

**CHAPTER 3 LICENSING**

**Section 300 - General Licensing and Permit Provisions**

**300.01 Licenses and Permits.**

**Subd. 1 General Rule.** Except as otherwise provided in this Code, all licenses and permits granted by the City shall be governed by the provisions of this Chapter.

**Subd. 2 Acts Prohibited.** No person shall conduct any activity or use any property for which a license or permit is required by law or this Code without a currently valid license or permit for such activity or use.

**Subd. 3 Application.** Every application for a license or permit shall be made to the City Administrator on a form provided by him or her. It shall be accompanied by payment to the City Administrator of the prescribed fee. If, after investigation, the City Administrator is satisfied that all requirements of law and this Code have been met, he or she shall present the application to the Council for action or, if the license or permit does not require Council approval, he or she shall issue the license or permit.

**Subd. 4 Bond.** Where a bond is required for any license or permit, the bond shall be a corporate surety bond executed on a form approved by the City attorney and shall be filed with the City Administrator before the license or permit shall be issued. Except where otherwise provided, a bond shall be in the amount of \$3000, conditioned that the licensee or permittee shall comply with the applicable ordinance and laws pertaining to the licensed or permitted activity and that the licensee or permittee will defend and indemnify the City and save it harmless from all loss or damage by reason of inadequate work performed by him or her or by reason of accident caused by the negligence of the licensee or permittee, his or her agents or employees.

**Subd. 5 Insurance.**

A. When a licensee or permittee is required to have in force a policy of insurance, the policy shall be approved as to substance and form by the City attorney. The policy shall provide that it is non-cancelable without 15 days' notice to the City, and the coverage shall be for the term of the license or permit. Satisfactory evidence of coverage by insurance shall be filed with the City Administrator before the license or permit is issued. Each license or permit shall terminate upon termination of the required insurance coverage.

B. Unless otherwise provided, a required policy of liability insurance shall provide for protection in at least the following amounts:

1. For injuries including death therefrom sustained by any one person, \$100,000.
2. For injuries including death resulting therefrom sustained by two or more persons as the result of any one occurrence, \$300,000.
3. For property damage, \$100,000.

**300.02 Fees.**

**Subd. 1 Fee Established.** Except as specifically provided, all fees shall be as set in a fee schedule to be adopted and amended from time to time by the Council. The fee schedule shall be included as an appendix to this code and is hereby adopted by reference and made a part of this Chapter as if set out here in full.

**Subd. 2 Prorated Fees.** License and permit fees shall not be prorated unless otherwise specified by this Code or by law.

**Subd. 3 Refunds.** License and permit fees shall not be refunded in whole or in part unless otherwise specified by this Code or by law.

**300.03 Duration of License.** Unless otherwise specified, a license or permit shall be valid for a calendar year or the part of the year for which it is issued and shall expire on December 31, unless an earlier expiration date is specified.

**300.04 Transfers.** No license or permit issued under this Code may be transferred to any other person. Where a license or permit relates to specific premises, the license or permit shall not be changed to another location without approval of the Council or other licensing authority.

**300.05 Renewal.** Applications for renewal of a license will be made to the City Administrator on forms provided. The renewal application will contain the information required for the original application plus any additional information required by the City Administrator.

**300.06 Inspection.**

**Subd. 1 Authorized Personnel.** Any City official or employee having a duty to perform with reference to a license or permit under this Code, and any police officer, may inspect and examine any licensee or permittee, his or her business, or premises to enforce compliance with applicable provisions of this Code. Subject to the provisions of Subd. 2, he or she may, at any reasonable time enter any premises for which a license or permit is required in order to enforce compliance with this Code.

**Subd. 2 Search Warrants.** If the licensee or permittee objects to the inspection of his or her premises, the City official or employee charged with the duty of enforcing the provisions of this Code shall procure a valid search warrant before conducting the inspection.

**300.07 Duties of Licensee or Permittee.**

**Subd. 1 Compliance Required.** Every licensee and permittee shall have the duties set forth in this Section.

**Subd. 2 Inspection.** He or she shall permit at reasonable times inspections of his or her business and examination of his or her books and records by authorized officers and City employees.

**Subd. 3 Compliance with Law.** He or she shall comply with laws, ordinances, and regulations applicable to the licensed or permitted business, activity, or property.

**Subd. 4 Display of License or Permit.** He or she shall display the license, permit, or other insignia given him or her as evidence of the license or permit in a conspicuous place on the premises, vehicle, or device to which the license or permit relates. If the license or permit is not so related, the license or permit shall be carried on the licensee's or permittee's person whenever he or she is carrying on the licensed or permitted activity.

**Subd. 5 Unlawful Disposition.** The licensee or permittee shall not lend or give to any other person his or her license or license insignia or permit.

**300.08 Suspension or Revocation.** The Council may suspend for a period not exceeding 60 days or revoke any license or permit for violation of any provision of law, ordinance, or regulation applicable to the licensed or permitted activity or property. Except where mandatory revocation is provided by law without notice and hearing and except where suspension may be made under the law without notice and hearing, no suspension or revocation shall be enforced until the licensee or permittee has been given notice of the alleged violation and has been given the opportunity to be heard at a public hearing.

**Section 310 - Traveling Shows**

**310.01 License Required.** No caravan, menagerie, circus, concert, or theatrical exhibition shall be exhibited in Big Lake without a license. The rates of the licenses shall be as established in the fee schedule as from time to time adopted and amended by the Council. Licenses under this Section may be granted by the City Administrator upon application and payment of the fee.

**310.02 Exception.** Schools, lodges, charitable organizations, and similar non-profit organizations shall be exempt from the licensing requirements of this Section.

**310.03 Application.** Any person desiring to obtain a license under this Chapter and having obtained approval of the City Administrator may pay to the City Administrator the amount of money herein fixed for the license, and shall be entitled to receive from the City Administrator, a license, signed by the Mayor and countersigned by the City Administrator and attested by the seal of the City authorizing such person to carry on the business at some certain place designated therein and for a specified time. Provided that the license under this Chapter shall be discretionary with the Mayor and City Council, and they may at any time for any violation of the laws of the State of Minnesota, the ordinances of this City, or other cause shown revoke any license granted under this Section.

**Section 320 - Peddlers, Solicitors, Transient Merchants**

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

**Subd. 1 Person.** The term "person" shall mean any natural individual, group, organization, corporation, partnership, or association. As applied to groups, organizations, corporations, partnerships, and associations, the term shall include each member, officer, partner, associate, agent, or employee.

**Subd. 2 Peddler.** The term "peddler" shall mean a person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personal property, that the person is carrying or otherwise transporting. The term peddler shall mean the same as the term hawker.

**Subd. 3 Solicitor.** The term "solicitor" shall mean a person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services, of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term solicitor shall mean the same as the term canvasser.

**Subd. 4 Transient Merchant.** The term "transient merchant" shall mean a person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise, or other personal property, and who does not remain or intend to remain in any one location for more than consecutive days.

**Subd. 5 Regular Business Day.** Any day during which the City Hall is normally open for the purpose of conducting public business. Holidays defined by State law shall not be counted as regular business days.

**320.02 Exceptions to Definitions.** For the purpose of the requirements of this Section, the terms "peddler," "solicitor," and "transient merchant" shall not apply to any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property, to a retailer of the item(s) being sold by the wholesaler. The terms also shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route. In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, as well as those persons participating in an organized multi-person bazaar or flea market, shall be exempt from the definitions of peddlers, solicitors, and transient merchants, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court ordered sale. Exemption from the definitions for the scope of this Section shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

### **320.03 Licensing.**

**Subd. 1 County License Required.** No person shall conduct business as a peddler, solicitor, or transient merchant within the City limits without first having obtained the appropriate license from the County as required by Minnesota Statutes Chapter 329 as amended.

**Subd. 2 City License Required.** Except as otherwise provided for by this Section, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the City.

**Subd. 3 Application.** Application for a City license to conduct business as a peddler or transient merchant shall be made at least fourteen (14) regular business days before the applicant desires to begin conducting business. Application for a license shall be made on a form approved by the City Council and available from the office of the City Administrator. All applications shall be signed by the applicant. All applications shall include the following information:

- A. Applicant's full legal name.
- B. All other names under which the applicant conducts business or to which applicant officially answers.
- C. A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, etc.)
- D. Full address of applicant's permanent residence.
- E. Telephone number of applicant's permanent residence.

- F. Full legal name of any and all business operation(s) owned, managed, or operated by applicant, or for which the applicant is an employee or agent.
- G. Full address of applicant's regular place of business (if any).
- H. Any and all business related telephone number(s) of the applicant.
- I. The type of business for which the applicant is applying for a license.
- J. Whether the applicant is applying for an annual or daily license.
- K. The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the City. (Maximum consecutive days)
- L. Any and all address(es) and telephone number(s) where the applicant can be reached while conducting business within the City, including the location where a transient merchant intends to set up business.
- M. A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses.
- N. A list of the most recent locations where the applicant has conducted business as a peddler or transient merchant.
- O. Proof of any required county license.
- P. Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.
- Q. A general description of the items to be sold or services to be provided.
- R. All additional information deemed necessary by the City Council.

**Subd. 4 Fee.** All applications for a license under this Section shall be accompanied by the fee established in the City's fee schedule as adopted from time to time by the Council.

**Subd. 5 Procedure.** Upon receipt of the completed application and payment of the license fee, the City Administrator shall determine if the application is complete. If the clerk determines that the application is incomplete, the clerk shall inform the applicant of the required necessary information which is missing. The Administrator shall review the application and order any investigation, including background checks, necessary to verify the information provided with the application. Within ten (10) regular business days of receiving the application from the applicant the City Administrator shall decide whether or not to issue the license. If the

Administrator rejects the application, the applicant shall be notified in writing of the Administrator's decision, the reason for the denial, and of his or her right to appeal the denial by requesting, within twenty (20) days of receiving the notice of rejection, a public hearing to be heard within twenty (20) days of the date of the request. The final decision of the Council following the public hearing shall be appealable by petitioning the Minnesota Court of Appeals for a Writ of Certiorari.

**Subd. 6 Duration.** An annual license granted under this Section shall be valid for one calendar year from the date of issue. All other licenses granted under this Section shall be valid only during the time period indicated on the license.

**320.04 License Exemptions.** No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated, or raised on any farm. No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when such activity is for the purpose of exercising that person's State or Federal Constitutional rights (i.e., freedom of speech, press, religion etc.) except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity. Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this Section.

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

- A. The failure of the applicant to obtain and show proof of having obtained any required County license.
- B. The failure of the applicant to truthfully provide any of the information requested by the City as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application.
- C. The conviction of the applicant within the past five years from the date of application, for any violation of any Federal or State statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner or that will not adversely affect the health, safety, and welfare of the residents of the City. Such violations shall include but not be limited to: burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
- D. The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant.
- E. The applicant is determined to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than one substantiated complaint(s) against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding

twelve (12) months, or such complaints filed against the applicant within the preceding five (5) years.

**320.06 Suspension and Revocation.** Any license issued under this Section may be suspended or revoked at the discretion of the City Council for violation of any of the following:

- A. Fraud, misrepresentation, or incorrect statements on the application form.
- B. Fraud, misrepresentation, or false statements made during the course of the licensed activity.
- C. Conviction of any offense for which granting of a license could have been denied under Subsection 220 of this Section.
- D. Violation of any provision of this Section.

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

**Subd. 1 Notice.** Prior to revoking or suspending any license issued under this Section, the City shall provide the license holder with written notice of the alleged violation(s) and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

**Subd. 2 Public Hearing.** Upon receiving the notice provided in Subdivision 1, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Administrator within ten (10) regular business days following the service of the notice, the City may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated timeframe, a hearing shall be scheduled within twenty (20) days from the date of the request. Within three (3) regular business days of the hearing, the City Council shall notify the licensee of its decision.

**Subd. 3 Emergency.** If in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this Section, the Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in Subdivision 2 of this Section.

**Subd. 4 Appeals.** Any person whose license is suspended or revoked under this Section shall have the right to appeal that decision in court.

**320.07 Transferability.** No license issued under this Section shall be transferred to any person other than the person to whom the license was issued.

**320.08 Registration.** All solicitors, and any person exempt from the licensing requirements of this Section under Subsection 320.04, shall be required to register with the City. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Administrator shall issue to the registrant a Certificate of Registration as proof of the registration. Certificates of Registration shall be non-transferable.

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

- A. Calling attention to his or her business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.
- B. Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right-of-way.
- C. Conducting business in such a way as to create a threat to the health, safety, and welfare of any individual or the general public.
- D. Conducting business before seven o'clock in the morning (7:00 a.m.), or after nine o'clock at night (9:00 p.m.)
- E. Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person.
- F. Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant shall claim to have the endorsement of the City solely based on the City having issued a license or certificate of registration to that person.
- G. Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating, or abusive.

**320.10 Exclusion by Placard.** No peddler, solicitor, or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor, or transient merchant when the property is marked with a sign or placard at least three and three-quarter (3-3/4) inches long and three and three-quarter (3-3/4) inches wide with print of at least 48 point in size stating "No Peddlers, Solicitors, or Transient Merchants," or "Peddlers, Solicitors, and Transient Merchants Prohibited," or other comparable statement. No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this Section.

**320.11 Violations and Penalties.** Any person who violates any provision of this Section shall be guilty of a misdemeanor. Each day a violation exists shall constitute a separate violation for the purposes of this Section.

**Section 321- Mobile Food Units**

**321.01 Purpose.** The purpose of this Section is to protect the public health, safety, and general welfare of the community through the establishment of standards to ensure that Mobile Food Units as defined herein are appropriately located, licensed and inspected, do not impede vehicular access, traffic flow or circulation, or create public safety hazards.

