

## **CHAPTER 6. OTHER BUSINESS REGULATIONS AND LICENSING**

### **Section 600 - DEFINITIONS, APPLICATIONS AND SPECIFIC LICENSES**

600.01 Definitions. As used in this Chapter, the following terms have the stated meanings:

Subd. 1 Applicant. Any person making an application for a license under this Chapter.

Subd. 2 Application. A form with blanks or spaces thereon, to be filled in and completed by the applicant as a request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

Subd. 3 Bond. A corporate surety document in the form and with the provisions acceptable and specifically approved by the city attorney.

Subd. 4 Business. Any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both licensed and regulated, by the terms and conditions of this Chapter.

Subd. 5 License. A document issued by the City to an applicant permitting the applicant to carry on and transact a business.

Subd. 6 Licensee. An applicant who pursuant to an application, holds a valid, unexpired and unrevoked license from the City for carrying on a business.

Subd. 7 License Fee. The money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on a business.

Subd. 8 Sale. Sell and Sold. All forms of barter and all manner or means of furnishing merchandise to persons.

600.02 Applications. All applications shall be made as follows:

Subd. 1 Forms. All applications shall be made at the office of the City Clerk upon forms that have been formulated by the City for such purposes.

Subd. 2 Content. All such applications must be subscribed, sworn to, and include, but not limited to, the following:

A. Applicant's name and citizenship.

B. Applicant's present address and length of time lived at that address.

C. Applicant's occupation and length of time so engaged.

D. Applicant's addresses and occupations for the three years last preceding the date of application.

E. Names and addresses of applicant's employers, if any, for the three years last preceding the date of application.

F. Whether or not applicant has ever been convicted of a felony, gross misdemeanor or misdemeanor, including violation of a municipal ordinance but excluding traffic violations, and if so, the date and place of conviction and the nature of the offense.

G. Type of license and location of premises for which application is made.

H. At least four character references if applicant has not resided in the City for two years last preceding the date of application.

I. Such other information as the Council shall deem necessary considering the nature of the business for which the license application is made.

Subd. 3 Omissions and False Statements Prohibited. It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form shall be cause for an automatic refusal of the license, or if already issued, shall render any license or permit issued void and of no effect to protect the applicant from prosecution for violation of this Chapter.

Subd. 4 Applicant Investigation. The City Clerk shall, upon receipt of each completed application, investigate the truth of statements made and the moral character and business reputation of each applicant for license to such an extent as the Clerk deems necessary. The City Clerk may enlist the aid of the Chief of Police in the investigation. The Council shall not consider an application before the investigation has been completed.

Subd. 5 License Renewal Applications. Applications for renewal licenses may be made in an abbreviated form, as the Council may adopt by resolution.

#### 600.03 Action on Application, Transfer, Termination and Duplicate License.

Subd. 1 Time Period. The Council may grant any application for the period of the remainder of the then current calendar year or for the entire ensuing license year. All applications, including proposed license periods, must be consistent with this Chapter.

Subd. 2 Issuing. If an application is approved, the City Clerk shall issue a license in the form prescribed by the Council upon proof of ownership; payment of the appropriate license fee; and approval of the bond or insurance as to form and surety or carrier, if required. All licenses shall be valid for a one year period of time, July 1 of each year until June 30 of the following year, unless otherwise specified as to particular businesses. Unless otherwise specified in this Section, license fees shall be pro-rated on the basis of 1/12th for each calendar month or part remaining in the then current license year. Licenses shall be valid only at one location and on the premises described in the license.

Subd. 3 Transfer. A license shall be transferable between persons upon consent of the Council. No license shall be transferable to a different location without prior consent of the Council and upon payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this Subdivision.

Subd. 4 Termination. Licenses shall terminate only by expiration or revocation.

Subd. 5 Refusal and Revocation. The Council may, for any reasonable cause, refuse to grant any application or revoke any license. No license shall be granted to a person of questionable moral character or business reputation. Before revocation of any license, the Council shall give notice to the licensee and grant the licensee opportunity to be heard. Notice to be given and the exact time of hearing shall be stated in the resolution calling for the hearing.

Subd. 6 Duplicate License. Duplicates of all original licenses may be issued by the City Clerk, without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of a fee as established from time to time by resolution of the Council for issuance of the duplicate. All duplicate licenses shall be clearly marked DUPLICATE.

600.04 Fixing License Fees. Except as otherwise provided in this Chapter, all fees for licenses under this Chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such license fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Clerk, and open to inspection during regular business hours. For the purpose of fixing such fees, the Council may subdivide and categorize licenses under a specific license requirement, provided, that any such subdivision or categorization shall be included in the resolution authorized by this Subsection.

600.05 Carrying or Posting. All solicitors shall at all times when so engaged, carry their licenses on their person. All other licensees shall conspicuously post their licenses in their place of business near the licensed activity. Provided, however, that in the case of machine or other device, the City may provide a sticker for the current license year which shall be affixed to each machine or device requiring such sticker. All licensees shall display their licenses, upon demand by any officer or citizen.

600.06 Penalty for Property Owners. It is unlawful for any person to knowingly permit any real property owned or controlled by the person to be used without a license for any business for which a license is required by this Chapter.

600.07 Responsibility of Licensee. The conduct of agents or employees of a licensee, while engaged in performance of duties for their principal or employer under such license, shall be deemed the conduct of the licensee.

600.08 Conditional Licenses. Notwithstanding any provision of law to the contrary, the Council may, upon a finding of necessity, place such conditions and restrictions upon a license as it deems reasonable and justified.

600.09 Renewal of Licenses. Applications for renewal of an existing license shall be made at least thirty (30) days prior to the date of expiration of the license, and shall contain such information as is required by the City. This time requirement may be waived by the Council for good and sufficient cause.

#### 600.10 License Denial and Fixing Rates - Hearing.

Subd. 1 Right to Deny. The Council reserves to itself the right to deny any application for a license to operate any business licensed or regulated under this Chapter where such business involves service to the public, rates charged for service, use of public streets or other public property by the applicant or the public, or the public health, safety and convenience. The Council may also consider the location of such business in making the determination. Provided, however, that before making the determination, the Council shall hold a public hearing, pursuant to notice to interested parties and the public, as it may deem necessary or proper in action calling for such hearing.

