

## **Chapter 14 - BUSINESSES**

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## ARTICLE I - IN GENERAL

### ***Sec. 14-1 - Business license requirements and regulations***

- (a) *Business licenses.* No person shall operate a business within the city without obtaining and maintaining a business license as provided herein.
- (b) *Licensing procedures and regulations.*
  - (1) *Issuance.* Each owner of a business to be located within the city shall complete an application for a business license on forms provided by the city clerk, containing such information as is requested on the form. Business licenses shall be issued upon receipt of the completed application and appropriate license fee (as established by city council), after review by city staff; provided that the operation of the business at the proposed location complies with this Code and other applicable laws (i.e., Uniform Fire Code and Uniform Building Code, the state fire and building codes), passes an inspection, and approval by the city council.
  - (2) *Renewal.* Business licenses granted hereunder may be renewed upon submission to the city clerk of the appropriate license renewal fee and a completed renewal application, indicating any changes from the previous license application. Licenses will be renewed only if the business has been operated in compliance with all applicable laws, including this Code, during the preceding license term. All renewals must be approved by the city council.
  - (3) *Condition of premises.* Premises used in connection with any licenses business must be kept clean, in good repair, and free and clear of any trash, rubbish or debris.
  - (4) *Ownership changes.* Changes that result in a 25% change in ownership of a business requires a new license. The new owner(s) must submit an application for a new license within thirty calendar days of acquiring the property. Businesses that are listed on a stock exchange are exempt from section 14-1(b)(4).

(Code 1993, §§ 5-1.01, 5-1.02; Ord. No. 19-06, § 1, 9-11-2019)

### ***Sec. 14-2 - Inspection requirements***

- (a) *Inspection required.* A satisfactory pass of an inspection is a condition of approval for a business license.
- (b) *Inspection scope.* The city clerk or designated representative is authorized to inspect all buildings where a business is located. The inspection may include the building or structure, the land upon which it is located and accessory uses or structures. All inspections authorized by this chapter shall be limited to those which are done for the purpose of seeking compliance with applicable safety codes, and shall take place only at reasonable hours or as may otherwise be agreed upon by the owner and the city clerk or designated representative. An inspection is required every 24 months.
- (c) *Notice of violations.* The city clerk or designated representative shall give written notice to the owner, or any known interested parties, of any violations of the applicable safety codes

which are discovered during any inspection. The violations must be remedied and pass a re-inspection as a condition of license approval.

- (d) *Access and warrant.* The city clerk or designated representative may enter, examine and survey at all reasonable times all businesses and premises after obtaining consent from an occupant of the premises. The city may also, upon receipt of a creditable third party complaint or a complaint by residents with reasonable concerns, require an inspection of a business. In the event that an occupant of the premises does not consent to entry by the city clerk or designate representative, and if there is probable cause to believe that an inspection is warranted, then application may be made to the court for an administrative or other search warrant for the purpose of inspecting the premises.
- (e) *Inspection fees.* The city council shall establish the fee for inspections and re-inspection related to issuing business licenses.

(Ord. No. 19-06, § 2, 9-11-2019)

### ***Sec. 14-3 - Revocation, suspension, and civil fines***

- (a) *Violations.* The following actions by property owners or license holders are misdemeanors and are subject to civil penalties, may constitute the basis for revocation of licenses and/or may result in injunctive action by the city. The property owner shall be responsible for the conduct of its agents or employees while engaged in normal business activities on the licensed premises. Any violation of this chapter shall be considered an act of the property owner or license holder for purposes of imposing a civil penalty or license revocation. If a license is revoked it is unlawful for the owner to permit new occupancy of any vacant unit, or any units that become vacant during license injunction.
- (b) *Basis for sanctions.* The city council may revoke, suspend, deny or decline to renew any license issued under this chapter for part or all of a property upon any of the following grounds:
  - (1) *Leasing without a license.* Leasing business units without a license is subject to license suspension or revocation;
  - (2) *Violation of codes.* Violation of the city maintenance code, building code, fire code, or state or federal law;
  - (3) *Hazardous or uninhabitable units.* Leasing units that are deemed hazardous or uninhabitable or units within a building that are deemed hazardous or uninhabitable;
  - (4) *Commission of a felony.* Commission of a felony related to the licensed activity by the property owner or business owner;
  - (5) *Consideration of suspension or revocation.* At any time during a license period, if a property does not meet or exceed the criteria established for the current license, the license may be brought forth to the city council for consideration of license suspension or revocation;
  - (6) *Updated application requirement.* Failure to provide an updated application with current information within 30 days of application renewal request from the city;

- (7) *False statements.* False statements on any application or other information or report required by this chapter to be given by the applicant or licensee;
- (8) *Fees.* Failure to pay any application, inspection, penalty, reinspection or reinstatement fee required either by this section or city council resolution. Fee amounts are subjected to change through the city fee schedule;
- (9) *Correction of deficiencies.* Failure to correct dwelling deficiencies in the time specified in a compliance order;
- (10) *Inspection.* Failure to schedule an inspection within 90 days of application filed and/or allow an authorized inspection;
- (11) *Delinquent taxes or fines.* Real estate or personal property taxes or municipal utilities have become delinquent or have unpaid fines.

(c) *Penalties.*

- (1) *Revocation.* Any violation of this chapter may be grounds to revoke a license. Any civil penalty, revocation or combination thereof under this section does not preclude criminal prosecution under this chapter or Minnesota statutes. All fines are cumulative and revocation periods will run consecutively.
- (2) *Violation.* Any person that maintains a business without having a property registered or after the registration for the property has been revoked or suspended or who permits new occupancy in violation is guilty of a misdemeanor and upon conviction is subject to a fine and imprisonment as prescribed by state law.
  - a. *First violation:* City clerk will give notice to the licensee of the violation, request fine payment and direct the licensee to take steps to prevent further violations.
  - b. *Second violation:* If a second violation occurs within 60 days of a first violation the city clerk will give notice to the licensee of the violation, request fine payment and direct the licensee to take steps to prevent further violations.
  - c. *Third or more violation:* If another instance of violations occurs within 60 days of the calendar year the city clerk will give notice to the licensee of the violation, request fine payment and direct the licensee to take steps to prevent further violations. If a fourth or subsequent violation occurs, suspension of the license will be pending until a hearing.
- (3) *Suspension.* The city council may temporarily suspend a license pending a hearing on the suspension or revocation when, in its judgment, the public health, safety, and welfare is endangered by the continuance of the licensed activity.
- (4) *Civil fines.* The city council may impose civil fines in addition to revocation or suspension for violations of any provision of this chapter as follows:

Within One Calendar Year	Fine Per Unit/Common Building
First Violation	\$300.00
Second Violation	600.00
Third or more within a 12-month period	900.00
Operating a business without a license after 30 days' notice shall be subject to \$1,000.00 fine per unit and also be a misdemeanor offense.	

