

# CHAPTER 9

## LICENSES AND BUSINESS REGULATIONS

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### ARTICLE 1. PAWNBROKERS/PRECIOUS METAL DEALERS/ SECONDHAND GOODS DEALERS

**Sec. 9-01. Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

- **Issuing Authority** - The City of Oakdale Administration Department.
- **Billable Transaction** – every reportable transaction except renewals, redemptions or extensions of existing pawns on items previously reported and continuously in the licensee’s possession.
- **Consignment** – an agreement between a dealer and a seller that enables the dealer to take temporary possession of secondhand property, owned by the seller, for the purpose of offering it for sale to the public.
- **Consignment House Dealer** – a dealer in secondhand goods acquired by a consignment agreement.
- **Flea Market** – any group of unrelated persons or businesses selling secondhand goods to the public from a single physical location.
- **Item containing precious metals** - an item made in whole or in part of metal and containing more than one (1) percent by weight of silver, gold, or platinum.
- **Pawn Transaction** – any loan on the security of pledged goods or any purchase of pledged goods on the condition that the pledged goods are left with the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.
- **Pawnbroker** - a person who loans money on deposit or pledge of personal property or other valuable thing; who deals in the purchasing or personal property or other valuable thing on condition of selling that same back at a stipulated price; or who loans money secured by chattel mortgage or on personal property, taking possession of the property or any part thereof

so mortgaged. To the extent that a pawnbroker business includes buying personal property previously used, rented, or leased, the provisions of this Chapter shall be applicable. Any bank, savings and loan association, or credit union shall not be deemed a pawnbroker for purposes of this Chapter.

- **Pawnshop** - any business establishment operated by a pawnbroker.
- **Person** - one or more natural persons; a partnership, including a limited partnership; a corporation, including a foreign, domestic, or nonprofit corporation; a trust; a political subdivision of the state; or any other business organization.
- **Pledger** – any person who delivers pledged goods to a pawnbroker, precious metal dealer or secondhand goods dealer as a security in which a binding promise is made to take back possession of those same pledged goods at a later time and for a stipulated price.
- **Pledged Goods** – tangible personal property other than those in action, securities, bank drafts, or printed evidence of indebtedness, that are purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction.
- **Precious Metal Dealer** - any person engaging in the business of buying coins or second-hand items containing precious metals, including, but not limited to, jewelry, watches, eating utensils, candlesticks, and religious and decorative objects.
- **Precious Metals** - silver, gold, or platinum.
- **Reportable Transaction** – transactions by a pawnbroker, precious metal dealer or secondhand goods dealer in which merchandise is received through a pawn, purchase, consignment or trade, or in which a pawn is renewed, extended or redeemed, or for which a unique transaction number or identifier is generated by their point-of-sale software, or an item is confiscated by law enforcement, except:
  - (a) The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer, non-profit or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the pawnbroker, secondhand goods or precious metal dealer, must maintain a record of such purchase.
  - (b) Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.
  - (c) Trades of secondhand goods for items of greater value.
  - (d) Transactions between precious metal dealers if both dealers are licensed under Minnesota Statute 325F.733 or if the seller’s business is located outside of the state and the item is shipped from outside the state to a dealer licensed under Minnesota Statute 325F.733.
  - (e) Transactions involving secondhand clothing, books and linens where no single item has a value greater than \$50.00, except that dealers of secondhand bedding must comply with Minnesota Statute 325F.25 – 325F.34.
  - (f) Consignment by the artists themselves of works of art or craft.
- **Secondhand Goods Dealer** – any person, partnership, firm or corporation whose business includes selling or receiving secondhand goods, including but not limited to consignment house dealers, flea market dealers and antique dealers, but not including used car dealers.
- **Secondhand Goods** – any tangible personal property, previously owned, used, rented or leased by a person other than the dealer offering it for sale.

**Sec. 9-02. Purpose.** The City Council finds that pawnbrokers, precious metal dealers and secondhand goods dealers potentially provide an opportunity for the commission of crimes and their concealment because such businesses have the ability to receive and transfer stolen property easily and quickly. The City Council also finds that consumer protection regulation is warranted in transactions involving pawnbrokers, precious metal dealers, and secondhand goods dealers. The purpose of this Chapter is therefore to prevent pawnbrokers, precious metal dealers and secondhand goods dealers from being used as facilities for commission of crimes and to assure that such businesses comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the citizens of the city.

To help the police department better regulate current and future pawn, precious metal dealers and secondhand goods dealer businesses, decrease and stabilize costs associated with the regulation of these industries, and increase identification of criminal activities in the industry through the timely collection and sharing of transaction information, this chapter also implements and establishes the required use a computer database maintained by a vendor that has been designated by the City of Oakdale Police Department.

**Sec. 9-03a. License Required.** No person shall exercise, carry-on, or be engaged in the trade or business of pawnbroker, precious metal dealer, or secondhand goods dealer within the city unless such person is currently licensed under this Chapter. No pawnbroker, precious metal dealer, or secondhand goods dealer license may be transferred to a different location or a different person.

**Sec. 9-03b. Exceptions to License Requirement.**

- (1) All pawnbrokers must be licensed and there are no exceptions to the licensing requirements for pawnbrokers.
- (2) The following transactions shall not require a precious metal dealer's license:
  - (a) Transactions at occasional "garage" or "yard" sales, or estate sales, or farm auctions held at the decedent's residence, except that precious metals dealers must comply with the requirements of Minnesota Statutes, Sections 325F.734 to 325F.742, for these transactions.
  - (b) Transactions regulated by Minnesota Statute, Section 80A.
  - (c) Transactions regulated by the Federal Commodity Futures Commission Act.
  - (d) Transactions involving the purchase of precious metals grindings, filings, slag, sweeps, scraps, or dust from an industrial manufacturer, dental lab, dentist, or agent thereof.
  - (e) Transactions involving the purchase of photographic film, such as lithographic and x-ray film, or silver residue or flake recovered in lithographic and x-ray film processing.
  - (f) Transactions involving coin, bullion, or ingots.
  - (g) Transactions in which the second-hand item containing precious metals is exchanged for a new item containing precious metals and the value of the new item exceeds the value of the second-hand item, except that a person who is a precious metals dealer by engaging in a transaction which is not exempted by this section

must comply with the requirements of Minnesota Statutes, Sections 325F.734-325F.742.

- (h) Transactions between precious metal dealers if both dealers are licensed under Minnesota Statutes, Section 325F.733, or if the seller's business is located outside of the state and the item is shipped from outside the state to a dealer licensed under Minnesota Statutes, Section 325F.733.
  - (i) Transactions in which the buyer of the second-hand item containing precious metals is engaged primarily in the business of buying and selling antiques, and the items are resold in an unaltered condition except for repair, and the items are resold at retail, and the buyer paid less than \$2,500 for the second-hand items containing precious metals purchased within any period of twelve (12) consecutive months.
- (3) All secondhand goods dealers must be licensed, except the following transactions shall not require a secondhand goods dealer license:
- (a) The sale of secondhand goods where all of the following are present:
    - (i) The sale is held on property occupied as a residential dwelling by the seller or owned, rented or leased by a charitable or political organization.
    - (ii) The items offered for sale are owned by the occupant.
    - (iii) That no sale exceeds a period of 72 consecutive hours.
    - (iv) That no more than two sales are held in any 12 consecutive month period at any residential dwelling.
    - (v) That none of the items offered for sale have been purchased for resale or received on consignment for purpose of resale.
  - (b) The sale of secondhand books or magazines where no single book has a value of greater than \$50.00.
  - (c) The sale of goods at an auction held by a licensed auctioneer.
  - (d) Sales by charitable organizations that take secondhand goods for no compensation.
  - (e) The sale of used motor vehicles.
  - (f) A bulk sale of property from a merchant, manufacturer or wholesaler having an established place of business or of goods sold at open sale from bankrupt stock.

**Sec. 9-04. Application Content.** In addition to any information that may be required by the County pursuant to Minnesota Statutes, Section 471.924, every application for a license under this Chapter shall be made on a form supplied by the issuing authority and shall contain the following information:

- (1) If the applicant is a natural person:
  - (a) The name, place and date of birth, residential street address, and telephone number of the applicant.
  - (b) Whether the applicant is a citizen of the United States or a resident alien.

- (c) Whether the applicant has ever used or been known by another name other than the applicant's name, and if so, the name or names used and information concerning the dates and places when used.
- (d) The name of the business if it is to be conducted under a designation, name, or style other than the name of the applicant and a certified copy of the certificate as required by Minnesota Statutes, Section 333.01.
- (e) The street addresses at which the applicant has lived during the preceding five (5) years.
- (f) The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding five (5) years and the name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding five (5) years.
- (g) Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the applicant shall furnish information as to the time, place, and offense for which convictions were had.
- (h) The physical description of the applicant.
- (i) If the applicant is married:
  - (i) The name, place and date of birth, and street address of the applicant's current spouse.
  - (ii) The type, name and location of every business or occupation in which the applicant's current spouse has been engaged during the preceding five (5) years.
  - (iii) The names and addresses of the employers or partners of the applicant's current spouse for the preceding five (5) years.
  - (iv) Whether the applicant's current spouse has ever been convicted of any felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the applicant shall furnish information as to the time, place, and offense for which convictions were had.

(2) If the applicant is a partnership:

- (a) The name(s) and address(es) of all general and limited partners and all information concerning each partner required in subpart (1) of this section.
- (b) The name(s) of the managing partner(s) and the interest of each partner in the pawnbroker or precious metals dealer 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.

(3) If the applicant is a corporation or other organization:

- (a) The name of the corporation or business form, and if incorporated, the state of the 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 application 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 information concerning each manager, proprietor, or agent required in subpart (1) of this section.
  - (d) A list of all persons who control or own an interest in excess of five (5) percent in such organization or business form or who are officers of the corporation or business form and all information concerning said persons required in subpart (1) of this section.
- (4) For all applicants:
- (a) Whether the applicant holds a current pawnbroker, precious metal dealer, or second-hand goods dealer license from any other governmental unit and whether the applicant is licensed under either Minnesota Statutes, Section 471.924 or Minnesota Statutes 325F.731-325F.744.
  - (b) Whether the applicant has previously been denied a pawnbroker, precious metal dealer, or second-hand goods dealer license from any other governmental unit.
  - (c) The names, residential street addresses, and business addresses of three residents of the seven-county metropolitan area, who are of good moral character and who are not related to the applicant or not holding any ownership in the premises or business, who may be referred to as to the applicant's and/or manager's character.
  - (d) The location of the business premises.
  - (e) The legal description of the premises to be licensed.
  - (f) Whether all real estate and personal property taxes that are due and payable to the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.
  - (g) Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans or designs are on file with the Oakdale Building Inspection Department, no plans need to be submitted with the issuing authority.
  - (h) Such other information as the City Council or issuing authority may require.

**Sec. 9-05. Application Execution.** All applications for a license under this Chapter shall be signed and sworn to. If the application is that of a natural person, it shall be signed and sworn to by such person; if that of a corporation, by an officer thereof; and if that of a partnership, by one of the general partners; and if that of an unincorporated association, by the manager or managing officer thereof. Any falsification on a license application shall result in the denial of a license.

**Sec. 9-06. Application Verification.** All applications shall be referred to the issuing authority for verification and investigation of the facts set forth in the application. The issuing authority shall make a written report and recommendation to the City Council as to the issuance or non-issuance

of the license. The City Council may order and conduct such additional investigation, as it deems necessary.

#### **Sec. 9-07. Application Consideration.**

- (1) The City Council shall conduct a hearing on the license application within a reasonable period following receipt of the issuing authority's report and recommendation regarding the application. At least ten (10) days in advance of the City Council hearing on an application, the issuing authority shall cause notice of the hearing to be published in the official newspaper of the city, setting forth the day, time, and place of the hearing; the name of the applicant; the premises where the business is to be conducted; and the type of license which is sought. At the hearing, opportunity shall be given to any person to be heard for or against the granting of the license. Additional hearings on the application may be held if the City Council deems additional hearings necessary. After the hearing or hearings on the application, the City Council may, in its discretion, grant or deny the application.
- (2) If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises.

#### **Sec. 9-08. Renewal Application.**

- (1) All licenses issued under this Chapter shall be effective for one (1) year from the date of approval by the City Council. An application for the renewal of an existing license shall be made prior to the expiration date of the license and shall be made in such form as the issuing authority requires. If, in the judgment of the City Council, good and sufficient cause is shown by an applicant for the applicant's failure to submit a renewal application before the expiration of the existing license, the City Council may, if the other provisions of this Chapter are complied with, grant the renewal application.
- (2) A license under this Chapter will not be granted:
  - (a) If the City Council determines that the licensee has failed to comply with the provisions of this Chapter in preceding license years.
  - (b) If the licensee, or if the licensee does not manage the establishment, the manager of the licensed premises is not a resident of the seven-county metropolitan area on the date that the renewal takes effect.
  - (c) If in the case of a partnership, the managing partner or other person who manages the establishment is not a resident of the seven-county metropolitan area on the date the renewal takes effect.
  - (d) If in the case of a corporation, or other organization, the manager, a proprietor, or agent in charge of the establishment is not a resident of the seven-county metropolitan area on the date the renewal takes place.
  - (e) The time for establishing residence in the seven-county metropolitan area may, for good cause, be extended by the City Council.