**321.02 Definitions.** The following words and phrases, when used in this Section and unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this Subsection:

**Mobile Food Unit** – means a food and beverage service establishment that is a vehicle mounted unit, such as:

- A. **Motorized or Trailer:** shall be defined as any self-propelled vehicle or fully contained trailer, licensed by the State of Minnesota to operate on public streets and roadways, which vends food (either prepackaged, prepared in the unit, or at a commissary) at retail for immediate consumption by the customer. Said vehicle and/or trailer may also be referred to herein as “unit”.
- B. A unit operating in conjunction with a permanent business licensed under MN Statutes Chapter 157 or Chapter 128A at the site of the permanent business by the same individual or company, and readily moveable, without disassembling, for transport to another location; and a self-contained unit, in which food is stored, cooked, and prepared for direct sale to the consumer.
- C. **Food Cart:** shall be defined as a food and beverage service establishment that is a non-motorized vehicle self-propelled by the operator.
- D. **Ice Cream Truck:** shall be defined as a motor vehicle utilized as the point of retail sales of pre-wrapped or pre-packaged ice cream, frozen yogurt, frozen custard, flavored frozen water, or similar frozen dessert products.

**Commissary** - shall be defined as a permanent, State-licensed location which services food trucks, including but not limited to the provision of food storage, paper goods and supplies, waste and grease disposal and food preparation.

**Vend or Vending** - shall be defined as the process of the transfer of a food product from the unit operator to a customer. Vending begins when the unit initially stops in a location at which customers can access the unit and continues until the unit leaves that location.

**321.03 Applicability.** Notwithstanding any contrary provision of any City ordinance, regulation, or rule, Mobile Food Units shall be licensed and located as provided in this ordinance:

**Subd. 1. Permit Required.** Within the City of Big Lake, no person shall vend from a Mobile Food Unit without first having obtained a permit to do so from the City.

- A. Form. An application for a permit shall be submitted to the City on forms prepared by the City.
- B. Required Information. The applicant shall file with the application such information that will clearly establish the times and places where the applicant desires to operate; the applicant shall describe the physical characteristics of the vehicle/unit being used; the applicant shall describe products to be sold and any other information the City may require.
  - 1. Mobile Food Unit applicants wishing to operate on any publicly owned land, right-of-way, or street located in a residential district, or any city park shall be required to meet all requirements listed under Section 321.05 (Investigation, Approval, or Disapproval) of this Section.

**Subd. 2. Fees.** All applications for a permit under this Section shall be accompanied by the fee established in the City's fee schedule as adopted from time to time by the Council.

- A. Proration of fee is allowed only on annual permits.
- B. There shall be no refunding of paid fees, nor shall a permit be transferrable.
- C. A separate permit shall be required for each Mobile Food Unit regardless of ownership, and the approved permit shall be displayed on or within the unit, visible from the outside of the unit, whenever the unit is vending.

**Subd. 3. Department of Health License Requirement.** Applicants must provide evidence of current licensing of the unit by the Minnesota Department of Health, the Minnesota Department of Agriculture, or other approved Department of Health licensing authority.

**Subd. 4. Term of Permit.**

- A. Annual Permits.
  - 1. Permits issued as an annual permit, shall expire January 1 of each year.
  - 2. Annual Permit fees are allowed to be pro-rated.
- B. Termed Permit.
  - 1. Termed Permits are issued on a 1 to 4 day term, or a 5 to 10 day term. Dates of vending are not required to be concurrent.
  - 2. All permits issued for a specific term must adhere to the dates allowed to vend identified on the applicant's permit.
  - 3. Termed permit fees shall not be prorated unless otherwise specified by this Code or by law.

**Subd. 5. Insurance Requirements.**

- A. The Applicant shall carry a general policy of liability insurance which shall provide a limit of coverage of not less than three hundred thousand dollars/one hundred thousand dollars (\$300,000/\$100,000) for bodily injury and twenty five thousand dollars (\$25,000) for property damage.
  - 1. Coinsured Requirement. Mobile Food Units operating on any public property must provide a certificate of insurance showing the City listed as coinsured.
- B. Notice of Cancellation. The insurance policy required by this Section shall further provide that no cancellation of said insurance policy, for any cause, may be made by the insured or the insurance company without first giving thirty (30) days' notice to the City, in writing, of the intention to cancel.

**Subd. 6. Sound Devices.** No person operating a Mobile Food Unit shall shout, make any cryout, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound amplifying system upon any public property, or upon any private premises in the City where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon public property, for the purpose of attracting attention to any goods, wares or merchandise which such permittee proposes to sell, unless prior approval with conditions is received from the City.

**Subd. 7. Mobile Food Unit Operations.**

- A. At no time shall any sales be made from a Mobile Food Unit while it is in motion.
- B. Shall not employ or utilize any signs that are not attached directly to the vehicle/trailer/unit. Signs may not project above the unit, nor more than six (6) inches from the side of the unit. No flashing, strobing or intermittent lighting is allowed.
- C. No external seating may be utilized while operating on public property.
- D. No other equipment may be utilized that is not fully contained within the vehicle/trailer/unit while operating on public property.
- E. Any generator in use must be self-contained and fully screened from view, and operate so as not to be deemed a nuisance.
- F. Operations shall be limited to the number of days indicated on the applicant's State License.

- G. Applicant shall provide waste disposal for litter and garbage generated by the operation of the Mobile Food Unit, and shall clean all such litter and garbage before moving from the location.
- H. The Mobile Food Unit and Vendor shall obey the orders of any traffic control officer, peace officer, zoning official, or inspector, and shall be open to inspection during all open hours.
- I. Hours of operation.
  - 1. Public Property - Hours of vending operation shall be allowed from 8:00 a.m. to 10:00 p.m. An exemption of this requirement would require approval from the City.
  - 2. Private Property - Hours of vending operation shall be allowed from 7:00 a.m. to 1:00 a.m. An exemption of this requirement would require approval from the City.

**Subd. 8. Mobile Food Units are prohibited from the following vending activity:**

- A. Vending is not allowed at Lakeside Park located at 101 Lakeshore Drive without having first obtained a Lakeside Park Vendor Permit issued by the City.
- B. Vending is not allowed within 500 feet of the property boundary of Lakeside Park without having first obtained a Lakeside Park Vendor Permit issued by the City.
- C. Vending is not allowed on any publicly owned Highway or County Road within the City.
- D. Vending is not allowed within 150 feet of the property line of any restaurant within the City.
- E. Vending is not allowed within 300 feet of a community event for which the City has issued a Special Event Permit, unless they are specifically authorized by the event sponsor to participate in the event. The terms of the Special Event Permit shall apply.

**Subd. 9. Location or Placement.**

- A. On public property.
  - 1. No unit shall occupy more than two (2) parking stalls.
  - 2. In no case shall a unit vend while occupying a traffic lane, parked on a sidewalk, or in any location which obstructs or impedes traffic.
  - 3. The unit shall vend only from the side of the vehicle away from moving traffic and as near as possible to the curb or side of the street.
  - 4. The unit shall not vend to any person standing in the traveled portion of any public street.
  - 5. On public streets, no unit shall vend within sixty (60) feet of the

intersection of two or more public streets, nor within thirty (30 feet of a driveway which enters onto a public street.

6. No unit shall vend while in motion.
7. There shall be no overnight parking of Food Trucks/Vendors on any public property.
8. Connection of the unit to any public utilities is strictly prohibited.

- B. On private property. Mobile Food Units are allowed to operate on private property zoned retail, commercial, or industrial as expressly authorized by the owner/manager/agent for the private property, and only for the length of time authorized by their State License.

**321.04 Exemptions.** The following are exempt from Mobile Food Unit licensing requirements:

- A. Mobile Food Units which are vending under a Special Event Permit issued by the City of Big Lake are allowed to operate under that Special Event Permit as authorized by the organizers/managers of the event, at the location of, and for, the duration of the event.
- B. Appropriately licensed caterers are exempted from this Section for catered events.
- C. Mobile Foods Units which are vending at a school, church, or other non-profit owned land for a non-profit event.
- D. Mobile Food Units which are hired to vend on private property for private events, located in any residential or agriculture zoned property. The Mobile Food Units must be fully contained on private property.
- E. Mobile Food Units owned and operated by a commercial food business located in the City of Big Lake.

**321.05 Investigation, Approval, or Disapproval.** The City may conduct such background checks as the city deems necessary and prudent when considering Mobile Food Unit applications.

- A. Mobile Food Unit applicants wishing to operate on any publicly owned land, right-of-way, or street located in a residential district, or in any City Park, shall be required to undergo a background check that may include, but is not limited to, a driver's license check and a criminal history check, for the protection of the public good.

**321.06 Approval, or Denial of Permit.** The City shall approve or deny the application in the manner prescribed in this Section within a reasonable period of time. The following shall be grounds for denying a permit:

- A. Failure of an applicant to truthfully provide any information requested by the City as part of the application process.
- B. Failure of the applicant to complete the application and/or pay any required fee.
- C. When an applicant has a bad business reputation. Evidence of a bad business reputation may include prior revocations of any permit or license, prior convictions for violation of any federal, state, or local law or which adversely reflects upon the person's ability to conduct the business for which the permit is being sought, or prior complaints with the City, Better Business Bureau, State Attorney General, or other similar business or consumer rights office.
- D. The conviction of the applicant within the past five years from the date of application, for any violation of any Federal or State statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner or that will not adversely affect the health, safety, and welfare of the residents of the City. Such violations shall include but not be limited to: burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
- E. The revocation within the past five years of any license issued to the applicant for the purpose of conducting a Mobile Food Unit or similar business transaction.
- F. The denial, within the last year, of any license or permit application for the purpose of conducting a Mobile Food Unit or similar business transaction.
- G. Failure to follow all Federal, State, and Local regulations, including failure to be registered, licensed or permitted if such registration, license or permit is required by any Federal, State, or Local regulation.
- H. Appeal. Any permit applicant aggrieved by the denial of a permit may appeal by filing with the City Administrator within ten (10) days of the date of mailing of the notice of denial, a written statement requesting a hearing before the City Council and setting forth fully the grounds for the appeal. A hearing shall be held within thirty (30) days of receipt of the request. Notice of the hearing shall be given by the City Administrator in writing, setting forth the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permit applicant at his/her last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) prior to the date set for hearing.

**321.06 Suspension or Revocation.**

- A. Permits issued under the provisions of this Section may be revoked after notice and a hearing conducted by the City Administrator, for any of the following causes: violation of this Section; violation of federal, state, or local law, rule, or regulation relating to Mobile Food Units; or any action identified in Subd. 11 of this Section.
- B. Notice of the hearing for revocation of a permit shall be given by the City Administrator in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permit holder at his/her last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing.
- C. Appeal. The decision of the City Administrator following a hearing as provided for in this Section can be appealed by petitioning the Big Lake City Council. The appeal must be delivered to the City Administrator in writing within ten (10) days of the date of mailing of the City Administrator's decision.
- D. Emergency. If, in the discretion of the City Administrator, imminent harm to the health or safety of the public may occur because of the actions of any person permitted under this Section, the City Administrator may immediately suspend the person's permit and in such event shall provide notice to the person of the right to a post-suspension hearing pursuant to the procedures in Subd. 321.06.B. of this Section.

**321.07 Severability.** If any provision of this Section is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

**321.08 Penalty.** Any violation of this Section, including but not limited to the vending operation of a Mobile Food Truck within the City without a permit issued pursuant to this Section, shall be a misdemeanor punishable in accordance with the penalties established by Minnesota Statutes.

**Section 325 – Alarm Systems**

**Section 325.01 Policy Statement.** The City Council of the City of Big Lake deems it necessary to provide for regulation of alarm systems used to summon public safety services; to establish alarm user fees for false alarms; and to establish a system administering alarm systems. The purpose of this Section is to provide for a high level of service to alarm users and to protect the public safety services of the City from misuse by alarm users whose alarm systems repeatedly generate false alarms.

**Section 325.02 Definitions.** The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Alarm system" means an assembly of equipment and devices (or a single device such as a solid state unit) arranged to signal the presence of a hazard. For the purposes of this ordinance, the alarm, when triggered, must be directly connected to a central monitoring agency which then notifies the police and/or fire departments of an emergency to which public safety personnel must respond, or may emit an audible signal which will require urgent attention and to which public safety personnel are expected to respond. "Alarm system" does not include audible alarms affixed to automobiles.

"Alarm user" means the person, firm, partnership, association, corporation, company or organization of any kind on whose premises an alarm system is maintained. "Alarm User" includes persons occupying dwelling units for residential purposes.

"False alarm" means any activation of an alarm system that results in a response by the Police or Fire Department where an emergency situation does not exist. "False alarm" includes, but is not limited to, activation of an alarm system through mechanical failure, malfunction, improper installation, or the negligent use or maintenance of the alarm system by its owner or lessee or by the owner's or lessee's employees or agents. "False alarm" does not include activation of the alarm by utility company power outages or by climatic conditions such as tornadoes, lightning, other violent conditions of nature, or any other conditions which are clearly beyond the control of the alarm manufacturer, installer, owner and user. "False alarm" does not include activation of an alarm system as the result of an effort or order to upgrade, install, test, or maintain the system, if the City and, where applicable, central monitoring agency for the alarm system are each notified in advance of any such upgrade, installation, test or maintenance.

**Section 325.03 Registration.** Every alarm user shall be required to register each alarm system on the alarm user's premises on a form provided by the City. Registrations are not transferable from one person to another or from one location to another.

**Section 325.04 New Alarm Systems and Users.** No alarm fee shall be chargeable against an alarm user until thirty (30) days after a new registration is received by the City. This grace period may be extended where there is a problem with the alarm system and the alarm user has notified the City in writing of the problem and the anticipated correction time.

**Section 325.05 Operation and Maintenance.** An alarm user shall:

- A. Maintain the premises and the alarm system in a manner that will minimize or eliminate false alarms;
- B. Make every reasonable effort to respond or cause a representative to respond to the alarm system's location within one hour when notified by the City to deactivate a malfunctioning alarm system, to provide access to the premises, and to provide security for the premises;
- C. Not manually activate an alarm for any reason other than an occurrence of an event that the alarm system was intended to report; and
- D. Adjust the mechanism or cause the mechanism to be adjusted so that an alarm signal audible on the exterior of the premises will sound for no longer than fifteen (15) minutes after being activated.

**Section 325.06 False Alarms.**

**Subd.1 Fees.** An alarm user fee shall be imposed upon any Alarm User when that user's alarm system reports more than three (3) false alarms to the City in a single calendar year. The amount of such fees shall be set by the City Council.

