

## 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, current, 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 Administrator 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 be 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 Administrator 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 Administrator deems necessary. The City Administrator 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 Administrator 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 1/12<sup>th</sup> 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 Administrator, 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 Administrator, 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 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 Administrator 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 the license term approved, and (3) that such insurance will not be cancelled or terminated without thirty days' written notice upon the City Administrator. 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 obtaining 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, dance, 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 governmental 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. 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 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 Minn. Stat. Sec. 144.391.

Subd. 2 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 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:

A. 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 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.

B. 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, excluding matches and lighters.

C. 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.

D. Vending Machine – Shall mean any mechanical, electrical 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.

E. Individually Packaged – Shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco or 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 Section shall not be considered individual packaged.

F. Loosies – Shall mean the common term used to refer to a single or individually packaged cigarette.

G. Minor – Shall mean any natural person who has not yet reached the age of eighteen (18) years.

H. 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.

I. 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.

J. Sale – Shall mean any transfer of goods for money, trade, barter, or other consideration.

K. Compliance Checks – Shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, or 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, or tobacco related devices.

Subd. 3 License. No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related devices without first having obtained a license to do so from the City.

A. 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

City Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

B. 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 applicant it deems necessary. If the Council shall approve the license, the City 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.

C. Term – All licenses shall be issued on a fiscal year basis, January 1 to December 31. For licenses issued and which are to become effective other than on the first day of the licensed year, the fee to be paid with the application shall be a pro rata share of the annual license fee.

D. 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.

E. 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.

F. 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.

G. Display – All licenses shall be posted and displayed in the plain view of the general public on the licensed premise.

H. 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 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.

Subd. 4 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 established from time to time by resolution of the Council.

Subd. 5 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, or 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 a license.

Subd. 6 Prohibited Sales. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, or tobacco products, or tobacco related devices:

- A. To any person under the age of 18 years.
- B. By means of any type of vending machine, except as may be otherwise 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 individually packaged tobacco, tobacco product, or tobacco related device and whereby there is not a physical exchange of the individually packaged tobacco, or 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 Subd. 2 of this ordinance.
- E. Containing opium, morphine, jimson, 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, in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

Subd. 7 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 means of a vending machine.

Subd. 8 Self-Service Sales. It shall be unlawful for a licensee under this ordinance to allow the sale of individually packaged tobacco, tobacco products, or tobacco related devices by any means whereby 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 tobacco related device between licensee or the licensee's employee and the customer. All tobacco, tobacco products, or 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 Subdivision by January 1, 1998.

Subd. 9 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 employee to whatever penalties are appropriate under this ordinance, State or Federal law, or other applicable law or regulation.

Subd. 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 years but less than eighteen years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by 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 part of the compliance check. No minor used in compliance 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 Subdivision 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. 11 Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance:

A. 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.

B. 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 compliance checks.

C. 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.

D. 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 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.

E. 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.

Subd. 13 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.

Subd. 14 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 affect the validity and enforceability of any other section or provision of this ordinance.

Subd. 15 Effective Date. This ordinance shall take effect the day following publication in the City's official newspaper.

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 watertight 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 licensee 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 Administrator 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 Administrator, 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, on 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.

#### 600.16 Kennels.

This Section of the Montgomery City Code is hereby repealed.

#### 600.17 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 Montgomery 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, as may be amended from time to time, 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 Minnesota Statutes Section 349.213, as may be amended from time to time, the Charitable Gambling Control Board of 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 thirty days of such notice, the license may not be issued or renewed.

Subd. 5 Eligibility for License. Eligibility for a charitable gambling license within the City of Montgomery shall be restricted to local fraternal, religious, veterans, educational and other non-profit organizations. A local organization shall be defined as an organization having at least forty percent of its members who list a Montgomery City or Rural Route mailing address which would include the existing Montgomery zip code, 56069, or its successor as determined by the U.S. Postal Service.

Subd. 6 Premises. The use 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 Subdivision 5 of this Section. 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 Montgomery 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. 7 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. 8 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 Subdivision 5 only between the hours of 8:00 o'clock a.m. and 1:00 o'clock a.m.