(Ord. No. 19-06, § 3, 9-11-2019)

***Sec. 14-4 - Hearing on penalties, revocation, violation, suspension and civil fines***

(a) **Hearing.** Following receipt of a notice of denial or nonrenewal or a notice of a violation and penalty issued under section 14-3 of this chapter, an applicant or license holder may request a hearing before the city council. A request for a hearing shall be made by the applicant or license holder in writing and filed with the city clerk within ten days of the mailing of the notice of denial or alleged violation. Following receipt of a written request for hearing, the applicant or license holder shall be afforded an opportunity for a hearing before the city council. A hearing will be conducted before the city council at a public meeting, or the city council may retain an administrative hearing officer or other impartial third party to conduct the public hearing. The licensee shall have the right to be represented by counsel, the right to respond to the charged violations, and the right to present evidence through witnesses. The rules of evidence do not apply to the hearing and the city council may rely on all evidence it determines to be reasonably credible. The determination to suspend or revoke the license shall be made upon a preponderance of the evidence. It is not necessary that criminal charges be brought in order to support a suspension or revocation of a license violation nor does the dismissal or acquittal of such a criminal charge operate as a bar to suspension or revocation.

(b) **Decision basis.** The council shall give due regard to the frequency and seriousness of violations, the ease with which such violations could have been cured or avoided and good faith efforts to comply and shall issue a decision to deny, not renew, suspend or revoke a license only upon written findings.

(c) **Findings.** If after the hearing the applicant or license holder is found ineligible for a license, or in violation of this chapter, the council may affirm the denial, impose a civil penalty, suspend, or revoke a license or impose any combination thereof.

(d) **Default.** If the applicant or license holder has been provided written notice of the denial, nonrenewal, or violation and if no request for a hearing is filed within the ten-day period, then the denial or revocation take immediate effect by default. The city clerk shall mail notice of the denial, fine, suspension, or revocation to the applicant or license holder. The city clerk shall investigate compliance with the denial or revocation.

(e) Penalties for default. Failure to comply with all terms of this section during the term of revocation, suspension or nonrenewal is a misdemeanor and grounds for extension of the term of revocation, suspension or continuation of nonrenewal of the license.

(f) Affected facility. The council may suspend or revoke a license or not renew a license for part or all of a facility.

(g) Suspension. Licenses may be suspended for up to 90 days and may, after the period of suspension, be reinstated subject to compliance with this chapter and any conditions imposed by the city council at the time of suspension including, but not limited to, receivership or city obtaining control to manage the property temporarily.

(h) Written decision, compliance. A written decision to revoke, suspend, deny, or not renew a license or application shall specify the part or parts of the facility to which it applies. Thereafter, and until a license is reissued or reinstated, no units becoming vacant in such part or parts of the facility may be relet or occupied.

(i) Continuing obligations, penalty. Revocation, suspension or nonrenewal of a license shall not excuse the owner/licensee from compliance with all terms of this chapter, this Code, and state or federal laws for as long as any units in the facility are occupied. Failure to comply with all terms of this chapter during the term of revocation, suspension or nonrenewal is a misdemeanor and grounds for extension of the term of such revocation or suspension or continuation of nonrenewal, or for a decision not to reinstate the license, notwithstanding any limitations on the period of suspension, revocation or nonrenewal specified in the city council's written decision.

(j) New licenses prohibited. A person who has a business license revoked may not receive a business license for another property within the city for a period of one year from the date of revocation. The person may continue to operate other currently licensed properties if the properties are maintained in compliance with city codes and other applicable regulations.

(Ord. No. 19-06, § 4, 9-11-2019)

***Sec. 14-5 - Summary action***

(a) When the condition of the property of any license holder or their agent, representative, employee or lessee is detrimental to the public health, safety and general welfare as to constitute a nuisance, fire hazard or other unsafe or dangerous condition and thus give rise to an emergency, the city clerk shall have the authority to summarily condemn or close off such area of the property.

(b) Any person aggrieved by a decision of the city clerk to cease business or revoke or suspend the license or permit shall be entitled to appeal to the city council immediately, by filing a notice of appeal. The city clerk shall schedule a date for hearing before the city council and notify the aggrieved person of the date.

(c) The hearing shall be conducted in the same manner as if the aggrieved person had not received summary action.

(d) The decision of the city clerk shall not be voided by the filing of such appeal. Only after the city council has held its hearing will the decision of the compliance official be affected.

(Ord. No. 19-06, § 5, 9-11-2019)

***Sec. 14-6 - Applicable laws***

Licenses shall be subject to all of the ordinances of the city and the State of Minnesota relating to businesses; and this chapter shall not be construed or interpreted to supersede or limit any other such applicable ordinance or law.

(Ord. No. 19-06, § 6, 9-11-2019)

***Sec. 14-7 - Multiple suspensions***

If the license of more than one unit in a licensed premises is suspended within 12 months, the period of suspension for the second and subsequent dwelling units licensed that are suspended may be doubled for the suspension period specified in this chapter.

(Ord. No. 19-06, § 7, 9-11-2019)

***Sec. 14-8 - Contractors license requirements and regulations***

(a) *Generally.* Residential building and remodeling contractors who engage in business in the city must present the city with proof they hold the required state license. Residential building and remodeling contractors who provide only one special skill and all commercial building and remodeling contractors who are not required to have a state license must maintain a Falcon Heights contractor license. Common services requiring licensure include, but are not limited to:

- (1) Asphalt paving and driveway installation.
- (2) Cement work, cement bond work, cement block laying, or brick work.
- (3) General construction including erection, alteration or repair of building.
- (4) Moving or demolition of buildings.
- (5) Plastering, drywall, outside stucco work, or lathing.
- (6) Heating, cooling, and gas installation including appliances, devices or machinery, but if the contractor holds a state license in the Plumbing discipline, a city contractor license is not required.
- (7) Roofing.
- (8) Fence erecting.
- (9) Sign and billboard erecting.

- (10) Excavation for basements, foundations, grading of lots, etc.
- (11) Water and sewer excavating, installation, and connection.
- (12) Tree removal and/or tree trimming, except that no license shall be required when the work to be done is performed under the direction of the public utility otherwise authorized to use the streets of the city for work related to such utilities.

(b) *Licensing procedure.*

- (1) *Application and issuance.* Application for contractor's licenses must be on forms provided by the city, accompanied by the appropriate fee as stipulated in the City Fee Schedule, and any special requirements set forth for specific contractors. Such application shall be submitted to the city administrator for approval.
- (2) *Revocation.* Every license may be revoked by the city council for violation of this code or whose work is found to be improper, defective, or so unsafe as to jeopardize life or property providing the license holder has been given reasonable notice and a hearing is held.
- (3) *Reapplication following denial.* In the event an individual is denied license, that individual may not reapply for a license until six months have passed from the date of denial.
- (4) *Insurance.* All contractors must apply for a license and provide to the city a certificate of insurance showing evidence that the applicant has in effect public liability insurance in the amount of at least \$300,000.00 for injury of one person, \$500,000.00 for injury of two or more persons in the same accident and \$100,000.00 for property damages. The insurance shall remain in and be in force and effect during the entire term of said license. Should any insurance be canceled, the city shall be given ten days notice, and the license issued shall be suspended and inoperative until adequate insurance is provided.
- (5) *Expiration.* All licenses under this section shall expire on December 31 of the year of issuance, unless sooner revoked or forfeited.