**Subd.2 False Alarm Determination.** There shall be a designated individual that reviews all alarms to determine if chargeable. Acts of nature such as high winds, lightening, or power outages that cause alarms to malfunction shall not be considered chargeable.

**Subd.3 Notice.** When imposing a false alarm user fee, the City shall notify the affected alarm user in writing of the date of a false alarm, the apparent reason for the false alarm, and the alarm user fee imposed, by mailing notice to the alarm user at the address on the alarm's registration form.

**Subd.4 Appeal.** The alarm user has the right to request an informal hearing before the City Manager or his/her designee to determine if the false alarm is chargeable. An appeal must be made in writing and must be filed with the City Clerk within ten days after the decision from which the appeal is taken.

**Subd.5 Payment.** An alarm user shall pay all alarm user fees within thirty (30) days from the date written notice is mailed by the City unless the false alarm determination is under appeal.

**Subd.6 Unpaid Fees.** Any fee required under this Section which is not paid within the time required herein shall be certified as "past due" by the City Clerk who in turn shall include it as an assessment for a current service.

**Section 335 – Solid Waste and Recycling Collection**

**335.01 Definitions.** The following words and phrases, when used in this Section and unless the context clearly indicates otherwise, shall have the meanings ascribed to them as follows:

**Subd. 1 Collection.** “Collection” shall mean the aggregation of waste from the place at which it was generated and includes all activities up to the time when delivered to a waste facility.

**Subd. 2 Commercial/Industrial Establishment.** “Commercial/Industrial Establishment” shall mean any premises not primarily used for residential purposes and a commercial or industrial enterprise of any kind is undertaken, including restaurants, clubs, churches, and schools.

**Subd. 3 Garbage.** “Garbage” shall mean any animal and/or vegetable waste resulting from the handling, preparing, cooking, and consumption of food.

**Subd. 4 Household.** “Household” shall mean an individual or two (2) or more persons related by blood, marriage, guardianship, or adoption, living together as a single housekeeping unit; or a group of not more than three (3) persons not so related, maintaining a common housekeeping unit and using common cooking and kitchen facilities; or a residential program (group home) for six (6) or fewer persons as defined and licensed by the State of Minnesota Department of Human Services.

**Subd. 5 Hauler.** “Hauler” shall mean a licensed collector or transporter of mixed municipal solid waste, recyclable materials, and/or yard waste.

**Subd. 6 Mixed Municipal Solid Waste.** “Mixed Municipal Solid Waste” shall mean garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities which are generated and collected in aggregate. This does not include auto bulks or large auto parts, street sweepings, ash, construction debris, mining waste, sludge, tree and/or agricultural waste, tires or other materials collected, processed, and disposed of as separate waste streams.

**Subd. 7. Recyclables.** “Recyclables” shall mean materials that can be separated from the mixed municipal solid waste stream for collection and preparation for reuse in their original form, or for other uses in manufacturing processes that do not cause the destruction of the recyclable materials in a manner that precludes further use.

**Subd. 8 Recycling.** “Recycling” shall mean the process of collecting and preparing recyclable materials and reusing the material in their original form or using them in manufacturing processes.

**Subd. 9 Refuse.** “Refuse” shall mean discarded waste materials in a solid or semi-liquid state, consisting of garbage, rubbish, or a combination thereof. “Refuse” does not include:

- (1) Construction materials resulting from the construction or reconstruction of buildings or other improvements by contractors; or
- (2) Trees in excess of six inches in diameter; or
- (3) Yard waste; or
- (4) Recyclables.

**Subd. 10 Rubbish.** “Rubbish” shall mean nonputrescible solid wastes consisting of combustible and noncombustible materials, including yard waste.

**Subd. 11 Solid Waste.** “Solid Waste” shall mean the meaning defined in Minn. Stat. § 116.06, subd. 10.

**Subd. 12 Source-separated Materials.** “Source-separated Materials” shall mean those elements of a waste stream that are separated by the generator for reuse in their original form or for use in manufacturing processes.

**Subd. 13. Special Pickup.** “Special pickup” shall mean any collection of materials other than garbage, refuse, recyclables or yard waste, including white goods (e.g., large appliances), furniture, oversized materials, construction debris, and other materials collected, processed, and disposed of as separate waste streams.

**Subd. 14 Targeted recyclables.** “Targeted recyclables” shall mean newspaper; clear, brown and green glass containers; tin cans; aluminum beverage cans; cardboard; plastics; magazines; phonebooks; high grade paper and or other materials that may be designated by resolution of the City Council.

**Subd. 15 Yard Waste.** “Yard Waste” shall mean organic material consisting of grass clippings, leaves and other forms of organic garden waste.

### **335.02 Hauler License.**

**Subd. 1 Required.** No person shall haul mixed municipal solid waste or recyclables collected in the city without first securing a license from the city.

**Subd. 2 Validity.** The license shall be valid for one calendar year and shall expire on December 31 of each year unless revoked sooner.

**Subd. 3 Application.** The initial application for a license to haul or collect refuse and each renewal application shall be in writing on a form provided by the City.

**Subd. 4 Fee.** The annual license fee shall be established by resolution of the City Council.

**Subd. 5 Bond; Insurance.** Before a license is granted or renewed, the applicant shall furnish to the City Administrator the following:

- (1) A surety bond in the sum of \$1,000.00 for each vehicle licensed, to be conditioned upon the faithful performance by the licensee of all work entered into or contracted for by said licensee and upon strict compliance with all the provisions and requirements of this Article and all applicable sanitary rules and regulations.
- (2) Statutory workers' compensation insurance and employer's liability insurance, as required under the laws of the State of Minnesota. In the event the licensee is a sole proprietor and has not elected to provide workers' compensation insurance, licensee shall be required to execute and submit an affidavit of sole proprietorship in a form satisfactory to the City.
- (3) A liability insurance policy for each vehicle authorized in the amount of \$100,000 for bodily injury to any one person, in the amount of \$300,000 for injuries to more than one person which are sustained in any one accident, and \$100,000 for property damage resulting from any one accident. Said insurance shall inure to the benefit of any one person who shall be injured or who shall sustain damage to property proximately caused by the negligence of the holder, his servant or agents.

A certificate of insurance covering the aforementioned insurance shall be issued in favor of the City. This certificate shall contain a thirty (30) day notice of cancellation to the City.

**Subd. 6 Issuance.** The City Administrator shall issue licenses only after receipt and review of all required forms and fees. Upon review of the documents submitted, the City Administrator shall issue a license if the documents comply with the provisions of this article. An applicant denied a license by the City Administrator may have the decision reviewed by the city council. The applicant shall request review by the city council in writing ten days after denial of the license.

**Subd. 7 Exemptions; conditions.** The license requirements of this article shall not apply to persons who haul garbage, refuse, or recyclables from their own residences or commercial/industrial establishments, provided that the following conditions are met:

- (1) Garbage is hauled in a timely manner such that it does not accumulate and become a nuisance as defined under the City Code
- (2) Garbage is hauled in containers equipped with tight fitting covers and which are also watertight on all sides and the bottom;
- (3) Refuse and recyclables are hauled in a manner that prevents leakage or any possibility of a loss of cargo;
- (4) Garbage and refuse is only dumped or unloaded at designated sanitary landfills or other facilities authorized by the county;
- (5) Recyclables are only dumped or unloaded at a recycling facility, an organized recycling drive, or through licensed collectors;
- (6) Yard waste is privately composted, or is only dumped or unloaded at a composting facility authorized by the county, or through a licensed collector; and
- (7) Items excluded in "mixed municipal solid waste" shall be collected, processed, and disposed of according to state and county laws.

**335.03 Collection Regulations.** A licensed hauler must comply with the following requirements. Failure to observe these provisions may be a basis for suspension or revocation of a license:

**A. Manner.** The licensee shall operate in a manner consistent with its application materials and shall provide notice to the city within ten (10) days of any change in the information.

**B. Hours of collection.** No collection of mixed municipal solid waste or recyclable materials shall be made from a residential dwelling and no waste hauler shall operate within a residential area except between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday. Operations during these hours may also be conducted on Saturday, to accommodate recognized national holidays or a special pickup. No collection of yard waste from a residential dwelling shall be made except between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday. Customers shall be reasonably notified of the specific day and hours for collection of their yard waste, mixed municipal solid waste, and/or recyclables and the licensee shall collect the materials within those time periods.

**C. Vehicles; maintenance.** Each licensed hauler shall only use collection trucks that are properly licensed and inspected by the state. The vehicles and equipment shall also be kept clean and as free from offensive odors as possible, and shall not stand in any street, alley, or public place longer than is reasonably necessary to collect mixed municipal solid waste, yard waste, and/or recyclables. No licensed hauler shall operate a vehicle that exceeds 5 tons per axle during spring road weight restrictions. There should be printed on both sides of such vehicles in clear, legible type the name and telephone number of the owner of such vehicle. The license shall also ensure that the collection site is left tidy and free of litter.

**D. Collecting Recyclable Material Required.** It shall be the duty of each licensed mixed municipal solid waste collector to haul away, on the same day as mixed municipal solid waste service, to such places as designated in their license application the targeted recyclable materials from households with individual curbside mixed municipal solid waste containers. Each licensed mixed municipal solid waste and recyclable material collector shall do the same for residences who occupy multiple-family (apartment) dwellings. The costs of collecting recyclable material shall be included in the general pricing scheme for collection of mixed municipal solid waste and recyclable material. Nothing herein shall be construed to prevent a licensee from offering curbside collection for recyclable materials other than targeted recyclables.

**E. Recyclable Material Report.** It shall be the duty of each licensee collecting recyclable material to provide upon request from the City and/or Sherburne County Solid Waste, a report on quantity and type of all material recycled within the city. Upon written notice to the licensee, the City and/or Sherburne County Solid Waste may require similar reports on other materials picked up by the licensee.

**F. Charges for service.** Charges for collection shall be based upon the volume or weight of mixed municipal solid waste that is collected. The charges shall increase with the volume or weight of the waste collected. Licensed haulers may not impose greater charges on households or commercial/industrial establishments that recycle than on those who do not recycle.

**G. Recyclables.** Recyclables may not be disposed of at a landfill or incinerated. All recyclables must be recycled. Licensed hauler shall not mix source-separated materials with mixed municipal solid waste or handle source-separated materials in any way that reduces the reusability or marketability of the source-separated material. Licensed haulers must notify the customer if recyclable materials are contaminated or not sorted correctly. The notification must be in writing stating the violation and corrective measures and it must be presented at the time of collection.

**H. Yard Waste/Christmas Tree Collection.** Each collector shall segregate yard waste and Christmas tree materials from other solid waste materials. Collectors shall not mix other types of waste or refuse or inorganic materials with yard waste or Christmas tree materials, or take any action so as to make the material unacceptable at a compost facility. Disposal of the material shall be to a licensed composting facility.

**I. Designated sanitary landfill.** Mixed municipal solid waste collected from sources other than public entities may be disposed only at a designated sanitary landfill or other facility authorized by the county. All mixed municipal solid wastes collected from any public entity within the City must be managed according to the Sherburne County waste management hierarchy. This section shall not be construed as limiting the disposal of refuse to sites in the City of Big Lake or the County of Sherburne.

**J. Compliance with laws.** The licensee shall comply with all state, county, and local laws and regulations.

#### **335.04 No vested rights.**

No collector licensed pursuant to this chapter shall acquire a vested right in the license. The city may, upon finding that public necessity requires, determine to establish other means of refuse collection.

#### **335.05 Suspension or revocation of license.**

The city council may suspend or revoke the license of any person whose conduct is found to be in violation of the provisions of this section. Suspension or revocation may also be based on other health, safety, and welfare concerns arising out of the performance of the licensee, its employees and agents, and/or its vehicles and equipment. Revocation or suspension of a license by the council shall be preceded by a public hearing. The hearing notice shall be given at least ten (10) days prior to the hearing, include notice of the time and place of the hearing, and shall state the nature of the charges against the licensee.

**335.06 Scavenging Prohibited Without License.** It is unlawful for any person or business to scavenge, collect, or otherwise remove mixed municipal solid waste, recyclables, or yard waste that has been placed at the curb or in recycling containers, without a license from the City and an account relationship with the owner, lessee, or occupant of the premise.

**335.07 Penalty.**

**Subd. 1** Any person convicted of violating this chapter shall be guilty of a misdemeanor and shall be subject to a fine or imprisonment, or both as specified by state statute.

**Subd. 2** Any licensed collector that accumulates three (3) documented violations of this chapter shall have its license revoked. A collector with a revoked license may seek review and hearing by the city council by initiating such proceedings with the city clerk.

**Section 340 - Junked Autos**

**340.01 Definition.** The terms "junk vehicle" and "abandoned vehicle" shall have the definitions assigned to them by Minn. Stat. 168B.011.

**340.02 Permit Required.** It shall be unlawful for any person, occupying or owning private property within the City, to keep or permit to be kept any junked or abandoned vehicles on the private property within the City for a period in excess of fourteen days without a special use permit granted by the City Council.

**Subd. 1 Special Use Permits.** Special use permits may be issued for any of the uses or purposes for which special use permits shall be required or permitted by the provisions of this Chapter.

**Subd. 2 Application.** Application for the issuance of a special use permit shall be made to the City Hall. A Committee will review all applications.

It may designate conditions and require guarantees for the granting of a special use permit.

**Subd. 3 Procedure.** Procedure by the applicant(s) and the City shall be as follows:

- A. Application made and fees paid.
- B. Review Committee scheduled.
- C. Committee reviews and approves or denies application.
- D. Denials appealable to City Council.

**Subd. 4 Fees.** The fees for a special use permit and any extension shall be set in the fee schedule adopted from time to time by the City Council.

**Subd. 5 Expiration.** Unless the City Council specifically approves a different time frame, all special use permits shall expire six (6) months after issuance. One extension shall be available for three (3) months. The applicant must make application and pay fee for the extension prior to the expiration of the original permit.

**Subd. 6 Conformance.** At all times while in possession of a special use permit, the applicant shall be in conformance with all provisions of the permit.

**Subd. 7 Violations and Penalties.** Any person, firm or corporation who shall violate any of the provisions of this Chapter shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense.