Subd. 9 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 Chapter 349, as may be amended from time to time.

Subd. 10 Employees. Compensation to be paid in accordance with Minnesota law.

Subd. 11 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



Montgomery for the sale of either on-sale or off-sale intoxicating liquor or non-intoxicating malt liquor shall be accomplished by the owner or the employee of the establishment wherein space is being rented by the conducting organization.

Subd. 12 Copies of Financial Reports to City Administrator. Each organization which is licensed to conduct charitable gambling within the City of Montgomery shall provide the City Administrator with a copy of the annual audited financial statements of the organization.

Subd. 13 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 Montgomery. 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 Administrator, or Chief of Police and to make a determination of the propriety of granting said permit. The City Administrator 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. 14 Non-Licensed Gambling Not Regulated. This ordinance shall not regulate the conduct of non-licensed gambling as defined by Minnesota Statutes Chapter 349, as may be amended from time to time.

Subd. 15 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 Montgomery 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.

Subd. 16 Number of Licenses Issued. Up to two eligible charitable organizations may be licensed for each premises on which gambling is to be conducted, except that licenses for bingo and raffles shall be governed by state law as to the number of licenses per premises. No eligible charitable organization may be licensed for more than three sites in the City. Any charitable organization whose existing site licenses are grandfathered in by this ordinance may renew existing site licenses but shall not replace any sites lost if said organization is at or above the maximum number of site licenses permitted in this Section.

## 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.

C. “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 zooerastia;
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 I-2 Industrial Districts. See Section 1115.02 of the Montgomery 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).

C. No owner, manager, or employee of an adult establishment shall have been convicted of violating this Section three (3) or more times within twenty-four (24) months.

620.06 Restrictions and Regulations of Adult Establishments. An adult establishment is subject to the following restrictions and regulations:

A. No owner, manager, or employee shall allow any sexually oriented materials or entertainment to be visible or perceivable in any manner, including aurally, at any time from outside of the business.

B. No owner, manager, or employee of an adult establishment shall have been convicted of a sex crime, as identified in Minnesota Statutes Section 609.293 through 609.352, 609.746 through 609.749, 609.79, 518B.01, or related statute dealing with sexual assault, sexual conduct, harassment, obscenity, or domestic abuse.

C. The business owner, manager, or employee shall ensure that no person under the age of eighteen (18) enters the business.

D. No owner, manager, or employee shall allow any person under the age of eighteen (18) to have access to sexually oriented materials, whether by sight, purchase, touch, or any other means.

E. No owner, manager, or employee may sell or display for sale any sexually oriented materials except in original unopened packages.

F. Each business shall display a sign on its main entrance door which reads: "This business sells sexually oriented materials or entertainment. Persons under the age of eighteen (18) are prohibited from entering." The sign letters shall be a minimum of two (2) inches high.

G. No business may have a license under Chapter 5 of the City Code, and no alcoholic beverages may be consumed in the business.

H. No business shall be open except between 7:00 o'clock a.m. and 10:00 o'clock p.m., Monday through Saturday.

620.07 Adult Cabarets.

A. An adult cabaret is a business that provides dancing and other live entertainment distinguished or characterized by an emphasis on the presentation, display or depiction of specified sexual activities or specified anatomical areas, or the presentation, display or depiction of matter that seeks to evoke, arouse or excite sexual or erotic feelings or desires.

B. Any adult cabaret operating in the City must comply with the following conditions:

1. an owner, operator, or manager of an adult cabaret may not allow any dancer or other live entertainer to display specified anatomical areas or to display or perform specified sexual activities on the premises of the adult cabaret;
2. a dancer, live entertainer, performer, patron, or any other person may not display specified anatomical areas in an adult cabaret;
3. the owner, operator, or manager of an adult cabaret must provide the following information to the City concerning any person who dances or performs live entertainment at the adult cabaret: the person's name, home address, home telephone number, date of birth, and any aliases;
4. a dancer, live entertainer, or performer may not be under eighteen (18) years old;
5. dancing or live entertainment must occur on a platform intended for that purpose and that is raised at least two (2) feet from the level of the floor;
6. a dancer or performer may not perform a dance or live entertainment closer than ten (10) feet from any patron;
7. a dancer or performer may not fondle or caress any patron and no patron may fondle or caress any dancer or performer;
8. a patron may not pay or give any gratuity to any dancer or performer; and
9. a dancer or performer may not solicit or accept any pay or gratuity from any patron.

