota Clean
Indoor Act, as it may be amended from time to time.

(4) **Illegal use as prohibited by private policy.** It shall be a violation of this
ordinance for any person to smoke or use any licensed product, including any electronic
delivery device, in an area where prohibited by a private policy established by a proprietor,
owner, lessee, manager or other person in charge of the area.

(5) **Proprietors and others.** It shall be a violation of this ordinance for the
proprietor, person, or entity that owns leases, manages, operates, or otherwise controls the
use of an area to knowingly permit the use of any licensed product in any area in which
said use is prohibited either pursuant to private policy or prohibited under this ordinance or
to fail to comply with any provision of this ordinance.

(6) **Illegal use by minor.** It shall be a violation of this ordinance for any minor to
smoke, chew, sniff or otherwise use any licensed product.

(7) **Illegal procurement.** It shall be a violation of this ordinance for any minor to
purchase or attempt to purchase or otherwise obtain any licensed product, and it shall be a
violation of this ordinance for any person to purchase or otherwise obtain those items on
behalf of a minor. It shall further be a violation for any person to coerce or attempt to
coerce a minor to illegally purchase or otherwise obtain or use any licensed product. This
shall not apply to minors lawfully involved in a compliance check.

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

(J) **EXCEPTIONS AND DEFENSES.** Nothing in this ordinance shall prevent
the providing of licensed products to a minor as part of a lawfully recognized religious,
spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this
ordinance for a person to have reasonably relied on proof of age as described by state law.

(K) **VIOLATIONS AND PENALTY.**

(1) **Violations.**

(a) **Notice.** A person violating this ordinance may be issued, either
personally or by mail, a citation that sets forth the alleged violation and that informs the
alleged violator of his or her right to a hearing on the matter. The citation shall provide
notice that a hearing must be requested within fifteen (15) business days of receipt and that
hearing rights shall be terminated if a hearing is not promptly requested. The citation shall
provide information on how and where a hearing may be requested, including a contact address and phone number.

(b) *Hearings.*

(i) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within fifteen (15) business days of the issuance of the citation and delivered to the city clerk or other designated city officer. Failure to request a hearing within fifteen (15) business days of the issuance of the citation will terminate the person’s right to a hearing.

(ii) The city clerk or other designated city officer shall set the time and place for the hearing within forty-five (45) days from receipt of the request. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least fifteen (15) business days prior to the hearing.

(c) *Hearing Officer.* The City Council shall designate a hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(d) *Decision.* A decision shall be issued by the hearing officer within thirty (30) business days. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer’s reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable. The decision of the hearing officer is final.

(e) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred.

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

(2) *Administrative penalties.*

(a) *Licensees.* Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of $100.00 for a first violation; $200.00 for a second offense at the same licensed premises within a 24-month period; and $400.00 for a third or subsequent offense at the same location within a 24-month period. In addition, upon a third violation, the license shall be suspended for not less than five (5) consecutive days and up to sixty (60) days. Upon a fourth violation, the license shall be revoked.
(b) **Other individuals.** Other individuals, other than minors regulated by division (C)(3) of this section, found to be in violation of this ordinance shall be charged an administrative fine consistent with the administrative fine schedule.

(c) **Minors.** Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase licensed products shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by the City Council upon consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may be established by ordinance and may be amended from time to time.

(d) **Statutory penalties.** If the administrative penalties authorized to be imposed by Minn. Stat § 461.12, as it may be amended from time to time, differ from those established in this section, then the higher penalties shall prevail.

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

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

(Ord, 75, Fourth Series, eff. 7-1-95; Am. Ord. 90, Sixth Series, eff. 3-12-09; Am. Ord. 41, Seventh Series, eff. 5-9-16)

§ 4.15 RESERVED.

§ 4.16 RESERVED.

§ 4.17 RESERVED.

§ 4.18 GAS AND OIL PIPING, APPLIANCES, AND APPURTENANCES.

(A) **License required.** It is unlawful for any person to install, alter, service or repair gas or oil piping, appliances or appurtenances without having a license therefor from the city.

(B) **Classification.** Licenses shall be issued in the following classifications:

(1) **Class “A” license.** Holders of Class “A” licenses, upon compliance with the terms and conditions of the code, shall be entitled to work at or engage in the business of installing, altering, repairing or servicing gas or oil piping, appliances and appurtenances.

(2) **Class “B” license.** Holders of Class “B” licenses, upon compliance with all the
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terms and conditions of the code, shall be entitled to work at installing, altering, repairing or servicing gas or oil piping, appliances and appurtenances, only if the work is done while in the employ of and under the direct supervision of a person holding a Class “A” license.

(3) Class “C” license. Holders of Class “C” licenses, upon compliance with all the terms and conditions of the code, shall be entitled to work at the business of installing, altering, repairing and servicing gas or oil piping, appliances and appurtenances, with the exception of gas-burning or oil-burning incinerators, appliances used for space heating, and any appliance requiring a vent, and it shall further entitle him or her to install not more than five feet of gas or oil piping in connection with any installation.

(C) Residence requirements. No license shall be granted under this section unless the applicant is a resident of the state; provided, that if the applicant is otherwise qualified but for this resident requirement, the license shall issue upon the applicant having filed with the City Administrator a power of attorney designating the City Administrator as his or her agent for service of process in any action or proceeding arising from, or as the result of, the exercise of a right or privilege granted by the issuance of the license. Provided, further, that if the applicant shall have designated the Secretary of the State of Minnesota as his or her agent for the service of process, and shall have presented a certificate stating the same, then this provision for filing a power of attorney shall be waived if all of the details of the filing with the Secretary of State are current and up to date. If a power of attorney is filed designating the City Administrator as the applicant’s agent for service of process, the same shall contain his or her current mailing address and shall be kept current in the future by the applicant, and the applicant shall agree to keep the mailing address current at all future times.

(D) Bond required. Before each Class “A” or Class “C” license is issued, the applicant shall file a surety bond in the amount of $2,000 or $1,000, respectively, which bond shall be approved by the Council and in a form approved by the City Attorney. Each bond shall be executed by the applicant, as principal, and by a corporate surety authorized to do business in the state, conditioned that the principal in all materials, equipment and appliances by him or her furnished, and in all work done or performed by him or her, in installing, altering, repairing and servicing gas or oil burners, gas-burning or oil-burning equipment, gas-burning or oil-burning appliances, piping and appurtenances, the same shall fully conform to and comply with the provisions of all city ordinances and other laws.

(E) Insurance required. In addition to the surety bond requirement set forth herein, and prior to issuance of a Class “A” or Class “C” license, the applicant shall furnish a certificate of insurance to be filed with the City Administrator describing a general policy of liability insurance for personal injury and property damage, including products and completed operation coverage, which shall have minimum limits of not less than $100,000 for injuries to or death of one person, and not less than $300,000 for injuries to or death resulting from one accident, and not less than $100,000 for property damage.

(F) Additional condition of bonds and insurance policies. The bonds and insurance policies provided for herein shall, in addition to any other requirement hereof, further provide that no
cancellation of the bond or insurance contract shall be made for any cause without first having given notice to the city 20 days prior to the proposed date of cancellation, of the intention to so cancel. The notice shall be served upon the City Administrator by certified or registered mail, or by a personal service by an agent of the company. If the personal service is made it shall be made only on the City Administrator individually.

(‘92 Code, § 4.18) Penalty, see § 4.99

§ 4.19 RESERVED.

§ 4.20 JUNK DEALERS.

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS PREMISE or PREMISES. The area of a junkyard and/or salvage and reclaiming operation as described in a junk dealer’s license or application for license as provided for in this section.

DEALER. Any person engaged in the operation of a junkyard, salvage or auto dismantling facility.

HAZARDOUS MATERIAL. Any material in solid, semisolid, liquid or contained gaseous form which, because of its quantity, concentration, chemical, physical or infectious characteristics may:

(a) Cause or significantly contribute to an increase in mortality or an increase in serious, irreversible or incapacitation reversible illness; or

(b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

HAZARDOUS WASTE. See M.S. § 116.06, Subd. 131, as it may be amended from time to time.

JUNK. Includes, but is not limited to, old or scrap copper, brass, rope, rags, batteries, paper, synthetic or organic, trash, tires, rubber debris, solid or liquid waste, (or junked dismantled, or wrecked automobiles or farm or construction machinery or parts thereof), junk vehicles, dismantled vehicles, parts from vehicles, machinery, machinery parts, iron, steel and other old or scrap ferrous or nonferrous material.

JUNK YARDS, SALVAGE AND AUTO DISMANTLING FACILITY. An establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling of junk or the maintenance or operation of an automobile and vehicle graveyard and storage and sale of parts thereof, and shall include appliance processing and reclaiming.
WASTE TIRES. Any tire which is not mountable on a wheel rim, has insufficient tread depth remaining to be legally used on a public roadway under M.S. §§ 169.71-3, as it may be amended from time to time, or has at least one cut, tear or deficiency, which would make it unsafe for use on a public road.

(B) License required. It is unlawful for any person to deal in junk without having a license therefor from the city.

(C) Bond requirement. Before issuing a junk dealer’s salvage and reclaiming license as provided for herein, the applicant shall execute and deliver to the City Administrator a bond in the penal sum of $5,000 with sufficient sureties approved by the Council and conditioned that the applicant will in every particularity conform with the requirements of any law relating to junk dealers.

(D) Conditional use. Operations in excess of five acres shall be by conditional use.

(E) General conditions. Each application for a junkyard license, salvage and reclaiming operation license shall include the following information:

(1) The name and street address of the applicant;

(2) The street address and legal description of the premises upon which the junkyard, salvage and reclaiming operation is to be operated;

(3) The name, street address and written consent of the owner of the premises to use the premises for the purposes detailed on the application;

(4) The zoning classification of the premises;

(5) The date of issuance and status of the conditional use permit, if applicable, for use of the premises for the purposes detailed on the application;

(6) A copy of a current industrial storm water permit for the site;

(7) Obtain an Environmental Protection Agency identification (EPAI.D.) number for a waste generator if required; and

(8) Site management plan which includes the following:

(a) Sketch showing location of fire lanes, buildings and storage areas;

(b) Location and size of operation; and

(c) Location of wetlands and site drainage.
(F) General requirements. It shall be unlawful for any junkyard or auto dismantling facility located in the city to operate, except in conformance with the following provisions:

(1) Battery storage. All batteries must be stored on a non-reactive, curbed and impermeable surface without a floor drain and protected from accumulations of rain, snow and drain water or stored within a covered, non-reactive, impermeable container.

(2) Antifreeze disposal. Antifreeze shall be collected and recycled, or disposed of through other Minnesota Pollution Control Agency approved methods. Antifreeze shall not be discharged to land, water, any septic system or public sewer system.

(3) Refrigerants. Refrigerants shall be recovered and recycled or reclaimed by methods approved by Minnesota Pollution Control Agency.

(4) Recycling petroleum products. Used oil, including engine oil, transmission fluid, hydraulic oil and similar petroleum products shall be recycled or disposed of through Minnesota Pollution Control Agency approved methods.

(5) Draining fluids.

(a) All auto dismantling facilities and junkyards shall have facilities to drain fluids on a curbed, impermeable surface, within a structure with an impermeable floor, on an unbermed, impermeable surface with adequate spill-control equipment and absorbent material immediately available to contain any spill which may occur.

(b) Where disassembly of any vehicle, or component thereof, is necessary at a location without an impermeable floor or surface, all drain plugs, hose connections, and other orifices, which allow for the leakage of fluids, shall be tightly capped prior to component movement to avoid spillage of residue liquids.

(6) Oil filter disposal. Used oil filters shall be recycled, disposed of as hazardous waste, or after being drained and tested by a professional testing laboratory, disposed of as solid waste. Oil filters may remain attached to engines or motors when sold to a second party or transported as scrap so long as the receiving person will accept the filter.

(7) Tire storage.

(a) Tires shall be stored in cells no larger than 10,000 square feet by ten feet high, with a posted fire lane 50 feet wide surrounding each cell and leading to a public street. The applicant shall insure emergency vehicle access on the fire lanes at all times of the years;

(b) Tire piles shall be located 50 feet away from any vegetation over 12 inches in height;

(c) No more than 500 waste tires shall be stored at any junkyard or auto
dismantling facility without a current permit from the Minnesota Pollution Control Agency. Tires maintained for resale as vehicle components shall be stored separately from waste tires.

(8) **Hazardous material storage.** Flammable and hazardous materials shall be stored in covered and appropriately marked containers suitable to the contents in storage. Adequate aisle space shall be provided for access by emergency personnel and for spill containment and clean-up equipment.

(9) **Fencing.** Fencing shall be installed in accordance with code specifications on the perimeter of all auto dismantling facilities and junkyards at least eight feet high to deny public access, except through controlled access gates. In the case where the facility has a minimum of 100 feet of vacant land between all dismantling facilities, and any adjacent property or public road, and the absence of a fence will not pose an unreasonable threat to the public safety, the Council may allow the posting of “No Trespassing” signs at intervals no greater than 50 feet around the perimeter of the facility in lieu of the required fence.

(10) **Screening.** Visual screening shall be installed in accordance with code specifications and subject to the approval of the City Building Inspector. Visual screening shall be provided through fencing or landscaping to block from view all auto dismantling, auto or junk storage, and related activities, from adjacent property or any public right-of-way.

(11) **Expansion or increase of operation.** No space not covered by the license shall be used in the licensed business.

(12) **Hazardous spills.** Spills of oil, lubricants or other hazardous material shall be promptly contained, cleaned and disposed of in accordance with current Minnesota Pollution Control Agency guidelines.

(13) **On-site disposal.** On-site disposal of any material is prohibited, except under proper license or permit.

(14) **Battery cable disposal.** Lead battery cable ends and heater cores shall be removed from vehicles prior to crushing and shall be recycled separately unless accepted as a vehicle component by a second person.

(15) **Public way.** No junk shall be allowed to rest upon or protrude over any public street, walkway or curb or become scattered or blown off the business premises.

(16) **Storage, junk.** Junk shall be stored in piles not exceeding ten feet in height and shall be arranged so as to permit easy access to all junk for fire fighting purposes.

(17) **Appliance processing.** Operators shall comply with the minimum requirements of Minnesota Pollution Control Agency (MPCA) and Minnesota Office of Waste Management (OWM).
(G) Inspections and monitoring.

(1) Inspections by officials. In order to insure compliance with the license or permit granted in this section and as a condition for the issuance of any permit or license granted under this section, the applicant shall allow inspections at reasonable and appropriate times by officials of the city or consultants as the city deems appropriate to retain. The license holder shall routinely be given a minimum of 24 hours notice of any scheduled inspection, but failure to provide the notice shall not be cause to deny an inspection of any facility, nor shall it be cause to deny enforcement of any ordinance, regulation or law.

(2) Monitoring wells. The Council may require that any licensee construct and maintain, at the licensee’s expense, ground water monitoring wells on the premises of their junkyard or auto dismantling facility to determine the impact the facility is having on the city’s ground water. In determining whether to require monitoring wells, the Council shall:

   (a) Consult with a licensee, or appoint a representative to consult with the licensee, prior to ordering that licensee to construct a monitoring well.

   (b) Consider the specific geographic, topographical and other features of the operation as they pertain to the facility’s potential to contaminating the city’s ground water.

   (c) Consider the professional recommendation of the City Engineer or other qualified individual or firm as to the necessity or desirability of constructing monitoring wells at the facility.

(3) Inspections and monitoring. It shall be the responsibility of the city’s Building Inspector to conduct or coordinate all inspection or monitoring activities required by this section or required by any license issued pursuant to this section.

(H) Report of spills. It is the duty of every person to notify the Minnesota Pollution Control Agency of any spill or discharge of a substance in accordance with M.S. § 115.061, as it may be amended from time to time. Any person holding a junkyard license from the city shall also report to the city in writing of the time, date, location, cause and method of clean-up of any hazardous material spill in excess of one gallon in volume, which occurs on the premises of the licensee within 48 hours of the occurrence of the spill.

(I) Term of licenses. Licenses shall be issued under this section for a period not to exceed one year.

(J) Display of license. Every license shall be kept conspicuously posted about the place for which it is issued, along with the telephone numbers of the Minnesota Pollution Control Agency Spill Unit and the Fergus Falls Fire Department. Licenses shall be exhibited to any person upon request.

(K) License fee. The fee for every junkyard and auto dismantling facility license shall be $50
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per year. In the event that the city is required to perform actual on-sight inspection of the licensed premises, the licensee shall reimburse the city for any and all actual costs incurred by the city in the on-sight inspection, including sampling and analysis fees, but not to exceed $6,000 annually. Fees do not include costs to be paid by the licensee in the design, supervision and construction of any ground water monitoring wells required as part of this license.