## Sec. 9-09. Fees.

- (1) Application Fee
  - (a) The license application fee shall be determined by the City Council.
  - (b) The license application fee shall be paid in full before the application for a license shall be accepted. Upon rejection of any application for a license or upon withdrawal of any application before City Council approval, the license fee shall be refunded in full to the applicant except where rejection is for a willful misstatement in the license application.
  - (c) When the license is for a premises where the building is not ready for occupancy, the time fixed for computation of the license fee for the initial license period shall be ninety (90) days after approval for the license by the City Council or upon the date the building is ready for occupancy, whichever is sooner.
  - (d) When a new license application is submitted as a result of incorporation by an existing licensee and the ownership, control, and interest in the license are unchanged, no additional fee shall be required.
- (2) Investigation Fee
  - (a) An applicant for any license under this Chapter shall deposit with the issuing authority at the time an original application is submitted, \$1,500 to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this Chapter.
  - (b) If the investigation and verification process is conducted solely within the State of Minnesota, the fee shall be \$500, and the remainder of the deposit shall be returned to the applicant. If the investigation and verification process is conducted outside the State of Minnesota, the issuing authority may recover the actual investigation costs not exceeding \$1,500.
- (3) Billable Transaction Fee
  - (a) The billable transaction license fee shall reflect the cost of monitoring and processing transactions and other related regulatory expenses as determined by the city council, and shall be reviewed and adjusted, if necessary, annually. Licensees shall be notified in writing thirty (30) days before any adjustment is implemented.
  - (b) Billable transaction fees shall be billed monthly and are due and payable within thirty (30) days. Failure to do so is a violation of this chapter.
- (4) **Late Fee.** If a renewal application is received after the given due date, a late fee, as determined by the City Council, shall be charged to the applicant. Late renewal applications shall not be processed until the late fee is paid in full. The late fee must be paid separately from the renewal application fee due to accounting purposes.



- (5) **Public Hearing Notice Fee.** New license applicants must pay a public hearing notice fee, per notice posting. The fee is non-refundable and must be paid prior to the public hearing. The amount of the public hearing notice fee shall be determined by the City Council.

**Sec. 9-10. Persons and Locations Ineligible for a License.**

- (1) No license under this Chapter shall be issued to an applicant who is a natural person; if such applicant:
- (a) Is a minor at the time the application is filed;
  - (b) Has been convicted of any crime directly related to the occupation licensed as prescribed by Minnesota Statutes, Section 364.03, subdivision 2, and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a pawnbroker or a precious metals dealer as prescribed by Minnesota Statutes, Section 364.03, subdivision 3;
  - (c) Is not a citizen of the United States or a resident alien;
  - (d) Is not of good moral character or repute; or
  - (e) Holds an intoxicating liquor license under Chapter 10 of this Code.
- (2) The provisions of this section as described in paragraph (1), letters (a) through (e), shall also apply to any partnership if such applicant has any general partner or managing partner meeting any of the described criteria; and shall also apply to any corporation or other organization if such applicant has any manager, proprietor, or agent in charge of the business meeting any of the described criteria.
- (3) The following locations shall be ineligible for a license under this Chapter:
- (a) No license shall be granted or renewed for operation on any property on which taxes, assessments, or other financial claims of the State, County, School District, or city are due, delinquent, or unpaid. In the event a suit has been commenced under Minnesota Statutes, Sections 278.01-278.03, questioning the amount or validity of taxes, the City Council may on application waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof which remain unpaid for a period exceeding one (1) year after becoming due.
  - (b) No license shall be granted or renewed if the property on which the business is to be conducted is owned by a person who is ineligible for a license under the requirements of any Chapter of this Code, except that a property owner who is a minor or who has been convicted of a crime, other than a crime involving theft, shall not make the premises ineligible under this subsection.
  - (c) A pawnshop license can only be granted if the pawnshop is located more than 150 feet, as measured from the closest point of the property line where the pawnshop is located to the closest point of the property line of another pawnshop, currency exchange business, school, church, or residentially zoned property. The following map depicts the areas in the City where a pawnshop license can be granted:



## Sec. 9-11. General Regulations.

- (1) Records Required. At the time of a receipt of an item of property, whether sold or pawned, the pawnbroker, precious metal dealer or secondhand goods dealer shall immediately record, using the English language, in a computerized record or in a book or journal which has page numbers that are preprinted and in an indelible ink, the following information:
  - (a) A complete and accurate description of each item including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such item;
  - (b) The price of the item paid by the pawnbroker, precious metal dealer or secondhand goods dealer, and whether the item was purchased or pawned;
  - (c) The date and time the item of property was received by the pawnbroker, precious metal dealer or secondhand goods dealer and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records;
  - (d) The full name, residential street address, residence telephone number, and date of birth of the person from which the item of property was received;
  - (e) An accurate description of the person from whom the item of property was received including: sex, height, weight, race, color of eyes and color of hair;
  - (f) The identification number from one of the following forms of identification of the person from whom the item was received:
    - (i) A valid driver's license,
    - (ii) A Minnesota identification card,
    - (iii) A photo identification issued by the state of residency of the person from whom the item was received.
  - (g) The signature of the person identified in the transaction.
  - (h) A color photograph of every item pawned or sold that does not have a unique serial or identification number permanently engraved or affixed.
- (2) Photograph Requirement. The City Council finds that the safety of the public is compromised when stolen property is easily pawned or sold to pawnbrokers, precious metal dealers or secondhand goods dealers. Given the nature of these businesses and the attraction these businesses have to the criminally disposed, the City Council enacts the following license regulations. A pawnbroker, precious metal dealer or secondhand goods dealer shall take a color photograph, a video photograph or color video recording of each person involved in a billable transaction. If a photograph is taken, it shall be at least two inches (2") in length by two inches (2") in width and shall be immediately developed and referenced with the information regarding the person and the transaction to which it relates. The major portion of the photograph shall include a front facial pose. The pawnbroker, precious metal dealer or secondhand goods dealer shall notify the person of the photograph requirement prior to taking his or her photograph. If a video photograph is taken, the video camera shall zoom in on the person involved in the billable transaction so as to include a close-up of the person's face. The video photograph shall be referenced by time and date so as to correspond to the merchandise sold or pawned by the person. The pawnbroker, precious metal dealer or secondhand goods dealer shall, by adequate signage, inform the person that he/she is being videotaped. The photographs and videotape shall be kept by the licensee for four (4) months.

- (3) Inspection of Records. The pawnbroker, precious metal dealer, or secondhand goods dealer shall make available the information required in subpart (1) of this section at all reasonable times for inspection by the Police Department or issuing authority. The information required in subpart (1) of this section shall be retained by the pawnbroker, precious metal dealer, or secondhand goods dealer for at least four (4) years.
- (4) Daily Reports to Police. Effective no later than sixty (60) days after the licensee receives the current version of the Automated Pawn System Interchange File Specification, licensees must submit every reportable transaction to the police department daily in the following manner:
- (a) Licensees must provide to the police department all reportable transaction information by transferring it from their computer to the Automated Pawn System via modem using the current version of the Automated Pawn System Interchange File Specification. All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the issuing authority. Any transaction that does not meet the Automated Pawn System Interchange File Specification must be corrected and resubmitted the next business day. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs patrons that all transactions are reported to the police department daily.
  - (b) Inability to transmit via modem.
    - (i) If a licensee is unable to successfully transfer the required reports by modem, the licensee must provide the police department, upon request, printed copies of all reportable transactions along with the videotape(s) for that date, by noon the next business day;
    - (ii) Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed.
- (5) Receipt. The pawnbroker, precious metal dealer or secondhand goods dealer shall provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for (3) years. The receipt must include the following information:
- (a) The name, address, and telephone number of the licensed business.
  - (b) The date and time the item was received by the licensee.
  - (c) Whether the item was pawned or sold, or the nature of the transaction.
  - (d) An accurate description of the item received including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item.
  - (e) The signature of the licensee or employee that conducted the transaction.
  - (f) The amount advanced or paid.
  - (g) The last regular business day by which the item must be redeemed by the pledger without risk that the item will be sold and the amount necessary to redeem the pawned item on that date.
  - (h) The monthly and annual rate of interest including all fees and charges.

- (i) The full name, current residential address, current residential telephone number, and date of birth of the person from which the item of property was received.
  - (j) An accurate description of the person from whom the item of property was received including: sex, height, weight, race, color of eyes and color of hair.
  - (k) The identification number from one of the following forms of identification of the person from whom the item was received:
    - (i) A valid driver's license,
    - (ii) A Minnesota identification card,
    - (iii) A photo identification issued by the state of residency of the person from whom the item was received.
  - (l) The signature of the person identified in the transaction.
  - (m) All printed statements as required by state statute 325J.04 subdivision 2, or any other applicable statutes.
- (6) Redemption Period. Any person pledging, pawning or depositing an item for security must have a minimum of (60) sixty days from the date of that transaction to redeem the item before it may be forfeited and sold. During the (60) sixty day holding period, items may not be removed from the licensed location. Licensees are prohibited from redeeming any item to anyone other than the person to whom the receipt was issued or, to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledger at the time of the initial transaction and signed by the pledger.
- (7) Holding Period. Any item purchased or accepted in trade by a licensee shall not be sold or otherwise transferred for thirty-one (31) days after the date of the sale or pawn. However, an individual may redeem an item pawned at any time during the redemption period.
- (8) Police Order to Hold Property.
- (a) Investigative hold. Whenever a law enforcement official notifies the licensee not to sell an item, the item shall not be sold or removed from the licensed premises. The investigative hold shall be confirmed in writing by the originating agency within (72) seventy-two hours and will remain in effect for (15) fifteen days from the date of initial notification, or until the investigative order is canceled, or until an order to confiscate is issued, whichever comes first.
  - (b) Order to confiscate. If an item is identified as stolen or evidence in a criminal case, a law enforcement official may physically confiscate and remove it from the licensed premises pursuant to a written order. When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.
  - (c) When an investigative hold or an order to confiscate is no longer necessary, a law enforcement official shall notify the licensee and property previously confiscated under the rescinded order returned to the licensee.
- (9) Inspection of Items. The pawnbroker, precious metal dealer or secondhand goods dealer shall, - during normal business hours and during the term of the license, allow the Police Department to enter the premises where the business is located, for the purpose of

inspecting such premises and inspecting the items, ware, and merchandise therein for the purpose of locating items suspected or alleged to have been stolen or otherwise improperly disposed of.

- (10) Label required. Licensees must attach a label to every item at the time it is pawned, purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the business' records, the transaction date, the name of the item and the description or the model and serial number of the item, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used.

#### **Sec. 9-12. General License Restrictions.**

- (1) Hours of Operation. No pawnbroker, precious metal dealer, or secondhand goods dealer shall keep the business open for the transaction of business on any day of the week before 7:00 a.m. or after 10:00 p.m.
- (2) Minors. The pawnbroker, precious metal dealer, or secondhand goods dealer shall not purchase or receive personal property of any nature from any minor.
- (3) License Display. A license issued under this Chapter must be posted in a conspicuous place in the premises for which it is used. The license issued is only effective for the compact and contiguous space specified in the approved license application.
- (4) Maintenance of Order. A licensee under this Chapter shall be responsible for the conduct of the business being operated and shall maintain conditions of order.
- (5) Gambling. No licensee under this Chapter may keep, possess, or operate, or permit the keeping, possession, or operation on the licensed premises of dice, slot machines, roulette wheels, punchboards, blackjack tables, or pinball machines which return coins or slugs, chips, or tokens of any kind, which are redeemable in merchandise or cash. No gambling equipment authorized under Minnesota Statutes, Section 349.11-349.60 may be kept or operated and no raffles may be conducted on the licensed premises and/or adjoining rooms. The purchase of lottery tickets may take place on the licensed premises as authorized by the director of the lottery pursuant to Minnesota Statutes, Section 349A.01-349A.15.
- (6) Prohibited Goods. No licensee under this Chapter shall accept any item of property that contains an altered or obliterated serial number or "Operation Identification" number or any item of property whose serial number has been removed.
- (7) Proper Identification. A licensee under this Chapter shall not accept items of property unless the seller or pledger provides to the licensee one of the following forms of identification:
  - (a) A valid driver's license,
  - (b) A Minnesota Identification Card; or
  - (c) A photo identification issued by the state of residency of the person from whom the item was received.No other forms of identification shall be accepted.

- (8) Property of Another. No person may pawn, pledge, sell, consign, leave, or deposit any article of property not their own, nor shall any person pawn, pledge, sell, consign, leave, or deposit the property of another, whether with permission or without; nor shall any person pawn, pledge, sell, consign, leave, or deposit any article of property in which another has a security interest; with any licensee.
- (9) False Information. No person seeking to pawn, pledge, sell, consign, leave, or deposit any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of date address of residence or telephone number; or present a false or altered identification, or the identification of another; to any licensee.
- (10) Licensee Prohibited Acts. No licensee shall:
- (a) Possess stolen goods;
  - (b) Receive property from a minor;
  - (c) Lend money on a pledge at a rate of interest above that allowed by law;
  - (d) Sell pledged goods before the time to redeem has expired;
  - (e) Refuse to disclose to the pledger, after having sold pledged goods, the name of the purchaser or the price for which the item sold.
- (11) Business At Only One Place. A license under this article authorizes the licensee to conduct its business only at the permanent place of business designated in the license. However, upon written request the Chief of Police or his designee may approve an off-site locked and secure storage facility. The licensee shall permit inspection of the facility in accordance with this chapter. All provisions of this article regarding recordkeeping and reporting apply to the facility and its contents. Property shall be stored in compliance with all provisions of this article. The licensee must either own the building in which the business is conducted and any approved off-site storage facility, or have a lease on the business premises which extends for more than six months.
- (12) Restrictions on Weapons.
- (a) A pawnbroker, precious metal dealer, or secondhand goods dealer may not receive as a pledge or otherwise, or accept for consignment or sale any revolver, pistol, rifle, shotgun, or other firearm unless said dealer also maintains a federal firearms dealers license.
  - (b) A pawnbroker, precious metal dealer, or secondhand goods dealer may not receive as a pledge or otherwise, or accept for consignment or sale, any sawed off shotgun, automatic rifle, black jack, switchblade, or other similar illegal weapons or firearms.
- (13) Not more than 1 pawn shop license shall be issued.
- (14) Not more than 1 precious metal dealer license shall be issued.