620.08 License Required. No person, corporation, partnership, or other ownership entity shall own or operate an adult establishment within the City of Montgomery, Le Sueur County, Minnesota, unless such person, corporation, partnership, or other ownership entity is currently licensed under the provisions of this Section.

620.09 License Application.

Subd. 1 The application for a license under this Section shall be made on a form supplied by the issuing authority and shall request the following information:

- (1) for all applicants:
  - (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 or applicants in subpart (2) of this Section.

Subd. 2 Ruling on Application.

- (A) Within 60 days of receiving an application for a license, the City Administrator 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 an 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 meets 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 Administrator. 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.

Subd. 1 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; or,
- (F) the adult establishment business does not meet all of the requirements prescribed in the Montgomery 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 Montgomery.

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 Administrator not later than sixty (60) days before the license expires.

Subd. 3 Renewal of a license may be issued by the City Administrator unless the Administrator finds cause for not renewing the license in which case the Administrator 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 Montgomery 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 license 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, buildings codes, and plumbing codes: the Montgomery City Police Department, the Montgomery 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 CONDUCTIVE 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 or 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 adjacent public room so 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 seem 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 so 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 pictures 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 portions 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 Montgomery City Police Department, the Montgomery Fire Chief, the State Fire Marshal, the Chief Building Inspector for the City, the Zoning Administrator, or the designees of these departments.



## Section 625 – PEDDLERS AND SOLICITORS

625.01 Purpose. The City Council finds that hawkers, peddlers, solicitors, and transient merchants by virtue of the temporary nature of their business and the lack of permanent location for their operations, present unique consumer protection problems. In order to protect the health, safety, and welfare of the community and pursuant to the authority granted by Minnesota Statutes Section 329.15, the City of Montgomery herein licenses and regulates all hawkers, peddlers, and solicitors operating within the City. The purpose of this Section of the City Code is to prevent fraud and criminal activity, such as burglary, theft, and assault and to protect the privacy of residents in their homes by requiring commercial hawkers, peddlers, and solicitors to be licensed and to impose restrictions on their operations within the City that are narrowly tailored to address the risks these operations pose to the public health, safety and welfare. It is not the purpose of this ordinance to burden interstate commerce or interfere with constitutionally protected rights under the First Amendment of the United States Constitution or Art. I, Section 3 of the Minnesota Constitution.

625.02 Definitions. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Subd. 1 Peddler. 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. 2 Person. Any natural individual, group, organization, corporation, partnership or association. As applied to groups, organizations, corporations, partnerships and associations, the term shall include each member, officer, partner, associate, agent or employee.

Subd. 3 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.

Subd. 4 Solicitor. 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 shall mean the same as the term canvasser.

Subd. 5 Transient Merchant. 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 intent to remain in any one location for more than 14 consecutive days.

#### 625.03 Exceptions to Definitions.

A. For the purpose of the requirements of this Chapter, 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 items 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.

B. In addition, person(s) selling from a temporary fruit and/or vegetable stand/truck set up on a local road or lot. Also, prearranged food stands for special community events.

C. In addition, person(s) 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 Chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

D. Nothing in this Chapter shall be interpreted to prohibit or restrict door-to-door advocacy. Persons engaging in door-to-door advocacy shall not be required to register as solicitors under Section 625.08. The term “door-to-door advocacy” includes door-to-door canvassing and pamphleteering as vehicles for the dissemination of religious, political and other ideas.

#### 625.04 Licensing; Exemptions.

A. 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 it may be amended from time to time, if the county issues a license for the activity.