(L) Revocation. Every license may be revoked by the Council for violation of any provision of this section after the licensee has been given reasonable notice and the opportunity to be heard or upon any change in zoning or special use permit status of the premises whereby junkyards are prohibited. There shall be no refund of any license fee, inspection fee or any portion thereof upon revocation.

(‘92 Code, § 4.20) (Am. Ord. 64, Fourth Series, passed 5-16-94) Penalty, see § 4.99

§ 4.21 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS.

Subd. 1. Purpose. This Section is not intended to interfere with the legitimate business activities of peddlers, solicitors, or transient merchants, as the same are defined herein, whether same be local or interstate. These provisions are intended only to, as nearly as possible, ferret out all illegitimate operators and to regulate and control all those who, in person, would use their unique presence on property within the City of Fergus Falls, or their unique proximity to its residents, for purposes of harassment, nuisance, theft, or other unlawful activities.

Subd. 2. Definitions. When used in this Section, the following terms have the following meanings:

A. "Peddler" means any person, whether a resident of the City of Fergus Falls or not, who goes from house to house, door to door, business to business, from street to street, or any other type of place to place movement, for the purpose of offering 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. It does not include vendors of milk, bakery products, perishable goods or groceries who distribute their products.

B. "Peddling" means the act of being a peddler.

C. "Solicitor" means any person, whether a resident of the City of Fergus Falls or not, 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 is to 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. All solicitors dealing with merchandise of any kind to be delivered to customers directly from points outside the State of Minnesota shall be exempt from payment of the license fee.

D. "Transient merchant" includes any person, firm or corporation, whether as owner, agent, consignee, or employee, whether a resident of the City of Fergus Falls or not, who
engages in a temporary business of selling and delivering goods, wares, products, and merchandise within the City, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, trailer, tent, railroad boxcar, boat, public room in hotels, lodging houses, apartments, shops, or any street, alley or other place within the City, for the exhibition, sale, or attempting to sale, and delivering such goods, wares, products, and merchandise, either privately or at public auction and who does not remain in any one location for more than fourteen (14) days..

E. “Person” includes any natural individual, group, organization, corporation, firm, partnership, or similar association.

Subd. 3. Regulated Activities, Permit Required. It is unlawful for any person to engage in the activity or any such business as a peddler, solicitor or transient merchant within the City of Fergus Falls without first obtaining a permit and identification card in compliance with the provisions of this ordinance. It is unlawful for any person engaging in the activity or any such business as a peddler, solicitor or transient merchant within the City of Fergus Falls, with or without a permit and/or identification card, to fail to comply with the provisions of this ordinance, including, but not limited to, the standards of conduct specifically identified at subdivision 10 of this section. The person must also comply with any applicable zoning and health regulations. A permit shall be issued to only one individual, who shall be named in the permit and identification card together with the corporation and/or business entity that individual represents. A corporation and business entity may apply for more than one permit. A permit and identification card issued by the City may only be used by the individual identified in said permit and identification card. It is unlawful for anyone, other than the individual identified in said permit and/or identification card, to use, possess, or display a permit and/or identification card when engaged in a regulated activity.

Subd. 4. Exemptions. A person engaged in the following activities is not required to obtain a permit and identification card from the City:

A. selling personal property at wholesale to dealers of the articles;

B. selling newspapers;

C. selling, attempting to sell, and delivering products of the farm or garden grown or raised by the seller, including meat, but such activities must comply with applicable health regulations;

D. selling antiques, collectibles, food products, beverages, or other products in a show or festival which last for five days or less and which involves two or more sellers or exhibitors;

E. calling upon or making contact with residents for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food, bakery and dairy products;

G. soliciting money, donations or financial assistance for a political, religious or non-profit tax-exempt organization, or selling or distributing literature or merchandise for which a fee is charged or solicited on behalf of such organization;
H. conducting the type of sale commonly known as garage sales, rummage sales, or estate sales; or

I. conducting a court-ordered sale.

A person that is exempt under this paragraph shall not, for the scope of this section, excuse any person from complying with any other applicable provision or requirement by another City or county ordinance or state statute.

**Subd. 5. Persons Ineligible.** The following are not eligible for a permit and identification card from the City:

A. a person whose permit or license and/or identification card for regulated activity was revoked by the City or another governmental body within three years before the application date;

B. a person who has been denied a permit or license for regulated activity by the City or another governmental body because of circumstances that occurred within three years before the application date;

C. a person who has violated, or whose representative has violated, a provision of this section within three years before the application date, or who violates a provision of this section during the application period pending issuance of the permit and identification card;

D. a person who has been convicted within three years before the application date of a crime that adversely reflects on the person’s ability to honestly, safely, or lawfully conduct the regulated activities, unless the individual can show sufficient evidence of rehabilitation as defined in Minn. Stat. §364.03, subd. 3; or

E. a person who produces documentation of identification that is torn, pasted, peeled, or otherwise damaged or altered.

**Subd. 6. Application.** Application for a permit and identification card must be made at least five (5) working days before the regulated activity is proposed to begin and must include an accurate, sworn statement in writing on a form to be furnished by the City Administrator’s office that includes the information listed below and includes the required supporting documentation:

A. name (including last, first and middle);

B. physical description of applicant;

C. date of birth;

D. a complete and valid home and local address of the applicant and, in the case of transient merchants, the local address from which the proposed sales will be made (this shall also include a valid address where notices can be sent to applicant from the City);

E. a brief description of the proposed activity, its location within the City, and the
merchandise and/or services involved;

F. the dates and hours of the day during which the activity will be conducted;

G. name, address, and phone number of the person on whose behalf orders are solicited, together with credentials therefrom establishing the applicant’s relationship to the person;

H. the source of supply of the goods or products proposed to be sold, or orders taken for the sale thereof, where such goods or products are located at the time said application is filed, and the proposed method of delivery;

I. two (2) recent photographs of the applicant as required below;

J. a statement whether the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, other than petty traffic violations, the nature of the offense, date of offense, and the punishment or penalty imposed and the date thereof;

K. the last cities or other localities, not exceeding five, where the applicant conducted the proposed activity, or activity similar to the proposed activity, immediately preceding the date of application;

L. a statement whether the applicant has had a previous permit, license and/or identification card for a regulated activity revoked by the City or another governmental body within three years before the application date and stating the governmental entity that issued the permit, license and/or identification card the reasons for the revocation;

M. a statement whether the applicant has been denied a permit, license or identification card for regulated activity by the City or another governmental body because of circumstances that occurred within three years before the application date stating the governmental body that denied the permit, license or identification card, the date of the denial, and the reasons for the denial;

N. make, model, year, color and state license number of each motor vehicle to be used in the proposed activity;

O. social security number, date of birth, and drivers license or state or tribal identification card number, together with copies of the same;

P. passport information and visa status if the applicant is not a United States citizen;

Q. the name, address, and phone number of the person or company employing the applicant, if different from the information provided in subparagraph F above; and

R. a copy of all documents to be used by the applicant in the regulated activity.

Subd. 7. Photographs. Each individual applicant and all other persons who will be conducting the regulated activity on behalf of the applicant must submit two copies of a recent
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photograph or themselves approximately 1 ½ inches by 1 ½ inches, showing the head and shoulders of the person in a clear and distinguishable manner. An application is not complete until the required photographs are supplied.

Subd. 8. Fees, Duration. The application must be accompanied by the required fees as may be established from time to time by the City Council by resolution. A permit and identification card is valid only for the calendar year in which it is issued. The fees are for a one year period and will not be prorated for periods less than one year. No fees are required of individuals taking orders for the shipment of goods through interstate commerce.

Subd. 9. Investigation, Issuance, and Denial.

A. Within five (5) working days after the application is complete and submitted to the City Administrator’s office, the City Administrator and the Chief of Police (or their designee's) will conduct an investigation regarding the information provided in the application, the applicant’s business and moral character, and the eligibility for a permit and identification card. The City Administrator’s office will issue a permit and identification card only to eligible people. Each identification card will include a copy of the person’s photograph.

B. If as a result of such investigation the applicant's information provided on the application is incomplete or false, the business and/or moral character of the applicant is found to be unsatisfactory, or the applicant is ineligible for a permit, the City Administrator’s office shall notify the applicant that his/her application is disapproved and that no permit or identification card will be issued. Any applicant's business and moral character may be found to be unsatisfactory for reasons including, but not solely limited to:

1. fraud, misrepresentation or incorrect statement contained in the application for permit and identification card;

2. past fraud, misrepresentation or incorrect statement made in the course of carrying on business as a solicitor, peddler, or transient merchant;

3. past conviction of any crime or misdemeanor involving fraud, theft or moral turpitude;

4. conducting the business of a peddler, solicitor, or transient merchant in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to health, safety or general welfare of the public; or

5. when the applicant, or any person associated with the applicant, has a bad business or moral reputation. Evidence of a bad business or moral reputation shall include, but is not limited to, the existence of more than three (3) complaints against the applicant, or the applicant’s company or employer with the Better Business Bureau, the Office of the Minnesota Attorney General or other state attorney general’s office, the last cities or other localities, not exceeding five, where the applicant conducted the proposed activity, or other similar business or consumer rights office or agency, with the preceding twelve (12) months, or three (3) complaints filed with the City against an applicant within the preceding five (5) years.

C. If as a result of such investigation, the business and moral character of the
applicant are found to be satisfactory and the applicant is determined to be eligible, the City Administrator’s office shall endorse its approval on the application and issue a permit and identification card to the applicant. Such permit and identification card shall contain the signature of the City Clerk and shall show the name, address and photograph of said permittee, the class of permit issued and the kinds of goods to be sold thereunder, the date of issuance and the length of time that the same shall be operative, not beyond the current year in which issued as well as the permit number and other identifying description of any vehicle used in such permitted business. Each peddler, solicitor, or transient merchant must secure a personal permit and identification card. Each person issued a permit must carry it on his or her person while conducting or engaging in any regulated activities within the city. No permit or identification card shall be used at any time by any person other than the one to whom it is issued. The City Clerk shall keep a permanent record of all permits issued.

Subd. 10. Standards of Conduct.

A. A person shall keep in their possession the City issued permit at all times during which the regulated activities are being conducted.

B. A person may conduct regulated activity in the City only if a valid identification card identifying the person has been issued, is prominently displayed by attaching to the front of the outermost clothing between the waist and neck, and has not been revoked, suspended, or impounded.

C. A person shall not transfer their permit or identification card to another person.

D. A person shall not use an identification card issued to someone other than that person.

E. The identification card must be displayed only while conducting regulated activity in the city and must be used for no other purpose and in no other location.

F. A person conducting regulated activity must not go onto private property for that purpose when there are signs prominently posted indicating that trespassing, peddling, and/or solicitation is unwelcomed or prohibited.

G. A person must not be on a street, highway, or adjacent boulevard and direct regulated activity toward the occupants of any motor vehicle in transit and must not obstruct the free flow of vehicular or pedestrian traffic on any public street, sidewalk, or other public right-of-way.

H. A person must not conduct regulated activity in a manner that creates a health or safety hazard.

I. A person must conduct regulated activity in a reasonable courteous manner at all times, must not engage in offensive, obscene, or abusive language, must not push open a door not opened by an occupant, must not place any portion of the person’s body through an opened doorway without the invitation of an occupant, and must not physically attempt to stop an occupant from closing a door.
J. A permittee must immediately leave private property when requested to do so by an occupant or owner and must leave immediately upon completion of a transaction or an unsuccessful attempt to contact an occupant.

K. A permittee must immediately produce and allow the inspection of the City issued permit when requested by an occupant or owner, representative of the City, and any law enforcement personnel.

L. A permittee entering onto residential property must go directly to a door of the house, unless there is an adult present outside of the house or in an open garage. At no time may a permittee go to a window or to the back yard, unless invited to do so by the occupant or owner.

M. A person conducting regulated activity must not make untrue statements to the people contacted regarding the purpose of the contact, orders placed by neighbors, or the goods and/or services offered.

N. A permittee must not make any statements to the people contacted indicating or implying that the identification card constitutes an endorsement of their activities or products by the City.

O. While conducting regulated activity, a permittee must not be accompanied by a person who is not permitted or issued an identification card or is not listed in the license application.

P. No person conducting regulated activities shall shout, cry out, blow a horn, ring a bell, or use any sound amplifying device upon any of the streets, alleys, parks or other public places of the city or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, for the purpose of attracting attention to any goods, products, wares or merchandise which such permittee proposes to sell.

Q. Activities shall be conducted under the permit only during the times and the day and days of the week which are stated in the applicant’s application. The times of the day and the days of the week shall, upon approval of the application and issuance of the permit, become the time and date limitations incorporated therein. No regulated activities shall be permitted between the hours of 8:00 P.M. and 9:00 A.M.

**Subd. 11. Suspension; Revocation.**

A. The City may deny, suspend or revoke the application and/or permit and identification card of any person, if the person who is the subject of the identification card, a person acting on behalf of the applicant, the employer of the applicant, or the applicant:

1. fails or refuses to comply with provisions of this ordinance;

2. violates any provision of this ordinance, or other local laws governing the same activity, during the license period;

3. violates a criminal law during the permit period that adversely reflects on
the ability to honestly, safely, or lawfully conduct the regulated activity; or

4. submits false information or omitted material information in the application process required by this ordinance.

B. Summary Action. As a condition of receiving a permit and identification card, the person to whom the permit and identification card is issued is presumed to agree and consent that the permit and identification card may be revoked for failing or refusing to comply with the provisions of this ordinance, or if the conduct of any person or their agents, representatives, or employees are detrimental to the public health, sanitation, safety and general welfare of the community at large so as to constitute an unsafe, dangerous or potentially an illegal condition and thus gives rise to an emergency, the City Administrator shall have the authority to summarily revoke the person’s permit and identification card as the City Administrator deems necessary.

1. Notice. Notice of summary revocation of a permit and identification card shall be provided to the person listed on permit by providing a mailed notice at the address specified in the application. Any notice of summary revocation shall state the reasons for the immediate revocation and shall state that the permit holder may appeal the summary decision following the procedure set forth in this ordinance. Notice of summary revocation from the City Administrator required by this ordinance shall be effective if personally delivered or if mailed to the addresses, by certified mail return receipt requested, shown in the application of the person’s request for a permit. Any person whose permit and identification card has been summarily revoked under this section may appeal the summary revocation before the City Council consistent with paragraph D of this section.

C. Non-Emergency Revocation, Suspension An action to revoke, or suspend a permit and identification card issued under this ordinance may be initiated by the City Administrator who shall give written notice of hearing before the City Administrator, or its designee, to consider such denial, revocation, suspension. A notice of intent to deny, revoke, or suspend a permit and identification card shall specify all violations and the reasons thereof and shall state the date, time, place and purpose of the hearing provided by this subdivision. The hearing held pursuant to this subdivision shall occur within thirty (30) days after notice.

1. Notice. The notice required for a non-emergency denial, revocation, or suspension of a permit and identification card issued by the City Administrator shall be provided to the person identified in the application for permit. Any such notice shall provide a hearing date before the City Administrator, or its designee, and shall provide the reasons for the requested action. It shall also provide that if the applicant fails to attend the hearing, the City Administrator, or its designee, may deny, revoke, or suspend the permit and identification card. Notices from the City Administrator required by this section shall be effective if personally delivered or if mailed to the addresses, by certified mail return receipt requested, shown in the application provided to the city pertaining to the person involved in the notice.

2. Hearing. Following the hearing, the City Administrator may deny, revoke, or suspend the permit and identification card or may grant conditional permits and identification cards upon such terms and conditions the City Administrator finds necessary to accomplish the purpose of this ordinance.
3. Postponed or Dismissed. An action to deny, revoke, or suspend a permit or identification card may be postponed or dismissed by the City Administrator at any time if it appears to the City Administrator that the permittee has taken appropriate remedial action.

4. Standard of Proof. The standard of proof to be used in determination by the City Administrator as to conduct constituting violations under this section is a fair preponderance of evidence in support of such determination. It is not necessary that criminal charges be brought to support a determination of violation of this section or determination that conduct constituting a violation of this section, that law enforcement officers be called in response to a complaint or that a police report and an investigation of the same be prepared.