Subd. 2 Rates. Where under specific provisions of this Chapter, the Council has reserved to itself the right to fix or approve fees, rates or charges of a licensed or regulated business, such rates shall be uniform for each category or class of service. No licensee or proprietor of a regulated business shall claim or demand payment in excess of the set rate.

Subd. 3 Hearing. Any applicant or licensee under this Chapter who challenges denial of a license or rates fixed or approved by the Council, shall have a right to a hearing before the Council upon written request for a hearing. Notice of time, place and purpose of the hearing shall be given to persons and by means as the Council determines in calling the hearing.

600.11 Insurance Requirements. Proof of insurance shall accompany the license application. Whenever insurance is required by a provision of this Chapter, after approval by the Council but before the license shall issue, the applicant shall file with the City Clerk a policy or certificate of public liability insurance showing (1) that the limits are at least as high as required, (2) that coverage is effective for at least t approved, and (3) that such insurance will not be cancelled or terminated without thirty days written notice upon the City Clerk. Cancellation or termination of such coverage shall be grounds for license revocation.

#### 600.12 Mechanical Amusement Devices.

Subd. 1 Definitions. The following terms, as used in this Section, shall have the stated meanings:

A. Game of Skill. Any device except bowling alleys and shooting lanes, but including miniatures thereof, played by manipulating special equipment and propelling balls or other projectiles across a board or field into respective positions whereby a score is established; the object of which is to secure a special number or numbers or a high or low total score or any other method used to indicate a winner which is available to be played by the public generally at a price paid either directly or indirectly for such privilege, whether a prize is offered for the game or not.

B. Coin Amusement. Any machine which upon the insertion of a coin, token or slug, operates or may be operated; which is available to the public generally for

entertainment or amusement; and which machine emits music, or noise or displays motion pictures.

C. Mechanical Amusement Device. Includes both games of skill and coin amusement.

Subd. 2 License Required. It is unlawful for any person to keep or maintain a mechanical amusement device for use by the public without first having obtained a license from the City.

Subd. 3 Unlawful Use and Devices. It is unlawful for any person to:

- (1) sell or maintain a machine or device which is for gambling or contains an automatic pay-off device;
- (2) give any prize, award, merchandise, gift, or thing of value to any person on account of operation of such device;
- (3) sell, maintain, or permit to be operated in the person's place of business, any mechanical amusement device equipped with an automatic pay-off device;
- (4) equip any mechanical amusement device with an automatic pay-off device; or,
- (5) permit the playing of coin amusement machines between the hours of 12:45 o'clock a.m. and 8:00 o'clock a.m., Monday through Saturday, and between the hours of 12:45 o'clock a.m. and 12:00 o'clock noon on Sundays.

#### 600.13 Shows.

Subd. 1 License Required. It is unlawful for any person to present any public show, movie, caravan, circus, carnival, theatrical or other performance or exhibition without first having obtained a license from the City.

Subd. 2 Exceptions. The following performances are exempt from the licensing requirements of this subsection; provided, however, that such exemption shall not extend to any regulation or act declared unlawful in this Section:

- A. Performances presented in the local schools and colleges, under the sponsorship of such schools and colleges, and primarily for the students thereof only.
- B. Performances of athletic, musical or theatrical events sponsored by local schools or colleges using student talent only.
- C. Any performance or event in or sponsored by bona fide local churches and non-profit organizations, provided that such organization shall be incorporated.

Subd. 3 Offenses Specified. The following acts or conduct on public premises are deemed contrary to public welfare and morals and no such conduct or acts are permitted.

For the purposes of this Subdivision, the term “public premises” shall mean any premises within the City owned by a state or local government entity.

A. To employ or use any person in any public premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

B. To employ or use the service of any hostess while such hostess is unclothed or in such attire, costume or clothing as described in paragraph (A) above.

C. To encourage or permit any person on a public premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.

D. To permit any employee or person to wear or use any device or covering exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof.

E. To permit any person to perform or simulate the following acts:

1. Sexual intercourse, sodomy, oral copulation, flagellation or any sexual acts which are prohibited by law.
2. Masturbation or bestiality.
3. Touching, caressing or fondling on the breast, buttocks, anus or genitals.

F. To permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

G. To permit the showing of film, still pictures, electronic reproduction or other visual reproduction, or other visual reproductions depicting:

1. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.
2. Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.
3. Scenes wherein a person displays the vulva or the anus or the genitals.
4. Scenes wherein artificial devices or inanimate objects are employed to portray any of the prohibited activities described above.

#### 600.14 Tobacco.

Subd. 1 Purpose. The City Council finds that substantial scientific evidence exists that the use of tobacco or tobacco products causes cancer, heart disease, and various other

medical disorders. It is the further finding of the City Council that the present legislative scheme of prohibiting sales of tobacco related products to young persons has proven ineffective in preventing young persons from using tobacco and tobacco products. The City Council has concluded that minors have ready access to self-service merchandising, including vending machines, which sell tobacco, tobacco products or tobacco related devices. The City Council has also concluded that the prohibition of the sale or dispensing of tobacco or tobacco related devices through vending machines and the regulation of sales through self-service merchandising will thereby promote the health, safety and welfare of the residents of the city, particularly young persons.

Subd. 2 Definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**ADULT.** A person 18 years of age or older.

**APPLICANT.** A person, as defined herein, who completes or signs an application for a license to sell tobacco, tobacco products or tobacco related devices individually or on behalf of a business.

**BUSINESS.** The business of selling tobacco, tobacco products or tobacco related devices.

**LICENSE HOLDER or LICENSEE.** The owner of the business licensed to sell tobacco, tobacco products or tobacco related devices.

**MOVABLE PLACE OF BUSINESS.** A business whose physical location is not permanent or is capable of being moved or changed.

**PERSON.** Includes one or more natural persons, a partnership, limited liability company, corporation, including a foreign, domestic, or nonprofit corporation, a trust, a political subdivision of the state, or any other business organization.

**SELF-SERVICE MERCHANDISING.** A method of displaying tobacco, tobacco products or tobacco related devices so that they are accessible to the public without the intervention of an applicant, license holder or their agents or employees.

**TOBACCO OR TOBACCO PRODUCT.** Includes cigarettes and any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready, rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scripts; clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. "Tobacco" or "tobacco product" does not mean a tobacco product that has been approved by the United States Food and Drug Administration for sale as

a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

TOBACCO RELATED DEVICES. Cigarette papers or pipes for smoking.