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

C. Application. Application for a City license to conduct business as a peddler or transient merchant shall be made at least 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:

1. Applicant's full legal name and legal names of other individuals applying under same application.
2. All other names under which the applicant conducts business or to which applicant officially answers.
3. Copy of the applicant's and other individuals applying under same application state identification card or state driver's license.
4. Full address of applicant's permanent residence.
5. Telephone number of applicant's permanent residence.
6. Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent.
7. Full address of applicant's regular place of business (if any).
8. Any and all business related telephone numbers of the applicant.
9. The type of business for which the applicant is applying for a license.
10. The dates during which the applicant intends to conduct business in the City.
11. Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the City, including the location where a transient merchant intends to set up business.
12. 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.

13. A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant.

14. Proof of any requested county license.

15. Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.

16. A general description of the items to be sold or services to be provided.

17. All additional information deemed necessary by the City Administrator or his designee.

18. The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

D. Fee. All applications for a license under this Chapter shall be accompanied by the payment of a fee established by resolution of the City Council.

E. Procedure. Upon receipt of the completed application and payment of the license fee, the City Administrator, within two regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the City Administrator determines that the application is incomplete, the City Administrator must inform the applicant of the required necessary information that is missing. If the application is complete, the City Administrator must order an investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving a complete application the City Administrator or designee must issue the license unless there exists grounds for denying the license under Section 625.05, in which case the Administrator must deny the license. If the City Administrator denies the license, the applicant must be notified in writing of the decision, the reason for denial, and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request. The decision of the City Council following the hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

F. Duration. A license granted under this Chapter shall be valid for thirty (30) calendar days from the date of issue.

G. License Exemptions.

1. 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.
2. 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 the activity is for the purpose of exercising that person's State or Federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.
3. No license shall be required for non-profit organizations, schools, churches, or political fund raisers.

625.05 License Eligibility. The following shall be grounds for denying a license under this Chapter:

- 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. Those 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 found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints 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 12 months, or three complaints filed against the applicant within the preceding five years.

625.06 License Suspension and Revocation.

A. Generally. Any license issued under this Section may be suspended or revoked at the discretion of the City Administrator or his/her designee for violation of any of the following:

1. Fraud, misrepresentation or incorrect statements on the application form.
2. Fraud, misrepresentation or false statements made during the course of the licensed activity.
3. Conviction of any offense for which granting of a license could have been denied under Section 625.05.
4. Violation of any provision of this Chapter.

B. Multiple Persons Under One License. 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 authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

C. Notice. Prior to revoking or suspending any license issued under this Chapter, the City shall provide the license holder with written and/or oral notice of the alleged violations 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.

D. Public Hearing. Upon receiving the notice provided in Subdivision (C) of this Section, 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 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 20 days from the date of the request. Within three regular business days of the hearing, the City Council shall notify the licensee of its decision.

E. Emergency. If, in the discretion of the City Administrator or his/her designee, 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 Chapter, the City Council may immediately suspend the person's license and provide notice of the

right to hold a subsequent public hearing as prescribed in Subdivision (C) of this Section.

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

625.07 License Transferability. No license issued under this Chapter shall be transferred to any person other than the person to whom the license was issued.

625.08 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 a way as to create a threat to the health, safety and welfare of any individual or the general public.

D. Conducting business before 8:00 a.m. or after 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.

625.10 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 four inches long and four 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.

## Section 626 – SEPTAGE DISCHARGE LICENSING

### 626.01 Definitions.

Subd. 1 City. The term “City” in this Section refers exclusively to the City of Montgomery.

Subd. 2 Person. The term “person” is inclusive of any individual, group, or business entity.

Subd. 3 Septage. “Septage” means solids and liquids removed from an SSTS and includes solids and liquids from cesspools, seepage pits, other pits, or similar systems or devices that receive sewage. Septage also includes solids and liquids that are removed from portable, incinerating, composting, holding, or other toilets. Waste from Type III marine sanitation devices, as defined in Code of Federal Regulations, title 33, section 159.3, and material that has come into contact with untreated sewage within the past 12 months is also considered septage

Subd. 4 Septage Discharge License. A license to discharge septage into the Montgomery waste treatment facility.