D. Appeal to City Council. A determination by the City Administrator to deny, revoke or suspend an application or permit issued by the City Administrator pursuant to this ordinance may be appealed to the City Council by filing with the City Administrator a written notice of appeal within fifteen (15) days of the date on which the City Administrator mailed such determination to the applicant or permit and identification card holder. In that event, the appeal will be heard by the City Council at its next meeting occurring at least fifteen (15) days after the filing of the notice of appeal. At any appeal of a determination by the City Administrator under this ordinance, the permittee or an attorney representing the permittee, may appear and make presentation to the City Council. The City Administrator shall present to the City Council the basis for the determination being appealed. After the hearing, the City Council may uphold, reverse or modify the decision of the City Administrator based upon the provisions of this ordinance and upon the protection of the public health, sanitation, safety or general welfare of the community at large. The City Council shall issue its findings and determination within thirty-one (31) days of the hearing unless the City Council extends that time for good cause.

E. Writ of Certiorari. A decision of the City Council made as provided in this section may be appealed by Writ of Certiorari to the Court of Appeals of the State of Minnesota pursuant to its Rules of Civil Procedure.

Subd. 12. Penalty, Enforcement. Violation of this ordinance is a misdemeanor. The City Administrator and Chief of Public Safety, and their designees are authorized to enforce this ordinance. They may impound an identification card and permit when a person has been found violating a provision of this ordinance, when cause exists for suspending or revoking the permit or identification card, or when the permit and identification card has been suspended or revoked. When impounding an identification card or permit, the official must send a notice to the permittee at the address on the application form, giving the person ten (10) days to submit a written request for a hearing before the City Council under Subd. 11 D. Failure to timely request an appeal, constitutes a waiver of that appeal and results in an automatic suspension of the permit and identification card for three years.

(Am. Ord. 8, Sixth Series, passed 9-15-03; Ord. 62, Sixth Series, eff. 12-30-06; Am. Ord. 101, Sixth Series, eff. 3-25-09; Am. Ord. 111, Sixth Series, eff. 9-30-09; Ord. 137, Sixth Series, eff. 5-10-12)

§ 4.22 TAXICABS.

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
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FERGUS FALLS. The City of Fergus Falls.

FOR HIRE. For remuneration or compensation of any kind promised, paid or given to or received by a person for the transportation of persons or property within and upon the city streets and includes compensation obtained by an operator, driver or other persons indirectly by subtraction of the purchase price or addition to the selling price of property transported, when the purchase or sale of the property is not a bona fide purchase or sale.

OPERATOR. Any person, partnership, corporation or other legal entity to whom a license has been issued to engage in the business of operating a taxicab or a personal transportation vehicle.

PERSONS. One or more persons of either sex, partnership or corporation.

TAXICAB AND PERSONAL TRANSPORTATION VEHICLES. A motor vehicle engaged in the for hire transportation of property or passengers, in form of fare or other remuneration, having a seating capacity of seven persons or less, including the driver, and not operated on a fixed route.

(B) License required. It is unlawful for any person or operator to drive or operate a taxicab or personal transportation vehicle without a license issued by the City Council for the vehicle to be operated as a taxicab or personal transportation vehicle. The owner, operator and driver are equally culpable and may be charged criminally under this ordinance.

(C) Application for license. An application for a taxicab or personal transportation vehicle license shall be filed with the City Administrator on forms provided by the Administrator and such application shall be verified under oath and shall contain the information required in the follow paragraphs.

(1) The name and address of the applicant, and company name, if any, under which applicant intends to operate.

(2) The location from which such taxicabs or personal transportation vehicles shall be operated.

(3) A complete description of each vehicle to be operated including the license number, the vehicle identification, the color of the vehicle, make, model and year.

(4) The employment history of the applicant.

(5) Whether or not the applicant has ever been convicted of a felony.

(6) Such other information as the city may from time to time require.
(D) Police investigation. Prior to submitting an application for a taxicab or personal transportation vehicle license to the Council, the City Administrator shall request an investigation and report from the Police Department as to the facts stated in the application and to the applicant’s traffic and police record.

(E) Council procedure. The City Administrator and the Chief of Public Safety shall meet and review the police record of the applicant. The City Administrator shall submit to the Council at a regular meeting thereof the application and any information deemed important by the City Administrator or the Chief of Public Safety, and any member of the public shall have an opportunity to be heard on the granting or refusal to grant a license. If the Council finds and determines that the public interest is not served by the issuance of a license to the applicant, the applicant may not make reapplication for a license to operate a taxicab or personal transportation vehicle in Fergus Falls until six months thereafter.

(F) License fee. If the Council approves the license on such application, a license shall be issued to the applicant upon the payment of the required license fee as established by Council Resolution. A new license for each succeeding year may be issued upon the payment of alike fee unless the license has been revoked as provided herein.

(G) Revocation of license. The license of any operator under this ordinance may be revoked for failing or refusing to comply with the provisions of this ordinance, or for the failure of any driver of a taxicab or personal transportation vehicle to comply with the provisions of this ordinance, or for the failure of any driver of a taxicab or personal transportation vehicle to comply with any local, state, or federal law while driving a taxicab or personal transportation vehicle.

(1) Summary Action. As a condition of receiving a taxicab or personal transportation vehicle license, an operator is presumed to agree and consent that the license of any operator under this ordinance may be revoked for failing or refusing to comply with the provisions of this ordinance, or for the failure of any driver of a taxicab or personal transportation vehicle to comply with the provisions of this ordinance, or for the failure of any driver of a taxicab or personal transportation vehicle to comply with any local, state, or federal law while driving a taxicab or personal transportation vehicle, or, if the conduct of any operator, operator’s agents, representatives, employees or lessees, or the condition of their vehicles used as a taxicab or personal transportation vehicle is detrimental to the public health, sanitation, safety and general welfare of the community at large so as to constitute an unsafe or dangerous condition and thus gives rise to an emergency, the City Administrator shall have the authority to summarily revoke an operator’s license as the City Administrator deems necessary.

(a) Notice. Notice of summary revocation of an operator’s license shall be provided to the operator listed on said license by providing a mailed notice to the operator listed on said license. Any notice of summary revocation shall state the reasons for the immediate revocation and shall state that the license holder may appeal the summary decision following the procedure set forth in this ordinance. Notice of summary revocation
from the City Administrator required by this ordinance shall be effective if personally delivered or if mailed to the addresses, by certified mail return receipt requested, shown in the City file pertaining to the operator of a taxicab or personal transportation vehicle involved in the notice. An operator whose license has been summarily revoked under this section may appeal the summary revocation before the City Council consistent with paragraph (3) section.

(2) Non-Emergency Revocation. An action to deny, revoke, suspend or not renew an operator’s license may be initiated by the City Administrator who shall give the operator a written notice of hearing before the City Administrator, or its designee, to consider such denial, revocation, suspension or non-renewal. A notice of intent to deny, revoke, suspend or not renew an operator’s license shall specify all violations and the reasons thereof and shall state the date, time, place and purpose of the hearing provided by this subdivision. The hearing held pursuant to this subdivision shall occur no less than thirty (30) days after notice.

(a) Notice. The notice required for a non-emergency denial, revocation, suspension or non-renewal of an operator’s license shall be provided to the operator listed on said license or application for license. Any such notice shall provide a hearing date before the City Administrator, or its designee, and shall provide the reasons for the requested action. It shall also provide that if the applicant fails to attend the hearing, the City Administrator, or its designee, may deny, revoke, suspend or not renew the operator’s license. Notices from the City Administrator required by this section shall be effective if personally delivered or if mailed to the addresses, by certified mail return receipt requested, shown in the City file pertaining to the operator of a taxicab or personal transportation vehicle involved in the notice.

(b) Hearing. Following the hearing, the City Administrator may deny, revoke, suspend or not renew registration for all or any part or may grant conditional licensure upon such terms and conditions the City Administrator finds necessary to accomplish the purpose of this ordinance.

(c) Postponed or Dismissed. An action to deny, revoke, suspend or not renew an operator’s license for violation of this ordinance may be postponed or dismissed by the City Administrator at any time if it appears to the City Administrator that the operator has taken appropriate remedial action.

(d) Standard of Proof. The standard of proof to be used in determination by the City Administrator as to conduct constituting violations under this section is a fair preponderance of evidence in support of such determination. It is not necessary that criminal charges be brought to support a determination of violation of this section or determination that conduct constituting a violation of this section, that law enforcement officers be called in response to a complaint or that a police report and an investigation of the same be prepared.
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(3) Appeal to City Council. A determination by the City Administrator to deny, suspend, revoke or not renew an operator’s license may be appealed to the City Council by filing with the City Administrator a written notice of appeal within fifteen (15) days of the date on which the City Administrator mailed such determination to the operator. In that event, the appeal will be heard by the City Council at its next meeting occurring at least fifteen (15) days after the filing of the notice of appeal. At any appeal of a determination by the City Administrator under this ordinance, the operator or an attorney representing the operator, may appear and make presentation to the City Council. The City Administrator shall present to the City Council the basis for the determination being appealed. After the hearing, the City Council may uphold, reverse or modify the decision of the City Administrator based upon the provisions of this ordinance and upon the protection of the public health, sanitation, safety or general welfare of the community at large. The City Council shall issue written findings and determination within thirty-one (31) days of the hearing unless the City Council extends that time for good cause.

(4) Writ of Certiorari. A decision of the City Council made as provided in this section may be appealed by Writ of Certiorari to the Court of Appeals of the State of Minnesota pursuant to its Rules of Civil Procedure.

(H) Inspection of vehicles and equipment. Every holder of a license under this ordinance shall keep such vehicle in good serviceable condition so that each vehicle may be safely operated at all times without endangering the safety or property of the passengers carried or other persons. The licensee shall from time to time, at least annually, have the vehicle inspected by a competent and experienced mechanic and shall produce a record of such inspection to authorized city personnel during regular business hours. The license for the operation of any vehicle not kept in a safe and serviceable condition may, upon ten days mailed notice, in the discretion of the City Council, be revoked.

(I) Designation of taxicabs or personal transportation vehicles. Each taxicab or personal transportation vehicle shall bear on the exterior surface of the body in letters not less than two inches in height the name of the owner or the company name under which the owner operates, and in addition may bear an identification design approved by the Council. No owner whose identifying design, monogram or insignia to be used thereon shall conflict with or imitate any other color scheme, identifying design, monogram or insignia used on a vehicle or vehicles already operating under the ordinance, in such a manner as to be misleading or tend to deceive or defraud the public, and further providing that if, after a license has been issued for a taxicab or personal transportation vehicle hereunder, identifying design, monogram or insignia thereof is changed so as to be in conflict with or imitate any identifying design, monogram or insignia used by any other person, owner or operator, in such manner as to be misleading or tend to deceive the public, the license covering such taxicab or personal transportation vehicle may be revoked.

(J) Rates. Each applicant shall file with the City Administrator, before a taxicab or personal transportation vehicle license is issued or renewed, a schedule of proposed maximum rates to be charged by the applicant during the licensed period for which the application is made. The schedule of proposed maximum rates, or compromise schedule thereof, shall be approved by the
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Council before granting or renewing a license. Such schedule shall be posted in a conspicuous place in the taxicab or personal transportation vehicle in full view of passengers riding therein. Nothing herein shall prevent a taxicab or personal transportation vehicle licensee from petitioning the Council for review of such rates during the licensed period, and the Council may likewise consider such petition and make new rates effective at any time. No taxicab or personal transportation vehicle licensee shall charge rates in excess of maximum rates approved by the Council.

(K) Drivers of taxicabs and personal transportation vehicles. Qualifications for drivers of taxicabs or personal transportation vehicles are as follows:

(1) Operators shall maintain the following standards for all drivers of taxicabs and personal transportation vehicles:

(a) No driver shall operate a taxicab or personal transportation vehicle unless that driver possess a current Motor Carrier Medical Examiner’s Certificate in accordance with Federal Motor Carrier Safety Regulations (49 CFR 391 et al.) or has obtained and possesses a current waiver for limb impairment or other medical condition from the Commissioner of the Department of Transportation pursuant to Minnesota Statutes section 221.0314, and is qualified to drive and operate a motor carrier as that term is defined in said section, or as may be amended from time to time.

(b) Each driver must:

1. Possess a Minnesota driver’s license which is valid for the class of vehicle driven;

2. Be at least 18 years of age; and

3. For the past three years:
   a. Have not had a driver’s license canceled under M.S. § 171.14, as it may be amended from time to time, revoked under M.S. § 171.17, as it may be amended from time to time, or suspended under M.S. §171.18, clause (2), (3), (4), (5), (7) or (11), as it may be amended from time to time;

   b. Have a driving record clear of convictions for operating a motor vehicle or motorcycle without insurance as required by M.S. § 169.797, as it may be amended from time to time; and

   c. Have a driving record clear of convictions for driving a motor vehicle without a valid current license for the class of vehicle driven; and

   d. Have a driving and criminal record clear of convictions for driving under the influence of alcohol or a controlled substance under M.S. § 169A, as it may be amended
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from time to time, or an ordinance in conformity with that section, of alcohol-related driving by commercial vehicle drivers under M.S. § 169A.20, as it may be amended from time to time, and of driver’s license revocations under M.S. §169A.20, as it may be amended from time to time.

(c) Each driver must also have a criminal record clear of convictions of crimes and anticipatory crimes against persons and crimes of anticipatory crimes reasonably related to providing transportation services. For purposes of this part, “criminal record” means the conviction records of the Minnesota Bureau of Criminal Apprehension in which the last date of discharge from the criminal justice system is less than 15 years. The following offenses are considered crimes against persons or reasonably related to providing transportation services, or both (All following Minnesota Statutes in subsections 1 through 55 below are as may be amended from time to time):

1. M.S. § 609.17, attempts;
2. M.S. § 609.175, conspiracy;
3. M.S. § 609.185, murder in the first degree;
4. M.S. § 609.19, murder in the second degree;
5. M.S. § 609.195, murder in the third degree;
6. M.S. § 609.20, manslaughter in the first degree;
7. M.S. § 609.205, manslaughter in the second degree;
8. M.S. § 609.21, criminal vehicular homicide and injury;
9. M.S. § 609.215, suicide;
10. M.S. § 609.221, assault in the first degree;
11. M.S. § 609.222, assault in the second degree;
12. M.S. § 609.223, assault in the third degree;
13. M.S. § 609.2231, assault in the fourth degree;
14. M.S. § 609.224, assault in the fifth degree;
15. M.S. § 609.228, great bodily harm caused by distribution of drugs;
16. M.S. § 609.23, mistreatment of persons confined;
17. M.S. § 609.231, mistreatment of residents or patients;
18. M.S. § 609.235, use of drugs to injure or facilitate crime;
19. M.S. § 609.24, simple robbery;
20. M.S. § 609.245, aggravated robbery;
21. M.S. § 609.25, kidnapping;
22. M.S. § 609.255, false imprisonment;
23. M.S. § 609.265, abduction;
24. M.S. § 609.2661, murder of an unborn child in the first degree;
25. M.S. § 609.2662, murder of an unborn child in the second degree;
26. M.S. § 609.2663, murder of an unborn child in the third degree;
27. M.S. § 609.2664, manslaughter of an unborn child in the first degree;
28. M.S. § 609.2665, manslaughter of an unborn child in the second degree;
29. M.S. § 609.267, assault of an unborn child in the first degree;
30. M.S. § 609.2671, assault of an unborn child in the second degree;
31. M.S. § 609.2672, assault of an unborn child in the third degree;
32. M.S. § 609.268, injury or death of an unborn child in the commission of a crime;
33. M.S. § 609.322, solicitation, inducement, and promotion of prostitution;
34. M.S. § 609.322, receiving profit from prostitution;
35. M.S. § 609.324, Subds. 1 and 1a, other prohibited acts;
36. M.S. § 609.33, disorderly house;
37. M.S. § 609.342, criminal sexual conduct in the first degree;
38. M.S. § 609.343, criminal sexual conduct in the second degree;
39. M.S. § 609.344, criminal sexual conduct in the third degree;

40. M.S. § 609.345, criminal sexual conduct in the fourth degree;

41. M.S. § 609.3451, criminal sexual conduct in the fifth degree;

42. M.S. § 609.352, solicitation of children to engage in sexual conduct;

43. M.S. § 609.365, incest;

44. M.S. § 609.377, malicious punishment of a child;

45. M.S. § 609.378, neglect or endangerment of a child;

46. M.S. § 609.498, tampering with a witness;

47. M.S. § 609.561; arson in the first degree;

48. M.S. § 609.582, Subd. 1, burglary;

49. M.S. § 609.617.23, indecent exposure;

50. M.S. § 617.241, obscene materials and performances;

51. M.S. § 617.243, indecent literature, distribution;

52. M.S. § 617.246, use of minors in sexual performance;

53. M.S. § 617.247, possession of pictorial representation of minors;

54. M.S. § 617.293, harmful materials; dissemination and display to minors;

and

55. Felony convictions under M.S. Ch. 152, prohibited drugs.

(2) Operator’s responsibility. Before using or hiring a driver, an operator shall determine that the driver has a valid driver’s license and must conduct a review of the driving and criminal record of a driver. In addition, an operator shall annually review the driving and criminal record of a driver it uses or employs. The driving and criminal record review must include an examination of the records of the Department of Public Safety, Division of Driver and Vehicle Services to determine if the driver meets the standards of subpart 1, item D, sub items (1), (3), and (4). The review must also include an examination of the conviction records of the Minnesota Bureau of Criminal Apprehension to determine if the driver has a criminal record of convictions for crimes listed in subpart 1, item E.
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(3) *Complaint records.* Operator shall keep a record of complaint, report or allegation of misconduct made against a driver it uses or employs. The record must contain a copy of the complaint or report or a detailed written summary of the allegation. Operator shall investigate the accuracy of the complaint, report, or allegation and shall include a summary of the investigation and resulting action taken, if any, in the record. These records must be included in the driver’s file or in a separate file kept by the operator.