VENDING MACHINE. Any mechanical or electric or electronic self-service device which, upon insertion of money, tokens or any other form of payment dispenses tobacco products, and the term includes vending machines equipped with manual, electric or electronic locking devices..

### Subd. 3 License Required.

(A) No person shall keep for retail sale, sell or offer to sell at retail, or otherwise dispense any tobacco, tobacco product or tobacco related device at any place in the city without first obtaining a license and paying a license fee.

(B) 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 include, but is not limited to requiring the full name of the applicant, the applicant's residential and business address and telephone numbers, the name of the proposed license holder, the business location for which the license is sought, and a copy of the educational materials the applicant intends to use to educate employees. The completed application along with the license fee shall be submitted to the City Administrator or his or her designee for approval. If the City Administrator determines that an application is incomplete, he or she shall return the application to the applicant with notice of the deficiencies.

(C) The City Administrator may either approve or deny the license, or may delay action for a reasonable period of time as is required to permit the city to complete any investigation of the application or the applicant deemed necessary. If the Administrator approves the application, a license shall be issued to the applicant. If the Administrator denies the application, a notice of denial shall be issued to the applicant at the business address provided on the application along with the reasons for the denial. The notice shall also inform the applicant of their right to appeal the Administrator's decision to the City Council. The appeal must be taken within 20 days after receipt of a notice of denial, and if so taken, the appeal shall be scheduled to be heard at the next Council meeting. If a license is mistakenly issued or renewed to an applicant or license holder, it shall be revoked by the City Administrator upon the discovery that the person, applicant or license holder was ineligible for the license under this section.

(D) Any license issued under this section may be revoked or suspended as specifically provided elsewhere in this chapter. The issuance of a license under this chapter 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.



(E) All licenses issued under this section shall be valid only on the business premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Administrator.

(F) No person shall be issued a license or renewal license to sell tobacco, tobacco products or tobacco related devices unless an applicant or license holder has an approved program for instructing all employees at the business premises for which the license was issued, in the legal requirements pertaining to the sale of tobacco, tobacco products and tobacco related devices, including, but not limited to, reviewing the law on the sale of tobacco, tobacco products and tobacco related devices, providing information on the health risks of using tobacco or tobacco products, and requiring employees to request identification from every customer who appears to be under 27 years of age. No license shall be issued unless the applicant or license holder has received training and instruction on the sale of tobacco, tobacco products and tobacco related devices. The training shall include information that the sale of tobacco, tobacco products and tobacco related devices to young people is illegal, explains what proof of age is legally acceptable, and that an illegal sale can subject the applicant or license holder and their employees to criminal and/or civil liability.

(G) The following shall be grounds for denying the issuance or renewal of a license under this section. The following list is not exhaustive or exclusive:

- (1) The applicant is under the age allowed by Federal or State law.
- (2) The applicant has been convicted within the past five years of a violation of any provisions of this chapter or a violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.
- (3) The applicant or license holder has had a license to sell tobacco, tobacco products or tobacco related devices revoked within the preceding 12 months of the date of application.
- (4) The applicant fails to provide any information required on the city license application, or provides false or misleading information.
- (5) The applicant or license holder has outstanding fines, penalties or property taxes owed to the city.

Subd. 4 Compliance Checks. All licensed premises shall be open to inspection by the city police or other authorized city officials during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, individuals over the age of 15 years but less than 21 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Individuals used for the purpose of compliance

checks shall be supervised by city designated law enforcement officers or other designated city personnel. Individuals used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when these items are obtained as a part of the compliance check. No individual used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all individuals lawfully engaged in a compliance check shall answer all questions about the individual'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.

Subd. 5 Violations.

(A) In addition to violations specified elsewhere in this chapter, the following acts shall be a violation of this chapter:

(1) It shall be a violation of this chapter 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.

(2) It shall be a violation of this chapter for any minor to smoke, chew, sniff, ingest or otherwise use any tobacco, tobacco product or tobacco related device.

(3) It shall be a violation of this chapter 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 chapter for any person to purchase or otherwise obtain these 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.

(4) It shall be a violation of this chapter 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.

(B) Whoever sells tobacco to a person under the age of 21 years is guilty of a misdemeanor. It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in M.S. § 340A.503, Subdivision 6, as it may be amended from time to time.

(C) Whoever furnishes tobacco or tobacco related devices to a person under the age of 18 years is guilty of a misdemeanor.

(D) Whoever possesses, smokes, chews or otherwise ingests, purchases or attempts to purchase tobacco or tobacco related devices and is under the age of 18 years is guilty of a petty misdemeanor. This subdivision does not apply to a person under the age of 18 years who purchases or attempts to purchase tobacco or tobacco related devices while under the direct supervision of a responsible adult for training, education, research or enforcement purposes. Any person under the age of 16 years who sells, furnishes or gives away any tobacco or tobacco related device is guilty of a petty misdemeanor. Any license holder who permits any employee under the age of 16 to sell, furnish or give away any tobacco or tobacco related device is guilty of a petty misdemeanor.

(E) Notwithstanding division (C) above, a Native American may furnish tobacco to a Native American under the age of 21 years if the tobacco is furnished as part of a traditional Native American spiritual or cultural ceremony. For purposes of this subdivision, an Native American is a person who is a member of a Native American tribe, as defined in M.S. § 257.351, Subdivision 9, as it may be amended from time to time.

(F) Upon discovery of a suspected violation, the City's authorized law enforcement shall issue a criminal citation to the alleged violator.

#### Subd. 6. Administrative Penalties and Procedure.

(A) If a licensee or employee of a licensee sells tobacco or tobacco related devices to a person under the age of 21 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of \$200. An administrative penalty of \$400 shall be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, the licensee shall lose the licensee's authorization to sell tobacco, tobacco products or tobacco related devices for a period of not less than 30 days nor more than one year. The loss of authorization shall be accomplished by a combination, if necessary, of a suspension of the licensee's then existing authorization and an order prohibiting renewal of the licensee's license for the prescribed period.

(B) An individual who sells tobacco or tobacco related devices to a person under the age of 18 years shall be charged an administrative penalty of \$50.