(c) *General and subcontractor licenses.* A license granted to a general contractor shall include the right to perform all of the work included in the general contract. Such license shall include any or all of the persons performing the work which is classified and listed in this section, providing that each person performing such work is in the regular employ of such general contractor and qualified under state law and the provisions of this Building Code to perform such work. In these cases, the general contractor shall be responsible for all of the work so performed. Subcontractors on any work shall be required to comply with the sections of this Code pertaining to license, bond, qualifications, etc. for their particular type of work.

(Code 1993, §§ 5-2.01, 5-2.02; Ord. No. 20-01, § 1, 2-12-2020)

*Secs. 14-9 – 14-41 - Reserved*

## **ARTICLE II - DRAIN OR SEWER CLEANERS**

*Sec. 14-42 - License; inspection of lines*

No person shall operate as a drain or sewer cleaner without a license issued by the city. Whenever a line is cleaned, the firm shall notify the city so that the city maintenance department can inspect the manholes.

(Code 1993, § 5-2.03(B))

*Secs. 14-43 – 14-72 - Reserved*

## **ARTICLE III - HOLIDAY TREE LOTS**

*Sec. 14-73 - Restrictions that govern issuance of license*

The following restrictions shall govern the issuance and continued validity of a holiday tree sales license:

- (1) Such license shall be granted only in a district in which such activity is authorized by chapter 113, zoning, or for an existing nursery or garden store.
- (2) Adequate off-street parking shall be provided on the site or adjacent thereto.
- (3) In the event the site is to be artificially illuminated, all lighting shall be directed to not create a glare on the traveled portion of any public street and so as not to shine upon any residentially used property.

(Code 1993, § 5-1.03(B)(3))

*Sec. 14-74 - Information to be provided by applicant for license*

The applicant shall provide the address and the parking to be provided on the property or adjacent property.

(Code 1993, § 5-1.03(B)(2))

*Sec. 14-75 - Term of license*

A license shall be referred to as a holiday tree sales license and shall expire on January 15 of the year following issuance of the license.

(Code 1993, § 5-1.03(B)(1))

*Secs. 14-76 – 14-93 - Reserved*

## **ARTICLE IV - PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS<sup>2</sup>**

### ***Sec. 14-94 - Definitions***

Unless otherwise expressly stated, whenever used in this article, the following words shall have the meaning given to them by this article:

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

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

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

*Transient merchant.* Any person who engages in any temporary and transient business in this state, either in one locality, or in traveling from place to place in this state, selling goods, wares, and merchandise; and who, for the purpose of carrying on such business, hires, leases, occupies, or uses a building, structure, vacant lot, or railroad car for the exhibition and sale of such goods, wares, and merchandise.

(Ord. No. 07-02, § 1(1), 1-10-2007)

### ***Sec. 14-95 - License required***

No peddler or solicitor shall sell or offer for sale any goods, wares, or merchandise within the city unless a license therefor shall first be secured as provided in this article. The nonrefundable license fee is \$25.00. Any peddler or solicitor dealing with merchandise of any kind to be delivered to customers in Minnesota directly from points outside of Minnesota shall be exempt from the payment of the license fee.

(Ord. No. 07-02, § 1(2), 1-10-2007)

### ***Sec. 14-96 - Conditions governing license***

Application shall be made with the city clerk of the city at least seven regular business days prior to the date when the activity to be carried on is to commence. Persons applying must file

with the city clerk an accurate sworn statement in writing, on a form furnished by the city clerk, giving the following information:

- (1) Name and physical description of the applicant;
- (2) Complete home and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made;
- (3) A brief description of the nature of the business and the product or services involved;
- (4) If employed, the name and address of the employer, together with credentials therefrom, establishing the exact relationship;
- (5) The dates and hours of the day during which the activity will be carried on;
- (6) The source of supply of any goods or property proposed to be sold or orders taken for the sale thereof, where such goods or products are located at the time said registration is filed and the proposed method of delivery;
- (7) A statement as to whether or not the applicant has been convicted of any crime, or misdemeanor or violation of any municipal ordinance of any municipality other than traffic violations, the nature of the offense and the punishment or penalty assessed therefor;
- (8) The last municipalities, not to exceed five, where the applicant carried on business immediately preceding the date of the application and the address from which such business was conducted in those municipalities.

(Ord. No. 07-02, § 1(3), 1-10-2007)

#### ***Sec. 14-97 - Procedure***

An application shall be determined to be complete only if all required information is provided. If the city administrator determines that an application is incomplete, then he or she shall inform the applicant of the information required to be provided prior to issuance of a license. The city administrator shall review the application and order any investigation, including background checks, necessary to verify the information provided with the application. The city administrator shall either approve or deny the license within seven regular business days. If the application is rejected, the applicant shall be notified in writing of the decision, the reason for the denial, and the applicant's right to appeal the denial by requesting, within 20 days of the date of the denial, a public hearing to be heard by the city council within 20 days of the date of the request.

(Ord. No. 07-02, § 1(4), 1-10-2007)

#### ***Sec. 14-98 - Exemptions***

The licensing and identification requirements of this article do not apply to persons engaged in the following activities:

- (1) Selling personal property at wholesale to dealers in such articles;

- (2) Selling newspaper subscriptions;
- (3) Soliciting money, donations, or financial assistance of any kind for nonprofit, religious, political, or education organizations; or taking orders for goods sold by a political, religious, educational, or nonprofit organization, or selling or distributing literature or merchandise for which a fee is charged or solicited on behalf of such an organization;
- (4) Calling upon householders in connection with a regular route service for the sale and delivery of perishable daily necessities of life such as bakery products and dairy products; this exception does not relieve such person of the duty of compliance with any other applicable provision of this Code;
- (5) Calling upon householders at the request of said householders.

(Ord. No. 07-02, 1(5), 1-10-2007)

***Sec. 14-99 - Proof of license***

Every license shall bear the written approval of the city administrator. Within five days after such approval, the city clerk shall provide the applicant with a written certificate showing proof of licensing. Such proof of licensing shall be exhibited by the licensee upon request of any police officer or of any person in the city who is being contacted by the licensee in pursuance of the licensee's activity.

(Ord. No. 07-02, § 1(6), 1-10-2007)

***Sec. 14-100 - License nontransferable***

No license is transferable from one individual to another. Each individual shall be separately licensed where more than one individual is involved in the same type of activity even though associated with the same organization.