**340.03 License Plate Requirement.** Any vehicle shall be deemed to be junked or abandoned within the meaning of this Section if the vehicle does not have attached thereto a valid and current license plate issued by the proper state agency, or is not in operable condition as defined by law.

**340.04 General Accumulation.** In any area within the City, the storage or accumulation of junk, trash, rubbish or refuse of any kind, except refuse stored in such manner as not to create a nuisance for a period not to extend thirty (30) days, shall not be permitted without a valid permit from the City. The term "Junk" shall include parts of machinery or motor vehicles, unused stoves or other appliances stored in the open; remnants of wood; decayed, weathered or broken construction materials; metal or any other material or cast-off material of any kind, whether or not the same could be put to any reasonable use.

**340.05 Abatement.** Any junk or abandoned vehicle found in violation of this Section may be removed from the property and disposed of by the City as provided in Minn. Stat. § 168B. All other junk, trash, or rubbish found in violation of this Section may be abated as a nuisance threatening the health, safety, and welfare of the City. No action shall be taken under this Subsection until the property owner has received notice of the alleged violation and given an opportunity to correct the violation or to be heard by the Council.

**Section 350 - Tobacco**

**Section 350.01 Purpose.** Because the City recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both State and Federal laws; and because studies such as “Cigarette Smoking and Changes in the Histopathology of Lung Cancer”, “Cigarette Smoking and Esophageal and Gastric Cardio-Adenocarcinoma” and others, 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 smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this Ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minnesota Statute Number 144.391.

**Section 350.02 Definitions and Interpretations.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and the neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissive. The following terms shall have the definitions given to them:

**Subd. 1 Tobacco or Tobacco Products.** “Tobacco” or “Tobacco products” shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.

**Subd. 2 Tobacco Related Devices.** “Tobacco related devices” shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

**Subd. 3 Self-Service Merchandising.** “Self-Service Merchandising” shall mean open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without the assistance or intervention of the licensee or the licensee’s employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

**Subd. 4 Vending Machine.** “Vending Machine” shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco related device.

**Subd. 5 Individually Packaged.** “Individually packaged” shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

**Subd. 6 Loosies.** “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette.

**Subd. 7 Minor.** “Minor” shall mean any natural person who has not yet reached the age of eighteen (18) years.

**Subd. 8 Retail Establishment.** “Retail Establishment” shall mean any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores and restaurants.

**Subd. 9 Moveable Place of Business.** “Moveable Place of Business” shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

**Subd. 10 Sale.** A “sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

**Subd. 11 Compliance Checks.** “Compliance Checks” shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this Ordinance. Compliance checks shall involve the use of minors as authorized by this Ordinance. Compliance Checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to tobacco, tobacco products, and tobacco related devices.

**Section 350.03 License.** No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the City.

**Subd. 1 Application.** An application for a license to sell tobacco, tobacco products, or tobacco related devices shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant’s residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the City deems necessary. Upon receipt of a completed application, the City Administrator shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the 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.

**Subd. 2 Action.** The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Administrator shall issue the license to the applicant. If the 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 Council’s decision.

**Subd. 3 Term.** All licenses issued under this Ordinance shall be valid for one calendar year from the date of issue.

**Subd. 4 Revocation or Suspension.** Any license issued under this Ordinance may be revoked or suspended as provided in the Violations and Penalties section of this Ordinance.

**Subd. 5 Transfers.** All licenses issued under this Ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Council.

**Subd. 6 Moveable Place of Business** No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this Ordinance.

**Subd. 7 Display** All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

**Subd. 8 Renewals** The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty days before the expiration of the current license. The issuance of a license issued under this Ordinance 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.

**Section 350.04 Fees.** No license shall be issued under this Ordinance until the appropriate license fee shall be paid in full. The fee for a license under this Ordinance shall be as set by the City Council in a fee schedule and adjusted from time to time.

**Section 350.05 Basis for Denial of License.** The following shall be grounds for denying the issuance or renewal of a license under this Ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section:

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

**Section 350.06 Prohibited Sales.** It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine, except as may otherwise be provided in this Ordinance.
- C. 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, or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco related device between the licensee or the licensee's employee, and the customer.
- D. By means of loosies as defined in Section 200 of this Ordinance.
- E. Containing opium, morphine, jimsonweed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- F. By any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

**Section 350.07 Vending Machines.** It shall be unlawful for any person licensed under this Ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

**Section 350.08 Self-Service Sales.** It shall be unlawful for a licensee under this Ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by any means where by the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, or tobacco related devices at the time this Ordinance is adopted shall comply with this Section within ninety (90) days.

**Section 350.09 Responsibility.** All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

**Section 350.10 Compliance Checks and Inspections.** All licensed premises shall be open to inspection by the City police or other authorized City official during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco related devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes or required for the enforcement of a particular State or Federal law.

**Section 350.11 Other Illegal Acts.** Unless otherwise provided, the following acts shall be a violation of this Ordinance.

**Subd. 1 Illegal Sales.** It shall be a violation of this Ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor.

**Subd. 2 Illegal Possession.** It shall be a violation of this Ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

**Subd. 3 Illegal Use.** It shall be a violation of this Ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.

**Subd. 4 Illegal Procurement.** It shall be a violation of this Ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this Ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

**Subd. 5 Use of False Identification.** It shall be a violation of this Ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

**Section 350.12 Violations.**

**Subd. 1 Notice.** Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

**Subd. 2 Hearings.** If a person accused of violating this Ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

**Subd. 3 Hearing Officer.** A member of City Staff shall serve as hearing officer.

**Subd. 4 Decision.** If the hearing officer determines that a violation of this Ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 1300 of this Ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

**Subd. 5 Appeals.** Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred.

**Subd. 6 Misdemeanor Prosecution.** Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Ordinance. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

**Subd. 7 Continued Violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense

**Section 350.13 Penalties.**

**Subd. 1 Licensees and Employees.** Any licensee, and any employee of a licensee, found to have violated this Ordinance shall be charged an administrative fine of \$75 for a first violation of this Ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

**Subd. 2 Other Individuals.** Other individuals, other than minors regulated by subdivision 3 of this Subsection, found to be in violation of this Ordinance shall be charged an administrative fee of \$50.

**Subd. 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 charged an administrative fee of \$25 or perform 16 hours of community service.

**Subd. 4 Misdemeanor.** Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this Ordinance.

**Section 350.14 Exceptions and Defenses.** Nothing in this Ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this Ordinance for a person to have reasonably relied on proof of age as described by State law.

**Section 350.15 Severability and Savings Clause.** If any section or portion of this Ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this Ordinance.

**Section 360 - Bingo**

**360.01 Purpose.** The purpose of this Section shall be to closely regulate and control the conduct of the game of bingo and to prohibit commercialization of bingo, and to regulate lawful gambling within the City.

**360.02 Definitions.** The definitions of Minn. Stat. Chapter 349 shall hereby be adopted by reference and made applicable to this Section.

**360.03 License or Permit.** No bingo occasion shall be conducted except by an eligible organization which has secured a license for that purpose from the State, as provided in Minn. Stat. Chapter 349, unless the organization is exempt from State licensing requirements.

**360.04 Prizes.** Prizes for bingo operations shall not exceed the limits imposed by State law or the rules promulgated by the State Gaming Board.

**360.05 Inspection and Investigation.** Any City official or employee, having to perform with reference to a bingo license, and any police officer, may inspect and examine the bingo records of any licensed organization.

**360.06 Penalties.** Violation of any provision of this Section shall be a misdemeanor.

**Section 370 - Regulation of Lawful Gambling**

**370.01 Declaration of Policy - Purpose.** The City Council recognizes that though “lawful gambling,” as set forth in Minnesota Laws, may not appeal to all members of society, it is an activity that is engaged in by a significant portion of the population and the financial profits thereof without the aid of Minnesota Statutes may or may not be used to the benefit of society.

The City Council of the City of Big Lake further recognizes that most charitable organizations and their members provide a much needed and useful service to mankind and the City Council is especially appreciative of the goals and objectives of all of the charitable or non-profit organizations established or organized within the Big Lake community; the Council commends these organizations for their contribution to worthy causes within and without the Big Lake community and therefore, the Council supports the purposes for which Minnesota Laws were adopted.

The ability to obtain a license number under Minnesota Statutes to conduct lawful gambling in the City of Big Lake is a privilege granted by the State of Minnesota and the City of Big Lake and not a right guaranteed by the Constitution of the United States of America or the State of Minnesota. The City Council feels that there are many areas within the Big Lake community wherein the profits derived from lawful gambling within the City could well be spent to the benefit of the community; and therefore, requires a percentage of such funds to be used within the Big Lake community.

**370.02 Provisions of State Law Adopted.** Minnesota Statutes, as now exist or as are hereinafter amended, as well as the adopted rules of the Charitable Gambling Control Board, as now exist or as are hereinafter amended, are hereby adopted and made a part of this Ordinance as if fully set out herein.

**370.03 License Required.** No person or organization shall conduct lawful gambling as defined by the laws of the State of Minnesota without the required state license issued through the Charitable Gambling Control Board and as approved by the City of Big Lake under the terms of this Ordinance.

**370.04 Application for License.** Every application for a gambling license shall be verified and filed with the City Clerk and shall be in compliance with the statutes and rules governing same adopted by the State of Minnesota and the Charitable Gambling Control Board. All applicants shall release, acquit and forever discharge the City of Big Lake, its agents, successors and assigns, from any and all actions, causes of action or claims and demands on account of or in any way growing out of any and all known and unknown damages resulting from the granting or denial of the license and shall agree to indemnify and save and hold harmless said City of Big Lake.

**370.05 Investigation Fee.**

**Subd. 1 Requirement.** Any person or organization applying for or renewing a state license to conduct lawful gambling within the City shall submit to a background investigation conducted by the City. At the time that it files its application for a license with the Charitable Gambling Control Board, the person or organization shall:

- A. Complete an investigation form provided by the City.
- B. Furnish any additional information required by the City.
- C. Pay an investigation fee to the City at the time of application in the amount stated on the City’s Current Fee Schedule.

**Subd. 2 Exception.** No person or organization which is exempt from state license requirements is required to comply with these investigation requirements.

**370.06 Restrictions.**

**Subd. 1. Gambling Sites.** One (1) or more organizations may be issued a Premises Permit at any premise at which there is a gambling site. The City will give preference to local organizations. If more than one (1) organization is granted a Premises Permit, each organization must have separate designated lease spaces and must meet MN Statute requirements. All gambling operations conducted by a licensed organization shall be managed by an active member of said organization. All leases pertaining to lawful gambling shall state the hours of the day during which a licensee may conduct lawful gambling on said premises.

**Subd. 2. Local Organizations.** A local organization shall be defined to mean:

- A. A fraternal, religious or veterans affiliate of a national organization with a Big Lake Chapter that has operated in the City for the most recent three (3) years and which conducts regular meetings or activities in the City at least six (6) times a year; or
- B. A fraternal, religious or veterans organization at least forty percent (40%) of whose active members are residents of Big Lake, that has operated in the City for the most recent three (3) years, and which conducts regular meetings or activities in the City at least six (6) time a year; or
- C. An organization that for the most recent three (3) years has had a bona fide office open in the City at least ten (10) hours a week; or
- D. A youth focused organization, if at least ten percent (10%) of the youth are Big Lake residents.

**Subd. 3. Trade Area.** Each organization conducting lawful gambling within the City must expend 75% of its lawful purpose expenditures on lawful purposes conducted or located within the trade area of the City, which shall include the corporate limits of the City and Big Lake Township. This section applies only to lawful purpose expenditures of gross profits derived from lawful gambling conducted at premises within the City. Annually, each organization must file with the City a report prepared by an independent certified public accountant documenting compliance with this Section. In addition, each organization shall submit a report to the City each January listing all lawful purpose expenditures from January 1 through December 31 of the preceding year. The report shall identify the name of the entity to which the check was written, the City location of the recipient and the amount of the donation.

**370.07 Reports.** Each licensee shall quarterly, within thirty (30) days after the close of a quarter of a year, file a report with the City Clerk if such form is prescribed by the City of Big Lake.

**370.08 Suspension, Revocation, Non-Renewal of Licenses.** If any person or organization shall fail to make the payments required by this Ordinance, fail to provide the City Clerk with reports as required by this Ordinance, or violate this ordinance in any other manner, such violation shall be grounds for the City to recommend to the Charitable Gambling Control Board that the gambling license for such organization be suspended, revoked or not renewed.

**370.09 Age Restriction.** No person under the age of eighteen (18) years shall conduct or participate in lawful gambling. “Participate” shall be defined to include but shall not be limited to playing the games of bingo, raffles, paddlewheels, tip boards or pull tabs.

**Section 380 - Adult Use Businesses**

**380.01 License Required.** No person, firm, partnership, or corporation shall operate an adult use, either principal or accessory, without having first secured a license as provided in this Section. Licenses shall be one of two types:

- A. Adult Use/Accessory
- B. Adult Use/Principal

**380.02 Application.** In addition to such information the City Council may require, the application shall also include:

- A. If the applicant is an individual, the name, residence, phone number, and birthday of the applicant. If the applicant is a partnership, the name, residence, phone number, and birthdate of each general and limited partner. If the applicant is a corporation, the names, residences, phone numbers, and birth dates of all those persons holding more than five (5) percent of the issued and outstanding stock of the corporation.
- B. The name, address, phone number, and birthdate of the manager of the operation, if different from the owners.
- C. The premises where the adult use is to be located within the entire building.
- D. A statement detailing any felony convictions by the applicant and whether or not the applicant has ever applied for or held a license to operate a similar type of business in other communities. In the case of a corporation, a statement detailing any felony convictions by the owners of more than five (5) percent of the issued and outstanding stock of the corporation, and whether or not those owners have ever applied for or held a license to operate a similar type of business in other communities.
- E. The activities and types of business to be conducted.
- F. The hours of operation.
- G. The provisions made to restrict access by minors.
- H. A building plan of the premises detailing all internal operations and activities.

**380.03 License Fees.** Each application for a license shall be submitted to the City Administrator and payment of the fee as established in the fee schedule shall be made to the City of Big Lake. Each application for a license shall be accompanied by payment in full of the required fee for the license 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 prorated fee. In computing the fee, any unexpired fraction of a month shall be counted as one (1) month.. All fees shall be paid into the general fund. Upon rejection of any application for a license, the City shall refund the amount paid except for that cost to investigate the applicant.