**Sec. 9-13. Restrictions Regarding License Transfer.** Each license under this Chapter shall be issued to the applicant only and shall not be transferable to any other person. No licensee shall loan, sell, give, or assign a license to another person.

**Sec. 9-14. Suspension or Revocation of License.**

- (1) The City Council may suspend or revoke a license issued under this Chapter upon a finding of a violation of: (1) any of the provisions of this Chapter; (2) any state statute regulating pawnbrokers, precious metal dealers, or secondhand goods dealers; or (3) any state or local law relating to moral character and repute. Any conviction by the pawnbroker, precious metal dealer, or secondhand goods dealer for theft, receiving stolen property, or any other crime or violation involving stolen property shall result in the immediate suspension pending a hearing on revocation of any license issued hereunder.
- (2) Except in the case of a suspension pending a hearing on revocation, a revocation or suspension by the City Council shall be preceded by written notice to the licensee and a public hearing. The written notice shall give at least eight (8) days' notice of time and place of the hearing and shall state the nature of the charges against the pawnbroker, precious metal dealer or secondhand goods dealer. The City Council may, without any notice suspend any license pending a hearing on revocation for a period not to exceed thirty (30) days. The notice may be served upon the pawnbroker, precious metal dealer, or secondhand goods dealer by United States mail addressed to the most recent address of the business in the license application.

**Sec. 9-15. Severability.** If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have adopted this Chapter and each section, subsection, sentences, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**Sec. 9-16. Penalty.** A violation of this Chapter shall be a misdemeanor under Minnesota law.

## **ARTICLE 2. USED CAR DEALERS**

**Sec. 9-17. Purpose and Findings.** The purpose and intent of this Chapter is to establish rules, regulations and standards for used car sales lots within the City of Oakdale.

**Sec. 9-18. Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

**Used car dealer** – means any person operating a used car lot or engaging regularly in the business of buying, selling and dealing in used automobiles. The fact that such person may maintain an agency or subagency for any automobile dealer or other person shall not exempt such agent or subagent from the terms of this article, if such agent or subagent engages in the used car business. State law references: Motor vehicle dealers generally, Minn. Stats. 168.27; sale of used motor vehicles, Minn. Stats. 325F.662 et seq.

**Sec. 9-19. License Required.** No person shall directly or indirectly sell cars from a used car sales lot in the city without first obtaining a license. Licenses are required to be reviewed annually. Applicant must also secure State of Minnesota dealer license prior to operating a used car sales lot and provide evidence of this to the city.

**Sec. 9-20. License Fee and Term of License.** Licenses issued pursuant to this article shall not be transferable from one person to another. The amount to be paid for a license required by this



division shall be determined by the City Council. The annual fee for licenses will be determined by an approved fee schedule.

**Sec. 9-21. Application for: Issuance of License.** Applications for a license required by this article shall be made to the city on a form supplied by the city, a minimum of thirty (30) days prior to the desired start date. The applicant shall state the full name and address of the applicant; the full business name and address of the applicant; contact phone numbers; the location/legal description of the premises where said business is to be carried on; the normal business hours; a letter describing operation; a site plan showing location of used car sales lot that notes the sales office, parking areas and streets; copy of State of Minnesota dealer license; copy of certificate of insurance and such other information as shall be required by the applicant form.

The completed application shall be presented to the Council for its consideration. If granted by the City Council, the Licensing Division shall issue a license. Such license may contain reasonable restrictions on the operation of the business.

**Sec. 9-22. License to be Displayed.** Every license required by this article shall be kept conspicuously posted at the location for which the license is issued and shall be exhibited to any person upon request.

**Sec. 9-23. Sunday Closing.** No person licensed under this division shall keep his place of business open, make any sales or do any work in connection with such business on Sunday.

**Sec. 9-24. Inspection.** The premises of any licensee under this division shall be open to inspection at any time during business hours by any authorized officer of the city.

**Sec. 9-25. Duration; suspension or revocation; criminal penalty.**

- (1) Any license issued under this division shall be for one year only, and the application for renewal must be presented to the Licensing Division each year. Licenses issued pursuant to this article shall not be transferable.
- (2) The City Council may suspend or revoke a used car dealer license upon a finding of a violation of: (1) any term or condition of said used car dealer license; (2) any of the provisions of this Chapter; (3) any other federal, state or local law regulating used car dealers; or (4) any federal, state or local law relating to moral character and repute.
- (3) A license revocation or suspension by the City Council shall be preceded by written notice to the licensee and a public hearing with an opportunity for the licensee to be heard. The written notice shall give at least eight (8) days' notice of time and place of the hearing and shall state the nature of the allegations purported as grounds for potential suspension or revocation. The notice may be served upon the licensee by United States mail addressed to the most recent address of the business in the license application.
- (4) It shall be a misdemeanor to violate or fail to comply with any term or condition of a used car dealer license issued under this Chapter.

**Sec. 9-26. General License Restrictions.** Special Use in Section 25-74 (c).

**Sec. 9-27. Zoning Action Required.** In addition to obtaining a license for the sale of used cars, those seeking to lease used motor vehicles also must be granted a Special Use Permit (refer to Chapter 25). Dealers operating prior to adoption of this ordinance are not required to secure a Special Use Permit unless the business proposes to make any physical changes.

**Sec. 9-28. Restrictions Regarding License Transfer.** Each license under this Chapter shall be issued to the applicant only and shall not be transferable to any other person. No licensee shall loan, sell, give or assign a license to another person.

### ARTICLE 3. TOBACCO

**Sec. 9-29. Purpose and Intent.** Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery devices, and the sales, possession, and use are violations of both state and federal laws; and because studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this article intends to regulate the sale, possession, and use of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery 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, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery devices and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minnesota Statutes, section 144.391, as amended from time to time.

**Sec. 9-30. Definitions.** Except as otherwise provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) **Background Investigation** shall refer to the investigation conducted by the police department of all tobacco license applicants, all parties having any formal or informal ownership stake in the business, and any person(s) identified as a manager of the proposed retail establishment. The purpose of the background investigation is to determine if there are any disqualifying factors that would preclude the issuance of a license to the applicant or the proposed retail establishment location.
- (2) **Cigars** shall refer to any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece that is not a cigarette as defined in Minnesota Statutes, Section 297F.01, subd. 3, as amended from time to time.
- (3) **Compliance Checks** shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery devices are following and complying with the requirements of this article. Compliance checks shall involve the use of minors as authorized by this article. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic

cigarettes, electronic delivery devices or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery

- (4) **Electronic Delivery Device or Electronic Cigarette** means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (5) **Hookah** shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.
- (6) **Individually Packaged** shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.
- (7) **Indoor Area** shall mean all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- (8) **Licensing Authority** shall mean the Oakdale Administration Department.
- (9) **Loosies** shall mean the common term used to refer to a single or individual packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term “loosies” does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.
- (10) **Minor** shall mean any natural person who has not yet reached the age of 18 years.
- (11) **Moveable Place of Business** shall mean any form of business operated out of a truck, van, automobile, kiosk, trailer or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions.
- (12) **Nicotine or Lobelia Delivery Devices** shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for

tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

- (13) **Public Place** shall mean any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings.
- (14) **Retail Establishment** shall mean any place of business where tobacco, tobacco products, tobacco related-devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include, but not be limited to, grocery stores, convenience stores, restaurants and drug stores.
- (15) **Sale** shall mean any transfer of goods for money, trade, barter, or other consideration.
- (16) **Sampling** shall mean the lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic cigarettes in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase.
- (17) **Self-Service Merchandising** shall mean open displays of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.
- (18) **Smoking** shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product or exhaling vapor from any electronic delivery device, such as vaping. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco plant product intended for inhalation.
- (19) **Smoking Lounge** shall mean a tobacco products shop which allows customers to be seated.
- (20) **Tobacco or Tobacco-Related Products** shall mean cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including by vaping, or any component, part, or accessory of a tobacco product; cigars; pipe tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; shorts; plug and twist tobaccos; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; dipping tobaccos; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

- (21) **Tobacco Products Shop** shall mean a retail establishment with an entrance door opening directly to the outside that derives more than 90% of its gross revenue from the sale of tobacco, tobacco-related products, or tobacco-related devices and in which the sale of other products is merely incidental. “Tobacco products shop” does not include a tobacco products department or section of any individual business establishment with any type of food, liquor or restaurant license.
- (22) **Tobacco-Related Devices** shall mean any tobacco product as well as a pipe, rolling papers, ash tray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or vaping of tobacco or tobacco products.
- (23) **Vapor Lounge** shall mean a vapor products shop which allows customers to be seated.
- (24) **Vapor Products Shop** shall mean a retail establishment with an entrance door opening directly to the outside that derives more than 90% of its gross revenue from the sale of electronic delivery devices, electronic cigarettes or related products in which the sale of other products is merely incidental. “Vapor products shop” does not include a vapor products department or section of any individual business establishment with any type of food, liquor or restaurant license.
- (25) **Vending Machine** shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.

**Sec. 9-31. License.**

- (1) **License Required.** No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery device without first having obtained a license to do so from the city. All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid.
- (2) **Application.** An application for a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices shall be made on a form provided by the city and filed, along with all required fees, with the city clerk or designated licensing authority. The application shall be submitted on the city’s approved form and shall contain all information that the city deems necessary. If the licensing authority determines that an application is incomplete, the application shall be returned to the applicant with notice of the information necessary to make the application complete. The investigation fee is applied to the city’s costs of the background investigation of the retail establishment and all persons or entities that have at least a five percent financial interest in the retail establishment. The property must be in compliance with all applicable laws and ordinances. The police department shall conduct the background investigation before consideration by the city. All applications shall thereafter be considered and approved or denied by the city council.

- (3) **Action.** The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any additional investigation of the application or the applicant it deems necessary. If the City Council approves the license, the licensing authority shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.
- (4) **Term.** All licenses issued under this article shall expire on December 31 of each year.
- (5) **Revocations or Suspension.** Any license issued under this article may be revoked or suspended as provided in the Administrative Penalties section.
- (6) **Transfer.** All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the persons to whom the license was issued. Should the ownership of the business change at any point during the licensing period, a new application will be required.
- (7) **Moveable Place of Business.** No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible for licensing under this article.
- (8) **Display.** All licenses shall be posted and displayed at or near the primary entrance to the licensed retail establishment and in plain view of the general public on the licensed premises. In addition to the operational license, tobacco products shops must display signage at or near the primary entrance of the business directing that no person younger than 18 years of age is permitted to enter the retail establishment at any time.
- (9) **Renewals.** The renewal of a license issued under this article shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license. The issuance of a license issued under this article 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.

**Sec. 9-32. Fees; Late Fees.** No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license shall be determined by the City Council. If a renewal application is received after the given due date, a late fee, as determined by the City Council, shall be charged to the applicant. Late renewal applications shall not be processed until the late fee is paid in full. The late fee must be paid separately from the renewal application fee due to accounting purposes.

**Sec. 9-33. Basis for Denial of License.** Grounds for denying the issuance or renewal of a license under this article are described below. 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 article. The following are grounds for denying a license or a license renewal:

- (1) The applicant is under the age of 18 years;
- (2) The applicant or any other person included on the application 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, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices;

- (3) The applicant or any other person included on the application has had a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices revoked within the preceding 12 months of the date of application in this or any other jurisdiction in the United States;
- (4) The applicant or any other person included on the application has been subject to any adverse or disciplinary actions against any business license held in this or any other jurisdiction in the previous five years, regardless of whether any criminal charges were brought in connection with the alleged violation(s);
- (5) The applicant fails to provide any information required on the application, or provides false or misleading information at any stage of the application or background investigation;
- (6) The applicant or any other person included on the application is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license;
- (7) The applicant or any other person included on the application has failed to pay any taxes or fees owed to the City of Oakdale or is in violation of Minnesota Statutes, section 270C.72; or
- (8) The applicant or any other person included on the application is determined to be not of good moral character and repute.

#### **Sec. 9-34. Prohibitions.**

- (1) **Prohibited Sales.** It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device:
  - (a) To any person under the age of 18 years;
  - (b) By means of loosies;
  - (c) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products;
  - (d) By means of any type of vending machine except when the vending machine is in a facility that cannot be entered at any time by any person under the age of 18 years;
  - (e) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device, nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer; or
  - (f) By any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

- (2) **Smoking and Sampling Prohibitions.** Except for the exceptions listed in Minnesota Statutes, section 144.4167, smoking generally shall be prohibited and no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. Other than provided for in Minnesota Statutes, section 144.4167, subd. 4, tobacco sampling, sampling of electronic delivery devices, and products used in electronic delivery devices, is specifically prohibited in the city. To ensure that tobacco smoke or vapor electronic delivery devices does not enter public places and places of work, and that persons entering such places are not exposed involuntarily to smoke or vapor, smoking and the use of electronic delivery devices are prohibited within twenty-five feet of entrances, exits, open windows and ventilation intakes of public places and places of work. This prohibition does not apply to entrances and exits used solely in the event of an emergency and appropriately signed for that purpose.
- (3) **Smoking Lounges.** Smoking lounges, hookah lounges and vapor lounges are prohibited.
- (4) **Cigars.** No person shall sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. The restrictions shall not apply to any sales, offer to sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$2.60 per cigar and after any price promotions or discounts are taken into account and before the imposition of sales tax, but excluding retail sales tax, and tobacco products only accessible to those 18 years or older. This section shall not apply to premium cigars as defined in Minnesota Statutes, section 297F.01, subd. 13a.