(L) *Liability insurance required.* No license to operate a taxicab or personal transportation vehicle shall be issued by the city until a certificate of insurance has been filed with the City Administrator establishing that there is in full force and effect a liability policy issued by an insurance company authorized to do business in the State of Minnesota for each vehicle authorized to be operated by the applicant in the amount of $100,000 for bodily injury to or death of any one person in a single accident, subject to a maximum of $300,000 for injuries to more than one person which are sustained in the same accident and $100,000 for the destruction of or damage to property in a single accident. In addition, the applicant shall provide uninsured and underinsured motorist coverage and basic economic loss benefits as outlined under M.S. § 65B, as it may be amended from time to time. An applicant shall obtain a certificate of insurance for each vehicle that is operated. The applicant’s insurer shall mail the certificate of insurance to the City Administrator, City of Fergus Falls, P.O. Box 866, Fergus Falls, MN, 56538-0866. The certificate must show the vehicles covered by the policy and the policy limits. Each policy shall provide that the city shall receive at least ten days written notice prior to cancellation of such policy.

(‘92 Code, § 4.22; Am. Ord. 90, Fourth Series, passed 11-6-95; Am. Ord. 67, Fifth Series, passed 3-19-01; Am. Ord. 15, Sixth Series, passed 1-5-04; Am. Ord. 87, Sixth Series, eff. 7-30-08) Penalty, see § 4.99

§ 4.23 PAVING CONTRACTORS.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Boulevard Driveway.* Any hard-surfacing used as a means of connecting the traveled portion of a public street with private property for vehicular traffic.

*Curb* and *Gutter.* Any hard-surfacing used as a means of conducting water along, and keeping soil out of, traveled portions of public streets.

*Sidewalk.* Any hard-surfaced area constructed in a public street for use by pedestrians or conveyances other than motor vehicles.

(B) *License required.* It is unlawful for any person, other than a duly authorized city employee acting within the course of his or her employment or a person acting under a contract with the city, to construct or re-construct sidewalk, curb and gutter, or boulevard driveway, without a license from the city.
(C) *Bond required.* Before a paving contractor’s license shall be issued the applicant shall file with the City Administrator a bond approved by the Council in the penal sum of $1,000, conditioned upon full compliance by the applicant with all applicable provisions of the code.

(D) *Insurance required.* Before a paving contractor’s license shall be issued the applicant shall also file with the City Administrator a liability insurance policy or certificate thereof in the sum of $300,000 for one claim, and at least $25,000 property damage, and the policy of insurance with minimum limits shall be kept in force during the entire period for which the license is issued.

(E) *Exception.* The owner of real estate may construct or re-construct sidewalks abutting thereon if he or she actually himself or herself performs the work, without compliance with the provisions of this section. Provided, however, that the owner shall, prior to the construction or re-construction, file with the City Administrator an agreement to hold the city harmless from any claim arising therefrom and fully comply with all provisions of the code in any way relating thereto.

(‘92 Code, § 4.23) Penalty, see § 4.99

§ 4.24 RESERVED.

§ 4.25 RESERVED.

§ 4.26 SIGN HANGERS.

(A) *License required.* It is unlawful for any person to engage in the business of hanging or installing signs without a license therefor from the city. For purposes of this section, engaging in the business of hanging or installing signs shall be so construed to mean erecting, constructing or maintaining a sign on any public or-private property, or in the air space over the same.

(B) *Liability insurance required.* Each applicant for a sign hanger’s license shall accompany his or her application with a certificate of insurance showing public liability in the sum of $100,000 for injury to one person and $300,000 for one accident, and at least $5,000 property damage, and the policy of insurance with the minimum limits shall be kept in force during the entire period for which the license is issued.

(C) *Bond required.* Before a sign hanger’s license shall be issued the applicant shall file with the City Administrator, a bond approved by the Council in the penal sum of $2,000, conditioned upon full compliance by the applicant with all applicable provisions of the code.

(D) *Exception.* No license shall be required of any person constructing or installing a residential, professional or institutional sign or nameplate not exceeding three square feet.

(‘92 Code, § 4.26) (Ord. 44, Second Series, eff. 7-1-74; Am. Ord. 101, Third Series, eff. 5-30-84) Penalty, see § 4.99
§ 4.27 RESERVED.

§ 4.28 KENNEL.

It is unlawful for any person to maintain a kennel where dogs are kept for personal use or enjoyment or are kept for sale or board without first having obtained a license therefor from the city. For purposes of this section, a “kennel” is defined as a place where three or more dogs over the age of four months are kept or boarded.

(‘92 Code, § 4.28) (Ord. 90, Second Series, eff. 9-1-76) Penalty, see § 4.99

§ 4.29 RESERVED.

§ 4.30 RESERVED.

§ 4.31 LAWFUL GAMBLING AND BINGO.

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ORGANIZATION. Any fraternal, religious, veterans or other nonprofit organization.

LAWFUL GAMBLING. The operation, conduct or sale of bingo, raffles, paddle wheels, tipboards and pulltabs.

(B) State license required for gambling and bingo. M.S. §§ 349.151 et seq., as it may be amended from time to time, provides for the regulation and licensing of lawful gambling and bingo by the State Charitable Gambling Control Board. The Board may issue licenses to organizations to conduct lawful gambling if the organization has been in existence for at least three years, has at least 15 active members and complies with M.S. § 349, as it may be amended from time to time. All license applications shall be on a form prescribed and procured from this Board.

(C) Local approval.

(1) The Gambling Board must notify the Council:

(a) Before issuing or renewing an organization license. If the Council adopts a resolution disapproving the license and so informs the Board within 60 days of receiving notice of the licenser the license may not be issued or renewed;
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(b) Of any application by an organization to conduct more than two bingo occasions in a week and more than 104 in a year. If the Council fails to adopt a resolution disapproving the additional occasions within 60 days of the notification, the Board may permit the additional occasions; and

(c) Of any application by a person or corporation, other than an organization, which leases any premises that it owns to two or more organizations to conduct more than four bingo occasions on the leased premises in any week. If the Council fails to adopt a resolution disapproving the additional occasions within 60 days of the notification, the Board may permit a specified number of bingo occasions on the premises in excess of four per week.

(2) Exemptions from the lawful gambling licensing requirements:

(a) Bingo may be conducted without a license if it is conducted in connection with a civic celebration and if it is not conducted for more than 12 consecutive days in a calendar year.

(b) Bingo may be conducted without a license if it is conducted by an organization which conducts four or fewer bingo occasions in a calendar year.

(c) Raffle may be conducted without a license if it is conducted by an organization and if the value of all raffle prizes awarded by the organization in a calendar year does not exceed $750; or if the raffle is conducted by a tax-exempt health or social service organization under contract to the State or a political subdivision if the prizes awarded are real or personal property donated by an individual, firm or other organization.

(D) Limitation on certain gambling sites. No more than one licensed organization may conduct lawful gambling on any premises at which there is a gambling site during the same period or periods of time than another licensed organization is conducting lawful gambling. All leases pertaining to lawful gambling shall state the days of the week during which a licensee may conduct lawful gambling on the premises. This prohibition shall, however, not apply to the conduct of bingo and raffles.

(E) Limitation on certain leases. The following forms of lawful gambling consisting of paddle wheel, tipboard and pulltabs may only be conducted by a licensed organization on premises owned by the organization or on premises leased by the organization and which premises has a valid bingo license issued by the State Charitable Gambling Control Board or a valid regular “on-sale” license issued by the city pursuant to Chapter 11.

(F) Reports. Each licensee shall annually within 60 days after the close of each annual licensing period, file a report with the City Administrator in a form as prescribed by the city, which report shall show how the profits derived from lawful gambling conducted by the licensee have been spent for lawful purposes as defined by Minnesota Statutes. At least 50% of the profits shall be spent for lawful purposes within the trade area of the city, which shall be the city and each contiguous town and city. Failure to do so shall be sufficient cause for immediate termination of the license by the Council.
(G) **Age Limit.** No person under the age of 18 shall be permitted to engage in any gambling, except bingo and raffles. No licensed organization shall allow any person under the age of 18 to engage in any gambling except bingo and raffles.

(‘92 Code, § 4.31) (Ord. 133, Third Series, eff. 2-25-86; Am. Ord. 182, Third Series, eff. 2-5-89; Am. Ord. 22, Fourth Series, eff. 12-15-91)

§ 4.32 ADULT USES AND ENTERTAINMENT.

(A) **Statement of policy.**

(1) The City Council deems it necessary to provide for the special and express regulation of businesses or commercial enterprises which operate as adult body painting studios, adult bookstores, adult cabarets, adult companionship establishments, adult hotels or motels, adult massage parlors or health clubs, adult mini-motion picture theaters, adult modeling studios, adult motion picture arcades or theaters, adult novelty businesses, adult saunas 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. The City Council further finds that the commercial enterprises such as the types described above and all other similar establishments whose services include sessions offered to adults conducted in private by members of the same or 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 the site of acts of prostitution, illicit sex and occasions of violent crimes, and thus requiring close inspection, licensing and regulation.

(2) The City Council also finds that control and regulation of commercial establishments of these types, in view of the abuses often perpetrated, require intensive efforts by the Police Department and other departments of the city. As a consequence, the concentrated use of city services in control detracts from and reduces the level of service 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. In consideration for the necessity on the part of the city to provide numerous services to all segments of the community without a concentration of public services in one area working to the detriment of the members of the general public, it is hereby decided that adult use principal should be limited to the B-2 district as a conditional use and that adult use accessory should be limited to the B-2 service business district and B-3 general business district as a permitted use and should require the issuance of licenses.

(B) **Definitions.** For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADULT USES.** Includes adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult steam room/bath house/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sports 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 which are capable of being seen by members of the public. Activities classified as obscene as defined by M.S. § 617.241, as it may be amended from time to time, are not lawful and are not included in the definition of ADULT USES.

ADULT USES - ACCESSORY. The offering of goods and/or services which are classified as adult uses on a limited scale and which are incidental to the primary activity and goods and/or services offered by the establishment. Examples of the items include adult magazines, adult movies, adult novelties and the like.

ADULT USES - PRINCIPAL. The offering of goods and/or services which are classified as adult uses as a primary or sole activity of a business establishment, and include but are not limited to the following:

(a) ADULT 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 the body is wholly or partially nude in terms of specified anatomical areas.

(b) ADULT BOOKSTORE. A business engaging in the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audiotapes, videotapes, motion picture film or any other similar materials, if the shop is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of the items are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

(c) ADULT CABARET. An establishment which provides dancing or other live entertainment if dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, depiction or description of specified sexual activities or specified anatomical area.

(d) ADULT COMPANIONSHIP ESTABLISHMENT. A companionship establishment if the establishment excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if the service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(e) ADULT ENTERTAINMENT. Adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult saunas, adult companionship establishment, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels or motels, adult body painting studios and other adult establishments.
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(f) **ADULT ESTABLISHMENT.**

1. A business engaging in any of the following activities or which utilizes any of the following business procedures or practices, either:

   a. Any business which is conducted exclusively for the patronage of adults and as to which minors are specifically excluded from patronage thereat either by law or by the operators of the business; or

   b. Any other business which offers its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas.

2. Specifically included in the term, but without limitation, are adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel and adult body painting studios.

(g) **ADULT 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 specified sexual activities or specified anatomical areas.

(h) **ADULT MASSAGE PARLOR, HEALTH CLUB.** A massage parlor or health club which restricts minors by reason of age, and is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

(i) **ADULT MINI-MOTION PICTURE THEATER.** A business premises with an enclosed building with a capacity for less than 50 persons used for presenting visual media material if the business as a prevailing practice excludes minors by virtue of age, or if the material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

(j) **ADULT 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 customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted by the customers.

(k) **ADULT MOTION PICTURE ARCADE.** Any place to which the public is permitted or invited wherein coin or slug operated or electronically, electrically or mechanically controlled still or motion 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
BUSINESS REGULATIONS

specified sexual activities or specified anatomical areas.

(l) **ADULT MOTION PICTURE THEATERS.** A business premises with an enclosed building with a capacity of 50 or more persons used for presenting visual media material if the business as a prevailing practice excludes minors by virtue of age, or if the material is distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

(m) **ADULT 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.

(n) **ADULT SAUNA.** A sauna which excludes minors by reason of age, or 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.

(o) **SPECIFIED ANATOMICAL AREAS.** Anatomical areas consisting of the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breast(s) below a point immediately above the top of the areola; and

2. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

(p) **SPECIFIED SEXUAL ACTIVITIES.** Activities consisting of the following:

1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;

2. Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence;

3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;

4. Fondling or touching of nude human genitals, pubic region, buttocks or female breast;
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5. Situations involving a person or persons, any of which 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 persons;

6. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being;

7. Human excretion, urination, menstruation, vaginal or anal irrigation.

(C) License required. No person, firm or corporation shall operate an adult use in the city without having first secured a license from the City Council as hereinafter provided. Licenses shall be one of two types:

(1) Adult use principal; and

(2) Adult use accessory.

(D) Applications. The application for an adult use license shall include:

(1) The name, residence, phone number, and birthdate of the applicant, if an individual; and if a corporation, the names, residences, phone numbers, and birthdates of those owners holding more than 5% of the outstanding stock of the corporation;

(2) The name, address, phone number, and birthdate of the manager of the operation, if different from the owners;

(3) The premises wherein the adult use is to be located;

(4) A statement detailing each gross misdemeanor or felony relating to a sex offense and/or the operation of adult uses and related activities of which the applicant or, in the case of a corporation, the owners of more than 5% of the outstanding stock of the corporation, have been convicted, and whether or not the applicant has ever applied for or held a license to operate a similar type of business in other communities;

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

(6) The hours of operation;

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

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

(9) All applications for licenses shall be referred to the Director of Public Safety and to other City Departments as the City Council shall deem necessary for verification and investigation of the facts set forth in the application and on all owners and employees. The Director of Public
BUSINESS REGULATIONS

Safety shall cause to be made an investigation of the information requested and shall make written recommendation and report to the City Council, which shall include a list of all violations of federal or state law or municipal ordinance and other facts that weigh upon the public interest in considering the application. The City Council may order additional investigation(s) as it shall deem necessary.

(E) License fees.

(1) Each application for a license shall be accompanied by a receipt from the Finance Director for payment in full of the required fee for the license as established by the City Council Resolution from time to time. All fees shall be paid into the general fund of the city. Upon rejection of any applications for a license, the Finance Director shall refund the amount paid.

(2) All licenses shall expire on the last day of December in each year. Each license shall be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rata fee. In computing the fee, any unexpired fraction of a month shall be counted as one month.

(3) The annual fee for an adult use license and a non-refundable investigation fee shall be as established by City Council resolution from time to time.

(4) No part of the fee paid by any license issued under this section shall be refunded, except in the following instances upon application to the City Administrator within 30 days from the happening of the event. There shall be refunded a pro-rata portion of the fee for the unexpired period of the license, computed on a monthly basis, when operation of the licensed business ceases not less than one month before expiration of the license because of:

(a) Destruction or damage of the licensed premises by fire or other catastrophe;

(b) The licensee’s illness;

(c) The licensee’s death; or

(d) A change in the legal status making it unlawful for the licensed business to continue.

(F) Granting of license.

(1) The city shall investigate all facts set out in the application. Before issuing an adult use principal license, the City Council shall hold a public hearing which will provide an opportunity to any person to be heard for or against the granting of the license. After the investigation and a public hearing, the City Council shall grant or refuse the application.

(2) Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No
license may be transferred to another place without the approval of the City Council.