No part of the fee paid for any license issued under this Section shall be refunded except in the following instances upon application to the City Administrator within thirty (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 no less than one (1) month before expiration of the license because of:

- A. Destruction or damage of the licensed premises by fire or other catastrophe.
- B. If the licensee is an individual, the licensee's disabling illness. If the licensee is a partnership, the disabling illness of any general partner. If the licensee is a corporation, the disabling illness of any shareholder or shareholders who in the aggregate hold fifty (50) percent or more of the issued and outstanding shares of the corporation.
- C. If the licensee is an individual, the licensee's death. If the licensee is a partnership, the death of any general partner. If the licensee is a corporation, the death of any shareholder or shareholders who in the aggregate hold fifty (50) percent or more of the issued and outstanding shares of the corporation.
- D. A change in the legal status making it unlawful for the licensed business to continue.

**380.04 Term.** All licenses shall expire on the last day of December in each year.

**380.05 Granting of License.** The City Council shall investigate all facts set out in the application and hold a public hearing within forty-five (45) days after the City Administrator receives the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and administrative hearing, the City Council shall grant or refuse the application. The City shall grant or refuse the application within forty-five (45) days after the public hearing has closed.

**380.06 Transfers.** 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 shall be transferred to another premise without the approval of the City Council. If the licensee is a partnership or corporation, a change in the identity of any of the principals of the partnership or corporation shall be deemed a transfer of the license. All adult uses existing at the time of the enactment of this Code shall be required to obtain an annual license.

**380.07 Persons Ineligible for License.** No license shall be granted to or held by any person:

- A. Under eighteen (18) years of age, unless alcohol is to be served on the premises in which case the minimum age shall be twenty-one (21) years .
- B. Who has been convicted of any felony relating to sexual misconduct or otherwise relating to adult use business and adult use business licenses, unless such person shall have shown sufficient rehabilitation in accordance with Minnesota Statutes Section 364.03, Subd. 3.
- C. Who is not the proprietor of the establishment for which the license is issued.

**380.08 Places Ineligible for License.**

- A. No license shall be granted for adult uses on any premises where a licensee has been convicted of a violation of this Chapter, or where any license hereunder has been revoked for cause, until one (1) year has elapsed after the conviction or revocation.
- B. Except for uses lawfully existing at the time of this Code adoption, no license shall be granted for any adult use which is not in compliance with the City's zoning regulations.

**380.09 Conditions of License.**

- A. Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of this Chapter, and of any applicable Sections of the Code of the City of Big Lake or State law.
- B. All licensed premises shall have the license posted in a conspicuous place at all times.
- C. In the case of an adult use/principal, no minor shall be permitted on the licensed premises unless accompanied by his/ her parent or legal guardian.
- D. Any designated inspection officer of the City of Big Lake shall have the unqualified right to enter, inspect, and search the premises of a licensee during business hours.
- E. Every licensee shall be responsible for the conduct of his/her place of business and shall maintain conditions of order.

**380.10 Violations and Penalties.**

**Subd. 1 Misdemeanor.** Any person violating any provision of this Section shall be guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by State Law.

**Subd. 2 Suspension or Revocation.** Any violation of this Section shall be a basis for the suspension or revocation of any license granted hereunder. In the event that the City Council proposes to revoke or suspend the license, the licensee shall be notified in writing of the basis for the proposed revocation or suspension. The Council shall hold a public hearing for the purpose of determining whether to revoke or suspend the license, which public hearing shall be within forty-five (45) days of the date of the notice. The City Council shall determine whether to suspend or revoke the license within forty-five (45) days after the close of the hearing and shall notify the licensee of its decision within that forty-five (45) day period.

**380.11 Right of Appeal.** Any applicant whose application for an adult use license is denied, or any licensee whose license is revoked or suspended, may appeal the denial, revocation, or suspension to the District Court of Sherburne County within thirty (30) days after the denial, revocation, or suspension of the license.

**Section 390 - Animals**

**390.01 Definitions.** As used in this Section, unless the context otherwise indicates, the following words shall be defined to mean:

**Subd. 1 Animal.** "Animal" shall mean any mammal, reptile, amphibian, fish, bird (including all fowl and poultry) or other member commonly accepted as a part of the animal kingdom. Animals shall be classified as follows:

A. Domestic. "Domestic animals" shall mean those animals commonly accepted as domesticated household pets. Unless otherwise defined, such animals shall include dogs, cats, pot-bellied pigs, caged birds, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.

B. Non-Domestic. "Non-Domestic animals" shall mean those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety, and welfare of people. Unless otherwise defined, such animals shall include:

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

C. Farm. "Farm animals" shall mean those animals commonly associated with a farm or performing work in an agricultural setting. Unless otherwise defined, such animals shall include members of the equestrian family (horses, mules), bovine family (cows, bulls), sheep, poultry (chickens, turkeys), fowl (duck, geese), swine except for pot-bellied pigs, goats, bees, and other animals associated with a farm, ranch, or stables.

**Subd. 2 Cat.** "Cat" shall be intended to mean both the male and female of the felidae species commonly accepted as domesticated household pets.

**Subd. 3 Dog.** "Dog" shall be intended to mean both the male and female of the canine species commonly accepted as domesticated household pets, and other domesticated animals of a dog kind.

**Subd. 4 Owner.** "Owner" shall be intended to mean any person or persons, firm, association or corporation owning, keeping, or harboring an animal.

**Subd. 5 At Large.** "At Large" shall be intended to mean off the premises of the owner and not under the custody and control of the owner or other person, either by leash, cord, chain, or otherwise restrained or confined.

**Subd. 6 Commercial Kennel.** "Commercial Kennel" means any place where dogs or other animals are kept where the business of raising, selling, boarding, breeding, showing, treating, or grooming of dogs or other animals is conducted.

**Subd. 7 Falconry Permit.** "Falconry Permit" means a valid falconry permit issued by the Minnesota Department of Natural Resources.

### 390.02 Dogs and Cats.

**Subd. 1 Running at Large Prohibited.** It shall be unlawful for any person who owns, harbors, or keeps a dog or cat, or the parents or the guardians of any such person under 18 years of age, to allow such dog or cat to run at large. Dogs or cats on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person so as to be effectively restrained by command as by leash, shall be permitted in streets or on public land unless the City has posted an area with signs reading "Dogs or Cats Prohibited".

#### **Subd. 2 Vaccination.**

A. All dogs and cats kept harbored, maintained, or transported within the City shall be vaccinated at least once every three years by a licensed veterinarian for:

1. Rabies - with a live modified vaccine; and
2. Distemper

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

### **390.03 Pot-bellied Pigs.**

- A. A person may keep no more than one-pot-bellied pig, which must be kept solely for the private use and enjoyment of the person.
- B. A pot-bellied pig may be kept only by residents of single family detached dwellings.
- C. All male pot-bellied pigs must be neutered by the age of three months, and all female pot-bellied pigs must be neutered by the age of one year. Upon request by the City, the owner must present to the City, a certificate executed by a licensed doctor of veterinary medicine showing that the animal has been neutered in a timely manner, or that the animal has not reached the age for required neutering.
- D. It shall be unlawful for any person who owns, harbors, or keeps a pot-bellied pig, or the parents or the guardians of any such person under 18 years of age, to allow such pig to run at large. Pigs on a leash and accompanied by a responsible person or accompanied by and under the control and direction of a responsible person so as to be effectively restrained by command as by leash, shall be permitted in streets or on public land unless the City has posted an area with signs reading "Dogs or Cats Prohibited". Although said signs may not mention pigs specifically, they are prohibited as well.
- E. All other provisions of section 390 of the city code relating to animals apply to pot-bellied pigs. Pot-bellied pigs will be considered along with any other animals when determining whether a private kennel license is required or permitted.

### **390.04 Chickens**

- A. This set of rules shall be in effect for residentially zoned properties throughout the City except that properties in the AG zoning district which are ten (10) acres or larger may deviate from these rules and may instead keep chickens in a manner consistent with the Code's rules for farm animals.
- B. No more than six (6) chicken hens (females) are permitted to be maintained on one property.
- C. The keeping of roosters, defined as male chickens, and crowing hens is prohibited.

- D. Chickens shall not be permitted on residential properties which contain three (3) or more dwelling units.
- E. All persons keeping or maintaining chickens must have a chicken coop to house the chickens and a chicken run where chickens may roam unsupervised. The coop and run must meet the following minimum requirements:
  - 1. Coop requirements are as follows:
    - a. “Coop” is defined as a structure for the keeping or housing of chickens, as permitted by this section.
    - b. The coop is considered a detached accessory building and must comply with all provisions of City Code Chapter 10 (Zoning), including design and exterior material requirements, unless specifically exempted from a zoning provision as part of this section.
    - c. A zoning permit is required for any detached accessory building which is not large enough to require a building permit, including any chicken coop.
    - d. The maximum height of a chicken coop shall be six (6) feet.
    - e. Coop shall be fully enclosed to prevent any escape by chickens or entrance by migratory birds or predators.
  - 2. Run requirements are as follows:
    - a. “Run” is defined as a fully-enclosed and covered area attached to a coop where chickens can roam unsupervised.
    - b. Fence around the run enclosure shall be securely constructed with mesh type material.
    - c. The maximum height of a run shall be six (6) feet.
    - d. Protective overhead netting or roofing with an approved material is required to prevent predators.
  - 3. The coop shall be counted as a detached accessory building when calculating the total number of permitted detached accessory buildings and the allowance for total square footage of detached accessory buildings EXCEPT that a property may be permitted one (1) coop of thirty (30) square feet or less which shall not count towards the total number of permitted accessory buildings or the allowance for total square footage of accessory buildings.
  - 4. Coops and hard-roofed runs shall be considered an impervious surface when calculating impervious surface coverage of a property EXCEPT that coops and hard-roofed runs which total thirty (30) square feet or less shall not be considered an impervious surface.
  - 5. Coops and runs are allowed only in a rear yard.
  - 6. Coops and runs must be located at least six (6) feet away from the primary structure on the property

7. Coops and runs must maintain a minimum setback of ten feet from all property lines and must maintain a minimum setback of 30 feet from all inhabited structures on adjacent properties.
  8. Coops and runs located in the Shoreland Management Overlay District must meet the required structure setback from the ordinary high-water level of any lake or river.
  9. Coops and runs located near wetlands must comply with wetland setback/buffer requirements.
- F. Food material must be stored in a closed metal container to avoid pests.
- G. The enclosure and surrounding grounds shall be maintained in a clean and sanitary condition and in good repair. Flies, rodents and noxious odors shall be controlled.
- H. Manure shall not be permitted to accumulate on the property. Manure shall be removed at least once per week, but while on the property shall be properly stored.
- I. Chickens must not be housed in a residential house or in an attached or detached garage, except chickens under the age of 6 weeks for brooding purposes.
- J. Chickens must not be allowed to free range unless the yard is completely fenced in. Chickens are not allowed to roam at large.
- K. Slaughtering and processing of chickens on the property is prohibited.
- L. Dead chickens must be disposed of according to the Minnesota Board of Animal Health rules which require chicken carcasses to be disposed of as soon as possible after death, usually within 48 to 72 hours. Acceptable methods of chicken carcass disposal include burial or these off-site options: incineration, rendering, or composting.
- M. The City reserves the right to require property owners to eliminate all fowl and poultry within City limits if a pandemic regarding fowl and poultry is declared.

**390.05 Non-Domestic Animals.** It shall be illegal for any person to own, possess, harbor, or offer for sale, any non-domestic animal within the City limits. Any owner of such an animal at the time of adoption of this Code shall have thirty days in which to remove the animal from the City after which time the City may impound the animal as provided for in this Section. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled, raptors possessed by an individual holding a falconry permit, and for those animals brought into the City as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

**390.06 Farm Animals.** Farm animals shall only be kept in an agricultural district of the City, or on a residential lot of at least ten (10) acres in size provided that no animal shelter shall be within three hundred (300) feet of an adjoining piece of property. An exception shall be made to this Subsection for chickens kept on residentially zoned properties in accordance with this ordinance and those animals brought into the City as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

**390.07 Limit on Number of Domesticated Animals.** Because the keeping of any combination of more than three dogs, cats, or any other domesticated animals allowed outdoors, on the same residential premises, could be subject to abuse and has the potential to cause discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of any combination of more than three dogs, cats, or any other domesticated animals allowed outdoors, over the age of six months, shall be declared a nuisance and is not allowed within the City limits.

**390.08 Nuisances.**

**Subd. 1 Habitual Barking.** It shall be unlawful for any person to keep or harbor a dog which habitually barks or cries. Habitual barking shall be defined as barking for repeated intervals of at least five minutes with less than one minute of interruption. Such barking must also be audible off of the owner's or caretaker's premises.

**Subd. 2 Damage to Property.** It shall be unlawful for any owner to permit their dog or other animal to damage any lawn, garden, or other property. Any animal covered by this subdivision may be impounded as provided in this Section or a complaint may be issued by anyone aggrieved by a dog under this Section, against the owner of the animal for prosecution under this Section.

**Subd. 3 Animal Waste.** All animal waste shall be removed with sufficient frequency to avoid any nuisance from odors, flies, or other similar problems.

**Subd. 4 Other.** Any animals kept contrary to this Section are hereby declared a public nuisance and may be abated according to the law.

**390.09 Animals Presenting a Danger to Health and Safety of City.** If, in the reasonable belief of any person or police officer an animal presents an immediate danger to the health and safety of any person, the officer may painlessly kill the animal. Otherwise the person or officer may apprehend the animal and deliver it to the pound for confinement. In such a case, the owner or keeper of the animal shall be liable for the cost of maintenance provided, and if the animal is destroyed, a charge to dispose of the animal, as set in the fee schedule. If the animal is found not to be a danger to the health and safety of the City, it may be released to the owner or keeper in accordance with this Section. The animal may be released to other persons in accordance with this Section.

**390.10 Diseased Animals.**

**Subd. 1 Running at Large.** No person shall keep or allow to be kept on his or her premises, or on premises occupied by them, nor permit to run at large in the City, any animal which is diseased so as to be a danger to the health and safety of any person, even though the animal be properly licensed under this Section.