**Sec. 9-35. Self-Service Sales.** It shall be unlawful for a licensee under this article to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices by any means whereby the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery 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. A license holder who operates tobacco products shop is exempt from the self-servicing merchandising provision if the license holder prohibits anyone under 18 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under 18 years of age from entering the establishment.

**Sec. 9-36. Responsibility.** All licensees under this article shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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 article shall be construed as prohibiting the city from also subjecting the licensee's sales clerk to whatever penalties are allowed under this article, state, or federal law, or other applicable law or regulation.



**Sec. 9-37. 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. Pursuant to Minnesota Statutes, Section 461.12, subd. 5, unannounced compliance checks shall be conducted at least once each calendar year at each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold to test compliance. Compliance checks must involve minors over the age of 15, but under the age of 18, who, with prior written consent of a parent or guardian, attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The Oakdale Police Department will be responsible for meeting the requirements of this section. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device, or nicotine or lobelia delivery devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this article 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.

**Sec. 9-38. Other Illegal Acts.** Unless otherwise provided, the following acts shall be a violation of this article:

- (1) **Illegal Sales.** It shall be a violation of this article for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device to any minor.
- (2) **Illegal Possession.** It shall be a violation of this article for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices. This subsection shall not apply to minors lawfully involved in a compliance check.
- (3) **Illegal Use.** It shall be a violation of this article for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device.
- (4) **Illegal Procurement.** It shall be a violation of this article for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device, and it shall be a violation of this article for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This subsection shall not apply to minors lawfully involved in a compliance check.
- (5) **Use of False Identification.** It shall be a violation of this article 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.

- (6) **Persons Under the Age of 16.** It shall be a violation of this article for any person under the age of 16 to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery products and a violation of this article for a licensee to cause or permit a person under the age of 16 to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery products.

**Sec. 9-39. Administrative Penalties; Fines Established.**

- (1) **Licensees.** If a licensee, any employee of a licensee, or any other person representing the licensed premises sells tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices to a minor or violates any other provision of this article, the licensee shall be subject to an administrative penalty. If a retail establishment has its license suspended pursuant to this article, that retail establishment shall, during the period of suspension, remove all tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices away from public view. Penalties occurring within a 24-month period will be presumed as follows:
- (a) First violation: \$75.00 fine;
  - (b) Second violation: \$200.00 fine;
  - (c) Third violation: \$250.00 fine and a license suspension for not less than seven days;  
and
  - (d) Fourth violation: License revocation.

No revocation, suspension or penalty may take effect until the licensee has received notice either personally or by mail of the alleged violation and has been afforded an opportunity for a hearing pursuant to section 9-40. The administrative penalties described above are only presumed and any violation may be subject to stricter penalties when in the judgment of the City Council it is appropriate to do so. Any violation may also be subject to lesser penalties when in the judgment of the City Council it is appropriate to do so; provided, however, that in no event will the amount of any fine or period of suspension for tobacco violations be less than the amounts and periods specified in Minnesota Statutes, section 461.12, subdivisions 2 and 3, as amended. Other mandatory requirements may be made of any penalized establishment, including but not limited to, meetings with the police department staff to present a plan of action to assure that the problem will not continue, mandatory education sessions with crime prevention staff, or other actions that the City Council deems appropriate.

- (2) **Individuals.** A person who sells tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices to a minor shall be charged an administrative fine of \$50.00. No fine may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and was provided an opportunity for a hearing before the City Council. A decision that a violation has occurred must be in writing.
- (3) **Fines Established.** The fines for violations as listed above may be amended from time to time by the City Council.

## **Sec. 9-40. Administrative Proceedings.**

- (1) **Notice.** The alleged violator shall receive notice, served either personally or by mail, that sets forth the alleged violation and informs the alleged violator of his or her right to a hearing on the matter. The notice shall indicate that a hearing must be requested within 10 business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The notice shall provide information on how and where a hearing may be requested, including a contact address and phone number. For the purpose of a mailed notice, service shall be considered complete as of the date the notice is placed in the mail.
- (2) **Hearing.** Upon receipt of a violation notice a person accused of violating this article may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the violation notice and delivered to the city clerk or other designated city officer. Failure to request a hearing within 10 business days of the issuance of the violation notice will terminate the person's right to a hearing. If a hearing is duly requested, the licensing authority shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least 10 business days prior to the hearing.
- (3) **Hearing Officer.** The City Council shall serve as the hearing officer unless the City Council should determine in its sole discretion that an independent party such as an administrative law judge would better serve as a hearing officer for the case at hand.
- (4) **Decision.** If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 9-39, shall be recorded in writing, a copy of which shall be provided to the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable. The decision of the hearing officer is final.
- (5) **Appeals.** Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within 10 business days of the hearing officer's decision.
- (6) **Continued Violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (7) **Costs.** If the alleged violation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing

**Sec. 9-41. Criminal Penalty.** In addition to any administrative penalties under this article, any person, firm, or corporation violating any of the provisions of this article shall be guilty of a misdemeanor. Nothing in this article shall prohibit the city from seeking prosecution as a misdemeanor in district court for any violation of this article, or in the case of minors, referring the matter to juvenile court.

**Sec. 9-42. Exceptions and Defenses.** Nothing in this article shall prevent the providing of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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 article for a person to have reasonably relied on proof of age as described by state law.

**Sec. 9-43. Severability and Savings Clause.** If any section or portion of this article is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

**Sec. 9-44. Reserved.**

#### ARTICLE 4. CHRISTMAS TREES

**Sec. 9-45. Definitions.**

- **Christmas Trees** shall be defined as natural trees used for decoration at holiday time.

**Sec. 9-46. License Required.** No person shall directly or indirectly sell Christmas trees at retail in the city without first obtaining a license.

**Sec. 9-47. Application for; Issuance of License.** Application for a license required by this article shall be filed with the City Clerk. The application shall be on a form supplied by the City Clerk and shall contain the full name and address of the applicant, legal description of the premises where said business is to be carried on, description of the lighting of said premises, and such other information as the application form may require. The complete application shall be presented to the Council for its consideration, and if granted by the City Council, a license shall be issued by the City Clerk upon payment of the required fee. Such license may contain reasonable restrictions on the operation of the business.

**Sec. 9-48. Fees.**

- (1) **License Fee.** The fee for a license required by this article shall be determined by the City Council.
- (2) **Late Fee.** If a renewal application is received after the given due date, a late fee, as determined by the City Council, shall be charged to the applicant. Late renewal applications shall not be processed until the late fee is paid in full. The late fee must be paid separately from the renewal application fee due to accounting purposes.

**Sec. 9-49. Licenses Not Transferable.** Licenses issued pursuant to this article shall not be transferable.

**Sec. 9-50. License Expiration and Clean up.** A license issued pursuant to this article shall expire on January ninth following the date of granting. By such date, the premises described in the application shall be cleaned up and unsold trees removed. If the premises are not so cleaned up, the city may cause the premises to be cleaned up and charge the cost to the applicant. Notwithstanding the above, it shall be a misdemeanor to fail to clean up said premises by the date of the expiration of said license.

**Sec. 9-51. License Revocation.** Every license required by this article may be revoked by the City Council for a violation of any provision of this article if the licensee has been given a reasonable notice and an opportunity to be heard.

## ARTICLE 5. GARDEN CENTERS/RETAIL TENT SALES

**Sec. 9-52. Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

- **Garden Center** - Temporary structure, such as a greenhouse, used for the seasonal sale of nursery items, including flowers and plants.
- **Tent Sale** - Temporary structure used for selling retail merchandise, typically during a promotion.

**Sec. 9-53. License Required.** No person shall directly or indirectly operate a garden center or conduct a retail tent sale in the city without first obtaining a license.

**Sec. 9-54. Application for; Issuance of License.** Application for a license required by this article shall be made to the Community Developer Director on a form supplied by the city, a minimum of thirty (30) days prior to the desired state date. The application shall state the full name and address of the applicant, the location of the building and the part thereof to be used by the applicant under the license, the kind of business conducted at such location, and such other information as shall be required by the applicant form. The completed application shall be presented to the City Council for its consideration, and if granted by the City Council, a license shall be issued by the City Clerk. Such license may contain reasonable restrictions on the operation of the business, such as: applicant shall obtain, if applicable, a hydrant meter from the Public Works Department.

**Sec. 9-55. License Fee; Term.** The fee for a license required by this article shall be determined by the City Council. Licenses issued pursuant to this article shall not be transferable from one person to another.

**Sec. 9-56. License to be Displayed.** Every license required by this article shall be kept conspicuously posted at the location for which the license is issued and shall be exhibited to any person upon request.

**Sec. 9-57. License Revocation.** Every license required by this article may be revoked by the City Council for a violation of any provision of this article, if the licensee has been given a reasonable notice and an opportunity to be heard.

## ARTICLE 6. FERTILIZER AND PESTICIDES.

**Sec. 9-58. Definitions.**

- **Fertilizer** - A substance containing one or more recognized plant nutrients that is used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth. Fertilizer does not include animal and vegetable manures that are not manipulated, marl, lime, limestone, and other products exempted from regulation by the Minnesota Department of Agriculture.

- **Pesticide** - A substance or mixture of substances intended to prevent, destroy, repel, or mitigate a pest, and a substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

**Sec. 9-59. General Regulation for the Application of Fertilizer and Pesticides.**

- (a) **Time of Application.** Lawn fertilizers shall not be applied whenever the ground is frozen, or after November 15 and before April 1 of the next following year.
- (b) **Prohibited Application Areas.** Lawn fertilizers or pesticides shall not be applied to impervious surfaces (incapable of being passed through or penetrated) or to areas within twenty (20) feet of any wetland or water resource, including lakes, ponds, streams, ditches, or waterways.

Sec. 9-60. Repealed.

Sec. 9-61. Repealed.

Sec. 9-62. Repealed.

Sec. 9-63. Repealed.

Sec. 9-64. Repealed.

Sec. 9-65. Repealed.

**ARTICLE 7. PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS**

**Sec. 9-66. Purpose.** It is the purpose of this section to protect the public health, safety and welfare of the citizens of the city of Oakdale by regulating door-to-door sales, solicitations, and transient merchandising through the establishment of reasonable regulations and licensing requirements.

**Sec. 9-67. Definitions.** The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

- **Garage Sales** – Any isolated or occasional display and sale of used personal property or homecrafted items conducted on residential premises by the occupant of the residential property. Garage sales shall include rummage sales, basement sales, yard sales, porch sales, craft sales and all other periodic sales at a residential location.
- **Issuing Authority** – The Oakdale Administration Department.
- **Non-Commercial Door-to-Door Advocate** – A person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs.
- **Peddler** – A person with no fixed place of business who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, 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, other personal property, or services that the person is carrying or otherwise transporting.
- **Solicitor** – Any person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, 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 representing or displaying 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.

- **Transient Business** – A business enterprise conducted by transient merchants involving the selling of goods, wares, products, merchandise, or other personal property.
- **Transient Merchant** – Any individual or entity which engages in temporary or transient business in the city from a fixed location or locations, but who does not remain in any one location for more than four (4) consecutive days and which hires, leases, occupies or uses any building, structure or land to conduct such business. The term includes not only the entity or individual on whose behalf the transient business is being conducted, but also all individuals actually engaged in conducting the transient business with the city.

**Sec. 9-68. Exceptions to Definitions.** For the purpose of this chapter, the terms Peddler, Solicitor, and Transient Merchant shall not apply to:

- (a) Persons who may sell or peddle products of a farm or garden occupied and cultivated by them.
- (b) Nonprofit, religious, political or educational organizations.
- (c) Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales.
- (d) Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other property to a retail seller of the items being sold by the wholesaler.
- (e) Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, when attempting to establish a regular delivery route, or when publications are delivered to the community at large.
- (f) Any person conducting an auction as a properly licensed auctioneer.
- (g) Commercial travelers or selling agents in the usual course of business.
- (h) Business in conjunction with a city-sponsored event.

Exemption from these definitions shall not, for the scope of this chapter, excuse any person from complying with all other applicable statutory provisions or requirements provided by this or any other city ordinance.

**Sec. 9-69. License / Registration Required.**

- (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 may be required by Minnesota State Statute, Section 329.
- (b) **City license or registration required.** Except as otherwise provided under the terms of this ordinance, no person shall conduct business within this jurisdiction as a peddler or a transient merchant without first obtaining a city license. Solicitors need not be licensed, but are required to register and obtain a certificate of registration from the Issuing Authority.

**Sec. 9-70. License or Registration Requirements.**

- (a) **Application and Registration.** Application for a transient merchant or peddler license and solicitor registration will be made on forms supplied by the city. All registration and license applications must be submitted to the issuing authority staff a minimum of fourteen (14) regular business days before the applicant desires to begin conducting a business operation within the city. No license will be issued for any activity that does not adhere to

this requirement. The application and registration form shall be signed by the applicant and shall contain:

- (1) The applicant's full legal name and date of birth in addition to the applicant's full address of permanent residence.
  - (2) If the applicant is a partnership; the names, dates of birth, addresses and phone numbers of all partners. If the applicant is a corporation; the names, dates of birth, addresses and phone numbers of all officers of the corporation.
  - (3) Any and all other names under which the applicant has conducted or does conduct business, or to which the applicant will officially answer to.
  - (4) A physical description of the applicant (hair color, eye color, height, weight, any distinguishing marks or features, and the like).
  - (5) Telephone number of applicant's permanent residence.
  - (6) Any and all business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines where the applicant can be reached while conducting business within the city.
  - (7) Applicant's business and residential addresses for a period of five years prior to the application date; a statement as to whether the applicant is the sole owner of the business; and a statement to the effect that no other persons other than those named have any interest in the management and control of the business.
  - (8) The applicant's driver's license number or other acceptable form of identification.
  - (9) The type of business for which the applicant is making license application.
  - (10) The dates during which the applicant intends to conduct business.
  - (11) A brief description of the activity and a general description of the items to be sold or services to be provided.
  - (12) A description of the location of the property where the activity is to be conducted and written permission of the property owner or the property owner's agent for any location to be used by a transient merchant.
  - (13) Information relating to all convictions of any felony, gross misdemeanor or misdemeanor level violation of any state or federal statute or any local ordinance, other than minor traffic offenses.
  - (14) A list of the three (3) most recent locations where the applicant has conducted business.
  - (15) Proof of any required county license.
  - (16) The license plate number and physical description for all vehicles to be used in conjunction with the business operation.
  - (17) Any and all additional information as may be deemed necessary by the Issuing Authority.
- (b) **Fee.** All applications for a license under this chapter shall be accompanied by a fee established by the City of Oakdale.
- (c) **Licensing Procedure.** Upon receipt of the transient merchant or peddler application and payment of the license fee, the issuing authority staff will, within two (2) regular business days, determine if the application is complete. An application will be considered complete if all required information is provided. If an application is determined incomplete, the issuing authority must inform the applicant of that required, or otherwise necessary information is missing. If the application is complete, the issuing authority staff will order any investigation, including background checks, necessary to verify the information provided with the application. Within ten (10) regular business days of receiving a



complete application, the issuing authority must issue the license unless grounds exist for denying the license application under Sec. 9-71.