(Ord. No. 07-02, § 1(7), 1-10-2007)

***Sec. 14-101 - Persons working for or assisting licensee***

The licensee shall also supply the information required in section 14-96 for all persons working for or assisting the licensee and pay the fee for each person.

(Ord. No. 07-02, § 1(8), 1-10-2007)

***Sec. 14-102 - Identification***

All solicitors and peddlers must wear some type of identification conspicuously showing their name and the organization for which they are soliciting or peddling, must carry their city issued license certificate when conducting the business or activity required to be licensed under this chapter, and must wear or display on their outermost clothing the certificate of licensure provided by the city.

(Ord. No. 07-02, § 1(9), 1-10-2007)

***Sec. 14-103 - Licensure control***

The certificate of licensure issued by the city is the property of the City of Falcon Heights, and must be returned to the city within seven days after the expiration date of the license. Failure to do so may result in prosecution and will result in the denial of any future license application for 12 months.

(Ord. No. 07-02, § 1(10), 1-10-2007)

***Sec. 14-104 - Practices prohibited***

No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

- (1) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right-of-way;
- (2) Conducting business in such a way as to create a threat to the health, safety, or welfare of any individual or the general public;
- (3) Entering upon any residential premises for the purpose of carrying on the licensee's or registrant's trade or business between the hours of 7:00 p.m. and 9:00 a.m. of the following day, unless such person has been expressly invited to do so by the owner or occupant thereof;
- (4) Call attention to his business or to his merchandise, by crying out, by blowing a horn, or by any loud or unusual noise in areas zoned for residential use;
- (5) No peddler, solicitor, or transient merchant shall harass, intimidate, abuse, or threaten a person or continue to offer merchandise for sale to any person after being told not to do so by that person.

(Ord. No. 07-02, § 1(11), 1-10-2007)

***Sec. 14-105 - Duration of license***

Each license shall be valid only for the period specified therein, and no license may extend beyond the 31st day of December of the year in which it is granted.

(Ord. No. 07-02, § 1(12), 1-10-2007)

***Sec. 14-106 - Exclusion of peddlers and solicitors***

Any person who wishes to exclude peddlers or solicitors from premises occupied by him may place upon or near the usual entrance to such premises a printed placard or sign bearing the following notice:

"Peddlers and Solicitors Prohibited"

Such placard shall be at least three and three-quarter-inches long and three and three-quarter-inches wide and the printing thereon shall not be smaller than 48-point type. No peddler or solicitor shall enter in or upon any premises or attempt to enter in or upon any premises where such placard or sign is placed and maintained notwithstanding the fact that he may have obtained a solicitation certificate or solicitation credentials, as the case may be, under the provisions of this article. No person other than the person occupying such premises shall remove, injure or deface such placard or sign.

(Ord. No. 07-02, § 1(13), 1-10-2007)

***Sec. 14-107 - Suspension and revocation***

- (a) *Suspension.* Any license may be temporarily suspended by the city administrator or revoked by the council for a violation of any of the following:
- (1) Fraud, misrepresentation, or incorrect statements on the application form;
  - (2) Fraud, misrepresentation, or false statements made during the course of the license activity;
  - (3) Conviction of any offense for which granting of a license could have been denied under this article;
  - (4) Violation of any provision of this article; or
  - (5) Conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.
- (b) *Notice.* Prior to revoking or suspending any license issued under this article, the city shall provide the license holder with written notice of the alleged violation(s) and inform the licensee of the licensee's right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, the business address provided on the license application.
- (c) *Hearing.* Upon receiving the notice provided in subsection (b) of this section, the licensee shall have the right to request a hearing. If no request for a hearing is received by the city within ten days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a hearing is requested within the required time, a hearing shall be scheduled within 20 days from the date of the request. The city administrator or the administrator's designee shall be the hearing officer and shall render a decision. The decision of the administrator is final unless the licensee, within five days, appeals the decision to the city council.
- (d) *Emergency.* If, in the discretion of the city administrator or the administrator's designee, imminent harm to the health or safety of the public may occur because of the actions of a peddler or solicitor licensed under this article, the city administrator may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in subsection (b) of this section.

- (e) *Appeals.* Any person whose license is suspended or revoked under this article, shall have the right to appeal that decision in court.

(Ord. No. 07-02, § 1(14), 1-10-2007)

***Sec. 14-108 - Compliance with zoning***

Transient merchants and transient produce merchants shall comply with provisions of the Falcon Heights Zoning Code. Compliance with the zoning ordinance location, information, and plan requirements shall be verified in writing by the city administrator.

(Ord. No. 07-02, § 1(15), 1-10-2007)

***Secs. 14-109 – 14-122 - Reserved***

**ARTICLE V - MASSAGE THERAPY**

**DIVISION 1 - GENERALLY**

***Sec. 14-123 - Purpose***

The purpose of this article is to prohibit massage businesses and services to the public except those licensed as therapeutic massage enterprises pursuant to this article. The licensing regulations prescribed herein are necessary in order to prevent criminal activity and to protect the health and welfare of the community. The purpose of this article is not to impose restrictions or limitations on the freedom of protected speech or expression.

(Code 1993, § 5-1.03(E)(1); Ord. No. 0-94-06, § 1, 3-23-1994)

***Sec. 14-124 - Findings***

The city council makes the following findings regarding the need to license therapeutic massage enterprises and therapists and to prohibit all other types of massage businesses and services to the public:

- (1) Persons who have bona fide and standardized training in therapeutic massage, health, and hygiene can provide a legitimate and necessary service to the general public.
- (2) Health and sanitation regulations governing therapeutic massage enterprises and therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.
- (3) License qualifications for the restrictions on therapeutic massage enterprises and therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.
- (4) Massage services provided by persons with no specialized and standardized training in massage can endanger citizens by facilitating the spread of communicable diseases, by

exposing citizens to unhealthy and unsanitary conditions, and by increasing the risk of personal injury.

- (5) Massage businesses which employ persons with no specialized and standardized training can tax city law enforcement services because such businesses are more likely to be operated as fronts for prostitution and other criminal activity than operations established by persons with standardized training.

(Code 1993, § 5-1.03(E)(2); Ord. No. 0-94-06, § 21, 3-23-1994)

### ***Sec. 14-125 - Definitions***

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

*Massage* means any method of pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, or rolling of the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations.

*Therapeutic massage enterprise* means a person who operates a business which hires only licensed therapeutic massage therapists to provide massage to the public. The owner/operator of a therapeutic massage enterprise need not be licensed as a therapeutic massage therapist if he or she does not at anytime practice or administer massage to the public.