(C) Any person who purchases or attempts to purchase tobacco, tobacco products or tobacco related devices and is under the age of 21 years may be charged an administrative penalty of up to \$50. The City Council may also send notice of the violation to the violator's parents or school, or order the violator to attend tobacco-free education programs or other court diversion programs, or to

perform appropriate community service. The provisions of this subdivision shall not apply to a person under the age of 18 who purchases or attempts to purchase tobacco, tobacco products or tobacco related devices while under the direct supervision of a responsible adult for training, research or enforcement purposes.

(D) Upon discovery of a suspected violation under this Section, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and the administrative penalty for the violation, and informs the alleged violator of his or her right to be heard on the accusation. If, within 20 days after receipt of a citation, a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. The City Council, or any other person as the Council may by resolution designate, shall serve as the hearing officer. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under this section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, the findings shall be recorded and a copy provided to the acquitted accused violator.

(E) Nothing in this section shall prohibit the city from seeking prosecution as a criminal offense for any alleged violation of this chapter. If the city elects to seek prosecution as a criminal offense, no administrative penalty shall be imposed.

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

#### 600.15 Refuse Haulers.

Subd. 1 Refuse Defined. The term "refuse" means waste, garbage and rubbish of all kinds that accumulate in the ordinary operation of a household, or commercial or industrial establishment, including, but not limited to, grass trimmings, ashes, tin cans and tree branches (those branches small enough to be placed in a 30 gallon standard type garbage can contained and placed therein). This definition is subject to the limitations imposed by the Minnesota Pollution Control Agency.

Subd. 2 License Required. It is unlawful for any person to haul refuse for hire without a license from the City, or to haul refuse from the person's own residence or business property other than as excepted in this Section.

Subd. 3 Exception. Nothing in this Section shall prevent persons from hauling refuse from their own residences or business properties provided the following rules are observed:

(1) that all refuse is hauled in containers that are water-tight on all sides and the bottom, and with tight-fitting covers on top,

(2) that all refuse is hauled in vehicles with leak-proof bodies and completely covered or enclosed by canvas or other means or material so as to completely eliminate the possibility of loss of cargo, and,

(3) that all refuse shall be dumped or unloaded only at an approved disposal facility.

#### Subd. 4 Hauler Licensee Requirements.

A. Hauler licenses shall be granted only upon the condition that the licensees have water-tight, packer-type vehicles in good condition to prevent loss in transit of liquid or solid cargo; that the vehicle be kept clean and as free from offensive odors as possible and not allowed to stand in any street longer than reasonably necessary to collect refuse; and that the same be dumped or unloaded only at an approved disposal facility, and strictly in accordance with applicable regulations.

B. Before a refuse hauler's license shall be issued, the applicant shall file with the City Clerk evidence that the applicant has provided public liability insurance on all vehicles in at least the sum of \$100,000.00 for the injury of one person, \$300,000.00 for the injury of two or more persons in the same accident, and \$25,000.00 for property damages. Said policy shall carry an endorsement that the policy will not be cancelled or terminated without first giving notice to the City, in writing, at least ten days prior to the proposed cancellation.

C. The Council, in the interest of maintaining healthful and sanitary conditions in the City, hereby reserves the right to specify and assign certain areas to all licensees, and to limit the number of licenses issued.

D. Each applicant shall file with the City Clerk, before a refuse hauler's license is issued or renewed, a schedule of proposed rates to be charged by the hauler during the license period for which the application is made. The schedule of proposed rates, or a compromise schedule, shall be approved by the Council before granting the license. Nothing in this Section shall prevent a licensee from petitioning the Council for review of such rates during the license period, and the Council may likewise consider such petition and make new rates effective at any time. No licensee shall charge rates in excess of the rates approved by the Council.

E. Violation of this Subdivision is a misdemeanor.

#### 600.16 Gambling Regulations.

Subd. 1 Purpose and Intent. This ordinance is enacted for the following purposes: to promote the health, safety, and general welfare of the inhabitants of the City of Heidelberg by closely regulating the conduct of gambling.

Subd. 2 Nuisance of Gambling. The Council finds that gambling could be a nuisance prone activity and as such, is subject to restrictive regulations. The Council further finds and declares that the ability to conduct gambling and participate in gambling is a privilege rather than a right.

Subd. 3 Provisions of State Law Adopted. The provisions of Minnesota Statutes, Chapter 349, relating to the definition of terms, licensing and restrictions of gambling are adopted and made a part of this Section as if set out in full. Amendments made pursuant to legislation to said Chapter shall also be incorporated and adopted herein without further action.

Subd. 4 Local Approval of State Licensed Organizations. Pursuant to M.S. 349.213, the Charitable Gambling Control Board for the State of Minnesota must notify the City Council before issuing or renewing an organization license at the state level for those organizations whose premises are located within the City. If the City Council adopts a resolution disapproving the state license and so informs the Board within 30 days of such notice, the license may not be issued or renewed.

Subd. 5 Obligations of State Licensed Organizations. State licensed organizations within the City shall provide to the City Clerk copies of all information which such organization provides to the Charitable Gambling Control Board. Such copies shall be provided to the City Clerk within seven days after the state licensed organization sends such information to the state. Failure of a state licensed organization to provide such copies shall constitute a basis for disapproval of the license or renewal by the City Council.

Subd. 6 Eligibility for License. Eligibility for a charitable gambling license within the City of Heidelberg shall be restricted to local fraternal, religious, veterans and educational and other non-profit organizations. A local organization shall be defined as an organization having at least 40 percent of its member list a Heidelberg City or Rural Route mailing address which would include the existing Heidelberg zip code, 56071, or its successor as determined by the U.S. Postal Service.

Subd. 7 Use of Proceeds of Charitable Gambling. All applications for licenses shall state the proposed use of funds received from the gambling activity. No license will be approved unless verification on the application is stated that at least 80 percent of the net proceeds collected from lawful charitable gambling shall be used to support recreational, cultural, and civic programs exclusively benefiting the citizens of Heidelberg. For purposes of this subsection, net proceeds shall be computed as follows: gross receipts from lawful gambling less reasonable sums necessarily and actually expended for the following items: (a) prizes; (b) gambling supplies and equipment which shall be defined as those expenses authorized by the Charitable Gambling Control Board in their adopted rules, specifically Subpart 2(B) of Adopted Rule 7860.0160; (C) rent; (d) utilities used during gambling occasions; (e) compensation paid to members for conducting gambling; (f) taxes imposed by Minnesota Statutes, Section 349.212; and, (g) maintenance of devices used in lawful gambling.