- (d) **Registration Procedure.** All solicitors shall be required to register with the city prior to engaging in soliciting activities. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form and review for completeness, the issuing authority shall issue to the registrant a certificate of registration as proof of the registration, unless grounds exist for denying the certificate of registration under Sec. 9-71.
- (e) **Duration.** All licenses and certificates of registration under this ordinance shall be valid only during the quarter in which the activity is taking place. Quarters are January through March, April through June, July through September and October through December. Only one license or certificate of registration may be issued to any applicant on behalf of a single identified commercial entity during or for the same quarter period. No transient business activity may be conducted in the city for more than eight (8) days total during a quarter and not for a period of more than four (4) consecutive days.

**Sec. 9-71. License or Certificate of Registration Ineligibility.** The following should be grounds for denying a peddler or transient merchant license or certificate of registration:

- (a) The failure of an applicant to obtain and demonstrate proof of having obtained any required county license.
- (b) The failure of an applicant to truthfully provide any information requested by the city as part of the application process.
- (c) The failure of an applicant to sign the license application.
- (d) The failure of an applicant to pay the required fee, (if any), at the time of application.
- (e) A conviction within the past five (5) years of the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects upon the person's ability to conduct the business for which the license is being sought in a professional, honest and legal manner. Such violations shall include, but are not limited to, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person or property.
- (f) The revocation within the past five (5) years of any license issued to an applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant.
- (g) Evidence of any unresolved or ongoing government or legal action against the business filed by any state or government entity.
- (h) The existence of three (3) or more substantiated complaints about the business conduct within the preceding three (3) years from Oakdale residents or other jurisdictions where licenses or certificates of registration have been issued.
- (i) When the Issuing Authority has learned the applicant has changed any name or names relating to the applicant or business in an attempt to hide or escape any legal obligation(s).
- (j) If after investigation, the Issuing Authority finds the character and business responsibility of the applicant to be unsatisfactory or a potential harm to the public and can endorse the disapproval and reasons for same.

**Sec. 9-72. License or Registration Denial Procedure.** If the city denies the license application, the applicant must be notified in writing of the decision and the reason for denial. Notice shall be delivered in person or by regular mail to the applicant at the address provided in the application and shall inform the applicant of the applicant's right to appeal the denial by requesting, within

twenty (20) days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within twenty (20) days of the date of the request for a hearing.

### **Sec. 9-73. Suspension and Revocation.**

- (a) **Generally.** Any license issued under this section may be suspended or revoked at the discretion of the Issuing Authority for violation of any of the following:
  - (a) Subsequent knowledge by the city of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.
  - (b) Fraud, misrepresentation or false statements made during the course of the licensed activity.
  - (c) Subsequent conviction of any offense to which the granting of the license could have been denied under Sec. 9-71.
  - (d) Engaging in any prohibited activity as provided under Sec. 9-76.
- (b) **Notice and Right to Public Hearing.** Prior to revoking or suspending any license under this chapter, the issuing authority shall provide a license or certificate of registration holder with written notice of the alleged violations and inform the licensee or registrant of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by regular mail to the applicant at the address provided in the application and shall inform the applicant of the applicant's right to a public hearing. If no request for a hearing is received within ten (10) days following the service of the notice, the issuing authority may proceed with the suspension or revocation. For the purpose of a mailed notice 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 time frame, a hearing shall be scheduled within twenty (20) days from the date of the request for the public hearing.
- (c) **Emergency.** If, in the discretion of the Issuing Authority, imminent harm to the health or safety of the public may occur because of the actions of a peddler, solicitor, or transient merchant licensed or registered under this ordinance, the Issuing Authority may immediately suspend the person's license or registration and provide notice of the right to hold a subsequent public hearing as prescribed in part (b) of this section.

**Sec. 9-74. License or Registration Transferability.** No license or certificate of registration issued under this chapter shall be transferred to any person other than the person to whom the license or certificate of registration was issued.

### **Sec. 9-75. Transient Business Regulations.**

- (a) The site of the transient business shall have direct access or abut access to an arterial or collector street and be located only in the C1 or C2 Commercial Zoning Districts.
- (b) No part of any transient business shall be located within 150 feet of a street intersection.
- (c) Transient merchants must keep the property free from trash, litter, and debris.
- (d) Signs must not have a total aggregate sign face surface measurement of more than six square feet.
- (e) The transient merchant must have immediate possession of written evidence of consent of the owner of the property to conduct the transient business thereon.

**Sec. 9-76. Prohibited Activities.** No peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall conduct business in any of the following manner:

- (a) Calling attention to his or her business or the 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.
- (b) Obstructing the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, 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 specific individual or the general public.
- (d) Conducting business before 8 a.m. or after 8 p.m.
- (e) Failing to provide proof of license, or registration, and identification when requested.
- (f) Using the license or registration of another person.
- (g) Alleging false or misleading statements about the products being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant shall claim to have the endorsement of the city solely base on the city having issued a license or certificate of registration to that person.
- (h) Remaining on the property of another when requested to leave or returning to that property after leaving, without the permission of the property owner.
- (i) Otherwise operating their business in any manner that a reasonable person may find obscene, threatening, intimidating or abusive.

**Sec. 9-77. Exclusion by Placard.** Unless specifically invited by the property owner or tenant, no peddler, solicitor, transient merchant, non-commercial door-to-door advocate or other person engaged in other similar activities shall enter onto the property of another for the purpose of such activity when the property is marked with a sign or placard bearing the notice "Peddlers and Solicitors Prohibited". No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

**Sec. 9-78. Penalty.** Any individual found in violation of any provision of this ordinance shall be guilty of a misdemeanor.

## **ARTICLE 8. REPEALED**

**Sec. 9-79 to 9-83. Reserved.**

## **ARTICLE 9. MASSAGE THERAPY/BODYWORK ESTABLISHMENTS**

**Sec. 9-84. Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

- **Appointment Record** – A written log of off-site massage or bodywork services.
- **Bodywork Therapists**- A person practicing all modalities of bodywork.
- **Client** – A person who receives massage therapy or bodywork services from a licensed massage or bodywork therapist.
- **Issuing Authority** - The City of Oakdale Administration Department
- **Massage Therapist** - A person who practices massage therapy.
- **Massage Therapy** - The rubbing, stroking, kneading, tapping or rolling of the body with the hands or other parts of the body for the exclusive purposes of relaxation, physical fitness or beautification, and for no other purpose.

- **Massage Therapy Establishment** - Any room or rooms wherein a person may receive a massage from a massage therapist for a fee or an establishment where persons are participating in a college accredited massage therapy program under the direct supervision of a licensed massage therapist/bodywork's therapist, or licensed health professional under which massage is within the scope of their practice.
- **Off-Site Massage/Bodywork Services** – Massage therapy or bodywork services that are conducted away from the massage therapy establishment. Locations shall be limited to the client's residence.

**Sec. 9-85. Purpose.** The City Council finds that massage therapy and bodywork establishments potentially provide an opportunity for the commission of crimes, including but not limited to, prostitution. The purpose of this Chapter is therefor to prevent businesses from being used as facilities for commission of crimes and to assure that such businesses comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the citizens of the city.

**Sec. 9-86. License Required.**

- (a) No person shall exercise, carry-on, or be engaged in the trade or business of providing massage therapy or bodywork or operating a massage therapy or bodywork establishment unless such person is currently licensed under this Chapter. The application and licensing process are described in Sections 9-96 through 9-99. This section is intended to require the licensing of the business as an entity, as well as each person employed by the business for the purpose of providing therapeutic massage or bodywork therapy.
- (b) Notwithstanding the licensing requirements detailed under paragraph (a) of this section, massage therapy premises license holders allowing persons to provide massage therapy or bodywork services at a massage therapy establishment without a current license may be held responsible and charged with a violation of this chapter.
- (c) Persons or businesses currently engaged in the practice of massage therapy or bodywork at the time of enactment of this section shall be in full compliance with the terms and conditions of the section no later than ten (10) days following publication of the section. The exception to the compliance requirement shall be the required educational standards. Specifically, those persons employed in the practice of massage therapy or bodywork within the City of Oakdale prior to the enactment of this section shall be allowed to continue in such practice without meeting the required minimum standard of 100 formal training hours until January 1, 2000. Persons or businesses engaging in the practices described in this section after the enactment of this ordinance shall be in full compliance prior to engaging in such practices.

**Sec. 9-87. Licensing Exceptions.** The following persons or places, as described, shall be exempt from the licensing requirements of this Chapter:

- (1) Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, provided the massage is administered in the regular course of the medical business and not provided as part of a separate and distinct massage or bodywork business.

- (2) Persons duly licensed by this state as beauty culturists or barbers, provided such persons do not hold themselves out as giving massage treatments and provided that massages provided by beauty culturists are limited to the head, hand, neck and feet, and that massages provided by barbers are limited to the head and neck.
- (3) Students participating in an educational massage therapy program at an accredited college providing therapeutic massage therapy under the direct supervision of a licensed massage therapist/bodyworks therapist, or licensed health professional under which massage is within the scope of their practice.
- (4) Off-site locations at which a client receives massage therapy or bodywork services from a licensed massage or bodywork therapist, licensed pursuant to the terms of this chapter.
- (5) As described in Minnesota Statute 471.709: a massage therapist who is working for or an employee of a medical professional licensed under Chapter 147 or 148.

**Sec. 9-88. Persons and Locations Ineligible for a License.**

- (1) No license under this Chapter shall be issued to an applicant who is a natural person if such applicant:
  - (a) Is a minor at the time the application is filed;
  - (b) Has been convicted of or entered a plea of guilty within the previous three (3) years to a violation of this Chapter or of any other law regulating the practice of massage, or of any law prohibiting criminal sexual conduct, prostitution, pandering, indecent conduct, or keeping of a disorderly house;
  - (c) Is not of good moral character or repute;
  - (d) Holds an intoxicating liquor license under Chapter 10 of this Code; or
  - (e) Provides any false, fraudulent, or deceptive information in the required application.
- (2) The provisions of this section as described in paragraph (1), letters (a) through (e), shall also apply to any partnership if such applicant has any general partner or managing partner meeting any of the described criteria; and shall also apply to any corporation or other organization if such applicant has any manager, proprietor, or agent in charge of the business meeting any of the described criteria.
- (3) The following locations shall be ineligible for a license under this Chapter:
  - (a) No license shall be granted or renewed for operation on any property on which taxes, assessments, or other financial claims of the state, county, school district, or city are due, delinquent, or unpaid. In the event a suit has been commenced under Minnesota statutes, Sections 278.01-278.03, questioning the amount or validity of taxes, the City Council may on application waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof which remain unpaid for a period exceeding one (1) year after becoming due.
  - (b) No license shall be granted or renewed if the property on which the business is to be conducted is owned by a person who is ineligible for a license under the requirements of any Chapter of this Code.

**Sec. 9-89. Fees.**

(1) **Application Fee**

- (a) The license application fee shall be as determined by the City Council, and should, as closely as possible, reflect the actual cost of processing, verifying, and approving the application. An applicant for any license under this Chapter shall be responsible for the payment of all actual expenses related to the background investigation conducted by the city, up to a maximum cost of \$250.00 per person employed or contracted with as a massage or body works therapist. The intent of this section is to require a background investigation for all persons employed by or contracting with any massage therapy or bodywork business operating within the city. These costs shall be paid to the city prior to the issuance of an individual or business license.
- (b) In the event that the licensed premises defines a structure not ready for occupancy, the time fixed for computation of the license fee for the initial license period shall be ninety (90) days after approval of the license by the City Council or upon the date the building is ready for occupancy, whichever is sooner.
- (c) When a new license application is submitted as a result of incorporation by an existing licensee and the ownership, control, and interest in the license are unchanged, no additional fee shall be required.

(2) **Annual License Renewal Fee**

- (a) The annual license renewal fee shall be determined by the City Council and should, as closely as possible, reflect the actual cost of processing, verifying and approving the renewal application. For the purpose of establishing an initial licensing fee, the annual fee shall be determined by the City Council.
- (b) If a renewal application is received after the given due date, a late fee, as determined by the City Council, shall be charged to the applicant. Late renewal applications shall not be processed until the late fee is paid in full. The late fee must be paid separately from the renewal application fee due to accounting purposes.

- (3) **Public Hearing Notice Fee.** New license applicants must pay a public hearing notice fee, per notice posting. The fee is non-refundable and must be paid prior to the public hearing. The amount of the public hearing notice fee shall be determined by the City Council.