*Therapeutic massage therapist* means an individual who practices or administers massage to the public who can demonstrate to the city that he or she:

- (1) Has a current insurance coverage of \$1,000,000.00 for professional or general liability in the practice of massage;
- (2) Is affiliated with, employed by, or owns a therapeutic massage enterprise licensed by the city; and
- (3) Has completed 400 hours of certified therapeutic massage training from a bona fide school or has one year of experience practicing massage therapy as established by an affidavit and is currently and continually enrolled in a bona fide therapeutic massage school. Compliance with this requirement applies to the license application and license renewal.

(Code 1993, § 5-1.03(E)(3); Ord. No. 0-94-06, § 3, 3-23-1994)

### ***Sec. 14-126 - General license restrictions***

- (a) A therapeutic massage enterprise license issued must be posted in a conspicuous place on the premises for which it is used.
- (b) A therapeutic massage enterprise license is only effective for the compact and contiguous space specified in the approved license application.

- (c) The license issued is for the person or the premises named on the approved license application. No transfer of a license shall be permitted from place-to-place or from person-to-person without complying with the requirements of an original application.
- (d) The enterprise hours of operation shall be no more than 9:00 a.m. to 9:00 p.m.
- (e) A therapeutic massage therapist shall be employed by, affiliated with, or own a therapeutic massage enterprise business licensed by the city, unless a person or place is specifically exempted from obtaining a therapeutic massage enterprise license in section 14-145.
- (f) No therapeutic massage enterprise shall employ or use any person to perform massage who is not licensed as a therapeutic massage therapist under this section, unless the person is specifically exempted from obtaining a therapist license in section 14-145.
- (g) The licensee shall require that the person who is receiving the massage shall at all times have his or her genital area covered with nontransparent material or clothing.
- (h) Any therapist performing massage shall at all times have his or her breasts, buttocks, anus, and genitals covered with a non-transparent material or clothing.
- (i) No licensee shall solicit business or offer to perform massage services while under license suspension or revocation by the city.
- (j) At no time shall the therapeutic massage therapist intentionally massage or offer to massage the penis, scrotum, mons veneris, vulva, or vaginal area of a person.

(Code 1993, § 5-1.03(E)(10); Ord. No. 0-94-06, § 10, 3-23-1994)

***Sec. 14-127 - Restrictions regarding sanitation and health***

- (a) A therapeutic massage enterprise shall be equipped with adequate and conveniently located toilet rooms for the accommodation of its employees and patrons. The toilet room shall be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room shall be kept clean and in good repair and shall be adequately lighted.
- (b) A licensed therapeutic massage enterprise shall provide single-service disposal paper or clean linens to cover the table, chair, furniture, or area on which the patron receives the massage; or in the alternative, if the table, chair, or furniture on which the patron receives the massage is made of material impervious to moisture, such table, chair, or furniture on which the patron receives the massage is made of material impervious to moisture.
- (c) The therapeutic massage therapist shall wash his or her hands and arms with water and soap, antibacterial scrubs, alcohol, or other disinfectants prior to and following each massage service performed.

(Code 1993, § 5-1.03(E)(11); Ord. No. 0-94-06, § 11, 3-23-1994)

***Secs. 14-128 – 14-144 - Reserved***

## DIVISION 2 - LICENSES

### ***Sec. 14-145 - Therapeutic massage enterprise license***

- (a) *Required.* It shall be unlawful for any person to operate, engage in, or carry on, within the city, any type of massage services to the public for consideration without first having obtained a therapeutic massage enterprise license from the city pursuant to this division.
- (b) *Exceptions.* A therapeutic massage enterprise license is not required for the following persons and places:
  - (1) Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry; provided, the massage is administered in the regular course of the medical business and not provided as part of a separate and distinct massage business.
  - (2) Persons duly licensed by this state as beauty culturists or barbers; provided, such persons do not hold themselves out as giving massage treatments and provided the massage is merely incidental to hairstyling or manicure services.
  - (3) Persons working solely under the direction and control of a person duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry.
  - (4) Places duly licensed or operating as a hospital, nursing home, hospice, sanitarium, or group home established for the hospitalization or care of human beings.

(Code 1993, § 5-1.03(E)(4), (5); Ord. No. 0-94-06, §§ 4, 5, 3-23-1994)

### ***Sec. 14-146 - Application***

An application for a therapeutic massage enterprise license shall be made on the form supplied by the city and shall request the following information:

- (1) For all applicants:
  - a. Whether the applicant is an individual, corporation, partnership, or other form of organization.
  - b. The legal description of the premises to be licensed together with a plan of the area showing dimensions, location of buildings, street access, and parking facilities.
  - c. The floor number, street number, and rooms where the massage services are to be conducted.
  - d. Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.
  - e. Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed.

- f. The name and street address of the business if it is to be conducted under a designation, name, or style other than the name of the applicant, and a certified copy of the certificate as required by Minn. Stats. § 333.01.
  - g. Such other information as the city shall require.
- (2) For applicants who are individuals:
- a. The name, place and date of birth, and street residence address of the applicant.
  - b. Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name and information concerning dates and places where used.
  - c. Whether the applicant is a citizen of the United States or a resident alien.
  - d. Street addresses at which the applicant has lived during the preceding five years.
  - e. The type, name, and location of every business or occupation the applicant has been engaged in during the preceding five years.
  - f. Names and addresses of the applicant's employers for preceding five years.
  - g. Whether the applicant has ever been convicted of any felony or crime, and the time, place and offense for which convictions were had.
  - h. Whether the applicant has ever been engaged in the operation of massage services. If so, applicant shall furnish information as to the name, place and length of time of the involvement in such an establishment.
- (3) For applicants that are corporations or other types of organizations:
- a. The name of the organization, and if incorporated, the state of incorporation.
  - b. A true copy of the certificate of incorporation, and, if a foreign corporation, a certificate of authority as described in Minn. Stats. § 303.03.
  - c. The name of the general manager, corporate officers, proprietor and other person in charge of the premises to be licensed, and all the information about said persons as is required in subsection (2) of this section.
  - d. A list of all persons who own or control an interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all the information regarding such persons as is required in subsection (2) of this section.

(Code 1993, § 5-1.03(E)(6); Ord. No. 0-94-06, § 6, 3-23-1994)

***Sec. 14-147 - Application and investigation fees***

The fees for a therapeutic massage enterprise licenses shall be in the amount established by the city council. An investigation fee shall be charged for therapeutic massage enterprise licenses in the amount established by the city council. Each application for a license shall be accompanied by payment in full of the required license and investigation fee, if applicable.

(Code 1993, § 5-1.03(E)(7); Ord. No. 0-94-06, § 7, 3-23-1994)

***Sec. 14-148 - Application verification and consideration***

The city shall verify the information supplied on the license application and shall investigate the background, including the criminal background, of the applicant to assure compliance with this section. Within 90 days of receipt of a complete application and fee for a therapeutic massage enterprise license, the city administrator shall make a written recommendation to the city council as to issuance or nonissuance of the license. The city council may order and conduct such additional investigation as it deems necessary, but shall grant or deny the application within 120 days of receipt by the city of the complete application and fee.