**Subd. 2 Confinement.** Any animal reasonably suspected of being diseased and presenting a threat to the health and safety of the public, may be apprehended and confined in the pound by any person or officer. The officer shall have a qualified veterinarian examine the animal. If the animal is found to be diseased in such a manner so as to be a danger to the health and safety of the City, the officer shall cause such animal to be painlessly killed and shall properly dispose of the remains. The owner or keeper of the animal killed under this Section shall be liable for a fine to cover the cost of disposing of the animal, and a per-day maintenance charge and the costs of any veterinarian examinations. The amount of the fine and charges shall be as set in the fee schedule.

**Subd. 3 Release.** If the animal, upon examination, is not found to be diseased within the meaning of this Section, then the animal shall be released to the owner or keeper free of charge.

**390.11 Basic Care.** All animals shall receive from their owners or keepers a kind treatment, clean and sanitary shelter from the elements and sufficient food and water for their comfort. Any person not treating their pet in such a humane manner will be subject to the penalties provided in this Section.

**390.12 Enforcing Officer.** The Council is hereby authorized to appoint any police officer(s) to enforce the provisions of this Section. In the officer's duty of enforcing the provisions of this Section, he or she may from time to time, with the consent of the Council, designate certain assistants.

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

**390.14 Impounding.**

**Subd. 1 Running at Large.** Any police officer may impound any dog found unlicensed or any animal found running at large and shall give notice of the impounding to the owner of such dog or other animal, if known. In case the owner is unknown, the officer shall post notice at the City office that if the dog or other animal is not claimed within five regular business days of the posting of the notice, it will be sold or otherwise disposed of. Except as otherwise provided in this Section, it shall be unlawful to kill, destroy, or otherwise cause injury to any animal, including dogs and cats running at large.

**Subd. 2 Biting Animals.** Any animal that has not been inoculated by a live modified rabies vaccine and which has bitten any person, wherein the skin has been punctured or the services of a doctor are required, shall be confined in the City Pound for a period of not less than ten days,

at the expense of the owner. The animal may be released at the end of such time if healthy and free from symptoms of rabies, and by the payment of all costs by the owner. However, if the owner of the animal shall elect immediately upon receipt of notice of need for such confinement by the officer to voluntarily and immediately confine the animal for the required period of time in a veterinary hospital of the owner's choosing, not outside of Sherburne county, and provide immediate proof of such confinement in such manner as may be required, the owner may do so. If, however, the animal has been inoculated with a live modified rabies vaccine and the owner has proof of the vaccination by a certificate from a licensed veterinarian, the owner may confine the dog or other animal to the owner's property.

**Subd. 3 Reclaiming.** All animals conveyed to the pound shall be kept, with kind treatment and sufficient food and water for their comfort, at least five regular business days, unless sooner reclaimed by their owners or keepers as provided by this Section. In case the owner or keeper shall desire to reclaim the animal from the pound, the following shall be required, unless otherwise provided for in this Code:

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

**Subd. 4 Unclaimed Animals.** At the expiration of five regular business days from the time any animal is impounded, if the animal has not been reclaimed in accordance with the provisions of this Section, the officer appointed to enforce this Section may let any person claim the animal by complying with all provisions in this Section, or the officer may sell the animal to the University of Minnesota, or cause the animal to be painlessly killed and shall properly dispose of the remains thereof. Any monies collected under this Section shall be payable to the City Administrator.

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

**390.16 Violations and Penalties.**

**Subd. 1 Separate Offenses.** Each day a violation of this Chapter is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under this Section.

**Subd. 2 Misdemeanor.** Violation of this Section shall constitute a misdemeanor.

**Section 391 - Dangerous Dogs and Potentially Dangerous Dogs**

**391.01 Purpose and Intent.**

It is the intent of the City to protect the public against the health and safety risks posed by dangerous and potentially dangerous dogs. By their very nature, dogs classified as “dangerous” or “potentially dangerous” pose a direct threat to the people and other animals that live in the same community or may otherwise come into contact with them. The intent of this Chapter is to govern and control dangerous and potentially dangerous dogs located within the City. This Chapter does not regulate, govern, or control dogs not considered dangerous or potentially dangerous, or otherwise impact the regulation and control of other animals, whether wild or domestic.

**391.02 Definitions.**

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

**Subd. 1 Animal Control Authority.** "Animal Control Authority" shall mean the Big Lake Police Department.

**Subd. 2 Dangerous dog.** “Dangerous dog” shall mean any dog that has:

- A. Without provocation, inflicted death, great bodily harm, substantial bodily harm, or permanent disfigurement to any person on public or private property; or
- B. Without provocation, engaged in any attack on any person under circumstances which indicated danger to personal safety; or
- C. Killed a domestic animal while off the owner’s property; or
- D. Bitten one (1) or more persons on two (2) or more separate occasions without provocation; or
- E. Been found to be potentially dangerous, and after the owner received notice or personal knowledge that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of a human being or domestic animal; or
- F. Been or will be used, trained, or encouraged to fight with another animal; or whose owner has in custody or possession any training apparatus, paraphernalia or drugs used to prepare such dog to be fought with another animal.

**Subd. 3 Great bodily harm.** “Great bodily harm” shall have the meaning given it under Minnesota Statutes Section 609.02, Subdivision 8.

**Subd. 4 Hearing Officer.** “Impartial Hearing Officer” shall mean the City Administrator or designee.

**Subd. 5 Owner.** "Owner" shall mean any person, firm, corporation, association, department, or organization possessing, harboring, keeping, having an interest in, or having care, custody, or control of a dog. Any person keeping or harboring a dog for five (5) consecutive days shall, for the purposes of this Chapter, be deemed to be an owner thereof.

**Subd. 6 Potentially dangerous dog.** "Potentially dangerous dog" shall mean any dog that has:

- A. When unprovoked, bitten a human or domestic animal on public or private property; or
- B. When unprovoked, chased or approached a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than upon the dog owner's property, in an apparent attitude of attack; or
- C. A known history or propensity, tendency, or disposition to attack while unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

**Subd. 7 Proper enclosure.** "Proper enclosure" shall mean securely confined indoors, or in a securely enclosed and locked pen or structure outdoors, suitable to prevent the animal from escaping and providing the dog protection from the elements. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the dog to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only obstacles that prevent the dog from exiting. Such enclosure shall not allow the egress of the animal in any manner without human assistance.

A pen or kennel, in order to qualify as a proper enclosure, shall meet the following minimum specifications:

- A. The overall floor size shall have a minimum area of thirty-two square feet (32 sq. ft.);
- B. Sidewalls shall have a minimum height of five feet (5 ft.) and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches (2 in.), support posts shall be one and one-quarter-inch (1¼ in.) or larger steel pipe buried in the ground eighteen inches (18 in.) or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of eighteen inches (18 in.) into the ground;
- C. A cover over the entire pen or kennel shall be provided, constructed of the same gauge wire or heavier as the sidewalls and shall also have no openings in the wire greater than two inches (2 in.); and

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D. An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two (2) inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

**Subd. 8. Provocation.** “Provocation” means an act that an adult could reasonably expect may cause a dog to attack or bite.

**Subd. 9 Substantial Bodily Harm.** “Substantial bodily harm” shall have the meaning given to it under Minnesota Statutes Section 609.02, Subdivision 7a.

**Subd. 10 Unprovoked.** “Unprovoked” shall mean the condition in which the animal is not purposely excited, stimulated, agitated or disturbed. It shall be a rebuttable presumption that any attack on a child fourteen (14) years of age or younger shall be considered to be unprovoked unless the child is engaged in the commission of a crime or illegal activity, including activities classified under Minnesota Statute Chapter 343 as cruelty to animals.

**391.03 Law Enforcement; exemption.** The provisions of this Chapter do not apply to dangerous dogs used by law enforcement officials for police work.

**391.04 Dangerous Dogs, Designation.**

**Subd. 1 Designation.** The Animal Control Authority or impartial hearing officer shall designate any dog as a dangerous dog upon receiving evidence that the dog meets any of the criteria in Section 391.02, Subd. 2 of this Chapter.

**Subd. 2 Notice.**

A. Upon a designation that a dog is dangerous, the Animal Control Authority shall provide a written Notice of Dangerous Dog to the owner of record or, if none, to any owner of such dog by delivering or mailing it to the owner of the dog, or by posting a copy of it at the place where the dog is kept, or by delivering it to a person residing on the property, and telephoning, if possible. The notice shall include the following:

1. A description of the dog deemed to be dangerous;
2. The authority for and purpose of the dangerous dog declaration and seizure, if applicable;
3. The time, place, and circumstances under which the dog was declared dangerous;
4. The contact person where the dog is kept, if the dog was seized;
5. The identity of the official who made the determination;

6. The restrictions imposed upon the owner of a dangerous dog under this Chapter.
7. A statement that the owner of the dog may request a hearing concerning the dangerous dog declaration and, if applicable, prior potentially dangerous dog declarations for the dog, and that failure to do so within fourteen (14) days of the notice will terminate the owner’s right to a hearing under this section;
8. A statement that if an appeal request is made within fourteen (14) days of the notice, the owner must immediately comply with the requirements of Sections 391.06, Subd. 2 and 391.05, Subd. 8 and until such time as the hearing officer issues an opinion;
9. A statement that if the impartial hearing officer affirms the dangerous dog declaration, the owner will have fourteen (14) days from receipt of that decision to comply with all other requirements of Sections 391.05 and 396.06;
10. A form to request a hearing under this Section; and
11. A statement that all actual costs of the care, keeping, and disposition of the dog are the responsibility of the person claiming an interest in the dog, except to the extent that a court or impartial hearing officer finds that the seizure or impoundment was not substantially justified by law.

B. If the owner does not request a hearing within fourteen (14) days, the designation of dangerous dog as issued in the written Notice of Dangerous Dog will stand, and the owner will be subject to all restrictions and requirements as set forth in the Notice by the Animal Control Authority.

**Subd. 3 Hearing.**

A. If an owner, within fourteen (14) days of the date of the Notice, requests a hearing for determination as to the dangerous nature of the dog, the hearing shall be held before an impartial hearing officer not more than fourteen (14) days after the Animal Control Authority is notified of the owner’s request for a hearing. Any dog owner who requests such a hearing is liable to the City for all costs and expenses related to the hearing.

B. Pending the hearing, the dog may be seized and kept in the custody of the Animal Control Authority unless the owner keeps the dog in a proper enclosure as defined in Section 391.02, Subd. 7 and otherwise demonstrates to the Animal Control Authority that the dog, under its present circumstances does not present an unreasonable risk of harm to persons or other domestic animals.

C. The records of the Animal Control Authority, any police reports relating to an attack or bite, medical records, and all reliable hearsay shall be admissible for consideration by the

hearing officer without further foundation. At the hearing, both the owner and the Animal Control Authority may present the testimony of live witnesses, cross-examine witnesses, and present documentary evidence.

D. After considering all evidence pertaining to the dog, the impartial hearing officer shall issue a written decision that rejects or upholds the determination within ten (10) days of the hearing. The decision must be delivered to the dog's owner by hand delivery or registered mail as soon as practical and a copy must be provided to the Animal Control Authority.

E. The impartial hearing officer may order the Animal Control Authority to take the dog into custody, if the dog is not currently in custody. Any person who fails or refuses to release a dog to the Animal Control Authority upon demand, or after it has been found by a hearing officer to be dangerous and ordered into custody, shall be guilty of a misdemeanor.

F. Authority to order destruction. The impartial hearing officer, upon finding that a dog is dangerous hereunder, is authorized to order, as part of the disposition of the case, that the dog be destroyed based on a written order containing findings of fact establishing that the dog:

1. The dog is a dangerous dog, as defined by Section 391.02, Subd. 2;
2. The owner of the dog has demonstrated an inability or unwillingness to sufficiently control the dog in order to prevent injury to persons or other animals; and
3. The owner refuses to provide proof of the liability insurance for the dog as required by Section 391.06, Subd. 3(C).

G. The decision of the impartial hearing examiner is final without any further right of administrative appeal. An aggrieved party may obtain review thereof by petitioning the Minnesota Court of Appeals for a Writ of Certiorari not more than thirty (30) days after notice of the decision.

H. In the event that the dangerous dog declaration is upheld by the impartial hearing officer, actual expenses of the hearing up to a maximum of \$1,000 will be the responsibility of the dog's owner.

I. The actual costs of care, keeping, and disposal of the dog are the responsibility of the dog's owner, except to the extent that a court or impartial hearing officer finds that the seizure or impoundment was not substantially justified by law. The costs must be paid in full, or a mutually satisfactory arrangement for payment must be made between the City and the person claiming an interest in the dog, before the dog is returned to the person.

**Subd. 4 Exemption.** A dog may not be declared dangerous if the threat, injury, or damage was sustained by a person who:

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- A. Was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the dog; or
- B. Was provoking, tormenting, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused, or assaulted the dog; or
- C. Was committing or attempting to commit a crime against the owner or the owner's property.

**Subd. 5 Review of Dangerous Dog Designation.** Beginning six (6) months after a dog is declared a dangerous dog an owner may request annually that the Animal Control Authority review the designation. The owner must provide evidence that the dog's behavior has changed due to the dog's age, sterilization, environment, completion of obedience training that includes modification of aggressive behavior, or other factors. If the Animal Control Authority finds sufficient evidence that the dog's behavior has changed, the Authority may rescind the dangerous dog designation.

**391.05 Dangerous Dogs; Registration.**

**Subd. 1 Requirements.** For any dog determined or declared to be dangerous by operation of this Chapter, state statute, court order, ordinance or regulation from another jurisdiction, or valid declaration from an Animal Control Authority, the dog shall, at all times during the dog's life, be registered as a dangerous dog pursuant to this Section or state law.

**Subd. 2 Registration.** No person may own or possess a dangerous dog in this City unless the dog is registered as a dangerous dog. All dogs declared dangerous by the Animal Control Authority or impartial hearing officer, as applicable, shall be registered as a dangerous dog with the Animal Control Authority within fourteen (14) days after the owner has notice that the dog is designated dangerous.