(G) Persons ineligible for license. No license shall be granted or held by any person:

1. Under 21 years of age;

2. Who has been convicted of a felony or of violating any law of this state or local ordinance relating to sex offenses and/or adult uses; and

3. Who is not the proprietor of the establishment for which the license is issued.

(H) Places ineligible for license.

1. No license shall be granted for adult uses on any premises where a licensee has been convicted of a violation of this section or where any license hereunder has been revoked for cause, until one year has elapsed after the conviction or revocation.

2. Except for uses lawfully existing at the time of this section adoption, no license shall be granted for any adult use which is not in compliance with the city’s zoning regulations.

(I) Nonconforming uses. Any adult use existing on the effective date of the adoption of this section may be continued subject to the following provisions:

1. No adult use shall be expanded or enlarged, except in conformity with the provisions of this section;

2. Any person responsible for a nonconforming adult use shall be required to apply for and receive an adult use license. No public hearing shall be required prior to the issuance of the license for the nonconforming adult use.

(J) Conditions of license generally.

1. Every license shall be granted subject to the conditions in the following divisions and all other provisions of this section, and of any applicable sections of the code or state law.

2. All licensed premises shall have the license posted in a conspicuous place at all times.

3. In the case of an adult use-principal, no minor shall be permitted on the licensed premises.

4. Any designated inspection officer or law enforcement officer of the city shall have the unqualified right to enter, inspect and search the premises of a licensee during business hours without a search and seizure warrant.
(5) Every licensee shall be responsible for the conduct of his or her place of business and shall maintain conditions of this order.

(K) Conditions of license; adult use principal. Adult use principal shall be allowed upon issuance of a conditional use permit in a B-2 service business district subject to the following requirements:

(1) An adult use principal business shall not be allowed within 500 feet of another existing adult use measured in a straight line from the buildings.

(2) An adult use principal business shall not be located within 500 feet measured in a straight line from any residential building located in any residential or agricultural zoning district in the city.

(3) An adult use principal business shall not be located within 500 feet measured in a straight line from an existing school, day-care center or place of worship located in the city.

(4) An adult use principal business shall not sell or dispense non-intoxicating or intoxicating liquors nor shall it be located in a building which contains a business that sells or dispenses non-intoxicating or intoxicating liquors.

(5) No adult use principal business entertainment shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the adult use establishment which is prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale or distribution of obscene material generally, or the exhibition, sale or distribution of specified materials to minors.

(6) No adult use principal business shall be conducted in any manner that permits the perception or observation from any property not approved as an adult use of any materials depicting, describing or related to specified sexual activities or specified anatomical areas by any visual or auditory media, including display, decoration, sign, show window, sound transmission or other means.

(7) All adult use principal businesses shall prominently display a sign at the entrance and located within two feet of the door-opening device of the adult use establishment or section of the establishment devoted to adult books or materials which states: “This business sells or displays material containing adult themes. Persons under age 21 years of age shall not enter.” The sign shall have letters at least 3/8 inch in height and no more than 2 inches in height.

(8) No person under the age of 21 shall be permitted on the premises of an adult entertainment establishment.

(9) No person under the age of 21 shall be permitted access to material displayed or offered for sale or rent by an adult use principal business establishment.
(10) Adult use principal businesses shall not be open between the hours of 1 a.m. and 8 a.m. on the days of Monday through Saturday, nor between 1 a.m. and 12 p.m., on Sunday.

(L) Conditions of license; adult use accessory. Adult use accessory licenses may be issued to businesses located in a B-2 service business district and in a B-3 general business district subject to the following requirements:

(1) The adult use accessory shall comprise no more than 10% of the floor area of the establishment in which it is located.

(2) Display areas for movie rentals or other similar products shall be restricted from general view and shall not be accessible to minors. The access must be in clear view and under the control of the person responsible for the operation.

(3) Magazines and publications or other similar products classified or qualified as adult uses shall either:

   (a) Not be accessible to minors; or

   (b) Shall be covered with a wrapper or other means to prevent display of any materials other than the publication title.

(4) Adult use accessory shall be prohibited from external advertising and signing of adult materials and products.

(M) Revocation, suspension or non-renewal of license. The license may be revoked, suspended or not renewed by the City Council upon recommendation of the City Administrator by showing that the licensee, its owners, managers, employees, agents or any other interested parties have engaged in any of the following conduct:

(1) Fraud, deception or misrepresentation in connection with securing of the license;

(2) Habitual drunkenness or intemperance in the use of drugs including, but not limited to, the use of drugs defined in M.S. § 618.01, as it may be amended from time to time, barbiturates, hallucinogenic drugs, amphetamines, benzedrine, dexedrine or other sedatives, depressants, stimulants or tranquilizers;

(3) Engaging in conduct involving moral turpitude or permitting or allowing others within their employ or agency to engage in conduct involving moral turpitude or failing to prevent agents, officers or employees in engaging in conduct involving moral turpitude;

(4) Failure to fully comply with any requirements of the ordinances on the city regarding sanitary and safety conditions, zoning requirements, building code requirements or ordinances, the violation of which involves moral turpitude or failure to comply fully with any requirements of this section;
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(5) Conviction of any offense involving moral turpitude. The certificate holder may appeal the suspension, revocation or non-renewal to the City Council. The Council shall consider the appeal at a regularly scheduled public hearing on or after ten days from service of the notice on appeal to the City Administrator. The Council may order:

(a) The revocation, suspension or non-renewal be affirmed;

(b) The revocation, suspension or non-renewal be lifted and that the certificate be returned to the certificate holder;

(c) The City Council may base either suspension or issuance upon any additional terms, conditions and stipulations which they may, in their sole discretion, impose.

(Ord. 2, Fifth Series, passed 3-18-96) Penalty, see § 4.99

Cross-reference:
Nudity or obscenity prohibited, see § 11.08

§ 4.33 CABLE TELEVISION.

(A) Intent.

(1) The city, pursuant to applicable laws, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable television systems within the city limits.

(2) The City Council finds that the development of cable television systems has the potential of having great benefit and impact upon the residents of the city. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or persons as the city shall designate. It is the intent of this section and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this section shall be deemed to include this finding as an integral part thereof.

(3) While both the city and grantee acknowledge that services beyond those contemplated herein may be technically capable of delivery to subscribers via the cable system, both the city and grantee wish to preserve their respective rights with regard to the regulation of the services. Therefore, nothing in this section shall be read or interpreted as either authorizing or prohibiting the provision of services beyond those contemplated herein.

(B) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. All capitalized terms used in the definition of any
other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

APPLICABLE LAWS. Any law, statute, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

BASIC CABLE SERVICE. Any tier which includes the retransmission of local broadcast signals or that definition which is prescribed by the FCC.


CABLE SERVICE.

(a) The one-way transmission to subscribers of video programming or other programming service; and

(b) Subscriber interaction, if any, which is required for the selection or use of the video programming or other programming service.

CABLE TELEVISION SYSTEM, SYSTEM or CABLE SYSTEM. A facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but the term does not include:

(a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) A facility that serves subscribers without using any public rights-of-way;

(c) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 USC 201-226, except that the facility shall be considered a CABLE SYSTEM (other than for purposes of 47 USC 541) to the extent the facility is used in the transmission of video programming directly to subscribers;

(d) An open video system that complies with Section 653 of the Cable Act; or

(e) Any facilities of any electric utility used solely for operating its electric utility system.
CHANNEL or CABLE CHANNEL. A portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission.

CLASS IV CABLE COMMUNICATIONS CHANNEL. A signaling path provided by a cable system to transmit signals of any type from a subscriber terminal to another point in the cable system.

COUNCIL. The City Council of the City of Fergus Falls, Minnesota.

FRANCHISE. An initial authorization, or renewal thereof, issued by the city, whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system for the purpose of offering cable service or other services to subscribers.

FRANCHISE AGREEMENT. A franchise granted pursuant to this section containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

FRANCHISE FEE. Any tax, fee or assessment of any kind imposed by the city or any other governmental authority on a grantee or cable subscriber, or both, solely because of their status as such. FRANCHISE FEE does not include:

(a) Any tax, fee or assessment of general applicability (including any tax, fee or assessment imposed on both utilities and cable operators or their services);

(b) Capital costs which are required by the franchise agreement to be incurred by the grantee for PEG access facilities;

(c) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

(d) Any fee imposed under Title 17 USC.

GOVERNMENTAL AUTHORITY. Any court or other federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.

GRANTEE. Any person receiving a franchise pursuant to this section and its agents, employees, officers, designees or any lawful successor, transferee or assignee.

GRANTOR or CITY. The City of Fergus Falls, Minnesota, as represented by the Council or any delegate acting within the scope of its jurisdiction. The City Administrator shall be responsible for the continuing administration of the franchise.
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**GROSS REVENUES.** All revenue derived by the grantee, or any affiliate that is a cable operator under the Cable Act, arising from or attributable to the provision of cable service by the grantee within the city from the operation of its system. **GROSS REVENUES** shall be the basis for computing the franchise fees imposed. **GROSS REVENUES** shall not include:

(a) Revenues received from national advertising carried on the system;

(b) Any taxes on cable service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the grantee on behalf of the governmental unit or agency;

(c) Franchise fees collected by the grantee for payment to the grantor; and

(d) An amount for bad debt not to exceed 2% of grantee’s gross revenues.

**NORMAL BUSINESS HOURS.** Those hours during which most similar businesses in the city are open to serve customers. In all cases, **NORMAL BUSINESS HOURS** must include some evening hours at least one night per week and/or some weekend hours.

**NORMAL OPERATING CONDITIONS.** Those service conditions which are within the control of the grantee. Those conditions which are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the system.

**PERSON.** Any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

**PUBLIC, EDUCATIONAL OR GOVERNMENT ACCESS FACILITIES or PEG ACCESS FACILITIES.**

(a) Channel capacity designated for public, educational or governmental use; and

(b) Facilities and equipment for the use of channel capacity.

**PUBLIC WAY or STREET.**

(a) The surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated or recorded, for compatible uses and any
BUSINESS REGULATIONS

temporary or permanent fixtures or improvements located thereon now or hereafter held by the grantor in the service area which shall entitle the grantor and the grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system.

(b) PUBLIC WAY shall also mean any easement now or hereafter held by the grantor within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way and shall within their proper use and meaning entitle the grantor and the grantee to the use thereof for the purpose of installing or transmitting grantee’s cable service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.

SERVICE AREA or FRANCHISE AREA. The present municipal boundaries of the grantor, and shall include any additions thereto by annexation or other legal means.

SERVICE INTERRUPTION. The loss of picture or sound on one or more cable channels.

SERVICE TIER. A category of cable service or other services provided by grantee and for which a separate charge is made by grantee.

STATE. The State of Minnesota.

SUBSCRIBER. Any person who or which lawfully elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with the cable system.

(C) Franchise to install and operate.

(1) A franchise granted by the city under the provisions of this section shall encompass the following purposes:

(a) To engage in the business of providing cable service, and other lawful services to subscribers within the service area;

(b) To erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cables, lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a cable system in, on, over, under, upon, along and across streets within the service area;

(c) To maintain and operate the franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals for the delivery of cable services; and

(d) To set forth the obligations of a grantee under the franchise agreement.
(2) Nothing contained in this section relieves a person from liability arising out of failure to exercise reasonable care to avoid injuring grantee’s facilities while performing work connected with grading, regarding or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

(D) Franchise required. It shall be unlawful for any person, other than the city, to construct, install or operate a cable television system in the city in, on, over, under, upon, along or across any street without a franchise properly granted pursuant to the provisions of this section.

(E) Term of the franchise.

(1) A franchise granted hereunder shall be for the term established in the franchise agreement and shall not exceed 15 years.

(2) A franchise granted hereunder may be renewed upon application by the grantee pursuant to the provisions of this section and applicable laws.

(F) Franchise territory. Any franchise granted pursuant to this section shall be valid within the service area.

(G) Federal, state and city jurisdiction.

(1) This section shall be construed in a manner consistent with applicable laws.

(2) In the event that the state or federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in a manner as to expand rather than limit municipal regulatory authority, grantor may, if it so elected, adopt rules and regulations in these areas to the extent permitted by applicable laws, including without limitation requirements with respect to system rebuilds, channel capacity, system design, construction and performance requirements, public, educational or governmental access facilities, support for any facilities, interconnect commitments, activation of interactive capability or institutional networks.

(3) This section shall apply to all franchises granted or renewed after the effective date of this section. This section shall further apply to the extent permitted by applicable laws to all existing franchises granted prior to the effective date of this section.

(4) The rights of all grantees are subject to the policing powers of the city to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All grantees shall comply with all applicable general laws and ordinances enacted by the city pursuant to that power.

(5) No grantee shall be relieved of its obligation to comply with any of the provisions of this section or any franchise granted pursuant to this section by reason of any failure of the city to enforce prompt compliance.

(6) This section and any franchise granted pursuant to this section shall be construed
and enforced in accordance with the substantive laws of the city, state and applicable federal laws, including the Cable Act.

(7) This section complies with the Minnesota franchise standards contained in M.S. § 238.084, as it may be amended from time to time.

(8) The grantee and the city shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable communications as they become effective.

(H) *Franchise non-transferable.*

(1) Neither the grantee’s right, title or interest in a franchise, nor the cable system for which it is granted, shall be sold, transferred, assigned or otherwise encumbered except with the advance written approval of grantor, which approval shall not be unreasonably withheld. The sale or transfer or creation of a new controlling interest shall be completed pursuant to applicable laws. No consent shall be required, however, for a transfer in trust, by a mortgage, by other hypothecation or by assignment of any rights, title or interest of grantee in the franchise or cable system in order to secure indebtedness. Nor shall consent be required for a transfer to an affiliate under common control or ownership.

(2) In the case of any sale or transfer of ownership of any franchise and/or cable system, the city shall have 120 days, unless federal law allows a greater time period for review, to act upon any request for approval of the sale or transfer that contains or is accompanied by the information as is required in this section and applicable laws and other reasonable information as the city, in its sole discretion, may request. If the city fails to render a final decision on the request within 120 days, unless federal law allows a greater time period for review, from receipt by the city of all required information, the request shall be deemed granted unless the requesting party and the city agree to an extension of time.

(3) The grantee shall notify the grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the cable system of the grantee or upon the termination of any lease or interest covering all or a substantial part of the property and assets. The notification shall be considered by the grantor as notice that a change in control or ownership of the franchise has taken place and the provisions under this section governing the consent of the grantor to the change in control or ownership shall apply.

(4) (a) For the purpose of determining whether it shall consent to the change, transfer or acquisition of control, the grantor may inquire into the qualifications of the prospective transferee or controlling party, and the grantee shall assist the grantor in any inquiry. In seeking the grantor’s consent to any change of ownership or control, the grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to the grantor, which application shall include the information required under this section and applicable laws of this section.
BUSINESS REGULATIONS

(b) An application, acceptable to the city, shall be submitted to the grantor not less than 120 days prior to the date of transfer. The transferee shall be required to establish to the satisfaction of the city that it possesses the legal, technical and financial qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise.

(c) If, after considering the legal, financial, character and technical qualities of the transferee and determining that they are satisfactory, the grantor finds that the transfer is acceptable, the grantor shall permit the transfer and assignment of the rights and obligations of the franchise as may be in the public interest. The consent of the grantor to the transfer shall not be unreasonably denied.

(5) In addition to the aforementioned requirements in this section, the city and grantee shall, at all times, comply with the requirements of M.S. § 238.083, as it may be amended from time to time, regarding the sale or transfer of a franchise.

(I) City’s right to purchase system. Pursuant to M.S. § 238.094(aa), as it may be amended from time to time, the city shall have the right to purchase the cable system.

(J) Purchase by city upon expiration or revocation. At the expiration, cancellation, revocation or termination of any franchise agreement, the city shall have the option to purchase, condemn or otherwise acquire and hold the cable system upon the payment of the fair market value of the cable system to the grantee, determined on the basis of the going concern value of the cable system (exclusive of any value attributable to the franchise itself).

(K) Emergency use. In the case of any emergency or disaster, the grantee shall, upon request of the city or emergency management personnel, make its cable system and related facilities available to the city for reasonable emergency uses.

(L) Geographical coverage.

(1) The grantee shall design, construct and maintain the cable system to have the capability to pass every dwelling unit in the service area, subject to any service area line extension requirements of the franchise agreement.

(2) After service has been established by activating trunk and/or distribution cables for any service area, the grantee shall provide cable service to any requesting subscriber within that service area within 30 days from the date of request, provided that the grantee is able to secure all rights-of-way necessary to extend service to the subscriber within a 30-day period on reasonable terms and conditions.

(M) Nonexclusive franchise.