(Code 1993, § 5-1.03(E)(8); Ord. No. 0-94-06, § 8, 3-23-1994; Ord. No. 0-96-03, § 1, 6-26-1996)

***Sec. 14-149 - Persons ineligible for license***

No therapeutic massage enterprise license shall be issued to a person who:

- (1) Is a minor at the time the application is filed;
- (2) Has been convicted of any crime directly related to the occupation licensed as prescribed by Minn. Stats. § 364.03;
- (3) Is not a citizen of the United States or a resident alien;
- (4) Is not of good moral character or repute;
- (5) Is not the real party in interest of the enterprise;
- (6) Has misrepresented or falsified information on the license application;
- (7) Cannot meet the definition of therapeutic massage enterprise as specified in section 14-125.

(Code 1993, § 5-1.03(E)(9); Ord. No. 0-94-06, § 9, 3-23-1994)

***Sec. 14-150 - Renewal of license***

An enterprise license issued under this section shall expire on December 31 at 12:00 a.m. of each year. An application for the renewal of an existing license shall be made at least 30 days prior to the expiration date of the license and shall be made in such form as the city requires. If, in the judgment of the city council, good and sufficient cause is shown by an applicant for the applicant's failure to submit a renewal application within the time provided, the city council may, if the other provisions of this section are complied with, grant the renewal application.

(Code 1993, § 5-1.03(E)(12))

***Sec. 14-151 - Sanctions for license violations***

- (a) The city council may revoke a license or suspend a license for up to 60 days for a violation of:
- (1) A provision of this article or therapeutic massage enterprise license;
  - (2) A state law relating to prostitution; or
  - (3) A federal, state, or local law relating to moral character.
- (b) A revocation or suspension shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least eight days notice of the time and place of the public hearing and shall state the nature of the charges against the licensee. The notice shall be mailed to the licensee at the most recent address listed on the license application. The hearing of a contested case shall be in accordance with Minn. Stats. §§ 14.57—14.60, but informal disposition of a contested case by stipulation, pursuant to Minn. Stats. § 14.59, may provide an adequate basis for imposition of sanctions.

(Code 1993, § 5-1.03(E)(13))

***Secs. 14-152 – 14-249 - Reserved***

**ARTICLE VI - PRECIOUS METAL DEALERS<sup>3</sup>**

***Sec. 14-250 - Definitions***

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

*Precious metal dealer* means any person who either as principal or agent engages in the business of buying coins or secondhand items containing precious metal, including, but not limited to, jewelry, watches, eating utensils, candlesticks, and religious and decorative objects.

*Precious metal items* means any item made in whole or in part of metal and containing more than one percent by weight of silver, gold or platinum.

*Precious metals* means silver, gold, and platinum.

(Code 1993, § 5-1.03(F)(2))

***Sec. 14-251 - Purpose***

The city council finds that precious metal dealers potentially provide an opportunity for the commission of crimes and their concealment because such businesses have the ability to receive and transfer stolen property easily and quickly. The city council also finds that consumer protection regulation is warranted in transactions involving precious metal dealers. The purpose of this article is to prevent precious metal businesses from being used as facilities for the commission of crimes such as the receipt and transfer of stolen merchandise and to assure that such businesses comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the citizens of the city.

(Code 1993, § 5-1.03(F)(3))

***Sec. 14-252 - License required***

No person shall exercise, carry on or be engaged in the trade or business of a precious metal dealer within the city unless such person is currently licensed under this chapter. Application for a license should be made to the city clerk on a form supplied by the city. Upon filing of the application and payment of the required fee as stipulated in section 14-253, the application shall be presented to the city council for consideration.

(Code 1993, § 5-1.03(F)(1))

***Sec. 14-253 - Fees***

(a) *Investigation fee.*

- (1) The license and investigation fee shall be paid in full before the application for a license shall be accepted.
- (2) The investigation fee is as established by the city council.

(b) *License fee.* A precious metal dealer business license shall be purchased annually. The annual fee is as established by the city council. Upon rejection of any application for a license or upon withdrawal of any application before city council approval, the license fee shall be refunded in full to the applicant except where rejection is for a willful misstatement in the license application.

(Code 1993, § 5-1.03(F)(5))

***Sec. 14-254 - License transfer prohibited***

Each license shall be issued to the applicant only and shall not be transferable to any other person. No licensee shall loan, sell, give or assign a license to another person.

(Code 1993, § 5-1.03(F)(6))

***Sec. 14-255 - Limitation on number of licenses***

The number of precious metal dealer licenses issued in the city in any calendar year shall not exceed one.

(Code 1993, § 5-1.03(F)(7))

***Sec. 14-256 - Recordkeeping and inspections; daily reports; orders to hold certain property; hours of operation; etc***

(a) *Recordkeeping.* At the time of a receipt of an item of property, the precious metal dealer shall immediately record, using the English language, in an indelible ink, in a book or journal, which has page numbers that are preprinted, the following information:

- (1) An accurate description of the item of property including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such item;
  - (2) The date and time the item of property was received by the precious metal dealer;
  - (3) The name, address, and date of birth of the person from whom the item of property was received.
- (b) *Inspection of records.* The precious metal dealer shall make available the information required in section 14-256(a) at all reasonable times for inspection by the city police department or issuing authority. The information required in section 14-256(a) shall be retained by the precious metal dealer for at least four years.
- (c) *Daily reports required.* The precious metal dealer shall complete forms approved by the city and send the forms daily to the city police department for any transactions involving the following items:
- (1) Precious jewelry;
  - (2) Gems;
  - (3) Watches; and
  - (4) Items containing precious metals.
- (d) *Daily report information.* The daily report forms submitted to the city police department shall contain the following information:
- (1) An accurate description of the item of property including, but not limited to, any trademark, identification number, serial number, or other identifying mark on such item;
  - (2) The price of the item paid by the precious metal dealer;
  - (3) The date, time, and place of receipt of the item;
  - (4) The name, address, and date of birth of the person from whom the item was received;
  - (5) The identification number from one of the following forms of identification of the person from whom the item was received:
    - a. A valid driver's license;
    - b. A state identification card; or
    - c. A photo identification issued by the state of residency of the person from whom the item was received.
- (e) *Police order to hold property.* Whenever the city police department notifies the precious metal dealer not to sell an item, the item shall not be sold or removed from the licensed premises until authorized to be released by the city police department.
- (f) *Holding period.* Any item received by the precious metal dealer, for which a report to the police is required under section 14-256(c), shall not be sold or otherwise transferred for 14 days after the date of such report to the police.
- (g) *Receipt to seller.* The precious metal dealer shall provide a receipt to the seller of any item of property received, which shall include the following information:

- (1) Name, address and phone number of the precious metal dealer business;
  - (2) The date on which the item was received by the precious metal dealer; and
  - (3) A description of the item received and amount paid to the seller in exchange for the item sold.
- (h) *Hours of operation.* No precious metal dealer shall keep the precious metal dealer business open for the transaction of business on any day of the week before 9:00 a.m. or after 9:00 p.m.
- (i) *Minors.* The precious metal dealer shall not purchase or receive personal property of any nature from a minor.
- (j) *Inspection of items.* The precious metal dealer shall, at all times during the term of the license, allow the city police department or issuing authority to enter the premises where the precious metals dealer business is located, for the purpose of inspecting such premises and inspecting the items, wares and merchandise therein for the purpose of locating items suspected or alleged to have been stolen or otherwise improperly disposed of.
- (k) *License display.* An issued license must be posted in a conspicuous place in the premises for which it is used. The license issued is only effective for the compact and contiguous space specified in the approved license application.
- (l) *Proper identification.* A licensee under this section shall not accept any items of property unless the seller provides to the precious metal dealer one of the following forms of identification:
- (1) A valid driver's license;
  - (2) A current state identification card; or
  - (3) A current photo identification issued by the state of residency of the person from whom the item was received.

The licensee shall not accept any items of property from a seller who does not match the photo and the description on the identification presented. No other forms of identification shall be accepted.

- (m) *Pawning not permitted.* Precious metal dealers may not loan money on deposit or pledge of personal property, or other valuable thing. Precious metal dealers may not deal in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price, or loan money secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged.

(Code 1993, § 5-1.03(F)(4))

***Secs. 14-257 – 14-275 - Reserved***

## **ARTICLE VII - REFUSE HAULERS<sup>4</sup>**

### ***Sec. 14-276 - License required***

No person shall operate as refuse hauler without a license issued by the city.

### ***Sec. 14-277 - Requirements for haulers***

All refuse haulers shall:

- (1) Be capable of at least weekly collection of rubbish and other waste materials including seasonal collection of leaves, grass clippings and brush.
- (2) Provide for periodic removal of excess refuse.
- (3) Offer a minimum of three different volume-based rates, including 32 gallons per week, 64 gallons per week, and greater than 64 gallons per week.
- (4) File with the city clerk a schedule of proposed rates to be charged during the licensing period. Every licensee shall provide 14 days' written notification to the city and the licensee's customers of any change in rates to be implemented during the licensing period.
- (5) Provide refuse collection in R-2 and R-1 zones on Fridays only.
- (6) Not collect or remove garbage or refuse within 500 feet of any residential district, except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or legal holiday.
- (7) Report to the city monthly the quantity of all yard waste abated from landfills. Such quantities shall be reported in estimates of cubic yardage abated. Failure to certify accurate volumes in a timely manner may be cause for revocation of a hauler's license.
- (8) Transfer the refuse of his or her vehicle without spilling, or if any spilling occurs, he or she shall clean it up completely.

(Code 1993, § 5-2.03(A)(1))

### ***Secs. 14-278 – 14-291 - Reserved***

## **ARTICLE VIII - TOBACCO<sup>5</sup>**

### ***Sec. 14-292 - Purpose and intent***

Because marketing and public health research and tobacco industry documents reveal that tobacco companies have used fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of flavors such as menthol in tobacco products can make it more difficult for youth, young adult, and adult tobacco users to quit; and

The city further recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users. National data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18

to 21 are a critical period when many smokers move from experimental smoking to regular, daily use.

Because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government;

This article shall be intended to regulate the sale of tobacco, tobacco-related devices, electronic cigarettes, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, and electronic delivery devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stats. § 144.391, as it may be amended from time to time.

(Ord. No. 12-01, § 1, 3-14-2012; Ord. No. 14-01, § 1, 1-22-2014; Ord. No. 18-03, § 2, 5-9-2018)

**Editor's note** – Ord. No. 12-01, § 1, adopted March 14, 2012, amended § 14-292 in its entirety to read as set out herein. Former § 14-292 pertained to definitions and derived from the Code of 1993, § 5-1.03(D)(2); Ord. No. 99-01, § 1, adopted Jan. 3, 1999.

### ***Sec. 14-293 - 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 article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

*Child-resistant packaging* means 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, as in effect on January 1, 2015.

*Cigar* means any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

*Compliance checks* means the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, and electronic delivery devices are following and complying with the requirements of this article. Compliance checks shall involve the use of persons under the age of 21 as authorized by this article. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase tobacco, tobacco products, tobacco-related devices, or electronic delivery devices for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products, tobacco-related devices, and electronic delivery devices.

*Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems,

or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device 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.

*Flavored tobacco product* means any tobacco, tobacco products, tobacco-related device, or electronic delivery device that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by a manufacturer of tobacco or tobacco related devices, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product is a flavored product.

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

*Indoor area* means 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.

*Loosies* means the common term used to refer to a single or individually-packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

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

*Person* means any natural person, partnership, firm, joint stock company, corporation, or other legal entity, including an employee of a legal entity.

*Retail establishment* means any place of business where tobacco, tobacco products, tobacco-related devices, or electronic delivery devices are available for sale to the general public. The phrase shall include, but not be limited to, grocery stores, convenience stores, restaurants, and drug stores.

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

*Self-service merchandising* means open displays of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, or electronic delivery devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or

intervention shall entail the actual physical exchange of the tobacco, tobacco product, tobacco-related device, or electronic delivery device 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 of the product between the clerk and the customer.

*Smoking* means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation. "Smoking" also includes the use of an electronic delivery device.

*Tobacco or tobacco products* means tobacco and tobacco products includes cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco 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* include any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

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

(Ord. No. 12-01, § 2, 3-14-2012; Ord. No. 14-01, §§ 1, 2, 1-22-2014; Ord. No. 18-03, § 3, 5-9-2018)

**Editor's note** – Ord. No. 12-01, § 2, adopted March 14, 2012, amended § 14-293 in its entirety to read as set out herein. Former § 14-293 pertained to license required and derived from the Code of 1993, § 5-1.03(D)(3); Ord. No. 99-01, § 1, adopted Jan. 3, 1999.

### ***Sec. 14-294 - License***

- (a) *License required.* No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, or electronic delivery device without first having obtained a license to do so from the city.
- (b) *Application.* An application for a license to sell tobacco, tobacco products, tobacco-related devices, or electronic delivery devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a

completed application, the city administrator shall forward the application to the city council for action at its next regularly scheduled city council meeting. If the city administrator 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.