Subd. 8 Premises. The use of or sale of gambling supplies and equipment described as pull-tabs, paddle wheels and tip boards, shall be allowed on the premises owned by eligible organizations as defined in Subd. 6 of this ordinance. Except for the preceding, the use of the gambling supplies and equipment described in this Subdivision shall be allowed only on the premises of an establishment having a liquor license issued by the City of Heidelberg for the on or off sale of either intoxicating liquor or non-intoxicating malt liquor.

A. In leased locations authorized by this Subdivision, the sale of pull-tabs, tip boards, and the operation of paddle wheels shall take place in a designated area of the leased premises. Locations authorized by this Subdivision which are owned by the charitable organization need not designate such a location within the premises.

Subd. 9 Gambling. Prohibited by Minors. Only those persons who have reached the age at which they are allowed to consume intoxicating liquor by Minnesota Statutes shall be allowed to participate in the charitable gambling use of pull-tabs, paddle wheels, and tip boards or shall be employed by the organization requesting the charitable gambling license for the purpose of accomplishing the sale of the gambling devices described in this Subdivision.

Subd. 10 Hours of Operation. The use or sale of gambling supplies and equipment described as pull-tabs, paddle wheels and tip boards shall be allowed on premises owned or leased by those organizations eligible for a charitable gambling license pursuant to Subd. 6 only between the hours of 8:00 o'clock a.m. and 1:00 o'clock a.m.

Subd. 11 Extended Hours for Bingo and Raffle Tickets. The above notwithstanding, the conduct of bingo and sale of raffle tickets shall be allowed on Sundays and legal holidays when not prohibited by Minnesota Statutes, Section 349.

Subd. 12 Employees. Compensation to persons who participate in the conduct of lawful gambling may be paid only to active members of the conducting organization or its auxiliary, or to the spouse or the surviving spouse of an active member.

Subd. 13 Gambling Sales Conducted by Organization's Members. The sale of pull-tabs, tip boards, paddle wheels and raffle tickets when accomplished on the premises of an establishment having a liquor license issued by the City of Heidelberg for the sale of either on-sale or off-sale intoxicating liquor shall be accomplished by an active member of the conducting organization or auxiliary or the spouse or surviving spouse of an active member of the conducting organization. The preceding notwithstanding, if the person conducting the sale is also the owner or the employee of the establishment wherein space is being rented by the conducting organization, said person may sell pull-tabs, raffle tickets, or other charitable gambling supplies while he or she is then on duty with the lessor.

Subd. 14 Copies of Financial Reports to City Clerk. Each organization which is censured to conduct charitable gambling within the City of Heidelberg shall provide the City Clerk

with a copy of all financial reports submitted to the State Charitable Gambling Control Board on a quarterly basis if there is any charitable gambling by that organization within the reporting period.

Subd. 15 Right to Set License or Permit Fee. To the extent allowed by Minnesota Statutes, the Council may by resolution set a licensing or permit fee for the conduct of charitable gambling within the City of Heidelberg. The resolution may set fees for application, processing of any application, including whatever amounts are deemed appropriate to defray the cost of investigation of the proposed applicant by the Council, City Clerk, or Chief of Police and to make a determination of the propriety of granting said permit. The City Clerk shall prepare a local application form and shall include verification that the applicant agrees to abide by the local ordinance concerning the conduct of licensed charitable gambling.

Subd. 16 Non-Licensed Gambling Not Regulated. This ordinance shall not regulate the conduct of non-licensed gambling as defined by Minnesota Statutes Chapter 349 et sec.

Subd. 17 Police Right to Inspecting Premises. Each licensee shall be responsible for the conduct of its place of operation as described in its license application. Any peace officer of the City of Heidelberg shall have the unqualified right to enter, inspect, and search such premises of the licensee during business hours in order to ensure that said premises are conducted in compliance with this ordinance and applicable state laws and regulations.

## Section 620 -- LICENSING & REGULATION OF ADULT ESTABLISHMENTS

620.01 Findings and Purpose. Studies conducted by the Minnesota Attorney General, the American Planning Association, and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Hopkins, Minnesota; Ramsey, Minnesota; Minnetonka, Minnesota; Rochester, Minnesota; Phoenix, Arizona; Los Angeles, California; and Seattle, Washington, have studied the impacts that adult establishments have on those communities. These studies have concluded that adult establishments have adverse impacts on the surrounding neighborhoods. These impacts include increased crime rates, lower property values, increased transiency, neighborhood blight, and potential health risks. Based on these studies and findings, the City Council concludes:

Subd. 1 Adult establishments have adverse secondary impacts of the type set forth above.

Subd. 2 The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by geographic, licensing, and health requirements.

Subd. 3 It is not the intent of the City Council to prohibit adult establishments from having a reasonable opportunity to locate in the City.

Subd. 4 Minnesota Statutes Section 462.357 allows the City to adopt regulations to promote the public health, safety, morals and general welfare.

Subd. 5 The public health, safety, morals and general welfare will be promoted by the City adopting regulations governing adult establishments.



620.02 Definitions. For purposes of this Section, the following terms have the meanings given them.

A. "Adult establishment" means a business where sexually oriented materials are sold, bartered, distributed, leased, or furnished and which meet any of the following criteria:

1. a business where sexually oriented materials are provided for use, consumption, enjoyment, or entertainment on the business premises;
2. a business that is distinguished or characterized by an emphasis on the description or display of specified sexual activities;
3. a business that is distinguished or characterized by an emphasis on the description or display of specified anatomical areas;
4. an adult cabaret as defined in 620.07 of this Section;
5. a business providing sexually oriented materials only for off-site use, consumption, enjoyment, or entertainment if the portion of the business used for such purpose exceeds 20% of the retail floor area of the business or 500 square feet, whichever is less. The phrase "retail floor area" does not include storerooms, stock areas, bathrooms, basements, attics or any portion of the business not open to the public.

B. "Sexually oriented materials" means visual, printed or aural materials, objects or devices that are distinguished or characterized by an emphasis on the depiction or description of specified anatomical areas or specified sexual activities.

C. "Specified anatomical areas" means:

1. less than completely and opaquely covered human genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola; and
2. human male genitals in a discernable turgid state, even if completely and opaquely covered.