(1) Any franchise granted under this section shall be nonexclusive. The grantor
specifically reserves the right to grant, at any time, additional franchises for a cable television system or any component thereof, as it deems appropriate, subject to applicable laws.

(2) In the event the grantor enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than the grantee to enter into the grantor’s streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another and to provide all parties equal protection under the law, and in accordance with M.S. § 238.08, as it may be amended from time to time.

(N) Multiple franchises.

(1) The grantor may grant one or more franchises for a service area. The grantor may, in its sole discretion, limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable laws and specific local considerations; such as:

(a) The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewage.

(b) The impact on the city of having multiple franchises.

(c) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents’ property, and the disruption arising from numerous excavations of the rights-of-way.

(d) The financial capabilities of the applicant and its guaranteed commitment to make necessary investment to erect, maintain and operate the proposed system for the duration of the franchise term.

(2) Each grantee awarded a franchise to serve the entire city shall offer service to all residences in the city, in accordance with construction and service schedules mutually agreed upon between the grantor and grantee, and consistent with applicable laws.

(3) The grantor may require that any new grantee be responsible for its own underground trenching and the costs associated therewith, if, in grantor’s opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

(4) Any additional franchise granted by the city to provide cable service in a part of the city in which a franchise has already been granted and where an existing grantee is providing service shall require the new grantee to provide service throughout its service area within a reasonable time and in a sequence which does not discriminate against lower income residents.

(O) Franchise application.
BUSINESS REGULATIONS

(1) Any person other than the city, desiring an initial franchise for a cable television system shall file an application with the city. A reasonable non-refundable application fee in an amount established by the city shall accompany the initial application. The application fee shall not be deemed to be “franchise fees” within the meaning of Section 622 of the Cable Act (47 USC 542), and payments shall not be deemed to be:

(a) Payments in kind or any involuntary payments chargeable against the franchise fees to be paid to the city by the grant and applicable provisions of a franchise agreement; or

(b) Part of the franchise fees to be paid to the city by grantee and applicable provisions of a franchise agreement.

(2) An application for an initial franchise for a cable television system shall be in a form reasonably acceptable to the grantor and shall contain, where applicable:

(a) A statement as to the proposed service area;

(b) A resume of prior history of applicant, including the legal, technical and financial expertise of applicant in the cable television field;

(c) A list of officers, directors and managing employees of applicant or its general partner, as applicable, together with a description of the background of each person;

(d) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;

(e) A current financial statement of applicant verified by an audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the city;

(f) Proposed construction and service schedule; and

(g) Any additional information that the city deems applicable.

(P) Consideration of initial application.

(1) Upon receipt of any application for an initial franchise, the City Administrator shall prepare a report and make his or her recommendations respecting the application to the City Council.

(2) A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Council. Within 30 days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted subject to what conditions. The Council may grant one or more
initial franchises, or may decline to grant any franchise.

(Q) *Franchise renewal.* Franchise renewals shall be in accordance with applicable laws. The grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

(R) *Consumer protection and service standards.* Except as otherwise provided in the franchise agreement, the grantee shall maintain one or more customer service and bill payment offices at convenient locations within the service area to provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under normal operating conditions:

(1) *Cable system office hours and telephone availability.*

(a) The grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

1. Trained grantee representatives will be available to respond to customer telephone inquiries during normal business hours.

2. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained grantee representative on the next business day.

(b) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90% of the time under normal operating conditions, measured on a quarterly basis.

(c) The grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(d) Under normal operating conditions, the customer will receive a busy signal less than 3% of the time.

(e) Customer service center and bill payment locations will be open at least during normal business hours.

(2) *Installations, outages and service calls.* Under normal operating conditions, each of the following four standards will be met no less than 95% of the time measured on a quarterly basis:
BUSINESS REGULATIONS

(a) Standard installations will be performed within seven business days after an order has been placed. Standard installations are those that are located up to 125 feet from the existing distribution system. Non-standard installations will be billed at cost.

(b) Excluding conditions beyond the control of the grantee, the grantee will begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. The grantee must begin actions to correct other service problems the next business day after notification of the service problem.

(c) The appointment window alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(d) The grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(e) If the grantee’s representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between the grantee and subscribers.

(a) Notifications to subscribers.

1. The grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

   a. Products and services offered;

   b. Prices and options for programming services and conditions of subscription to programming and other services;

   c. Installation and service maintenance policies;

   d. Instructions on how to use the cable service;

   e. Channel positions of the programming carried on the system; and

   f. Billing and complaint procedures, including the address and telephone number of the grantee’s office within the service area.

2. Customers will be notified of any increases in rates, changes in
programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of 30 days in advance of the changes if the increase is within the control of the grantee. In addition, the grantee shall notify subscribers 30 days in advance of any significant changes in the other information required by (3)(a)1.

(b) Billing.

1. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. The city acknowledges that the grantee may provide subscribers with the option of purchasing various packages of services, and the grantee’s bills may not specifically identify all aspects of the packages or prices associated therewith.

2. In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within 45 days.

(c) Refunds. Refund checks will be issued promptly, but no later than either:

1. The customer’s next billing cycle following resolution of the request or 45 days, whichever is earlier; or

2. The return of the equipment supplied by the grantee if service is terminated.

(d) Credits. Credits for service will be issued no later than the customer’s next billing cycle following the determination that a credit is warranted.

(S) Rate regulation. The city reserves the right to regulate rates for cable service to the extent not inconsistent with applicable laws. The grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 CFR Part 76, Subpart N, as the same may be amended from time to time. The city shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 CFR Part 76, Subpart N, as the same may be amended from time to time.

(T) Franchise fee.

(1) Following the issuance and acceptance of a franchise, the grantee shall pay to the grantor a franchise fee in the amount set forth in the franchise agreement.

(2) The grantor, on an annual basis, shall be furnished a statement within 90 days of the close of the calendar year, certified by a representative of the grantee who is an accountant, reflecting the total amounts of gross revenues and all payments, and computations of the franchise fee for the previous calendar year. Upon ten days prior written notice, the grantor shall have the
right to conduct an independent audit of the grantee’s records. If the audit indicates a franchise fee underpayment of 5% or more, the grantee shall assume all reasonable costs of an audit and shall remit to the grantor all applicable franchise fees due and payable together with interest thereon up to the maximum rate permitted by applicable laws.

(3) Except as otherwise provided by the state’s statute of limitations, no acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim that the grantor may have for further or additional sums payable as a franchise fee under this section or any franchise agreement or for the performance of any other obligation of the grantee.

(4) In the event that any franchise fee payment or recomputed amount is not made on or before the dates specified in the franchise agreement, the grantee shall pay as additional compensation an interest charge, computed from the due date, at an annual rate up to the maximum rate permitted by applicable laws during the period for which payment was due.

(5) Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

(U) Design and construction requirements.

(1) The grantee shall not commence construction of a cable system, open or disturb the surface of any street, sidewalk, driveway, public way, or public place without first obtaining a permit from the proper municipal authority. If the grantee fails to meet the conditions of the permit, the grantor shall have the right to put the street or public way back into the condition that existed immediately prior to the use by the grantee at the reasonable expense of the grantee. The permit shall not be unreasonably withheld.

(2) All wires, conduits, cable and other property and facilities of the grantee shall be located, constructed, installed and maintained in compliance with all applicable laws. The grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public ways of the service area or endanger the life or property of any persons.

(3) All transmission and distribution structures, poles, other lines and equipment installed or erected by the grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of the public ways.

(4) If, during the course of the grantee’s construction, operation or maintenance of the cable system, there occurs a disturbance of any public way by the grantee, it shall, at its expense, replace and restore the public way to a condition reasonably comparable to the condition of the public way existing immediately prior to the disturbance.

(5) Upon receipt of reasonable advance notice, not to be less than 21 business days, the grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public
way, or remove from the public way, any property of the grantee when lawfully required by the grantor by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, or installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the grantor; but, the grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using the street, easement or right-of-way for the purpose of defraying the cost of any of the foregoing, the finds shall also be made available to the grantee.

(6) The grantee shall, upon request of any person holding a building moving permit issued by the grantor, temporarily raise or lower its wires to permit the moving of the building, provided:

(a) The expense of the temporary raising or lowering of wires is paid by the person, including, if required by the grantee, making payment in advance; and

(b) The grantee is given not less than 21 business days’ advance written notice to arrange for temporary wire changes.

(7) In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that the facilities are actually capable of receiving the grantee’s cable and other equipment without technical degradation of the cable system’s signal quality. In those areas of service area where the transmission distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, the grantee shall have the sole discretion to construct, operate and maintain underground any ground-mounting appurtenances such as, but not limited to, subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this section, the grantee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities’ facilities at the time that such are placed underground.

(8) This agreement is granted for the service area, as it exists from time to time. In the event of annexation by city, or as development occurs, any new territory shall become part of the service area, provided, however, that the grantee shall not be required to extend service beyond its present cable system boundaries unless there is a minimum density equivalent of ten homes per one-quarter cable mile. Access to cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the area in which the group resides. The grantee shall be given six months from the time the grantor notifies the grantee to
construct and activate cable plant to service annexed or newly developed areas to the extent the areas meet the line extension criteria established in this section.

(V) Technical standards.

(1) The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws and the Federal Communications Commission technical standards, and any standards set forth in its franchise agreement. In addition, the grantee shall provide to the grantor, upon request, a written report of the results of the grantee’s periodic proof of performance tests conducted pursuant to Federal Communications Commission standards and guidelines.

(2) All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable laws.

(3) All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as may from time to time be amended.

(4) All of the grantee’s plant and equipment, including, but not limited to, the antenna site, head end and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the city may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(5) The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

(W) Trimming of trees.

(1) The grantee shall have the authority to trim trees and other natural growth overhanging any of its cable system in the service area so as to prevent branches from coming into contact with the grantee’s wires, cables or other equipment. The grantee shall be permitted to charge persons who own, or are responsible for, the trees or natural growth for the cost of the trimming, provided that similar charges are assessed by and paid to the utilities or the grantor for tree trimming. The grantee shall reasonably compensate the grantor or property owner for any damages caused by the tree trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the cable system undertaken by the grantee.

(2) The replacement shall satisfy any and all obligations the grantee may have to the
grantor or property owner pursuant to the terms of this section. City representatives shall have authority to supervise, at the city’s expense, and approve all trimming of trees conducted by the grantee.

(X) Use of grantee facilities. Subject to any applicable state or federal regulations or tariffs, the grantor shall have the right to make additional use, for any governmental non-revenue generating public purpose, of any poles or conduits controlled or maintained exclusively by or for the grantee in any public way, provided that:

1. The use by the grantor does not interfere with the current or future use by the grantee;

2. The grantor holds the grantee harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of the use of the poles or conduits, including but not limited to, reasonable attorneys’ fees and costs; and

3. At the grantee’s sole discretion, the grantor may be required either to pay a reasonable rental fee or otherwise reasonably compensate the grantee for the use of the poles, conduits or equipment, provided, however, that the grantee agrees that the compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the service area.

(Y) Programming decisions. All programming decisions shall be at the sole discretion of the grantee in accordance with applicable laws, in particular 47 USC 545.

(Z) Indemnification. The grantee shall indemnify, defend and hold the city, its officers, boards, commissions, agents and employees (collectively the “indemnified parties”) harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorneys’ fees) and costs of any nature that any of the indemnified parties may at any time, directly or indirectly, suffer, sustain or incur arising out of, based upon or in any way connected with the operation of the grantee’s system by the grantee, its agents and employees and/or the acts and/or omissions of the grantee or its agents or employees, whether or not pursuant to the franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent or any other right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter or any franchise agreement, but shall exclude any claim or action arising out of the acts or omissions of the indemnified parties or related to any city programming or other access programming for which the grantee is not legally responsible.

(AA) Insurance. Within 60 days following the grant of a franchise, the grantee shall obtain, pay all premiums for the below listed insurance policies and shall at any time thereafter make available to the city, at its request, certificates of insurance, in a form and substance acceptable to the city.
BUSINESS REGULATIONS

(1) A general liability insurance policy insuring, indemnifying, defending and saving
harmless the indemnified parties from any and all claims by any person whatsoever on account of
injury to or death of a person or persons occasioned by the operations of the grantee under any
franchise granted hereunder, or alleged to have been so caused or occurred with a minimum
coverage of $1,000,000 for personal injury or death of one person, and $2,000,000 for personal
injury or death of any two or more persons in any one occurrence.

(2) Property damage insurance for property damage occasioned by the operation of the
grantee under any franchise granted pursuant to this section, or alleged to have been so caused or
occurred, with minimum coverage of $1,000,000 for property damage to the property of any one
person and $2,000,000 for property damage to the property of two or more persons in any one
occurrence.

(3) Workers’ compensation insurance as provided by applicable laws.

(4) All certificates of insurance called for herein shall be in a form satisfactory to the
city with a company licensed to do business in the state with a rating by A.M. Best & Co. of not
less than “A” and shall require 30 days written notice of any cancellation to both the city and the
grantee. The grantee shall, in the event of any cancellation notice, obtain, pay all premiums for,
and file with the city, written evidence of the issuance of replacement policies within 30 days
following receipt by the city or the grantee of any notice of cancellation.

(5) If the grantee sells or transfers the cable system, or in the event of expiration,
termination or revocation of a franchise, the grantee shall ensure adequate insurance coverage for
the time periods according to applicable statutes of limitation, insurance for any issues attributable
to the period the grantee held its franchise.

(6) It shall be the obligation of the grantee to promptly notify the city of any pending or
threatened litigation that would be likely to affect the indemnified parties.

(BB) Records required and grantor’s right to inspect.

(1) The grantee shall at all times maintain:

(a) A full and complete set of plans, records and “strand” maps showing the
location of the cable television system installed or in use in the city, exclusive of subscriber
service drops and equipment provided in subscribers’ homes.

(b) If requested by the grantor, a summary of service calls, identifying the number,
general nature and disposition of the calls, on a monthly basis. A summary of the service calls
shall be submitted to the grantor within 30 days following its request in a form reasonably
acceptable to the grantor.

(2) Upon reasonable notice, and during normal business hours, the grantee shall permit
examination by any duly authorized representative of the grantor, of all franchise property and
facilities, together with any appurtenant property and facilities of the grantee situated within or without the city, and all records relating to the franchise, provided they are necessary to enable the grantor to carry out its regulatory responsibilities under applicable laws, this section and the franchise agreement. The grantee shall have the right to be present at any examination.

(3) The city shall also have the right to inspect, upon 24 hours written notice, at any time during normal business hours at the grantee’s office, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service and other like materials of the grantee.

(4) Copies of all petitions, applications, communications and reports submitted by the grantee or on behalf of or relating to the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other governmental authority having jurisdiction with respect to any matters affecting the cable system authorized pursuant to this section and any franchise shall be submitted upon request to the city. Copies of responses from the governmental authority to the grantee shall likewise be furnished to the city within 15 days of receipt of the response.

(CC) Annual reports.

(1) Upon written request of the grantor, the grantee shall, within 90 days of each calendar year end, submit a written end of the year report to the grantor with respect to the preceding calendar year containing the following information:

(a) A summary of the previous year’s (or in the case of the initial reporting year, the initial year’s) activities in development of the cable system, including but not limited to, services commenced or discontinued during the reporting year; and

(b) Information as to the number of subscribers, additional television outlets, and the number of basic and pay service subscribers.

(2) All reports required under this section, except those required by law to be kept confidential, shall be available for public inspection in the grantee’s offices during normal business hours.

(3) All reports and records required under this section shall be furnished at the sole expense of the grantee, except as otherwise provided in this section or the franchise agreement.

/DD) Franchise violation.

(1) In the event the grantor believes that the grantee has breached or violated any material provision of this section or a franchise granted hereunder, the grantor may act in accordance with the following procedures.

(2) The grantor must notify the grantee of the alleged violation or breach by certified
mail and demand that the grantee cure the same within a reasonable time, which shall not be less
than ten days in the case of an alleged failure of the grantee to pay any sum or other amount due
the grantor under this section or the grantee’s franchise and 30 days in all other cases. If the
grantee fails either to cure the alleged violation or breach within the time prescribed or to
commence correction of the violation or breach within the time prescribed and thereafter diligently
pursue correction of the alleged violation or breach, the grantor shall then give written notice of
not less than 14 days of a public hearing to be held before the Council. The notice shall specify
the violations or breaches alleged to have occurred. At the public hearing, the Council shall hear
and consider relevant evidence and thereafter render findings and its decision. In the event the
Council finds that a material violation or breach exists and that the grantee has not cured the same
in a satisfactory manner or has not diligently commenced action to cure the violation or breach
after notice thereof from the grantor and is not diligently proceeding to fully cure the violation or
breach, the Council may revoke and terminate the franchise or impose any other remedy permitted
by the franchise agreement or applicable laws.