Subd. 5 State. The term “State” in this Section refers exclusively to the State of Minnesota.

626.02 License Required. It is unlawful for any person to discharge septage into the Montgomery waste treatment plant or sewer system without a septage discharge license from the City. The issuance and maintenance of the City’s septage discharge license is contingent upon licensee maintaining a State septic tank maintainer’s license. The requirement that an applicant and later licensee have and maintain a State septic tank maintainer’s license is central to this ordinance and cannot be waived.

626.021 Term of License. The term of any license issued under this Section shall be one (1) year.

626.03 Applications. Any person seeking a City septage discharge license shall obtain the City application/renewal form from the City Public Utility Director and shall fully complete the application.

Subd. 1 Approval of Application. The Montgomery Public Utility Director shall review the completed application form. If the form is not filled out completely, including all required attachments, the Director shall reject the application for lack of completeness. In the event the application has been rejected for lack of completeness, the Public Utility Director shall give written notice to the applicant that the application has been rejected on that ground, and shall state in the written notice what information must be provided for the application to be deemed



complete. Upon the Public Utility Director deeming the application complete, the application and all attachments shall be submitted to the City Council for review and approval. The Public Utility Director shall make written recommendations to the Council as to whether the license application be approved or denied and said written recommendation shall state in detail the reasons for the Director's recommendation of approval or disapproval. The application can be approved only by a majority vote of the City Council. If the application is not approved by the City Council, applicant must wait a minimum of ninety (90) calendar days before reapplying for a license.

Subd. 2 Issuance of License. Upon City Council approval of the issuance of a septage discharge license to an applicant, the septage discharge license shall be promptly issued to the licensee by the City Administrator, but only after licensee has paid all required City fees. The City Administrator and the Public Utility Director shall keep a full, up to date record of all septage discharge licenses issued by the City, as well as the status of each license.

626.04 Discontinuance of Septage Hauling/Processing Program. The City reserves the unlimited right to discontinue the septage disposal program created by this ordinance. In the event the City Council determines to terminate the septage discharge program and terminate all licenses issued thereunder, the City shall give licensees two (2) weeks written notice that the City has terminated the program and all licenses issued thereunder. In this event, the unused pro rata portion of the license fee shall be refunded to the licensee. Licensee, its employees, agents, subcontractors, or persons under licensee's control discharge septage into the Montgomery City sewer system at any location other than the designated area of the Montgomery wastewater treatment facility.

626.05 License Renewal. To renew a septage discharge license, the licensee must fully complete and submit the renewal application to the City Public Utility Director at least sixty (60) days prior to the expiration of the current license. The renewal application shall be on a form provided by the City and shall be accompanied by payment of the City's renewal fee for the reissuance of the annual license. The Public Utility Director shall review the application. If the form is not filled out completely, including all required attachments, the Director shall reject the application for lack of completeness. In the event the application has been rejected for lack of completeness, the Public Utility Director shall give written notice to the applicant that the application has been rejected on that ground, and shall state in the written notice what information must be provided for the application to be deemed complete. When the Public Utility Director has reviewed the renewal and found it to be complete, including all attachments, the application shall be submitted to the City Council for review and approval. The Public Utility Director shall make written recommendations to the Council as to whether the Director recommends the license application be approved or denied and said written recommendation shall state in detail the reasons for the Director's recommendation of approval or disapproval. The renewal application can be approved only by a majority vote of the City Council. The City Administrator shall issue the septage discharge license renewal only after all required City fees have been paid. The City Administrator

and Public Utility Director are to keep good, up to date records as concerns all septage discharge license renewals.

626.06 Septic Discharge Licenses are Not Transferable. City septage disposal licenses shall not be assigned or transferred from the licensee to any successor in interest. Licensee's successor in interest shall apply for a new license. Licensee's unused, pro rata portion of the license fee shall be refunded to licensee, upon the issuance of a new license to licensee's successor in interest.