D. "Specified sexual activities" means:

1. actual or simulated: sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation of unclothed genitals; flagellation or torture in the context of a sexual relationship; the use of excretory functions in the context of a sexual relationship; anilingus; buggery; coprophagy; coprophilia; cunnilingus; fellatio; necrophilia; pederasty; pedophilia; piquerism; sapphism, or zoerastia;
2. clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;

3. use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;
4. fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts;
5. situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding, or other physical restraint of any person;
6. erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or
7. human excretion, urination, menstruation, or vaginal or anal irrigation.

620.03 Adult establishments may be located only in 1-2 industrial districts. See Section 1115.021-2 Subdivision 4 of the Heidelberg City Code.

620.04 Location of Adult Establishments.

A. No person shall operate an Adult Establishment on property, any part of which is within the area circumscribed by a circle which has a radius of 750 feet from any of the uses listed below. Distances shall be measured by following a straight line, without regard to intervening structures or objects, between the closest points on the property lines of the two (2) uses. This distance requirement applies to the following uses:

1. property developed or zoned for residential uses;
2. property located in a major recreation zone;
3. property frequented by children or designed as a family destination, such as a day care facility, school, library, park, playground, state or federal wildlife area or preserve, religious institution, or other public recreational facility;
4. premises licensed under City Code Chapter 5, relating to liquor, beer and wine licensing;
5. a street with a 10,000 average daily traffic count, as noted on the most recent Municipal State Aid System Traffic Volume Map from the Minnesota Department of Transportation, and
6. another adult establishment.

620.05 Operation of Business.

A. Both the owner of an Adult Establishment and the manager of the business shall be responsible for the conduct of their employees and for compliance with this Section.

B. No owner or manager of an Adult Establishment shall employ a person under the age of eighteen (18).

(A) whether the applicant is a natural person, corporation, partnership, or other form of organization;

(B) the legal description of the premises to be licensed, along with a floor plan of the premises. The floor plan of the premises shall detail all internal operations and activities, including a statement of the total floor space occupied by the business. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;

(C) the name and street address of the business. If the business is to be conducted under a designation, name, or style other than the name of the applicant, a certified copy of the certificate required by Minnesota Statutes Section 333.01 shall be submitted;

(D) a detailed owners and encumbrance report concerning the premises to be licensed, fully identifying all owners of the premises to be licensed, the type and percentage of ownership interest possessed by each owner, and a detailed disclosure of any encumbrances against the premises to be licensed.

(2) if the applicant is a natural person:

(A) the name, place and date of birth, street and city address, and phone number of the applicant;

(B) whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places where used;

(C) the street and city addresses at which the applicant has lived during the preceding two (2) years;

(D) the type, name, and location of every business or occupation in which the applicant has been engaged during the preceding two (2) years and the name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding two (2) years;

(E) whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a petty misdemeanor traffic ordinance. If so, the applicant shall furnish information as to the time, place, and offense for which convictions were had.

(3) if the applicant is a partnership:

(A) the name(s) and address(es) of all general partners and all of the information concerning each general partner that is required of applicants in subpart (2) of this Section;

(B) the name(s) of the managing partner(s) and the interest of each partner in the business;

(C) a true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to Minnesota Statutes Section 333.01, a certified copy of such certificate shall be attached to the application.

(4) if the applicant is a corporation or other organization:

(A) the name of the corporation or business form, and if incorporated, the state of incorporation;

(B) a true copy of the Certificate of Incorporation, Articles of Incorporation or Association Agreement, and By-Laws shall be attached to the application. If the applicant is a foreign corporation, a Certificate of Authority as required by Minnesota Statutes Section 303.06, shall be attached;

(C) the name of the manager(s), proprietor(s), or other agent(s) in charge of the business and all of the information concerning each manager, proprietor, or agent that is required of applicants in subpart (2) of this Section.

Subd. 2 Ruling on Application.

(A) within 60 days of receiving an application or a license, the City Clerk shall submit the application to the City Council for approval or denial;

(B) failure or refusal of the applicant to give any information relative to the investigation of the application shall constitute grounds for denial of the license.

Subd. 3 Application Execution. If the application is that of a natural person, the application shall be signed and sworn to by that person; if of a corporation, by officer thereof; if of a partnership, by one of the general partners; or if of an unincorporated association, by the manager or managing officers thereof.

620.10 Standards for Issuing Licenses.

Subd. 1 To receive a license to operate an adult oriented business, an applicant must meet the following standards:

(A) the applicant must be eighteen (18) years of age or older;

(B) the applicant or his or her spouse has not been denied a similar license by any other city, county or state within the preceding twelve (12) months or has not had such a license revoked or suspended within the preceding twelve (12) months;

(C) all current real estate taxes have been paid on the licensed premises;

(D) the licensed premises meet all the provisions of this Chapter as well as all building and fire codes;

(E) the applicant or spouse has not been convicted of any felony involving moral turpitude, prostitution, obscenity or other crime of a sexual nature or involving the use or distribution of a controlled substance as defined by Minnesota laws, or the use or distribution of a dangerous weapon. The fact that a conviction may be under appeal shall not affect the disqualification of the applicant;

(F) all license and investigation fees required by this Chapter have been paid.

Subd. 2 For the purposes of this Section the term "applicant" shall include an individual, all persons having a financial interest in a partnership or joint venture, and, in the case of a corporation, all officers, directors and stockholders required to be named in the application.

Subd. 3 All police, fire and building code investigations shall be completed within forty-five (45) days after the date the application is filed with the City Clerk. Upon a showing of good cause and reasonable diligence on the part of an investigator, the City Council may extend the investigation period for a reasonable time. Any investigation not completed within the allotted time period shall be deemed to be waived.

#### 620.11 Persons and Locations Ineligible for a License.

The issuing authority shall issue a license under this Section to an applicant unless one or more of the following conditions exist:

(A) the applicant is a minor at the time the application is submitted; or,

(B) the applicant failed to supply all of the information requested on the license application; or,

(C) the applicant gave false, fraudulent, or untruthful information on the license application; or,

(D) the applicant has had an adult establishment or similar license revoked within a one (1) year period immediately preceding the date the application was submitted; or,

(E) the applicant has had a conviction for a felony or gross misdemeanor or misdemeanor relating to sex offenses, obscenity offenses, or adult use offenses within five (5) years of the date of the application;

(F) or, the adult establishment business does not meet all of the requirements prescribed in the Heidelberg City Zoning Code; or,

(G) the premises to be licensed as an adult establishment is currently licensed by the City as a tanning facility, tattoo establishment, pawn shop, therapeutic massage enterprise, or an establishment licensed to sell alcoholic beverages; or,

(H) the applicant has not paid the license and investigation fees required in Section 325.05.