(3) In the case of a lawful revocation of a franchise, at the grantee’s request, which
shall be made in its sole discretion, the grantee shall be given a reasonable opportunity to
effectuate a transfer of its cable system to a qualified third party. The grantor agrees that during a
period of time, it shall authorize the grantee to continue to operate pursuant to the terms of its prior
franchise; however, in no event shall the authorization exceed a period of time greater than six
months from the effective date of the revocation. If, at the end of that time, the grantee is
unsuccessful in procuring a qualified transferee or assignee of its cable system which is reasonably
acceptable to the grantor, the grantee and grantor may avail themselves of any rights they may
have pursuant to federal or state law; it being further agreed that the grantee’s continued operation
of its cable system during the six-month period shall not be deemed to be a waiver, nor an
extinguishment of, any rights of either the grantor or the grantee. Notwithstanding anything to the
contrary set forth in this section, neither the grantor nor the grantee shall be required to violate
federal or state law.

(EE) Force majeure: grantee’s inability to perform. In the event the grantee’s performance of
any of the terms, conditions or obligations required by this section or a franchise granted
hereunder is prevented by a cause or event not within the grantee’s control, the inability to perform
shall be deemed excused for the period of the inability and no penalties or sanctions shall be
imposed as a result thereof for the purpose of this section, causes or events not within the control
of the grantee shall include, without limitation, acts of God, strikes, inability to obtain reasonably
necessary contract labor or materials, sabotage, riots or civil disturbances, restraints imposed by
order of a governmental agency or court, failure or loss of utilities, explosions, acts of public
enemies, and natural disasters such as floods, earthquakes, landslides and fires.

(FF) Abandonment or removal of franchise property.

(1) In the event that the use of any property, other than real property, of the grantee
within the franchise area or a portion thereof is discontinued for a continuous period of 12 months,
the grantee shall be deemed to have abandoned that property. The grantee shall be afforded 30
days advance notice before this provision may be implemented.
(2) The grantor, upon the terms as the grantor may impose, may give the grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained in, on, under or over the franchise area. Unless permission is granted or unless otherwise provided in this section, the grantee shall remove all abandoned facilities and equipment upon receipt of written notice from the grantor and shall restore any affected street to its former state at the time the facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation made by or on behalf of the grantee and shall leave all streets and other public ways and places in as good condition as that prevailing prior to the removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The grantor shall have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this section and any security fund provided for in the franchise agreement shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section.

(3) Upon abandonment of any franchise property in place, the grantee, if required by the grantor, shall submit to the grantor a bill of sale and/or other an instrument, satisfactory in form and content to the grantor, transferring to the grantor the ownership of the franchise property abandoned.

(4) At the expiration of the term for which the franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the franchise agreement, in any case without renewal, extension or transfer, the grantor shall have the right to require the grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the city within a reasonable period of time, which shall not be less than 180 days.

(5) Notwithstanding anything to the contrary set forth in this section, the grantee may, with the consent of the grantor, abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which the property is located or with the use thereof by any public utility or other cable grantee.

(GG) *Extended operation and continuity of services.* Upon the expiration, revocation or termination of the franchise, the grantor shall have discretion to permit and/or require the grantee to continue to operate the cable television system for a period of time not to exceed six months from the date of the expiration, revocation or termination. The grantee shall continue to operate the system under the terms and conditions of this section and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time.

(HH) *Receivership and foreclosure.*

(1) A franchise granted hereunder shall, at the option of the grantor, cease and terminate 120 days after appointment of a receiver or receivers, or trustee or trustees, to take over
and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless the receivership or trusteeship shall have been vacated prior to the expiration of the 120 days, or unless:

   (a) The receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within the 120 days shall have remedied all the defaults and violations under the franchise and/or this section or provided a plan for the remedy of the defaults and violations which is satisfactory to the grantor; and

   (b) The receivers or trustees shall, within the 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise and this section.

   (2) In the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, the grantor may give notice of termination of any franchise granted pursuant to this section upon the grantee and the successful bidder at the sale, in which the event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate 30 days after the notice has been given, unless:

      (a) The grantor shall have approved the transfer of the franchise in accordance with the provisions of the franchise and this section; and

      (b) The successful bidder shall have covenanted and agreed with the grantor to assume and be bound by all terms and conditions of the franchise.

(II) Rights reserved to grantor.

   (1) In addition to any rights specifically reserved to the grantor by this section, the grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.

   (2) The grantor shall have the right to waive any provision of the franchise, except those required by applicable laws and those relating to franchise enforcement or revocation, if the grantor, in its sole opinion, determines:

      (a) That it is in the public interest to do so; and

      (b) That the enforcement of the provision will impose an undue hardship on the grantee or the subscribers. Waiver of any provision in one instance shall not be deemed a waiver of the provision subsequent to the instance nor be deemed a waiver of any other provision of the franchise unless the statement so recites.

(JJ) Rights of individuals.
BUSINESS REGULATIONS

(1) The grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, gender or sexual preference. The grantee shall comply at all times with all other applicable laws, relating to nondiscrimination.

(2) The grantee shall adhere to the applicable equal employment opportunity requirements of applicable laws, as now written or as amended from time to time.

(3) Neither the grantee, nor any person, agency or entity shall, without the subscriber’s consent, tap or arrange for the tapping, of any cable, line, signal input device or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(4) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, the grantee shall take reasonable steps to prevent the invasion of a subscriber’s or general citizen’s right of privacy or other personal rights through the use of the system as the rights are delineated or defined by applicable laws. The grantee shall not, without lawful court order or other applicable valid legal authority, utilize the system’s interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(5) No cable line, wire, amplifier, converter or other piece of equipment owned by the grantee shall be installed by the grantee in the subscriber’s premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber’s property shall be presumed. Where a property owner or his or her predecessor was granted an easement including a public utility easement or a servitude to another and the servitude by its terms is for a comparable use such as the grantee’s intended use, the grantee shall not be required to obtain the written permission of the owner for the Installation of cable television equipment subject to applicable laws.

(6) To the extent required by applicable laws, no signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of a subscriber. The request for permission must be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year which is renewable at the option of the subscriber. No penalty may be invoked for a subscriber’s failure to provide or renew the authorization. The authorization is revocable at any time by the subscriber without penalty of any kind. The permission must be required for each type or classification of Class IV cable communications activity planned.

(a) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to the lists of the names and addresses of the subscribers or lists that identify the viewing habits of subscribers may be sold or otherwise made
available to any person other than to the grantee and its employees for internal business use, or to the subscriber who is the subject of that information, unless the grantee has received specific written authorization from the subscriber to make the data available.

(b) Written permission from the subscriber must not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to division (a) above.

(c) For purposes of this section, a “Class IV cable communications channel” means a signaling path provided by a system to transmit signals of any type from a subscriber terminal to another point in the system.

(Ord. 6, Fifth Series, passed 5-20-96) Penalty, see § 4.99

§ 4.34 RESERVED.

§4.35 RENTAL UNIT REGISTRATION AND INSPECTION.

(A) Definitions. For the purpose of this Ordinance, the following definitions shall apply:

“RENTAL UNIT” or “RESIDENTIAL RENTAL UNIT” means any house, apartment, condominium, townhouse, room or group of rooms, constituting or located within, a dwelling and forming a single habitable unit.

“DWELLING” means any building or other permanent or temporary structure, including a manufactured or mobile home which is wholly or partly used, or intended to be used, for living or sleeping by human occupants.

“RENT”, “LEASE”, “LET” or “SUBLET” means the leasing of a rental unit to a non-owner for a fixed or non-fixed period of time, and shall include lease to buy, contract for deed, installment sales, purchases, and other similar arrangements whereby nonpayment of a periodic payment means the occupants may be evicted without the necessity of either a statutory mortgage foreclosure procedure, a statutory termination or contract for deed procedure, or a statutory repossession procedure.

“SHALL” and “MUST” as used in this Ordinance are each mandatory. “Should” and “may” as used in this Ordinance are each permissive or directory.

“ADMINISTRATOR” or “CITY ADMINISTRATOR” means the Fergus Falls City Administrator or the Deputy Fergus Falls City Administrator in the absence of the City Administrator, or such person as the City Administrator designates, in writing, to carry out the responsibilities of the City Administrator as provided by this
Ordinance.

“REGISTRATION HOLDER” means a person or entity to whom registration for a rental unit is issued under this ordinance.

“LOCAL PROPERTY MANAGER” means a natural person residing within 30 miles of the City of Fergus Falls who is authorized by the rental unit owner to make decisions for the owner about rental, occupancy and maintenance of the rental unit.

(B) Business Requirements.

(1) No person or entity may hereafter occupy, allow to be occupied or rent, lease, let or sublet a rental unit, to another person or entity for occupancy without a valid and current rental unit registration issued by the Fergus Falls City Administrator.

(2) Each rental unit must have an owner, or Local Property Manager designated by the owner, who resides within 30 miles of the City of Fergus Falls.

(3) Any person or entity desiring to rent, let, lease or sublet any rental unit shall apply for registration by using form furnished by the City for that purpose. The forms must provide information required by the City Administrator, including the following:

(a) Name, address, phone number (and fax number, if owner has one) of the property owner.

(b) Name, address, phone number (and fax number, if manager has one) of a designated Local Property Manager.

(c) The street address of the rental property.

(d) The number and types of units within the rental property (dwelling units or sleeping rooms).

(e) The maximum number of occupants permitted for each dwelling unit or sleeping room.

(f) The name, phone number, fax number and address of the person authorized to make, or order, make repairs or service for the property if in violation of City or State codes, if the person is different than the owner of Local Property Manager.

(C) Exemptions. This ordinance does not apply to campus dormitory and campus residence units owned, operated or managed by a governmental entity or agency, hospital units or rooms, nursing homes, retirement homes or other similar rental space which is otherwise registered by the State of Minnesota or the City of Fergus Falls.
(D) Manner of Registration Renewal. Registration shall be required each calendar year and may be issued on a calendar year basis prior to January 1 of each successive year. The City will annually mail registration renewal forms to rental unit owners or their designated Local Property Managers on or about October 1 of each year. Registration renewal forms must be delivered to the City Administrator no later than the fifteenth day of November each year. Failure of the City to mail renewal forms and failure of an owners or Local Property Manager to receive a renewal form, does not excuse or waive the registration required by this Ordinance.

(E) Transfer of Property. Every new owner of a rental unit, whether fee owner or contract purchaser, shall furnish to the City Administrator the new owner’s name, address, phone number and fax number and the name, address, phone number and fax number of the new owner’s designated Local Property Manager before taking possession of the rental property upon closing of the transaction. No new registration fee is required of the new owner during the year in which such possession takes place, provided that the previous owner has paid all registration fees and has complied with all requirements of this Ordinance and any violation of health, zoning, fire or safety codes of the City. If any change in the type of occupancy as originally registered is contemplated by the new owner, a new registration application will be required.

(F) Posting of Registration. Each rental unit registration holder must post the rental unit registration in a conspicuous spot near the front entry to the rental unit in a public corridor, hallway or lobby. Failure to post the registration and keep the registration posted in a misdemeanor, but is not grounds for termination of registration.

(G) Fees. The fees for rental unit registration, registration renewal, late fees and inspection may be set by resolution of the City Council adopted from time to time.

(H) Maintenance of Records. All records, files and documents pertaining to rental unit registration and rental unit inspections may be maintained by the City Administrator and will be available to the public as allowed, permitted or required by State Law or City Ordinance.

(I) Maintenance Standards. Every rental unit must be maintained in compliance with standard building codes, dwelling maintenance standards, nuisance ordinance, noise ordinance and with all other provisions of Fergus Falls City Code as now in force and hereafter amended, revised or replaced, and in compliance with all other standards, ordinances, laws and regulations governing use, occupancy, construction and maintenance of property and conduct of persons in or on that property.

(J) Inspections and Investigations.

(1) Fire Department personnel, police officers, the City Building Inspector, City Administrator and their respective designees and representatives, are hereby authorized to make inspections reasonably necessary to the enforcement of this Ordinance.
(2) All persons authorized herein to inspect shall have the authority to enter, at all reasonable times, any rental unit or structure containing a rental unit, registered or required to be registered, for the purpose of enforcing this Ordinance.

(3) Written notice of a violation of this Ordinance may be given to the Registration Holder by certified mail directed to the address of the Registration Holder as shown by the Administrator’s registration application file. Said notice may contain a Compliance Order stating that compliance with this ordinance shall be made immediately and, in that case, the notice shall advise the Registration Holder that the property may be re-inspected in not less than fifteen (15) days, unless extended by the Administrator, based on good cause.

(4) A Registration Holder may appeal to the City Administrator the requirements of any Compliance Order by filing a written appeal with the office of the City Administrator no later than ten (10) days after filing of the Notice of Appeal. Enforcement of the Compliance Order shall be stayed pending the decision of the City Administrator on the appeal. The City Administrator may reschedule the hearing as the Administrator determines is necessary.

(K) Conduct on Registered Premises.

(1) It is the responsibility of the Registration Holder to require and ensure that occupants of the registered premises conduct themselves in such a manner as to not cause the premises to be disorderly and in violation of law or ordinance when any of the following activities occur in, on or at the registered premises:

   (a) Conduct which constitutes a violation of the Fergus Falls City Code relating to nuisances as it now exists or as hereafter amended.

   (b) Conduct which constitutes a violation of the Fergus Falls City Code relating to the noise ordinance as it now exists or as hereafter amended.

   (c) Conduct which constitutes disorderly conduct in violation of Minnesota Statues 609.72 or City Code Section 6.81 as it now exists or as hereafter amended.

   (d) Conduct which constitutes a violation of laws relating to possession of controlled substances pursuant to Minnesota Statutes Chapter 152 as it now exists or as hereafter amended.

   (e) Conduct which constitutes a violation of any City ordinance or State law relating to minors possessing or consuming alcohol, or relating to providing, furnishing or serving alcohol to minors, or relating to sale of alcoholic beverages.
(f) Conduct which constitutes a violation of State Laws of City ordinance relating to prostitution, indecent exposure or acts related to prostitution as defined by State Law.

(g) Conduct which constitutes a violation of City ordinances and State laws relating to weapons or fire arms.

(h) Conduct which constitutes a violation of City ordinances or State laws relating to assault, specifically including domestic assaults and criminal sexual conduct.

(i) Conduct which constitutes a violation of ordinances or laws relating to contributing to the need for protection, services or delinquency of a minor as defined in Minnesota Statutes 260.315 as it now exists or as hereafter amended.

(j) Conduct which constitutes a violation of any other federal, state or local ordinance or regulation and which is reasonably likely to threaten, annoy or harass tenants or visitors to rental units, or to residents, visitors or occupants of neighboring properties.

(2) The City Administrator shall administer this section of the Ordinances and may delegate administration of a designee authorized in writing by the City Administrator.

(3) If the Administrator determines that a violation of this section has occurred, then the Administrator will give notice of the violation to the Registration Holder and the renters of the rental unit, if known, and will direct that the Registration Holder take steps to prevent further violations.

(4) If another violation of this section occurs within ninety (90) days of the incident for which notice was given as provided in Subdivision 3 above, then the City Administrator will give notice of the violation to the Registration Holder and the renters of the rental unit, if known, and will direct that the Registration Holder take steps to prevent further violations. The City Administrator will also, at that time, request that the Registration Holder submit to the City Administrator, within ten (10) days of the City Administrator’s mailing of the notice of violation provided in this section, a report itemizing all actions taken by the Registration Holder in response to all notices of violations as to the rental unit within the preceding ninety (90) days.

(5) If a third violation of this section occurs within ninety (90) days after the last of any two or more previous violations for which notices were given pursuant to this section, and the Registration Holder has not sufficiently taken action to prevent further violations, then the rental unit registration for the premises may be denied, revoked, suspended or not renewed.
(a) Action to deny, revoke, suspend or not renew a rental unit registration may be initiated by the City Administrator who shall give to the Registration Holder a written notice of hearing before the City Administrator to consider such denial, revocation, suspension or non-renewal.

(b) A notice of intent to deny, revoke, suspend or not renew registration shall specify all violations of this section and shall state the date, time, place and purpose of the hearing provided by this subdivision.

(c) The hearing held pursuant to this subdivision shall occur no later than thirty (30) days after notice.

(d) Following the hearing, the City Administrator may deny, revoke, suspend or not renew registration for all or any part of the registered premises or may grant conditional registration upon such terms and conditions as the Administrator finds necessary to accomplish the purpose of this Ordinance.