**Subd. 3 Registration requirements.** The Animal Control Authority shall issue a Certificate of Registration to the owner of a dangerous dog only if the owner presents sufficient evidence that all of the following are met:

- A. The owner provides and maintains a proper enclosure for the dangerous dog, as defined in Section 391.02, Subd. 7; and
- B. The owner posts clearly visible warning signs, available from the Animal Control Authority, that there is a dangerous dog on the property, including a warning symbol to inform children. The City may charge the owner a reasonable fee to cover its administrative costs and cost of the warning symbol; and
- C. The owner provides, and annually shows proof of, public liability insurance pre-paid in full in the minimum amount of five-hundred thousand dollars (\$500,000.00) per person

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and one-million dollars (\$1,000,000.00) per incident, payable to any person or persons injured by the dangerous dog, or a policy of liability insurance issued by an insurance company authorized to conduct business in this state in the amount of at least five-hundred thousand dollars (\$500,000.00) per person and one-million dollars (\$1,000,000.00) per incident insuring the owner for any personal injuries inflicted by the dangerous dog; and

D. The owner pays the annual registration fee set by City Council Ordinance; and

E. The owner has implanted an identification microchip in the dog as required under Section 391.09.

**Subd. 4 Release.** If a dangerous dog was impounded by the Animal Control Authority, or upon order of an impartial hearing officer, the dog shall not be released until the owner demonstrates to the Animal Control Authority compliance with all applicable requirements of this Chapter. The owner shall have fourteen (14) days to comply with all requirements. The owner must pay the City for all costs incurred in the seizure and boarding of the dog prior to its return.

**Subd. 5 Revocation.**

A. Any Certificate of Registration for a dangerous dog may be revoked, following hearing, if the owner fails to maintain compliance with any registration requirement, or fails to keep or maintain the dangerous dog as required by any provision of this Chapter or applicable state law. The provisions of Sections 391.10 and 391.11, applicable to the seizure and disposition of dogs, shall apply.

B. The Animal Control Authority shall serve upon the owner a written Notice setting forth the alleged reasons why the dog is not being kept in conformance with this Chapter, and shall also notify the owner of the date, time, and location of the hearing. Any hearing to revoke a Certificate of Registration shall be held before a hearing officer within twenty (20) days of the date of the Notice, and shall comply with all the requirements as set forth in Section 391.04, Subd. 3.

C. If a dangerous dog Certificate of Registration is revoked following hearing, the hearing officer shall order the dog disposed of immediately or, in the alternative, permit the owner a reasonable time period, not to exceed thirty (30) days, to reclaim the dog if the owner is in compliance with all registration requirements.

**Subd. 6 Registration renewal.** An owner of a dangerous dog shall renew the Certificate of Registration annually until the dog is deceased.

**Subd. 7 Death or relocation of dangerous dog.** An owner of a dangerous dog shall notify the Animal Control Authority, in writing, of the death of the dog, or if the dog relocates or transfers out of the City to a new location or where the dog will reside within 30 days of the death or transfer. An owner shall, if requested by the Animal Control Authority, execute an affidavit, under oath and penalty of perjury, setting forth either the circumstances of the dog's death and disposition, or the

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complete name, address, and telephone number of the person to whom the dog was transferred or the address where the dog has been relocated.

**Subd. 8 Sale or transfer of dangerous dogs.** A person who sells or transfers ownership or control of a dangerous dog must notify any potential purchaser or transferee, prior to the consummation of the transaction, that the dog was previously designated as dangerous. The current owner must also notify the Animal Control Authority, in writing, of the transfer of ownership and provide the Animal Control Authority with the new owner's name, address, and telephone number.

### **391.06 Dangerous Dogs; Requirements.**

**Subd. 1 Requirements.** For any dog declared dangerous by operation of this Chapter, state statute, court order, an ordinance or regulation from another jurisdiction, or by operation of a declaration by an Animal Control Authority, the owner, in addition to complying with all the registration requirements set forth under Section 391.05, shall keep and maintain the dog pursuant to all requirements of this Chapter.

**Subd. 2 Restraint.** An owner of a dangerous dog shall keep the dog, while on the owner's property, in a proper enclosure as defined by Section 391.02, Subd. 7. The dog shall, at all times, be kept in such proper enclosure unless the dog is, at any and all times the dog is outside a proper enclosure, muzzled and restrained by a substantial chain or leash not to exceed six (6) feet in length and under the physical restraint of a responsible person eighteen (18) years of age or older. The muzzle, chain, and leash must all be of such a design, manufacture, and maintained in a condition that will prevent the dog from biting any person or animal, but that will not cause injury to the dog or interfere with its vision or respiration.

**Subd. 3 Dog Sterilized.** The owner of a dangerous dog shall have the dog sterilized within thirty (30) days after the owner has received a Notice of Dangerous Dog.

**Subd. 4 Leased premises.** A person who owns a dangerous or potentially dangerous dog and who rents property from another where the dog will reside shall disclose to the property owner prior to when the dog begins to reside on the property, or prior to entering the lease agreement, and at the time of any lease renewal, that the person owns a dangerous dog that will reside at the property.

**Subd. 5 Tag.** A dangerous dog registered under this Section shall have a standardized, easily identifiable tag identifying the dog as dangerous and containing the uniform dangerous dog symbol affixed to the dog's collar at all times.

**Subd. 6 Property inspection.** The owner of a dangerous dog shall permit the Animal Control Authority to enter the property where a dangerous dog is kept or located, at all hours reasonable under the circumstances to inspect to ensure compliance with the provisions of this Chapter, applicable state statutes, order from a hearing officer, or directive from the Animal Control Authority. The failure of an owner to permit such inspection is, by itself, a ground to immediately seize the dog pursuant to Section 391.10 and revoke the dangerous dog registration pursuant to Section 391.05, Subd. 7.

**Subd. 7 Review.** If, in reviewing the conditions for keeping a dangerous dog there have been no ordinance violations for a period of two (2) years, the Animal Control Authority or impartial hearing officer may use discretion in determining whether the conditions set forth above are still required.

**391.07 Potentially Dangerous Dogs; Designation.**

**Subd. 1 Designation.** The Animal Control Authority or impartial hearing officer shall designate any dog as a potentially dangerous dog upon receiving evidence that the animal meets any of the criteria in Section 391.02, Subd. 6.

**Subd. 2 Notice.**

A. Upon a designation that a dog is potentially dangerous, the Animal Control Authority shall provide a written Notice of Potentially Dangerous Dog to the owner of record or, if none, to any owner of such dog by delivering or mailing it to the owner of the dog, or by posting a copy of it at the place where the dog is kept, or by delivering it to a person residing on the property, and telephoning, if possible. The notice shall include the following:

1. A description of the dog deemed to be potentially dangerous;
2. The authority for and purpose of the potentially dangerous dog declaration and seizure, if applicable;
3. The time, place, and circumstances under which the dog was declared potentially dangerous;
4. The contact person where the dog is kept, if the dog was seized;
5. The identity of the official who made the determination;
6. The restrictions imposed upon the owner of a potentially dangerous dog under this Chapter;
7. A statement that the owner of the dog may request a hearing concerning the potentially dangerous dog declaration and that failure to do so within fourteen (14) days of the notice will terminate the owner's right to a hearing under this section;
8. A statement that if the impartial hearing officer affirms the potentially dangerous dog declaration, the owner will have fourteen (14) days from receipt of that decision to comply with the requirements in the Notice of Potentially Dangerous Dog;
9. A form to request a hearing under this Section; and

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10. A statement that all actual costs of the care, keeping, and disposition of the dog are the responsibility of the person claiming an interest in the dog, except to the extent that a court or impartial hearing officer finds that the seizure or impoundment was not substantially justified by law.

B. If the owner does not request a hearing within fourteen (14) days, the designation of potentially dangerous dog as issued in the written Notice of Potentially Dangerous Dog will stand, and the owner will be subject to all restrictions and requirements as set forth in the Notice by the Animal Control Authority.

**Subd. 3 Hearing.**

A. If an owner requests a hearing within fourteen (14) days of the date of the Notice for determination as to the potentially dangerous nature of the dog, the hearing shall be held before a hearing officer not more than fourteen (14) days after demand for said hearing.

B. The hearing shall be conducted pursuant to the requirements of Section 391.04, Subd. 3.

C. After considering all evidence pertaining to the dog, the hearing officer shall issue a written order that rejects or upholds the determination. The decision must be delivered to the dog’s owner by hand delivery or registered mail as soon as practical and a copy must be provided to the Animal Control Authority. If the hearing officer upholds the determination as potentially dangerous, the order may affirm or modify the conditions recommended by the Animal Control Authority. If, as a result of testimony or other evidence at the hearing, there are grounds for declaring the dog to be a dangerous dog pursuant to Section 391.04, the hearing officer may change the designation and issue the appropriate orders.

D. In the event that the dangerous dog declaration is upheld by the impartial hearing officer, actual expenses of the hearing up to a maximum of \$1,000 will be the responsibility of the dog’s owner.

E. The decision of the impartial hearing examiner is final without any further right of administrative appeal. An aggrieved party may obtain review thereof by petitioning the Minnesota Court of Appeals for a Writ of Certiorari not more than thirty (30) days after service of the hearing examiner’s written decision.

**391.08 Potentially Dangerous Dogs; Requirements.**

**Subd. 1 Microchip.** The owner of any dog that has been determined to be potentially dangerous shall have a microchip installed in the dog in accordance with Section 391.09.

**Subd. 2 Registration.** No person may own or possess a potentially dangerous dog in this City unless the dog is registered as a potentially dangerous dog. All dogs declared potentially

## Section 391 – Dangerous Dogs and Potentially Dangerous Dogs

dangerous by the Animal Control Authority or impartial hearing officer, as applicable, shall be registered as a potentially dangerous dog with the Animal Control Authority within fourteen (14) days after the owner has notice that the dog is designated dangerous.

**Subd. 3 Registration renewal.** An owner of a potentially dangerous dog shall renew the Certificate of Registration annually until the dog is deceased.

**Subd. 4 Death or Relocation of Potentially Dangerous Dog.** An owner of a potentially dangerous dog shall notify the Animal Control Authority, in writing, of the death of the dog, or if the dog relocates or transfers out of the City to a new location or where the dog will reside within 30 days of the death or transfer. An owner shall, if requested by the Animal Control Authority, execute an affidavit, under oath and penalty of perjury, setting forth either the circumstances of the dog's death and disposition, or the complete name, address, and telephone number of the person to whom the dog was transferred or the address where the dog has been relocated.

**Subd. 5 Sale or Transfer of Potentially Dangerous Dogs.** A person who sells or transfers ownership or control of a potentially dangerous dog must notify any potential purchaser or transferee, prior to the consummation of the transaction, that the dog was previously designated as dangerous. The current owner must also notify the Animal Control Authority, in writing, of the transfer of ownership and provide the Animal Control Authority with the new owner's name, address, and telephone number.

**Subd. 6 Release.** If a potentially dangerous dog was impounded by the Animal Control Authority, or upon order of an impartial hearing officer, the dog shall not be released until the owner demonstrates to the Animal Control Authority compliance with all applicable requirements of this Chapter. The owner shall have fourteen (14) days to comply with all requirements. The owner must pay the City for all costs incurred in the seizure and boarding of the dog prior to its return.

**Subd. 7 Other restrictions.** Any dog determined to be potentially dangerous may be subject to any or all of the following restrictions, as determined by the Animal Control Authority or the hearing officer:

A. The owner of a dog may be required to complete an approved dog obedience class within a designated period of time, and provide proof of completion to the Animal Control Authority;

B. The dog may be required to be kept in a proper enclosure, or restrained by chain or leash not to exceed six (6) feet in length, and/or muzzled, and under the control of a responsible person eighteen (18) years of age or older at all times it is outdoors and not inside a proper enclosure;

C. The owner may be required to post the property where the dog resides with warning signs, available from the Animal Control Authority, readable to children, containing a written notice and warning that a potentially dangerous dog is present on the property;

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D. The owner may be required to show proof of up-to-date rabies vaccination and, if required, licensing; and

E. The dog may be required to wear, at all times, a tag or marker identifying it as a potentially dangerous dog.

**Subd. 9 Review of Potentially Dangerous Dog Designation.** Beginning six (6) months after a dog is declared a potentially dangerous dog an owner may request annually that the Animal Control Authority review the designation. The owner must provide evidence that the dog's behavior has changed due to the dog's age, sterilization, environment, completion of obedience training that includes modification of aggressive behavior, or other factors. If the Animal Control Authority finds sufficient evidence that the dog's behavior has changed, the Authority may rescind the potentially dangerous dog designation.

**391.09 Microchip Identification.** It shall be the responsibility of each owner of any dog kept or harbored within the City and determined to be a dangerous or potentially dangerous dog under this Chapter, court order, state statute, designation from the Animal Control Authority, or a substantially similar ordinance from another jurisdiction, to ensure that a microchip is implanted in the dog for identification. The name of the microchip manufacturer and identification number of the microchip must be provided to the Animal Control Authority. If the microchip is not implanted by the owner, it may be implanted by a qualified veterinarian under the direction and control of the Animal Control Authority. All costs related to purchase and implantation of the microchip must be borne by the dog's owner.

**391.10 Confiscation.**

**Subd. 1 Dangerous Dogs.** The Animal Control Authority shall immediately seize any dangerous dog dangerous dog if:

A. After fourteen (14) days after the owner has notice that the dog is dangerous, the dog is not validly registered under Section 391.05;

B. After fourteen (14) days after the owner has notice that the dog is dangerous, the owner does not secure the proper liability insurance or surety coverage as required under Section 391.05, Subd. 3(C);

C. The dog is not maintained in a proper enclosure, as defined in Section 391.02, Subd. 7;

D. The dog is not sterilized, pursuant to Section 391.06, Subd. 3, within thirty (30) days after the owner receives the Notice of Dangerous Dog;

F. The owner is served with written notice, by certified mail to the owner's last known address, that the owner is in violation of any of the requirements of this Chapter or any applicable state law, or is in violation of any directive issued by the Animal Control

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Authority or order from a hearing officer; and, within fourteen (14) days of service of such written notice, has refused or failed to achieve satisfactory compliance;

G. The Animal Control Authority has reason to believe the dog is a dangerous dog, and is kept or maintained under conditions or circumstances creating an unacceptable risk of harm to physical persons or other domesticated animals; or

H. For any other reason authorized by law.

**Subd. 2. Security.** A person claiming an interest in a seized dog may prevent disposition of the dog by posting security in an amount sufficient to provide for the dog’s actual cost of care and keeping. The security must be posted within seven (7) days of the seizure inclusive of the date of the seizure.