#### 620.12 License Fees.

Subd. 1 The annual license fee to operate an adult oriented business shall be \$5,000.00.

Subd. 2 In addition to the annual license fee, an investigation fee of \$1,500.00 shall be paid at the time of the initial license application. This fee does not apply to an applicant who is already an adult oriented business license holder in the City of Heidelberg. .

Subd. 3 All appropriate fees shall be submitted along with the application for a new or renewal license.

Subd. 4 If an application is denied, the license fee, but not the investigation fee shall be refunded to the applicant.

620.13 Display of License. The license shall be displayed in a conspicuous public place in the adult oriented business.

620.14 Renewal of License.

Subd. 1 Every license issued pursuant to this Chapter shall expire at 12:00 midnight on December 31<sup>st</sup> of each year unless sooner revoked by the City Council, and must be renewed before operation is allowed in the following year.

Subd. 2 Applications for renewal must be submitted with the annual license fee to the City Clerk not later than sixty (60) days before the license expires.

Subd. 3 Renewal of a license may be issued by the City Clerk unless the Clerk finds cause for not renewing the license in which case the Clerk shall submit the renewal application to the City Council prior to the expiration of the license.

Subd. 4 No license for which application for renewal has been timely made shall be deemed to expire until the City Council has rendered its decision not to renew a license. No application for renewal of a license may be denied by the City Council until after the applicant has received ten (10) days' written notice of a public hearing before the Council. The applicant may appear with or without counsel at that public meeting and may present such evidence and witnesses as he or she deems appropriate.

620.15 Revocation of License.

Subd. 1 The City Council shall revoke a license for any of the following reasons:

(A) Discovery that false or misleading information or data was given on any initial or renewal application or material facts were omitted from any such application.

(B) The operator or an employee of the operator violates any provisions of this Chapter or any rule or regulation adopted by the Council pursuant to this Chapter, provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee the penalty shall not exceed a suspension of thirty (30) days if the Council finds that the operator had no actual or

constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

(C) The operator or an employee of the operator violates any provision of the Heidelberg City Code, provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee the penalty shall not exceed a suspension of thirty (30) days if the Council finds that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

(D) The operator becomes ineligible to obtain a license.

(E) Any cost or fee required to be paid by this ordinance is not paid.

(F) Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult oriented business.

Subd. 2 The Council, before revoking or suspending any license, shall give the operator ten (10) days' written notice of the charges against him or her, and an opportunity for a public hearing before the Council at which time the operator may appear with or without counsel and may present such evidence and witnesses as he or she deems appropriate.

Subd. 3 The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

Subd. 4 Any operator whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult oriented business for six (6) months from the date of revocation of the license.

620.16 Severability. If any Section or portion of any Section of this Chapter is deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other sections or portion of Sections of this Chapter.

620.17 Enforcement. The following shall have the authority to enter any adult establishment at all reasonable times to inspect the premises for the purposes of enforcing this Chapter and all other applicable federal, state, and local laws, fire codes, building codes, and plumbing codes: the Heidelberg City Police Department, the Heidelberg Fire Chief, the State Fire Marshal, the Chief Building Inspector for the City, the Zoning Administrator, or the designees of these departments.

## Section 621 – PREMISES CONDUCIVE TO HIGH-RISK SEXUAL CONDUCT

621.01 Findings and Purpose. The City Council makes the following findings regarding the need to regulate commercial premises, buildings, and structures that are conducive to the spread of communicable diseases of danger to persons in order to further the substantial interest of public health:

A. The experience of other cities establishes that certain commercial premises, buildings and structures, or parts thereof, by reason of the design and use of such premises, buildings or structures are conducive to the spread of communicable disease of danger to persons frequenting such premises, buildings or structures, as well as to the general public, and that the risk of spreading infectious and contagious diseases can be minimized by regulating such commercial premises, buildings and structures.

B. The experience of other cities where such commercial premises, buildings and structures are present indicates that the risk of spreading the sexually transmittable disease of Acquired Immune Deficiency Syndrome (AIDS) is increased by the presence of such premises, buildings and structures, because the design or use of such premises, buildings and structures, or parts thereof, can facilitate high-risk sexual conduct.

C. Medical publications of the Center for Disease Control of the United States Department of Health and Human Services indicate that the sexually transmittable disease of AIDS is currently irreversible and uniformly fatal. Medical research has further established that the risk factors for obtaining or spreading AIDS are associated with high-risk sexual conduct.

D. Certain commercial premises, buildings and structures, or parts thereof, by reason of their design and use, are conducive to high-risk sexual conduct and hence the spread of communicable disease, and that the risk of spreading infectious and contagious diseases can be minimized by regulating these commercial premises, buildings and structures.

E. The public health, safety, morals and general welfare will be promoted by the City adopting regulations governing commercial premises, buildings and structures conducive to high-risk sexual conduct.

F. The purpose of this Section is to prescribe regulations governing commercial premises, buildings and structures that are conducive, by virtue of design and use, to high-risk sexual conduct which can result in the spread of sexually transmitted diseases to persons frequenting such premises, buildings and structures

621.02 Definitions. The following terms have the meanings given them below:

A. "Booths, stalls, or partitioned portions of a room or individual room" means enclosures specifically offered to persons for a fee or as an incident to performing high-risk sexual conduct, or enclosures which are part of a business operated on the premises which offers movies or other entertainment to be viewed within the enclosure, including enclosures wherein movies or other entertainment is dispensed for a fee, but does not include enclosures that are private offices used by the owners, managers or persons employed by the premises for attending to the tasks of their employment, and which are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing movies or other entertainment for a fee, and are not open to any persons other than employees.



B. "Doors, curtains or portal partitions" means full, complete, non-transparent closure devices through which one cannot see or view activity taking place within the enclosure.

C. "Hazardous site" means any commercial premises, building or structure, or any part thereof, which is a site of high-risk sexual conduct as defined herein.