**Sec. 9-90. General License Restrictions.**

- (1) Number of Establishments in City. *[To be established by City Council based on zoning.]*
- (2) Educational Requirements. Persons applying for a license under this Chapter shall provide, in addition to the general application described later in this Chapter, a copy of a diploma or certificate of graduation from a school approved by the state or local government agency having jurisdiction over the school. The minimum acceptable level of training shall be established one hundred (100) practitioner hours. Additionally, each practitioner must be currently certified in the administration of Cardiopulmonary Resuscitation (CPR).

- (3) Inspection of Premise. During business hours, all massage therapy and bodywork establishments shall be open to inspection by city Building and License Inspectors, Health Officers, and Licensed Peace Officers. At the request of the described inspecting parties, any person licensed under this Chapter shall produce correct and authentic identification that includes a true legal name and current home address.
- (4) License Display. A license issued under this Chapter must be posted in a conspicuous place in the premises for which it is used. The license issued is only effective for the compact and contiguous space specified in the approved license application. In addition to the license issued to the business establishment, the licenses issued to individual persons employed by the business shall be displayed in a similar manner.
- (5) Maintenance of Order. A licensee under this Chapter shall be responsible for the conduct of the business being operated and shall maintain conditions of order.
- (6) Gambling. No licensee under this Chapter may keep, possess, or operate, or permit the keeping, possession, or operation on the licensed premises of dice, slot machines, roulette wheels, punchboards, blackjack tables or pinball machines which return coins or slugs, chips, or tokens of any kind, which are redeemable in merchandise or cash. No gambling equipment authorized under Minnesota Statutes, Sections 349.11-349.60, may be kept or operated and no raffles may be conducted on the licensed premises and/or adjoining rooms. The purchase of lottery tickets may take place on the licensed premises as authorized by the director of the lottery pursuant to Minnesota Statutes, Section 349A.01-349A.15.
- (7) Alcohol or Drugs Prohibited. No beer, liquor, narcotic drug, or controlled substance, as such terms are defined by state statutes or city code, shall be permitted on the premises.
- (8) Building, Safety and Health Regulations. Any establishment licensed under this Chapter shall be in full compliance with all applicable local, state and federal building, safety and health laws and regulations.
- (9) Locks on Doors. There shall be no locks placed upon or used on the doors of massage rooms.
- (10) Appropriate Covering Required. Any female patron receiving a massage or bodywork treatment shall have her breasts and genitals covered with a nontransparent material. Any male patron receiving a massage or bodywork treatment shall have his genitals covered with a nontransparent material. Any female practitioner shall have her breasts, buttocks, and genitals covered with a nontransparent material. Any male practitioner shall have his buttocks and genitals covered with a nontransparent material.
- (11) Breast Massage Policy Statement. The exception to Section 9-90 (10) shall be (a) the therapeutically necessary massage of the breast, and (b) students participating in an educational massage therapy program at an accredited college providing therapeutic massage therapy under the direct supervision of a licensed massage therapist/bodywork therapist, or licensed health professional under which massage is within the scope of their practice. Should breast massage therapy be therapeutically necessary or performed in conjunction with an educational massage therapy program, it shall be provided with the

informed written consent of the person receiving the breast massage. Additionally, breast massage therapy shall be considered unlawful under the provisions of this section if the breast massage is conducted for the self-gratification of the therapist or is conducted without informed written consent of the person receiving the breast massage.

- (12) Professional Liability Insurance. Each business as an entity and each practitioner individually shall obtain and keep current a professional liability insurance policy governing the activities of the business and practitioner.
- (13) Minnesota Statute Chapter 146A. Each business as an entity and each practitioner individually shall additionally comply with all of the requirements and regulations established by Minnesota Statute Chapter 146A. This chapter establishes the State Office of Unlicensed Complementary and Alternative Health Care Practice and establishes additional regulations and requirements for businesses governed by Oakdale City Code Chapter 9, Article IX.
- (14) Appointment Record Requirement. All licensees shall be responsible for keeping appointment records of all off-site massage/bodywork services provided. The records shall be sequential and shall include the name of the therapist conducting the service, the name and signature of the client, the address where the service was provided, and the date and time of the service. Licensed therapists shall have appointment records in possession at all off-site locations. Appointment records shall be kept for a period of twenty-four (24) months from the date of the service.

**Sec. 9-91. Restrictions Regarding License Transfer.** Each license under this Chapter shall be issued to the applicant only and shall not be transferable to any other person. No licensee shall loan, sell, give, or assign a license to another person.

**Sec. 9-92. Suspension or Revocation of License.**

- (1) The City Council may suspend or revoke a license issued under this Chapter upon a finding of a violation of: (1) any of the provisions of this Chapter; (2) any state statute regulating massage therapy or bodywork; or (3) any state or local law relating to moral character and repute. Any conviction by the license holder for any other law regulating the practice of massage or bodywork, or of any law prohibiting criminal sexual conduct, prostitution, pandering, indecent conduct, or keeping of a disorderly house shall result in the immediate suspension pending a hearing on revocation of any license issued hereunder.
- (2) Except in the case of a suspension pending a hearing on revocation, a revocation or suspension by the City Council shall be preceded by written notice to the licensee and a public hearing. The written notice shall give at least eight (8) days' notice of time and place of the hearing and shall state the nature of the charges against the license holder. The Council may, without any notice, suspend any license pending a hearing on revocation for a period not to exceed thirty (30) days. The notice may be served upon the license holder by United States mail addressed to the most recent address of the business in the license application.

**Sec. 9-93. Prohibited Acts.** Any touching, manipulation, stimulation, or excitation of the primary genital area of a client by a massage therapist or bodywork practitioner, or of a massage therapist or bodywork practitioner by a client, pursuant to the provision of a massage or bodywork



technique, is expressly prohibited. The offer or suggestion to provide any of the described acts to a client by the massage therapist or bodywork practitioner is prohibited.

**Sec. 9-94. Severability.** If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have adopted this Chapter and each section, subsection, sentences, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**Sec. 9-95. Penalty.** A violation of this Chapter shall be a misdemeanor under Minnesota law.

**Sec. 9-96. Application Content.** Every application for a license under this Chapter shall be made on a form supplied by the issuing authority and shall contain the information described below. The intent of the application process is to acquire sufficient information on the owner of the business and each employee or contractor with the business as to allow a thorough background investigation and an informed decision by the city with regard to licensing. If the applicant is employed by or contracting with a business, and is not the owner of the business, it will not be necessary to provide information regarding the applicant's spouse.

(1) If the applicant is a natural person:

- (a) The name, place and date of birth, street resident address, and phone number of the applicant.
- (b) Whether the applicant is a citizen of the United States or a resident alien.
- (c) Whether the applicant has ever used or been known by another name other than the applicant's name, and if so, the name or names used and information concerning the dates and places when used.
- (d) The name of the business if it is to be conducted under a designation, name, or style other than the name of the applicant and a certified copy of the certificate as required by Minnesota Statutes, Section 333.01.
- (e) Whether the applicant will engage in off-site massage/bodywork services.
- (f) The street addresses at which the applicant has lived during the preceding five (5) years.
- (g) The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding five (5) years and the names(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding five (5) years.
- (h) Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the applicant shall furnish information as to the time, place, and offense for which convictions were had.
- (i) The physical description of the applicant.
- (j) If the applicant is married:
  - (1) The name, place and date of birth, and street address of the applicant's current spouse.
  - (2) The type, name, and location of every business or occupation in which the applicant's current spouse has been engaged during the preceding five (5) years.
  - (3) The names and addresses of the employers or partners of the applicant's current spouse for the preceding five (5) years.

- (4) Whether the applicant's current spouse has ever been convicted of any felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the applicant shall furnish information as to the time, place, and offense for such convictions.
- (2) If the applicant is a partnership:
  - (a) The names(s) and address(es) of all general and limited partners and all information concerning each general partner required in subpart (1) of this section.
  - (b) The name(s) of the managing partner(s) and the interest of each partner in the massage therapy 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.
- (3) If the applicant is a corporation or other organization:
  - (a) The name of the corporation or business form, and if incorporated, the state of the 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 application 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 information concerning each manager, proprietor, or agent required in subpart (1) of this section.
  - (d) A list of all persons who control or own an interest in excess of five (5) percent in such organization or business form or who are officers of the corporation or business form and all information concerning said persons required in subpart (1) of this section.
- (4) For all applicants:
  - (a) Whether the applicant holds a current massage therapy license from any other governmental unit.
  - (b) Whether the applicant has previously been denied a massage therapy license from any other governmental unit.
  - (c) The names, street resident addresses, and business addresses of three residents of the seven-county metropolitan area, who are of good moral character and who are not related to the applicant or not holding any ownership in the premises or business, who may be referred to as to the applicant's and/or manager's character.
  - (d) The location of the business premises.
  - (e) The legal description of the premises to be licensed.
  - (f) Whether all real estate and personal property taxes that are due and payable to the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.
  - (g) Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If

the plans or design are on file with the Oakdale Building Inspection Department, no plans need to be submitted with the issuing authority.

- (h) Such other information as the City Council or issuing authority may require.

**Sec. 9-97. Application Execution.** All applications for a license under this Chapter shall be signed and sworn to. If the application is that of a natural person, it shall be signed and sworn to by such person; if that of a corporation, by an officer thereof; and if that of a partnership, by one of the general partners; and if that of an unincorporated association, by the manager or managing officer thereof. Any falsification on a license application shall result in the denial of a license.

**Sec. 9-98. Application Verification.** All applications shall be referred to the issuing authority for verification and investigation of the facts set forth in the application. The issuing authority shall make a written report and recommendation to the City Council as to the issuance or non-issuance of the license. The City Council may order and conduct such additional investigation, as it deems necessary.

**Sec. 9-99. Application Consideration.**

- (1) The City Council shall conduct a hearing on a massage therapy establishment license application within a reasonable period following receipt of the issuing authority's report and recommendation regarding the application. At least ten (10) days in advance of the City Council hearing on an application, the issuing authority shall cause notice of the hearing to be published in the official newspaper of the city, setting forth the day, time, and place of the hearing; the name of the applicant; the premises where the business is to be conducted; and the type of license which is sought. At the hearing, opportunity shall be given to any person to be heard for or against the granting of the license. Additional hearings on the application may be held if the City Council deems additional hearings necessary. After the hearing or hearings on the application, the City Council may, in its discretion, grant or deny the application.
- (2) If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises.

**Sec. 9-100. Expiration of License; Prorating.** All licenses issued pursuant to this Chapter shall expire on the last day of September of each year. Each license shall be issued for a period of one year except that if a portion of the license year (October to September following) has elapsed at such time as the application is filed, a license may be issued for the remainder of the license year for a pro rata fee. For the purpose of computing such "pro rata fee", any fraction of a month falling within the license period shall be counted as a full month.

**Sec. 9-101. Renewal Application**

- (1) Applications for the renewal of an existing license shall be made at least thirty (30) days prior to the date of the expiration of the license and shall be made in such form as the issuing authority requires. If, in the judgment of the issuing authority, good and sufficient cause is shown by an applicant for the applicant's failure to submit a renewal application before the expiration of the existing license, the issuing authority may, if the other provisions of this Chapter are complied with, grant the renewal application.

- (2) A license under this Chapter will not be renewed:
- (a) If the issuing authority determines that the licensee has failed to comply with the provisions of this Chapter in preceding license years.
  - (b) If the licensee, or if the licensee does not manage the establishment, the manager of the licensed premises, is not a resident of the seven-county metropolitan area on the date that the renewal takes effect.
  - (c) If in the case of a partnership, the managing partner or other person who manages the establishment, is not a resident of the seven-county metropolitan area on the date the renewal takes effect.
  - (d) If in the case of a corporation, or other organization, the manager, a proprietor, or agent in charge of the establishment, is not a resident of the seven-county metropolitan area on the date the renewal takes effect.
  - (e) The time for establishing residence in the seven-county metropolitan area may, for good cause, be extended by the City Council.

**Sec. 9-102 to 9-106. Reserved.**

### **ARTICLE 11. SALE OF PERMITTED CONSUMER FIREWORKS**

**Sec. 9-107. Purpose and Findings.** The purpose of this Chapter is to regulate the sale of permitted consumer fireworks in order to protect the health, safety and welfare of the general public. The City Council makes the following findings regarding the need to license and regulate the sale, distribution, storage, and display of fireworks permitted under State law:

- (a) Consumer fireworks contain pyrotechnic chemical compositions that are combustible; accordingly, the unregulated accumulation, storage, display and sale of these items present a fire safety hazard.
- (b) The improper disposal of consumer fireworks presents environmental hazards.
- (c) Inspections by the city are necessary to prevent improper display, storage and disposal of consumer fireworks.
- (d) Accurate information concerning the addresses and locations of person dealing in permitted consumer fireworks in the city is necessary to facilitate the inspection of the premises for compliance with necessary safety regulations and performance standards and to assist the city in responding to any emergency situation arising out of or adjacent to this business.

**Sec. 9-108. Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise.

- **Adult** - a person 18 years of age or older.
- **Business** - refers to the business of selling, storing or displaying any form of permitted consumer fireworks.
- **Issuing Authority** - the City of Oakdale Administration Department.
- **Licensed Premises** - the premises described in the approved license application and approved site plan for the sale, display and storage of permitted consumer fireworks.
- **Licensee** - the person to whom a license is issued under this Chapter, including any agents or employees of the person.
- **Movable Place of Business** - a business whose physical location is not permanent or is capable of readily being moved or changed, including without limitation commercial transactions

conducted in whole or in part from motorized vehicles, non-permanent stands, mobile sales, kiosks, trailers, tents or carts.