626.07 License Termination.

Subd. 1 Mandatory License Termination. The City shall terminate licensee's septage discharge license for any of the following reasons:

- A. Licensee allows its Minnesota septic tank maintainer's license to lapse, or it is revoked by the State.
- B. The City Council decides to discontinue the septage disposal program created by this ordinance. In the event the City Council determines to terminate the septage discharge program and terminate all licenses issued thereunder, the City shall give each licensee two (2) weeks written notice that the City has terminated the program and all licenses issued thereunder. In this event, the unused pro rata portion of the license fee shall be refunded to the licensee.
- C. Licensee, its employees, agents, subcontractors, or persons under licensee's control discharge septage into the Montgomery City sewer system at any location other than the designated area of the Montgomery wastewater treatment facility.

Subd. 2 Permissive License Termination. The City may terminate licensee's septage discharge license for any of the following reasons:

- A. Failure to abide by the site disposal rules, including the requirement that licensee, its employees, agents, subcontractors or other persons under licensee's control enter data for each load brought in for disposal and failure to cooperate in the City's obtaining samples from each load.
- B. The licensee, its employees, agents, subcontractors, or other persons under licensee's control supply false information in the sample log book and/or card reading system regarding any of the following: the content of the load, source of the load, the amount discharged, or concerning the identification of the vehicle hauling the waste.
- C. The licensee, its employees, agents, subcontractors, or other persons under licensee's control refuse to allow the City, through its employees or

agents, reasonable and timely access to licensee's vehicle for the purpose of inspection, monitoring, or obtaining samples of the waste to be discharged.

D. The licensee fails to remain current in paying City billing for monthly waste discharge.

E. The licensee fails to pay any fines imposed upon it by the City as concerns licensee's septage discharge.

F. Licensee fails to maintain valid City licensure and fails to remain current in paying all applicable licensing fees or charges imposed by the City.

G. Licensee, its employees, agents, subcontractors, or other persons under licensee's control tamper with a load sample, fails to correctly record the number of gallons in each hauled load.

H. Licensee, its employees, agents, subcontractors, or other persons under licensee's control discharges any waste that causes interference or damage to the P.O.T.W.

I. Licensee, its employees, agents, subcontractors, or other persons under licensee's control fails to comply with all conditions or requirements of this Section.

J. Licensee, its employees, agents, subcontractors, or other persons under licensee's control violate Sections 626.09-626.11.

#### 626.08 Discharge Requirements.

Subd. 1 Time and Location Where Discharge is Permitted. The discharge of all septage shall occur at the Montgomery waste treatment facility located at 16638 340<sup>th</sup> Street, Montgomery, Minnesota. Discharge of septage into the Montgomery City sewer system at any other location is prohibited and unlawful. Septage discharge hours at the Montgomery waste treatment facility shall be Thursdays from 7:00 a.m. to 4:00 p.m. and Fridays from 7:00 a.m. to 1:00 p.m., or such other times as set by the Public Utility Director and posted onsite.

Subd. 2 Sampling and Refusal of Load. Hauled wastes are subject to sampling by the City. The hauler's refusal to permit the City to sample the load, or the hauler's interference with the City obtaining a good sample of the load shall result in the hauler being refused permission to dump the load. The City shall have the right to require the septage hauler to suspend the discharging of septage into the Montgomery wastewater treatment facility until the City's septage analysis is complete.

Subd. 3 The City, through its employees or agents, has the right to refuse to accept and process any septage load which violates any of the criteria requirements set out in this ordinance. The refusal to accept the load for processing shall not automatically constitute a termination of licensee's septage discharge license, though the City reserves the right to review the incident to determine if that remedy should be exercised by the City.

Subd. 4 City License May Be Revoked for Reasons of Delinquency. Licensees must be current in the payments due the City of Montgomery at all times. Licensees are to pay the City the amount due for the use of the Montgomery waste disposal system within thirty (30) days of the billed due date. No licensee whose account is not in good standing shall be permitted to dump any loads at the Montgomery waste treatment facility until such account is brought current. Any licensee more than sixty (60) days in arrears may have its/his City license terminated by the City Council.