D. "High-risk sexual conduct" means (i) fellatio; (ii) anal intercourse; or (iii) vaginal intercourse with persons who engage in sexual acts in exchange for money.

E. "Open to an adjacent public room as that the area inside is visible to persons in the adjacent public room" means either the absence of any entire "door, curtain or portal partition" or a door or other device which is made of clear, transparent material such as glass, plexiglass or other similar material meeting building code and safety standards, which permits the activity inside the enclosure to be entirely viewed or seen by persons outside the enclosure.

F. "Public health official" means an agent or employee of the City, county or state charged with the enforcement of the state or local health laws.

621.03 Public Health Regulations. A commercial building, structures, premises or part thereof, or facilities therein may not be constructed, used, designed or operated in the City for the purpose of engaging in, or permitting persons to engage in, sexual activities which include high-risk sexual conduct.

621.04 It is unlawful to own, operate, manage, rent, lease, or exercise control of a commercial building, structures, premises or portion or part thereof in the City that contains:

A. Partitions between subdivisions of a room portion or part of a building, structure or premises having an aperture which is designed or constructed to facilitate sexual activity, including but not limited to vaginal intercourse, anal intercourse, or fellatio, between persons on either side of the partition.

B. "Booths, stalls, or partitioned portions of a room or individual room" as defined herein which have "doors, curtains or portal partitions" as defined herein unless the booths, stalls or partitioned portions of a room or individual room have at least one (1) side open to an adjacent public room as that the area inside is visible to persons in the adjacent public room as defined herein. Booths, stalls or partitioned portions of a room or individual room that are so open to an adjacent public room must be lighted in a manner that the persons in the area used for viewing motion picture or other forms of entertainment are visible from the adjacent public rooms, but such lighting need not be of such intensity as to prevent the viewing of the motion pictures or other offered entertainment.

621.05 Exceptions. The regulations set forth in this Section do not apply to premises, buildings or structures that are lawfully operating and licensed as hotels, motels, apartment complexes, condominiums, townhomes, or boarding houses which are subject to other general health and sanitation requirements under state and local law.

621.06 Health Enforcement Powers. In exercising powers conferred by this and any other Section of this Code relating to communicable diseases, the Public Health Official is to be guided by the most recent instructions, opinions and guidelines of the Center for Disease Control of the United States Department of Health and Human Services that relate to the spread of infectious diseases. In order to ascertain the source of infection and reduce its spread, the Public Health Official, and persons under the Public Health Official's direction and control, may inspect or cause to be inspected, and to issue orders regarding any commercial building, structures or premises, or any part thereof, that may be a site of high-risk sexual conduct. If the Public Health Official determines that a hazardous site as defined herein exists, the Public Health Official will declare it to be a public health hazard and public health nuisance and will:

- A. Notify the manager, owner, or tenant of the hazardous site that the Public Health Official has reasonable belief that the premises, building or structure is a hazardous site as defined herein.
- B. Issue two (2) written warnings at least ten (10) days apart to the manager, owner, or tenant of the premises stating the specific reasons for the Public Health Official's opinion that the premises, building or structure is a hazardous site as defined herein.
- C. Once such notices and warnings have been issued, the Public Health Official must proceed as follows:
  1. after the manager, owner or tenant of the premises has been notified in writing as to the basis of the Public Health Official's determination, the manager, owner or tenant will have ten (10) days from the date of the last warning to request a hearing before the Public Health Official or the Public Health Official's appointee for the determination as to the existence of such hazardous site. If the manager, owner or tenant of the premises does not request a hearing within ten (10) days of the last warning notice, the Public Health Official will then cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site and the Public Health Official will cause orders to be issued to the manager, owner or tenant of the premises constituting the hazardous site to take specified corrective measures to prevent high-risk sexual conduct from taking place within the premises.
  2. if the manager, owner or tenant of the premises requests a hearing, the hearing will be held before the Public Health Official or the Public Health Official's appointee at a date not more than thirty (30) days after demand for a hearing. After considering all evidence, the Public Health Official or the Public Health Official's appointee will make a determination as to whether the premises constitute a hazardous site, as defined herein and issue a decision based upon all hearing evidence presented. If the Public Health Official or the Public Health Official's appointee makes a determination that the premises constitute a hazardous site, the Public Health Official will then issue orders to the manager, owner or tenant of the premises to take corrective measures to prevent high-risk

sexual conduct from taking place within the premises and cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site.

3. if, within thirty (30) days after issuance of the orders to the manager, owner or tenant of the hazardous site, the Public Health Official determines that such corrective measures have not been undertaken, the Public Health Official (i) may order the abatement of the hazardous site as a public nuisance, which may be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction, or (ii) may secure a court order for the closure of the premises constituting the hazardous site until the premises, building or structure is in compliance with all provisions of this Code.

621.07 Severability. If any Section or portion of any Section of this Chapter is deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other Sections or portion of Sections of this Chapter.

621.08 Enforcement. The following shall have the authority to enter any adult establishment at all reasonable times to inspect the premises for the purposes of enforcing this Chapter and all other applicable federal, state, and local laws, fire codes, building codes, and plumbing codes: the Heidelberg City Police Department, the Heidelberg Fire Chief, the State Fire Marshal, the Chief Building Inspector for the City, the Zoning Administrator, or the designees of these departments.

## Section 625 – PENALTIES

625.01 Criminal Penalties. A person violating any provision of this Chapter shall be guilty of a misdemeanor, punishable by a fine of up to 90 days in jail, payment of a fine of up to the maximum permitted in Minnesota Statutes Section 412.231, or both. A defendant convicted of a misdemeanor under this Section of the City Ordinance, in addition to the other penalties proscribed by law, shall be made responsible for reimbursing the City its costs of prosecution. This Section is adopted in conformance with Minnesota Statutes Section 412.231, which the City hereby adopts and incorporates herein.

625.02 Administrative Remedies. The City may, at its sole discretion, invoke any administrative remedy available to it under the Code in the event a person violates any provision of this Chapter. For the purposes of this Section a person is defined as an individual, a partnership, a corporation, or any other entity.

625.03 Non-Exclusivity of Remedies. Violations of this Chapter of the Heidelberg City Code may be remedied by the City, at its sole discretion, administratively or through criminal prosecution. These remedy options are not mutually exclusive, and the City may pursue both remedy options simultaneously.

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