- (c) *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 administrator 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.
- (d) *Term.* The license is effective from January 1 to December 31 of each year.
- (e) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in section 14-297.
- (f) *Transfers.* All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the city council.
- (g) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed-location businesses shall be eligible to be licensed under this section.
- (h) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- (i) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application.
- (j) *Issuance as a 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.
- (k) *Smoking.* Smoking shall not be permitted and no person shall smoke within the indoor area of any retail establishment with a tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products is prohibited.
- (l) *Sale by person under the age of 18.* It shall be unlawful for any business licensed under this article to allow any person under the age of 18 years to sell, offer for sale, or attempt to sell tobacco, tobacco products, tobacco-related devices, or electronic delivery devices.
- (m) *Age verification.* Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
- (n) *Signage.* Notice of the legal sales age and age verification requirement must be posted at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

(Ord. No. 12-01, § 3, 3-14-2012; Ord. No. 14-01, §§ 1, 3, 1-22-2014; Ord. No. 18-03, § 3, 5-9-2018)

**Editor's note** – Ord. No. 12-01, § 3, adopted March 14, 2012, amended § 14-294 in its entirety to read as set out herein. Former § 14-294 pertained to license shall be displayed and derived from the Code of 1993, § 5-1.03(D)(4); Ord. No. 99-01, § 1, adopted Jan. 3, 1999.

***Sec. 14-295 - License restrictions***

It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, or electronic delivery device:

- (1) To any person under the age of 21 years.
- (2) By means of any type of vending machine.
- (3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, tobacco-related device, or electronic delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or electronic delivery device between the licensee, or the licensee's employee, and the customer.
- (4) By means of loosies as defined in section 14-293.
- (5) 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 tobacco products.
- (6) In the form of 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 must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (7) 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.
- (8) It shall be a violation of this article for any person to sell or offer to sell any flavored tobacco product. This prohibition on the sale of flavored tobacco products does not apply to retail establishments that:
  - a. Prohibit persons under 21 years of age from entering at all times; and
  - b. Derive at least 90 percent of their revenues from the sale of any tobacco, tobacco products, tobacco-related devices, or electronic delivery devices.
  - c. Any retail establishment that sells flavored tobacco products must provide upon request financial records that document annual sales.

(Code 1993, § 5-1.03(D)(5); Ord. No. 99-01, § 1, 1-3-1999; Ord. No. 12-01, § 4, 3-14-2012; Ord. No. 14-01, § 1, 1-22-2014; Ord. No. 18-03, § 3, 5-9-2018)

**State Law reference** – Sale of tobacco to minors, Minn. Stats. § 609.685.

***Sec. 14-296 - Compliance checks***

- (a) Open to inspection. All licensed premises shall be open to inspection by the city police or other authorized city officials during regular business hours.
- (b) Annual compliance checks. From time to time, but at least twice per year, the city shall conduct compliance checks. One check will be conducted by engaging, with the written consent of their parents or guardians, a person over the age of 15 years but less than 17 years of age, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or electronic cigarettes. A second check will be conducted by engaging a person over the age of 18 but less than 21 years of age, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or electronic cigarettes.
- (c) Persons under the age of 21 used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. No person under the age of 21 used in compliance checks shall attempt to use a false identification misrepresenting the person's age, and all persons under the age of 21 lawfully engaged in a compliance check shall answer all questions about their person'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.

(Code 1993, § 5-1.03(D)(6); Ord. No. 99-01, § 1, 1-3-1999; Ord. No. 18-03, § 3, 5-9-2018)

**State Law reference** – Compliance checks, Minn. Stats. § 461.128, subd. 5.

***Sec. 14-297 - Violations and penalties***

- (a) *Generally.* The license holder shall be responsible for the conduct of its agents or employees while on the licensed premises. Any violation of this article shall be considered an act of the license holder for purposes of imposing a civil penalty, license suspension, or revocation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (b) *Notice of violation.* Upon the occurrence of a suspected violation, the police department shall inform the city administrator of the suspected violation. The city administrator shall then send to the license holder a written notice of the civil violation. The notice shall advise the license holder of the penalty and the license holder's right to request a hearing regarding the violation of this article.
- (c) *Administrative civil penalties; licensee:* Each license issued hereunder shall be subject to suspension or revocation for violation of any provisions of this chapter or the laws of the State of Minnesota as follows:

- (1) *First violation:* The first violation of this chapter shall be punishable by a civil penalty of \$500.00.
  - (2) *Second violation:* A second violation of this chapter within any twenty-four-month period shall be punishable by a civil penalty of \$750.00.
  - (3) *Subsequent violation:* A third or subsequent violation of this chapter within any twenty-four-month period shall be punishable by revocation of the license plus a civil penalty of \$250.00. Any licensee whose license is revoked under this section shall not be eligible for renewal for a period of two years after the revocation.
- (d) *Administrative civil penalties; individuals:* An individual who sells tobacco to a person under the age of 21 years shall pay an administrative penalty of \$50.00.
- (e) *Hearing:* Following receipt of a notice of a violation and penalty issued under this section, the license holder or individual may agree to the presumptive penalty or request a hearing before the city council. A request for a hearing shall be made by the individual or license holder in writing and filed with the city administrator or designee within ten days of the mailing of the notice of the alleged violation. Following receipt of a written request for hearing, the individual or license holder shall be afforded an opportunity for a hearing before the council.
- (f) *Findings:* If after the hearing the license holder or individual is found in violation of this chapter, the council shall impose the presumptive penalty.
- (g) *Default:* If the individual or license holder has been provided written notice of the violation and if no request for a hearing is filed within the ten-day period, then the presumptive civil penalty, suspension or revocation imposed in this chapter shall take immediate effect by default. The city administrator or designee shall mail notice of the fine, suspension or revocation to the individual or license holder.

(Code 1993, § 5-1.03(D)(7); Ord. No. 99-01, § 1, 1-3-1999; Ord. No. 10-02, § 1, 1-27-2010; Ord. No. 18-03, § 3, 5-9-2018)

#### ***Sec. 14-298 - Affirmative defense***

It is an affirmative defense to charges under this article if the license holder proves by a preponderance of the evidence that the license holder reasonably and in good faith relied on proof of age as described in Minn. Stats. § 340A.503, subd. 6 in making the sale.

(Code 1993, § 5-1.03(D)(9); Ord. No. 99-01, § 1, 1-3-1999)

#### ***Secs. 14-299 – 14-310 - Reserved***

Footnotes:

<sup>1</sup> **State Law reference** – State regulation of construction contractors, Minn. Stats. ch. 326.

<sup>2</sup> **Editor's note** – Section 1 of Ord. No. 07-02, adopted Jan. 10, 2007, amended Ch. 5, § 5-1.03C, which had been codified as §§ 14-94 – 14-97, in its entirety to read as herein now codified as §§ 14-94 – 14-108.

**State Law reference** – Authority to regulate transient commerce, Minn. Stats. § 412.221, subd. 19; authority to regulate transient merchants, Minn. Stats. § 437.02.

<sup>3</sup> **State Law reference** – Precious metals dealers, Minn. Stats. § 327F.731 et seq.

<sup>4</sup> **State Law reference** – Licensing of solid waste collection, Minn. Stats. § 115A.93.

<sup>5</sup> **State Law reference** – Municipal tobacco licenses, Minn. Stats. § 461.12.