(6) No adverse registration action may be imposed where the violation of this section occurred during the pendency of unlawful detainer eviction proceedings brought under Minnesota Statutes Chapter 566 or within thirty (30) days of notice given by the Registration Holder to a tenant to vacate the premises, will not, however, bar adverse registration action unless diligently pursued by the Registration Holder. Action to deny, revoke, suspend or not renew registration for violation of this section may be postponed or dismissed by the City Administrator at any time if it appears to the Administrator that the Registration Holder has taken appropriate remedial action.

(7) The standard of proof to be used in determination by the City Administrator as to conduct constituting violations under this section is a fair preponderance of evidence in support of such a determination. It is not necessary that criminal charges be brought to support a determination of violation of this section or a determination that conduct constituting a violation of this section, that law enforcement officers be called to the rental unit in response to a complaint and that a police report and investigation of the same be prepared.

(8) For the purpose of this Ordinance, a violation under this section includes violations by the rental unit renters or occupants, or by their visitors or guests, in or at the rental unit of the renters or tenants, or in, at or upon its curtilage, including anywhere on the property grounds and premises of an apartment building, home or mobile home park at which the rental unit is situated.

(9) Failure of a Registration Holder to respond to notice provided in this section is not, by itself alone, a violation of this Ordinance.

(L) Failure to Grant Registration, Revocation, Suspension or Failure to Renew Registration.
BUSINESS REGULATIONS

(1) The City reserves the right to not register a rental unit unless it complies with the requirements of this Ordinance.

(2) Any registration issued under this Ordinance is subject to the right, which is hereby expressly reserved by the City, to deny, suspend, revoke or not renew the same should the Registration Holder or their agents, employees, representatives or lessees directly or indirectly operate or maintain the rental dwellings contrary to the provisions of this Ordinance or any other ordinance of the City or any special permit issued by the City, or the laws of the State of Minnesota. Provided, however, registration shall not be denied, suspended, revoked or not renewed if the Registration Holder complies with a compliance order or orders in a reasonably timely manner as determined by the City Administrator.

(3) The City Administrator shall notify the applicant that registration has been denied, or the Registration Holder that registration is being suspended, revoked or not renewed. The suspension, revocation or non-renewal shall occur thirty-five (35) days after the date of the notification order, or at such later date as set out in the notification.

(4) A determination by the City Administrator to deny, suspend, revoke or not renew registration of a rental unit may be appealed to the City Council by filing with the City Administrator a written notice of appeal within fifteen (15) days of the date on which the City Administrator mails such determination to the applicant or Registration Holder. In that event, the appeal will be heard by the City Council at its next meeting occurring at least fifteen (15) days after the filing of the Notice of Appeal.

(5) At any appeal of a determination by the City Administrator under this Ordinance, the Registration Holder or applicant, Local Property Manager for the Registration Holder or applicant, or an attorney representing them, may appear and make a presentation to the City Council. The City Administrator shall present to the City Council the basis for the determination being appealed. After the hearing, the Council may uphold, reverse or modify the decision of the City Administrator based upon the provisions of this Ordinance and upon the protection of the public health, sanitation, safety or general welfare of the community at large or the residents of rental units within the City. The City Council shall issue written findings and determination within thirty-one (31) days of the hearing, unless the Council extends that time for good cause.

(6) A decision of the City Council made as provided in this section may be appealed by Writ of Certiorari to the Court of Appeals of the State of Minnesota pursuant to its Rules of Civil Appellate Procedure.

(M) Summary Action.

(1) As a condition of receiving rental unit registration, each Registration Holder is presumed to agree and consent that when the conduct of any Registration Holder or Registration Holder’s agent, representative, employee or lessee, or the condition of their
rental unit, or the property in or on which it is located, is detrimental to the public health, sanitation, safety and general welfare of the community at large, or residents of the rental units go as to constitute a nuisance, fire hazard, or other unsafe or dangerous condition and thus give rise to an emergency, the City Administrator shall have the authority to summarily condemn or close individual rental units or such areas of the rental dwelling as the Administrator deems necessary. Notice of summary condemnation shall be posted at the units or areas affected. No person shall remove the posted notice, other than the Fire Inspector, City Administrator, or their designated representative. Any person aggrieved by the decision or the action of the City Administrator or Fire Inspector set out in this Subdivision, may appeal the decision following the procedures set out in this Ordinance. The hearing shall be conducted in the same manner as provided in this Ordinance, however, the date of the hearing may be expedited with the consent of the Registration Holder.

(2) The decision of the City Administrator set forth in this Subdivision is not voided by the filing of such appeal. Only after the hearing by the City Council has been held will the decision or action of the City Administrator be affected.

(N) Applicable Laws. Registration Holders are subject to all of the ordinances of the City and State of Minnesota relating to rental dwellings, and this Ordinance shall not be construed or interpreted to supersede or limit any other applicable ordinance or law.

(O) Violations, Injunctive Relief.

(1) Nothing in this Ordinance prevents the City from taking enforcement action under any of its fire, housing, zoning, health safety or other codes, ordinances and State laws for violation thereof, or to seek injunctive relief and criminal prosecution for violations of any ordinance, code or law. Nothing contained in this Ordinance prevents the City from seeking injunctive relief against a property owner or designated property manager who fails to comply with the terms and conditions of this Ordinance or to obtain an order closing such rental units until violations of this particular Ordinance has been remedied by the property owner or designated property manager.

(2) Violation of this Ordinance is a misdemeanor. Each separate day on which a continuing violation occurs is a separate violation.

(P) Written Notices. Notices from the City required by this Ordinance shall be effective if personally delivered or if mailed to the addresses by certified mail, return receipt requested, to the address shown in the City file pertaining to the rental unit involved in the notice.

(Ord. 2, Sixth Series, eff. 8-15-04)

§ 4.36 REGULATION OF SALE OF FIREWORKS.

A. Definitions – Fireworks. For the purposes of this section, “fireworks” will have the same definition as contained in Minnesota Statute Section 624.20, Subd. 1 or any
BUSINESS REGULATIONS

superceding statute.

B. Sale and Use of Fireworks Prohibited. It shall be unlawful for any person to offer for sale, expose for sale, sell at retail, or wholesale, or use or explode any fireworks, except as otherwise hereinafter provided.

C. Permit Required. No person shall sell or possess for sale fireworks without first having obtained an annual permit from the City.

1. Application for Fireworks Display. An application for a fireworks display permit shall be made in writing to the City Administrator at least fifteen (15) days in advance of the date of display. The application shall be promptly referred to the Chief of the Fire Department.

   (a) Investigation. The Chief of the Fire Department shall make an investigation to determine whether the operator of the display is competent and whether the display is of such a character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. The Fire Chief shall report the results of this investigation to the City Administrator and if he reports that in his opinion the operator is competent and that the display as planned will conform to safety requirements, including the rules and regulations of the State Fire Marshal hereinafter provided for, the City Administrator shall issue a permit for the display when the applicant pays a permit fee as determined by resolution of the City Council adopted from time to time. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit so granted shall be transferable.

2. Application for Permitted Sales, Use and/or Possession. An application for a permitted sale, use and/or possession permit shall be made in writing to the City Administrator at least fifteen (15) days in advance of the date of display. In addition to the application, the applicant shall provide a plan showing the location of fireworks for sale, which plan shall provide for proper exiting and fire extinguisher placement. The application shall be promptly referred to the Chief of the Fire Department.

   (a) Investigation. The Chief of the Fire Department shall make an investigation to determine whether the applicant is competent and to determine that the submitted plan showing the location of fireworks for sale contains proper exiting and fire extinguisher placement. The Fire Chief shall report the results of this investigation to the City Administrator and if he reports that in his opinion the applicant is competent and that the permitted sale, use and/or possession will conform to safety requirements, including the rules and regulations of the State Fire Marshal hereinafter provided for, the City Administrator shall issue a permit when the applicant pays a permit fee as determined by resolution of the City Council adopted from time to time. After such permit shall have been granted, sales, possession, use and/or distribution of fireworks shall be lawful. No permit so granted shall be transferable.
BUSINESS REGULATIONS

3. Permits for permitted use, sale and/or possession shall be issued for the calendar year applied for and shall expire on December 31 of that year. Display permits shall be issued for the duration of the event only and expire thereafter.

4. Prior to processing the application, a criminal records check may be conducted. Neither the applicant nor the responsible party for the permit shall have been convicted of a felony or a fire or fireworks-related misdemeanor within the last three (3) years.

5. Prior to processing the application, the designated Fire Official shall determine that the proposed location is code compliant.

6. The application shall include a letter from the person legally responsible for the property on which the fireworks related activity would occur. Such letter shall grant permission to the applicant for the use of said property.

7. No display shall be given unless a permit therefore has first been secured in the manner hereinafter set forth, provided, however, no such permit shall be required when such display is given by a municipality or fair association within its own limits.

D. Exceptions ad Permitted Sales and Uses.

1. Paragraph B above shall not be construed to prohibit the sale or uses set forth in any of the following:

   (a) Sales at wholesale to those persons holding valid permits for a fireworks display from a governmental subdivision of the State.

   (b) Sales outside the State.

   (c) The use of fireworks by airplanes and railroads or other transportation agencies for signal purposes or illumination.

   (d) The sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

   (e) Supervised public displays of fireworks by cities, villages, and fair associations, amusement parks, and other organizations, when granted a permit and conducted as hereinafter provided.

E. Regulations.

1. No person shall sell or store fireworks within 100 feet of any fuel dispensing apparatus unless within an approved structure or building. Fireworks sales and
display shall not be permitted within malls, within buildings where alcohol is sold and within assembly areas such as halls, theatres, churches or schools. The designated Fire Official shall determine compliance.

2. It shall be unlawful for a seller of any fireworks to permit smoking at any site containing fireworks. “No smoking” signs must be conspicuously posted and approved fire extinguishers must be available for use.

3. In buildings that do not have an approved automated sprinkling system, retail sales displays of fireworks shall be limited to a gross weight of 400 pounds of fireworks and packaging. In buildings that do contain an approved automated sprinkling system, the amount of fireworks contained in retail sales displays shall be a maximum of 1000 gross pounds of fireworks and packaging.

4. The requirements of this ordinance are in addition to any requirements imposed by any building and zoning regulations, fire codes or state law.

5. Only persons 18 years of age or older may purchase fireworks and the age of the purchaser must be verified by photographic identification. It shall be unlawful for any person to sell fireworks to persons under the age of 18.

6. Exterior storage, display, sales or transient sales of fireworks are permitted subject to a site plan review. Site plans shall be submitted for review and approval a minimum of thirty (30) days before display. A distance of 100 feet shall be provided from the exterior display to adjacent buildings, combustibles or flammable liquids. No manufacturing, sales or storage for commercial purposes shall occur on residentially zoned property or properties used for educational purposes or assemblies.

7. A list of all consumer fireworks displayed for sale and stored on the property shall be available at all times. The list shall document the name, weights and quantity of the fireworks and be accompanied by the material safety data sheets.

8. Manufacturing, warehouse buildings, or sales displays in excess of quantities listed in paragraph E (3) above for retail consumer fireworks shall be classified as an H occupancy as defined in the Building Code and protected as such – similar to explosives and aerosols and in accordance with Chapter 33, Explosives and Fireworks of the International Fire Code.

9. A handout describing fireworks shall be provided to each consumer purchasing fireworks.

F. Use and Possession.

1. It is unlawful to use, fire or discharge any fireworks along the route of and during any parade, in any place of public assembly, on any public property or in any
commercial/industrial zoning district.

2. It is unlawful at any time to throw, toss or aim any fireworks at any person, animal, vehicle or other thing or object or used in any manner that may threaten or cause possible harm to life or property.

3. The discharge of fireworks shall be prohibited inside a building and within fifteen (15) feet of any building.

4. The Fire Official may ban fireworks if dry or windy conditions occur.

5. Juveniles may not possess fireworks unless under the direct supervision of a responsible adult.

6. Fireworks may not be discharged in such a manner that may create a nuisance nor between the hours of 12:00 a.m. to 7:00 a.m. Fireworks use shall also be subject to any additional ordinances such as noise and/or assembly.

G. Officers May Seize Illegal Fireworks. The State Fire Marshal or any sheriff, police officer, constable or local fire official shall seize, take, remove or cause to be removed, at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this ordinance.

H. Penalties.

1. Materials that violate and/or pose a threat to public safety may be confiscated and destroyed. Costs associated with disposal shall be assessed back to the property owner or permit holder.

2. Violations of this regulation, city ordinance or state statute may result in revocation of the permit.

3. Any violation of this ordinance is a misdemeanor.

(Ord. 37, Sixth Series, eff. 5-15-05)

§ 4.37 RESERVED.

§ 4.38 RESERVED.

§ 4.39 RESERVED.
§ 4.40 RESERVED.

§ 4.41 SOLID WASTE COLLECTION.

(A) Definition. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**MIXED MUNICIPAL SOLID WASTE.** Garbage, refuse or other solid waste from residential, commercial, industrial and community activities which is generated and collected in aggregate, but does not include auto bodies, street sweepings, ash and residuals, construction debris, mining wastes, sludges, tree and agricultural waste, tires, and other materials collected, processed and disposed of as separate streams.

(B) License required. It is unlawful for any person, other than a duly authorized city employee acting within the course of his or her employment or a person acting under contract with the city, to engage in the business of curbside collection or transportation of mixed municipal solid waste or source separated materials without a license therefore from the city.

(C) Insurance required. Before a solid waste collection or transportation license shall be issued, the applicant shall file with the City Administrator a liability insurance policy or certificate thereof in the sum of $1,000,000 (combined limit) for injury to one person and $1,000,000 for one accident and property damage which shall include coverage for the following hazards: explosion, collapse and underground. A policy of insurance with minimum limits shall be kept in force during the entire period for which the license is issued.

(D) Bond required. Before a solid waste collection or transportation license shall be issued, the applicant shall file with the City Administrator a bond approved by the Council in the penal sum of $2,000, conditioned upon full compliance by the applicant with all applicable provisions of the code.

(Ord. 50, Fourth Series, passed 12-21-92) Penalty, see § 4.99

§ 4.42 GARAGE OR RUMMAGE SALES.

(A) Definition. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

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

(B) Restrictions and prohibitions on garage or rummage sales.
(1) None of the items offered for sale shall have been obtained for resale or received on consignment for sale.

(2) Any garage or rummage sale (community or neighborhood sale) shall be conducted solely within the boundaries of the property owned or occupied by the occupant who is conducting the sale.

(3) There shall be no more than four garage or rummage sales conducted at any one premise during any period of 12 calendar months.

(4) No garage or rummage sale shall be conducted during any part of more than three consecutive days.

(5) No garage or rummage sale may be conducted before 7 a.m. or after 8 p.m.

(6) Any related signage shall be limited to the premises and to other residential property provided permission from property owner is obtained and shall be removed at termination of sale. Signs shall be limited to four square feet.

(7) There shall be no more than two consecutive sales with 30-day separation between all others.

(C) Exceptions. This section shall not apply to any sale under Court Order, nor to any bona fide auction sale, nor to a sale of farm or garden products by the person producing same.

(Ord. 51, Fifth Series, passed 5-1-00) Penalty, see § 4.99

§ 4.43 RETAIL SALE OF FEVER AND BASAL THERMOMETERS CONTAINING MERCURY.

(A) Purpose. The City Council finds that it is in the public interest to protect persons in the area from toxic mercury pollution. It further finds that the elimination of mercury containing devices such as small thermometers which may enter the solid waste stream is in the public interest. It also finds that enactment of an ordinance prohibiting the sale of mercury fever and basal thermometers in the city is consistent with the state policy on mercury expressed in M.S. § 116.92, as it may be amended from time to time.

(B) Sale of mercury or basal thermometers prohibited. No person shall sell at retail or offer at retail within the city any fever thermometer or basal thermometer containing mercury.

(Ord. 61, Fifth Series, passed 12-4-00) Penalty, see § 4.99
§ 4.99 PENALTY.

(A) Every person violates a section, division or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be subject to the penalty of § 1.99 and punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(‘92 Code, § 4.99)

(B) Every person violate § 4.14 according to the following provisions.

(1) Licensees. Any licensee found to have violated this section, or whose employee shall 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 seven days.

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

(3) Minors. Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products or tobacco-related devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services or another penalty that the city believes will be appropriate and effective. An administrative fine or other penalty shall be established by City Council ordinance upon the City Council’s consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city.

(4) Misdemeanor. Nothing in this division shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this section.

(Ord. 44, Second Series, eff. 7-1-74)