626.09 Duty to Mitigate. The licensee shall take all reasonable steps to minimize or correct any adverse impact to the environment or the Montgomery waste treatment plant that results from licensee's noncompliance with federal, state, or local laws pertaining to the discharge of hauled septage into the Montgomery wastewater treatment plant. Failure to mitigate as required herein may result in the City terminating licensee's septage discharge license.

626.10 Specific Prohibitions and Limitations.

Subd. 1 The City shall accept only septage it deems appropriate and is willing to accept. The City shall not accept any of the following for disposal at the Montgomery septic dump station:

- A. Industrial or business wastes, including wastes from any sand/oil separators, grease traps, hot tanks, dip or batch tanks, or any other tank, pit, pond, or container used to hold wastes or products used in a business or related purpose, or wastes from other than domestic residential use at its septic dump station.
- B. Any waste which violates federal, state, or local restrictions.
- C. Wastes containing fats, wax, grease or oils of petroleum origin, whether emulsified or not.
- D. Waste containing any liquids, solids, or gases that can create a fire, explosion, or health hazard to the public.
- E. Waste containing any substances capable of causing obstructions or other interferences with the proper operation of the sewer system.

F. Waste containing any pollutant which will cause a pass-through of pollutants or which will interfere with the City of Montgomery wastewater treatment facility's operations, sludge use, or disposal practices.

G. Any waste containing sludge, screenings, or other residues from business or industrial wastes, or the pretreatment of business or industrial waste.

H. Any waste containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.

I. Any waste containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.

J. Any waste containing material considered a hazardous waste under the Resource Conservation and Recovery Act (R.C.R.A.), or infectious medical waste, materials that are toxic, hazardous, or radioactive.

Subd. 2 Limitations. The City of Montgomery may commence enforcement proceedings when a load sample is found to exceed the maximum concentrations acceptable for discharge of hauled waste from domestic septic systems, cesspools, portable toilets or approved holding tanks into the City of Montgomery septic receiving facility. The maximum concentrations accepted, based on a dry weight analysis, are as follows:

<u>Waste or Chemical</u>	<u>Maximum</u>	<u>Units</u>
Arsenic	38	mg/kg
Cadmium	43	mg/kg
Chromium	300	mg/kg
Copper	2150	mg/kg
Cyanide	100	mg/kg
Lead	420	mg/kg
Mercury	28	mg/kg
Molybdenum	38	mg/kg
Nickel	210	mg/kg
Selenium	50	mg/kg
Zinc	3750	mg/kg

626.11 Monitoring and Records. All load samples taken must be listed in the daily log book for such purpose maintained at the wastewater treatment plant. All information regarding the wastes origin and the signature of each waste generator will be included. Licensee shall also sign the form, indicating that he has accepted no wastes other than those listed. Failure to accurately record every load, falsification of data, or failure to

transmit the form to the City prior to discharge may result in termination of this license, a fine of up to \$700.00 per offense, and up to 90 days' jail time for the offender, per offense. The licensee shall maintain records of all data pertaining to origin and quantity of each loads for a period of at least three years. Upon written request of the City the licensee shall have three (3) business days to provide the City Administrator a full list of the names of its haulers.

626.12 Licensing Fees and Rates. All licensing fees and discharge rates shall be set annually, each January, by ordinance or by resolution. The first setting of licensing fees and rates shall be done contemporaneously with the passage of this ordinance. The licensing fees and septage discharge rates shall be reviewed by the City Council in January, 2009, and each year thereafter.

626.13 Right to Appeal. Any applicant for a septage discharge license, any person seeking a renewal of such license, or any person whose license has been terminated shall have the right to appeal the adverse ruling to the District Court.

626.14 Current Mailing Address Required. All applicants and licensees must have a current mailing address on file with the City Administrator at all times. The City shall mail all written notices to applicant's or licensee's address on file.

## Section 699 – PENALTIES

699.01 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 \$1,000.00, 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, as may be amended from time to time, which the City hereby adopts and incorporates herein.

699.02 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.

699.03 Non-Exclusivity of Remedies. Violations of this Chapter of the Montgomery 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.

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