- **Permitted Consumer Fireworks** - those non-explosive, non-aerial pyrotechnic entertainment devices containing only the limited amounts of pyrotechnic chemical compositions permitted by Minnesota Statutes § 624.20, subd. 1(c).
- **Person** - one (1) or more natural persons; a partnership, including a limited partnership; a corporation, including a foreign, domestic or nonprofit corporation; a trust; a political subdivision of the State; or any other business organization.
- **Transient Merchant** - any person who engages in or transacts any temporary and transient business in the city, either in one locality or in traveling from place to place in the city selling merchandise and who, for the purpose of carrying on such business, hires, leases, occupies or uses a building, stand, tent, trailer, cart, structure, vacant lot or motor vehicle for the exhibition and sale of such merchandise.

**Sec. 9-109. License Required.** No person shall keep for retail sale of wholesale distribution, sell at retail or wholesale, or otherwise supply or furnish as part of a commercial transaction any permitted consumer fireworks without first having obtained a current license hereunder, paid the required license fee and conspicuously posted the license on the licensed premises. Issuance of a license under this Chapter shall not relieve the person from obtaining any other licenses required by City Code, state law or federal law to conduct this or other businesses at the same or any other location.

**Sec. 9-110. License Fee and Term of License.**

- (a) The annual license fee shall be determined by the City Council, but in no event shall the fee exceed the amount provided in Minnesota Statutes, Section 62A.20, subd. 1. The license fee shall cover the administrative and enforcement costs, including inspections by the Fire Department and Police Department. Full payment of the required license fee shall accompany the application.
- (b) When a new license application is submitted as a result of incorporation by an existing licensee and the ownership, control, and interest in the license are unchanged, no additional fee shall be required.
- (c) A separate fee and license shall be required for each separate, non-contiguous licensed premise, even if owned and operated by the same licensee. The annual license shall be effective for one (1) year from the date of approval. An application for the renewal of an existing license shall be made prior to the expiration date of the license and shall be made in such form as the Issuing Authority requires.

**Sec. 9-111. Mobile Sale or Sales by Transient Merchants.** No license shall be issued for the sale of permitted consumer fireworks at a movable place of business, including without limitation, mobile sales made from motorized vehicles, mobile sales kiosks, non-permanent stands or trailers that fail to comply with National Fire Protection Association Standard 1124 (2003 edition).

**Sec. 9-112. License Application.** An application for a license under this Chapter shall be made on a form supplied by the Issuing Authority and shall contain the following information:

- (1) Whether the applicant is a natural person, corporation, partnership or any other business association or organization.

- (2) The applicant's full legal name, mailing address and telephone number.
- (3) The street address or legal description of the premises to be licensed.
- (4) If the applicant does not own the business premises, a true and correct copy of the current, executed lease, as well as, the written authorization of the property owner for the applicant's use of the property for the sale of permitted consumer fireworks.
- (5) The applicant's hours of operation, on-site management and parking facilities.
- (6) The full name, mailing address, and telephone number of the person in charge of the licenses premises.
- (7) Such other information as the City Council or Issuing Authority may require.

**Sec. 9-113. Insurance Required.** All licensees must have at all times a valid certificate of insurance issued by an insurance company licensed to do business in the State of Minnesota evidencing that the applicant's use of the property is currently covered by a liability insurance policy. The minimum limits of coverage for such insurance shall be:

- (a) Each claim, at least \$200,000;
- (b) Each incident, at least \$500,000.

Such insurance shall be kept in force during the term of the license and the licensee must provide for prior notification to the City of Oakdale should the policy be terminated or canceled. A certificate of insurance must accompany all initial and renewal license applications.

**Sec. 9-114. License Application Verification and Consideration.**

- (a) **Verification.** Applications for a license under this Chapter shall be submitted to the Issuing Authority who shall verify the information on the application form. The Issuing Authority is empowered to conduct any and all investigations to verify the information on the application, including ordering a computerized criminal history inquiry and/or a driver's license history inquiry on the applicant.
- (b) **Consideration.** After verifying the information contained on the license application, the Issuing Authority shall then route the application to the city Fire Department which shall review the site plan and determine if the manner of storage, display or sales area of the licensed premises constitutes a fire or safety hazard. In assessing the potential hazard, reference shall be made to all applicable state and federal laws, rules and regulations, as well as the administrative standards for the storage, display and sales of permitted consumer fireworks established by the State Fire Marshal. If the Fire Department finds no hazard with the proposed site plan, the Issuing Authority shall grant the license in accordance with this Chapter. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises.
- (c) **Denial of Application.** If the application is denied, the Issuing Authority shall notify the applicant of that determination in writing. The notice shall be mailed by certified and regular mail to the applicant at the address provided in the application and it shall inform the applicant of the applicant's right, within twenty (20) days after the date of the notice to request an appeal of the denial to the City Council. If an appeal to the City Council is timely received by the Issuing Authority, the hearing before the City Council shall take place within a reasonable period thereafter.

### Sec. 9-115. Persons and Locations Ineligible for License.

- (a) **Persons Ineligible.** No original or renewal license under this Chapter shall be issued to an applicant who if such applicant or any manager, proprietor, or agent in charge of the business to be licensed:
- (1) Is not eighteen (18) years of age or older on the date the license application is submitted to the Issuing Authority;
  - (2) Has been convicted of any crime directly related to the occupation licensed as prescribed by Minnesota Statutes §364.03, subd. 2, and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a purveyor of permitted consumer fireworks as prescribed by Minnesota Statutes §364.03, subd. 3;
  - (3) Has knowingly falsified or misrepresented information on the license application;
  - (4) Is not the real party in interest in the business being licensed; or
  - (5) Owes taxes or assessments to the State, County, School District, or City that are due and delinquent.
- (b) **Locations Ineligible.** The following locations shall be ineligible for a license under this Chapter:
- (1) **Claims Due.** No license shall be granted or renewed for operation on any property on which taxes, assessments, or other financial claims of the State, County, School District, or City are due, delinquent, or unpaid. In the event a suite has been commenced under Minnesota Statutes §278.01-278.13, questioning the amount of validity of taxes, the City Council may on application waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof which remain unpaid for a period exceeding one (1) year after becoming due.
  - (2) **Improper Zoning.** No license shall be granted if the property is not properly zoned for the activity being licensed under Chapter 25 of this Code, unless the business is a legal, nonconforming use.

### Sec. 9-116. License Restrictions.

- (a) **License Display.** A license issued under this Chapter must be posted in a conspicuous place in the premises for which it is used. The license issued is only effective for the compact and contiguous space specified in the approved license application.
- (b) **Licensed Premises.** A separate license is required for each place of business.
- (c) **Change in Ownership.** Any change, directly or beneficially, in the ownership of the licensed business shall require the application for a new license and the new owner must satisfy all current eligibility requirements.
- (d) **Non-transferable.** Each license under this Chapter shall be issued to the applicant only and shall not be transferable to any other person. No licensee shall loan, sell, give or assign a license to another person.
- (e) **Location Restrictions.** A license under this Chapter authorizes the licensee to carry on its business only at the permanent place of business designated on the license.

## **Sec. 9-117. Restrictions Regarding Operation.**

- (a) **Prohibited Transactions.** No licensee, clerk, agent or employee thereof shall sell, distribute or furnish any permitted consumer fireworks to a person under the age of eighteen (18) years, any person who is obviously intoxicated, chemically impaired or incompetent.
- (b) **Inspection of Items.** The licensee must, at all times during the term of the license, allow the authorized agents of the Police Department, the Fire Department or Issuing Authority to enter the premises where the licensed business is located, including all display areas, storage areas, and all approved off-site storage facilities, during normal business hours, or beyond normal business hours where the inspector determines an emergency situation exists, for the purpose of inspecting such premises and inspecting the items, ware, and merchandise therein for the purpose of verifying compliance with the requirements of this Chapter, and any other applicable state and federal regulations.
- (c) **Fire Safety Requirements**
  - (1) Firework storage or sales areas shall provide approved "no smoking" signs in red letters not less than two (2) inches in height on white background. All signs shall be maintained in legible condition.
  - (2) Smoking and the discharge of fireworks shall be prohibited within one hundred (100) feet of any building in which fireworks are stored or sold.
  - (3) Each permit holder shall have not less than two (2) water-type or equivalent extinguishers of not less than two and one-half gallon capacity.
  - (4) There shall be at least two (2) exits from all building from which fireworks are stored or sold.
  - (5) In building without an approved automatic sprinkler system, retail consumer fireworks indoor sales displays shall be limited to fifty (50) pounds net pyrotechnic composition or two hundred (200) pounds gross weight, if the pyrotechnic composition weight is not known.
  - (6) Building protected throughout by an approved automatic sprinkler system shall be limited to one hundred (100) pounds net, or four hundred (400) pounds gross weight if the pyrotechnic composition weight is not known.
- (d) **Proper Disposal of Unsold Permitted Consumer Fireworks.** It shall be the responsibility of the licensee to properly dispose of all unsold permitted consumer fireworks. Any consequential cost to the city for disposal of these goods shall be the ultimate responsibility of the licensee.
- (e) **Confiscation and Destruction of Illegal Fireworks.** Any authorized agent of the Police Department or Fire Department may seize, take, remove or cause to be removed all stocks of fireworks or other combustibles offered or exposed for sale, stored or held in violation of this Chapter or applicable state or federal law. Any consequential cost to the city for disposal of these goods shall be the ultimate responsibility of the licensee.
- (f) **Signs.** The provisions of Sec. 25-181 through 25-200 of the Zoning Code regulating the display of signs within the City of Oakdale shall apply to this Chapter and all licensees herein.

## **Sec. 9-118. Sanctions for License Violations.**



- (a) **Suspension or Revocation.** The City Council may suspend or revoke a license issued pursuant to this Chapter for a violation of:
- (1) Fraud, misrepresentation, or false statement contained in a license application or a renewal application.
  - (2) Fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business.
  - (3) Any violation of this Chapter or state law.
  - (4) A licensee's criminal conviction that is directly related to the occupation or business licensed as defined by Minnesota Statutes §364.03, subd. 2 provided that the licensee cannot show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the licensed occupation or business as defined by Minnesota Statutes §364.03, subd. 3.
  - (5) Conducting the licensed business or occupation in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the community.
  - (6) Any significant unauthorized deviation, enlargement or alteration of the approved site plan for the storage and sales display areas of the licensed premises shall, in and of itself, constitute a basis for license revocation.
- (b) **Notice of Hearing.** A revocation or suspension by the City Council shall be preceded by written notice to the licensee and a hearing. The notice shall give at least five (5) days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice shall be mailed by regular and certified mail to the licensee at the most recent address listed on the license application.

**Sec. 9-119. Penalty.** A violation of this Chapter shall be a misdemeanor under Minnesota law.

**Sec. 9-120. Severability.** In any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid; such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have adopted this Chapter and each section, subsection, sentences, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases by declared invalid.

## ARTICLE 12. DYNAMIC BILLBOARDS

**Sec. 9-121. Purpose and Findings.** The purpose and intent of this Chapter is to establish rules, regulations and standards for dynamic signs within the City of Oakdale.

**Sec. 9-122. Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

- **Billboard:** A large outdoor advertising structure mounted on one or more legs and designed to display posters, composite graphics and electronic (Dynamic Displays) advertisements.
- **Electronic Message Signs:** Displays, devices or portions thereof with lighted messages that change at intermittent intervals by electronic process or remote control. Also known as an automatic changeable copy sign, Dynamic Display message sign, electronic variable message center or video display sign. Electronic message signs are not identified as flashing or motion signs.

- **Motion Sign:** Any sign that revolves, rotates, or has any moving parts. Included in this category are searchlights, image-projection used for advertisements.
- **Nits:** International System of Units, unit of luminance; to quote the brightness of computer displays.

State law references – The 1965 Highway Beautification Act and corresponding state laws are in place to provide for effective control of outdoor advertisement. Roadside billboards fall under this category. It is the intent that the cities regulations adhere to these overriding federal and state statutes.

**Sec. 9-123. License Required.** No person shall operate a dynamic billboard in the city without first obtaining a license. Licenses are required to be reviewed annually.

**Sec. 9-124. License Fee and Term of License.** Licenses issued pursuant to this article shall not be transferable from one person to another. The amount to be paid for a license required by this division shall be imposed, set, established and fixed by the City Council, by resolution, from time to time. The annual fee for licenses will be determined by an approved fee schedule.

**Sec. 9-125. Application for: Issuance of License.** Applications for a license required by this article shall be made to the city on a form supplied by the city, a minimum of thirty (30) days prior to the desired start date. The applicant shall state the full name and address of the applicant; the full business name and address of the applicant; contact phone numbers; the location/legal description of the premises where said dynamic billboard will be located; a letter describing operation; a site plan showing location of the dynamic billboard, and such other information as required by the applicant form.

The completed application shall be presented to the City Council for its consideration. If granted by the City Council, the City Clerk shall issue a license.

**Sec. 9-126. Inspection.** The premises of any licensee under this division shall be open to inspection at any time during business hours by any authorized officer of the city.

**Sec. 9-127. Duration; renewal.** Any license issued under this division shall be for one year only, and the application for renewal must be presented to the City Clerk each year. Licenses issued pursuant to this article shall not be transferable.

**Sec. 9-128. General License Restrictions.** Section 25-185 Billboards. A maximum of eight licenses for dynamic billboards may be issued in the city.

**Sec. 9-129. Zoning Action Required.** No license shall be granted unless the property is zoned: Community Commercial, Industrial-Office, or Gateway.

**Sec. 9-130. Restrictions Regarding License Transfer.** Each license under this Chapter shall be issued to the applicant only and shall not be transferable to any other person. No licensee shall loan, sell, give or assign a license to another person.

## **ARTICLE 13. CRIMINAL HISTORY BACKGROUND CHECK FOR CITY LICENSES**

**Sec. 9-131. Purpose.** The purpose of this section is to establish regulations that will allow law enforcement access to the Minnesota Bureau of Criminal Apprehension's Computerized Criminal History information for the purpose of conducting background checks for city licenses.