**Subd. 3 Reclaiming dogs.** A dog seized under this Chapter may be released to the owner of the dog upon payment of impounding and boarding fees, and presenting proof to the Animal Control Authority that all requirements of this Chapter and state law have or will be met. A dog not reclaimed under this subdivision within ten (10) days may be disposed of as provided under Minnesota Statutes Section 35.71, Subdivision 3, and the owner is liable to the Animal Control Authority for costs incurred in confining and disposing of the dog.

**Subd. 4 Subsequent offenses.** If a person has been convicted of a misdemeanor for violating a provision of this Chapter or state law and the person is charged with a subsequent violation relating to the same dog, the dog shall be seized by the Animal Control Authority. If the owner is convicted of the crime for which the dog was seized, the hearing officer may order that the dog be destroyed in a proper and humane manner and the owner pay the cost of confining and destroying the dog. If the owner is not convicted and the dog is not reclaimed by the owner within ten (10) days after the owner has been notified that the dog may be reclaimed, the dog may be disposed of as provided under Minnesota Statutes Section 35.71, Subdivision 3.

**391.11 Destruction of Dogs in Certain Circumstances.**

**Subd. 1.** A dog may be destroyed in a proper and humane manner by the Animal Control Authority if the dog:

- A. inflicted substantial or great bodily harm on a human on public or private property without provocation;
- B. inflicted multiple bites on a human on public or private property without provocation;
- C. bit multiple human victims on public or private property in the same attack without provocation;
- D. bit a human on public or private property without provocation in an attack where more than one dog participated in the attack.

**Subd. 2.** The Animal Control Authority may not destroy the dog until the dog owner has had the opportunity for a hearing before an impartial hearing officer pursuant to Section 391.04, Subd. 3.

**391.12 Dog Ownership.**

**Subd. 1. Dog Ownership Prohibited.** Except as provided in Subd. 3, no person may own a dog if the person has:

- A. been convicted of a third or subsequent violation of Minnesota Statutes Sections 347.51, 347.515, or 347.52;
- B. been convicted of a violation under Minnesota Statutes Section 609.205, clause (4);
- C. been convicted of a gross misdemeanor under Minnesota Statutes Section 609.226, subdivision 1;
- D. been convicted of a violation under Minnesota Statutes Section 609.226, subdivision 2; or
- E. had a dog ordered destroyed under Minnesota Statutes Section 347.56 and been convicted of one or more violations of Section 347.51, 346.515, 347.52, or 609.226, subdivision 2.

**Subd. 2 Household members.** If any member of a household is prohibited from owning a dog in Subd. 1, unless specifically approved with or without restrictions by an Animal Control Authority, no person in the household is permitted to own a dog.

**Subd. 3. Dog Ownership Prohibition Review.** Beginning three (3) years after a conviction under Subd. 1 that prohibits a person from owning a dog, and annually thereafter, the person may request that the Animal Control Authority review the prohibition. The Animal Control Authority may consider such facts as the seriousness of the violation or violations that led to the prohibition, any criminal convictions, or other facts that the Animal Control Authority deems appropriate. The Animal Control Authority may rescind the prohibition entirely or rescind it with limitations. The Animal Control Authority also may establish conditions a person must meet before the prohibition is rescinded, including, but not limited to, successfully completing dog training or dog handling courses. If the Animal Control Authority rescinds a person’s prohibition and the person subsequently fails to comply with any limitations imposed by the Animal Control Authority or the person is convicted of any animal violation involving unprovoked bites or dog attacks, the Animal Control Authority may permanently prohibit the person from owning a dog in this state.

**391.13 Penalty.**

- A. Any person who violates any provision of this Chapter is guilty of a misdemeanor.

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B. It is a misdemeanor to remove a microchip from a dangerous or potentially dangerous dog; to fail to renew the registration of a dangerous dog; to fail to account for a dangerous dog's death, transfer of ownership, or removal from the jurisdiction; to sign a false affidavit with respect to a dangerous dog's death, transfer of ownership, or removal from the jurisdiction; or to fail to disclose ownership of a dangerous or potentially dangerous dog to a property owner from whom the person rents property.

Section 395 - Therapeutic Massage

Licensing of Persons Who Administer Massage

**395.01 Policy Statement.** In order to protect the public health, safety, and welfare and to guard against the inception and transmission of disease, the City Council deems it necessary to provide for the regulation and licensing of persons who administer massages.

**395.02 Definitions.** The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

*Massage:* The rubbing, stroking, kneading, tapping, or rolling of the body of another with the hands or objects for the exclusive purpose of physical fitness, relaxation, beautification, and for no other purpose.

*Masseur:* A male person who practices or administers a massage.

*Masseuse:* A female person who practices or administers a massage.

**395.03 License Required.** No person shall engage in or hold himself or herself out as being engaged in the practice of massage nor shall any person administer or practice massage commercially or for hire, or for the exchange of any valuable consideration without first having obtained a license as herein provided.

**395.04 Contents of the Application for License.** Application shall be made on forms provided by the City Administrator. The application shall contain the following information together with any other information that the City Administrator may require:

- a. Evidence of the applicant's training and certification to administer massage.
- b. Evidence of applicant's practical qualifications to practice massage.
- c. The names and addresses of two persons who are residents of Sherburne County and who can attest to the applicant's character.
- d. Statement disclosing whether the applicant has ever been convicted of a crime or offense and, if so, information as to the time, place, and nature of such crime or offense.
- e. Evidence that the applicant is at least eighteen (18) years of age.
- f. The street address at which massages will be performed.

**395.05 Granting or Denial of Licenses and Certificates**

- a. Application Review. License applications shall be reviewed by the Police Department and such other departments, as the City Administrator shall deem necessary. Licenses shall be issued by the City Administrator. If the City Administrator refuses to issue a license, the decision may be appealed to the City Council.
- b. Term of License. A license permitting the holder thereof to practice or administer massage commercially is nonrenewable and nontransferable and application must be made each year for a license permitting and allowing the holder thereof to administer or practice massage for the succeeding year. All licenses shall be issued for a term expiring on December 31st following its issuance.

**395.06 License and Investigation Fees.** The license and investigation fees shall be established by resolution of the City Council.

**395.07 Conditions Governing Issuance of License.**

- a. Applicant. Licenses shall be issued only to persons of good moral character and repute and persons who are in good health and free from any communicable disease.
- b. Training and Certification. Licenses may be issued only to persons who have a diploma or certificate demonstrating that they have completed at least one hundred (100) hours of training in massage from either a school approved by the American Massage Therapy Association or similar reputable massage association, or from a school which is either accredited by a recognized education accrediting association or agency, or is licensed by the State or a local government agency having jurisdiction over the school, or a certificate from the National Certification for Therapeutic Massage and Bodywork by the National Certification Board of Therapeutic Massage and Bodywork.
- c. Prior Offenses. Licenses may be issued only to persons free from convictions or offenses which involve moral turpitude or which relate directly to the person's ability, capacity, or fitness to perform the duties and discharge the responsibilities of the occupation.
- d. Prior Revocation. Licenses may not be issued to persons who, within one year prior to the date of application, have been denied licensing or who have had their license revoked or suspended by any community, political entity, or by the State of Minnesota.

- e. Cooperation of Applicant. Licenses may be issued only to persons who have fully and truthfully answered all of the information requested in the application and have paid the full license fee and investigation fee.
- f. Age. Licenses may be issued only to persons eighteen (18) years of age or older.

**395.08 Revocation, Suspension, or Non-renewal of License.** The license may be revoked, suspended, or not renewed by the City Administrator by showing that the licensee has engaged in any of the following conduct:

- a. Fraud, deception, or misrepresentation in connection with the securing of the license.
- b. Habitual drunkenness or intemperance in the use of illegal drugs, including but not limited to the use of drugs defined in either 26 U.S.C. § 4731 or Minn. Stat. § 152.02, barbiturates, hallucinogenic drugs, amphetamines, benzedrine, dexedrine, or other sedatives, depressants, stimulants, or tranquilizers.
- c. 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 from engaging in conduct involving moral turpitude.
- d. Conviction of an offense involving moral turpitude by any court of competent jurisdiction.
- e. Engaging in any conduct which would constitute grounds for refusal to issue a license herein.

**395.09 Exceptions.** This ordinance does not apply to:

- a. A person practicing massage at a hospital, nursing home, or other institution for the hospitalization or care of human beings licensed under the provisions of Minn. Stat. §§ 144.50 through 144.69.
- b. By a licensed nurse, licensed medical doctor, licensed podiatrist, licensed chiropractor, or other health care professional licensed by the State of Minnesota, or by someone employed by such an individual and working under their supervision.

**395.10 Location of Massage.** It is unlawful for a licensed masseur or masseuse to perform a massage except at a location in the City of Big Lake stated on the license application or in an office, home, community center, or apartment, on an outcall basis.

**Section 396 – Fireworks**

**396.01 Violations.**

- a. Any violation of state statutes regarding fireworks or this Section will result in the revocation of any permit to sell or store fireworks.
- b. Materials that violate state statutes or this code may be confiscated and destroyed. Costs associated with disposal shall be paid by the violator and/or be assessed back to the property.

**396.02 Discharge Rules and Regulations.**

- a. It is unlawful to use or discharge any fireworks along a parade route prior to, during or after any parade, or at any place of public assembly, parks or government property.
- b. It is unlawful at any time to throw or toss any fireworks at any person, animal, vehicle or other thing or object.
- c. The discharge of fireworks shall be prohibited within 300 feet of any building in which fireworks are sold or stored.
- d. Fireworks may only be discharged in an area with a water source connected to a hose, fire extinguisher and/or other means of putting out a fire that is acceptable to the fire chief or his/her designee.
- e. The fire chief or his/her designee may ban fireworks for any period of time for any public safety reason.
- f. No one under the age of 18 years may possess fireworks unless under the direct supervision of a responsible adult.

**396.03 Governing regulations.** Fireworks are regulated by Minn. Stats. §§ 624.20--624.25. In addition to these state laws, all display, sales, storage, and use of fireworks shall comply with this Section.

**396.04 Acts prohibited without permit.** No person shall do any of the following without obtaining a fireworks permit, and if selling outside, a general planning permit:

- a. Store or sell any fireworks.
- b. Make a public display of fireworks.

**396.05 Permit application.**

- a. The application for a permit to store or sell fireworks shall be made to the city clerk or his/her designee on a form provided by the City of Big Lake.
- b. A criminal record check will be done on all applicants.
- c. The fire chief or his/her designee will inspect the proposed location for selling and/or storing fireworks to determine if it is a suitable location.
- d. The fire chief or his/her designee will determine if the applicant is competent and trained to handle fireworks.
- e. The application for a permit must include:
  1. A letter from the property owner granting permission to the applicant to sell and/or store fireworks on the property.
  2. A floor plan designating the area where the fireworks will be sold and/or stored.
  3. A list of the fireworks that will be sold. The list must include the name, weight, quantity and material safety data sheets.
  4. A certificate of insurance coverage as set forth in Subd. 396.07.

**396.06 Permit fee.** The fee for a permit to store or sell fireworks and if necessary a general planning permit shall be that as provided in the current city fee schedule.

**396.07 Terms and conditions for issuance of permit.** A permit for the storage and/or retail sale of fireworks shall be issued only upon the following terms and conditions:

- a. The applicant shall not have been convicted of a crime of violence as defined by Minn. Stats. § 624.712, subd. 5 or any fire/fireworks related crime within the last five years.
- b. The applicant shall maintain general liability, bodily injury and property damage insurance approved by the city in the minimum amount of \$1,000,000.00 single limit. The city shall be named as an additional insured. Certificates of coverage shall be filed with the city clerk with the application.
- c. No sale of fireworks shall occur on property zoned residential or properties used for educational or assembly purposes. Transient sales of fireworks are not permitted.
- d. When the sale of fireworks is from a truck, trailer, tent or other facility that is temporary in nature, a general planning permit is required, as well as a fireworks permit. Also, the following standards shall be met for the issuance of a general planning permit:
  1. No electrical services shall be across any drive or walking surface.

2. The sale of fireworks must be at least 50 feet from any fuel-dispensing equipment.
  3. If traffic becomes a problem around the temporary site, the sales area shall be delineated with a barrier to restrict traffic.
  4. The sales tent shall be maintained free of debris and kept in an orderly condition.
  5. The location of the tent is consistent with the submitted site plan and meets all fire codes.
  6. The tent shall be removed within one week of the end of the sales period and the site be returned to its previous condition.
  7. Other standards may be required on a site-by-site basis.
- a. Fireworks sales and/or storage areas shall have signs designated "no smoking" in red letters not less than two inches in height on white background. All signs shall be maintained in legible condition. Signage must be approved by the fire chief or his/her designee.
  - b. The discharge of fireworks shall be prohibited within 300 feet of any building in which fireworks are being sold or stored.
  - c. Each permit holder shall have at least two water-type or equivalent fire extinguishers of not less than 2 1/2-gallon capacity in the area where the fireworks are sold or stored.
  - d. There shall be at least two exits from all buildings where fireworks are being sold or stored.
  - e. In buildings without an approved automatic sprinkler system, fireworks sales displays and/or storage shall be limited to 50 pounds net pyrotechnic composition or 200 pounds gross weight, if the pyrotechnic composition weight is not known.
  - f. In buildings with an approved automatic sprinkler system, fireworks sales displays and/or storage shall be limited to 100 pounds net pyrotechnic composition or 400 pounds gross weight, if the pyrotechnic composition weight is not known.
  - g. A list of all fireworks displayed for sale and stored on the property must be posted in a conspicuous location near the display/storage area. The list shall include the name, weight and quantity of the fireworks and shall be accompanied by the material safety data sheets. Upon request, samples of the fireworks shall be made available to the fire chief or his/her designee for testing.
  - h. A permit granted pursuant to this division is not transferable.
  - i. Fireworks shall not be sold to people less than 18 years of age.