**Sec. 9-132. Criminal History License Background Investigations.** The Oakdale Police Department is hereby required to conduct a criminal history background investigation on the applicant, owner, partner, officer, person in charge of premises, or any person(s) controlling or owning an interest in excess of five (5) percent of the business for the following licenses within the City of Oakdale:

- (1) Pawnbroker, precious metal dealer, or secondhand goods dealer.
- (2) Tobacco.
- (3) Peddler, solicitor, or transient merchant.
- (4) Massage therapy.
- (5) Consumer fireworks.
- (6) Liquor.

In conducting the criminal history background investigation for city license applicants and other involved individuals as specified under this section, the Oakdale Police Department is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehension's Computerized Criminal History information system in accordance with BCA policy. All such data accessed and acquired through the Minnesota Justice Information Services (MNJIS) shall be maintained at the Oakdale Police Department under the care and custody of the chief law enforcement official or his or her designee. Criminal History Records Information shall be stored in a secure records environment and may be stored for extended periods only when the information is deemed a key element for the integrity and/or maintenance of case files and/or criminal record files. When no longer usable or qualified for extended storage, diskettes, tape cartridges, ribbons, hard-copy, print-outs, and other similar items used to process Criminal Justice Information System (CJIS) data shall be destroyed by shredding, incineration, and/or degaussing. A summary of the results of the Computerized Criminal History data may be released by the Police Department to the licensing authority, including the City Council, City Administrator, or other city staff involved in the license approval process.

Before the investigation is undertaken, the license applicant, owner, partner, person in charge of premises, or any person(s) controlling or owning an interest in excess of five (5) percent of the business must complete a written informed consent authorizing the Oakdale Police Department to undertake the investigation. The written informed consent must fully comply with the provisions of Minnesota Statutes Chapter 13 regarding the collection, maintenance, and use of the information. The City will not reject an applicant for a license based solely on a prior conviction unless the crime is directly related to the license sought or the conviction is for a felony, gross misdemeanor, or misdemeanor offense punishable by a term of incarceration. If the City rejects the license request on this basis, the City shall notify the applicant in writing of the following:

- (1) The grounds and reason for the denial.
- (2) The complaint and grievance procedure set forth in Minnesota Statutes Section 364.06.
- (3) The earliest date for reapplication of the license.
- (4) That all competent evidence of rehabilitation will be considered upon reapplication.

#### **ARTICLE 14. USE OF COAL TAR-BASED SEALER PRODUCTS**

**Sec. 9-133. Purpose.** The City Council finds that lakes, rivers, streams, and other bodies of water are natural assets that enhance the environmental, recreational, cultural, and economic resources and contribute to the general health and welfare of the community. The use of sealers on asphalt driveways is a common practice. However, scientific studies on the use of coal tar-based driveway sealers have shown that they contain PAHs, which contaminate storm water runoff and cause health and environmental concerns to wildlife and humans. The purpose of this Article is to regulate the use of coal tar-based sealer products within the City of Oakdale in order to protect its residents and to protect, restore, and preserve the quality of its waters.

**Sec. 9-134. Definitions.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- **Asphalt-Based Sealer:** A petroleum-based sealer material that is commonly used on driveways, parking lots, and other surfaces and which does not contain coal tar.
- **Coal Tar:** A byproduct of the process used to refine coal.
- **Coal Tar-Based Sealer:** A sealer material containing coal tar that is commonly used on driveways, parking lots, and other surfaces.
- **PAHs:** Polycyclic Aromatic Hydrocarbons. A group of organic chemicals formed during the incomplete burning of coal, oil, gas, or other organic substances. Present in coal tar and believed harmful to humans, fish, and other aquatic life.

**Sec. 9-135. Prohibitions.** No person, including but not limited to homeowners, commercial product applicators, and residential or commercial developers, shall apply any coal tar-based sealer to any driveway, parking lot, or other surface within the City of Oakdale.

**Sec. 9-136. Asphalt-Based Sealcoat Products.** The provisions of this Article only apply to the use of coal tar-based sealer in the City and shall not affect the use of asphalt-based sealer products within the City.

**Sec. 9-137 to 9-140. Reserved.**

## ARTICLE 15. MOBILE FOOD VENDORS

**Sec. 9-141. Definitions.** The following words, terms and phrases when used in this Article, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning.

- City – City of Oakdale, Minnesota.
- County Authority – Washington County Public Health and Environment.
- Issuing Authority – The City Administrator or his authorized designee.
- Local Authority – City of Oakdale, Minnesota.
- Mobile Food Vehicle - Any vehicle or trailer used for the purpose of selling more than two types of food or beverage prepared inside the vehicle and ready to be consumed while the vehicle is parked.

- Mobile Food Vehicle License – A license issued under this Article that is valid during the licensing term.
- State Authority – Minnesota Department of Health or Minnesota Department of Agriculture.

**Sec. 9-142. License Required.** It is unlawful for any person to operate a Mobile Food Vehicle without being issued a license from the City. Operations meeting the definition of a Mobile Food Vehicle and operating under a valid Mobile Food Vehicle License do not need a Peddler’s license under Section 9-69(b) of the City Code.

**Sec. 9-143. License Requirements.**

- (a) **Application.** Application for a Mobile Food Vehicle License will be made on forms supplied by the City. All license applications and associated required materials must be submitted to the Issuing Authority a minimum of 15 business days before the applicant desires to begin conducting business within the City. The Issuing Authority may require such information on the application as it deems reasonable and necessary.
- (b) **Licensing Procedure.** If an application is determined incomplete, the Issuing Authority must inform the applicant of that required, or otherwise necessary information is missing. If the application is complete, the Issuing Authority staff will forward the application to any other City departments to conduct inspections and to verify eligible zoning locations. Within 15 business days of receiving a complete application, the Issuing Authority must issue the license unless grounds exist for denying the license application under Sec. 9-145.
- (c) **License Term.** All licenses issued under this article shall expire December 31.
- (d) **Display of License.** All licenses issued by the City shall be visibly displayed on the outside of the Mobile Food Vehicle at all times when conducting business in the City.

**Sec. 9-144. Licensing Exceptions.** Mobile Food Vehicles participating in organized events sanctioned by the City shall be exempt from the licensing requirements of this Article.

**Sec. 9-145. License Ineligibility.** The following are grounds for denying issuance of a Mobile Food Vehicle License:

- (a) The failure of an applicant to obtain and demonstrate proof of all necessary licenses or permits required by state, county, or local health, or transportation authorities.
- (b) The failure of an applicant to truthfully provide any information requested by the City as part of the application process.
- (c) Evidence of any unresolved or ongoing government or legal action against the business filed by any state or government entity.
- (d) The existence of three or more substantiated complaints about the business conduct within the preceding three years from city residents or other jurisdictions where licenses have been issued to the applicant.
- (e) When the Issuing Authority has learned the applicant has changed any name or names relating to the applicant or business in an attempt to hide or escape any legal obligation(s).
- (f) If after investigation, the Issuing Authority finds the character and business responsibility of the applicant to be unsatisfactory or a potential harm to the public.
- (g) The failure to meet or comply with fire codes or safety standards upon inspection completed by any local, county, or state authorities.

**Sec. 9-146. License Denial Procedure.** If the City denies the license application, the applicant shall be notified in writing of the decision and the reason(s) for denial. Notice shall be delivered in person, ~~or~~ by regular mail, or by email to the applicant at the address provided in the application and shall inform the applicant of the applicant's right to appeal the denial by requesting in writing, within 20 days of receiving notice of denial, a hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request for a hearing.

**Sec. 9-147. Suspension and Revocation.**

- (a) **Generally.** Any license may be suspended or revoked at the discretion of the Issuing Authority for violation of any of the following:
- 1) Subsequent knowledge by the city of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.
  - 2) Fraud, misrepresentation or false statements made during the course of the licensed activity.
  - 3) Subsequent offenses to which the granting of the license could have been denied under Sec. 9-145.
  - 4) Engaging in any prohibited activity as provided under Sec. 9-149.
- (b) **Notice and Right to Hearing.** Prior to revoking or suspending any license, the Issuing Authority shall provide a license holder with written notice of the alleged violations and inform the licensee or registrant of his or her right to a hearing on the alleged violation. Notice shall be delivered in person, by regular mail, or by email to the applicant at the address provided in the application and shall inform the applicant of the applicant's right to a hearing. If no request for a hearing is received within 10 days following the service of the notice, the Issuing Authority may proceed with the suspension or revocation. For the purpose of a mailed notice service shall be considered complete as of the date the notice is placed in the mail. If a hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request for the hearing.
- (c) **Emergency.** If, in the discretion of the Issuing Authority, imminent harm to the health or safety of the public may occur because of the actions of a Mobile Food Vehicle licensee, the Issuing Authority may immediately suspend the person's license and provide notice of the right to hold a subsequent hearing as prescribed in part (b) of this section.

**Sec. 9-148. License or Registration Transferability.** No license issued shall be transferred to any person other than the person to whom the license was issued.

**Sec. 9-149. Restrictions.** No Mobile Food Vehicle shall conduct business in any of the following manners or in the following areas:

- (a) Calling attention to his or her business or the 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.
- (b) Obstructing the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, 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 specific individual or the general public.

- (d) Conducting business before 8 AM or after 8 PM, unless authorized by the Issuing Authority.
- (e) Failing to provide proof of license and identification when requested.
- (f) Using the license of another person and or of another Mobile Food Vehicle licensee.
- (g) Alleging false or misleading statements about the products being sold, including untrue statements of endorsement. No Mobile Food Vehicle shall claim to have the endorsement of the City solely based on the City having issued a license to that person.
- (h) Remaining on the property of another when requested to leave or returning to that property after leaving, without written permission of the property owner.
- (i) Otherwise operating their business in any manner that may be found to be obscene, threatening, intimidating or abusive.
- (j) Conducting business in a City park or parking lot at a City park unless authorized by the Issuing Authority.
- (k) Operating business less than 2,000 feet away from a permitted event.
- (l) Operating business less than 200 feet from any food service premises, unless with approval from the owner of the food service premise(s) or retail center.
- (m) Failing to maintain mobile food vehicle in good repair, order, and neat appearance.
- (n) Failing to clean up and properly dispose of trash and debris in the vicinity of the mobile food vehicle at the end of each business day.
- (o) Dispensing liquid and or other waste products from mobile food vehicle on to city, public, and private property. (Ord. 874, 8/10/2021).

## **ARTICLE 16. TEMPORARY OUTDOOR PATIOS**

**Sec. 9-150. Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

- **Temporary Outdoor Patio** – A specifically defined outdoor area, operated by a restaurant or tavern for seasonal outdoor service between April 1 and November 1 in a calendar year, located on an existing sidewalk or parking area.

**Sec. 9-151. License Required.** No person shall operate a temporary outdoor patio in the city without first obtaining a license.

**Sec. 9-152. Application for; Issuance of License.** Application for a license required by this article shall be made to the City Clerk on a form supplied by the city, a minimum of fourteen (14) days prior to the desired start date. The application shall state the full name and address of the applicant and be signed by the applicant and the property owner if different; include a site plan of the location, size and type of enclosure materials to be used by the applicant under the license; a written narrative describing the request; whether the establishment holds a license under Section 10-02 and for such establishments an updated certificate of insurance for liquor sales, indicating that liquor liability is extended to the outside of the building premises; and such other information as shall be required by the application form. The City Clerk has the authority to approve or deny the license application. If the license application is denied the City Clerk shall notify the applicant in writing and the reason for denial. Notice shall be delivered by regular mail to the applicant at the address provided in the application and shall inform the applicant of the applicant's right to appeal the denial by requesting, within twenty (20) days of receiving notice of denial a hearing before the City Council.

**Sec. 9-153. Extending Licensed Premises.** In order to comply with Sec. 10-12 of the City Code, an establishment licensed under Sec. 10-02 of the City Code, must submit an amended description

of the licensed premises including the entire space, indoor and outdoor, where alcoholic beverages will be served. For liquor licensed establishments, the premises must be compact and contiguous in accordance with Minn. Stat. § 340A.410.

**Sec. 9-153. Noise.** All businesses must comply with noise ordinances in Sections 19-03, 19-04(c) and 19-05 of the City Code. Variances under Section 19-10 of the City Code for temporary outdoor patios to exceed the standards referenced in Sections 19-03, 19-04, and 19-05 of the City Code will not be granted.

**Sec. 9-154. License Fee; Term.** The fee for a license required by this article shall be determined by the City Council. Licenses shall be valid from April 1 to November 1 in the calendar year for which the license is issued. Licenses issued pursuant to this article shall not be transferable from one person to another.

**Sec. 9-155. License to be Displayed.** Every license required by this article shall be kept conspicuously posted at the location for which the license is issued and shall be exhibited to any person upon request.

**Sec. 9-156. License Suspension, Revocation.**

1. **Generally.** The City Council may suspend or revoke a license issued under this section on a finding that the license holder has failed to comply with this section or with an applicable statute, regulation, or ordinance relating to such license.
2. **Notice and Right to Hearing.** Prior to revoking or suspending any license under this section, the City Clerk shall provide a licensee with written notice of the finding and the basis for the determination and inform the licensee of his or her right to a hearing. Notice shall be delivered in person or by regular mail to the applicant at the address provided in the application and shall inform the applicant of the applicant's right to a hearing. If no request for a hearing is received within ten (10) days following the service of the notice, the suspension or revocation will be imposed. For the purpose of a mailed notice, service shall be considered complete as of the date the notice is placed in the mail. If a hearing is requested within the stated time frame, a hearing shall be scheduled within twenty (20) days from the date of the request for the hearing. (ORD: 881, 3/22/2022)