

Chapter 38

**LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS**

**ARTICLE I. IN GENERAL**

**Sec. 38-1. Parade permit required.**

The streets in the city shall be kept free and clear of all obstructions and encroachments, for the use of the public, and no parade, civic or military, with or without band of other music, and no public gathering or meeting of any kind for any purpose, and no beating of drum or drums, or playing of any instrument or instruments of any kind tending to the obstruction thereof, or gathering of crowds of people thereon, shall be permitted upon the public streets or public grounds of said city except with a written permit therefor being first obtained from the City Council. Such a permit shall be issued upon a showing that public safety will not be jeopardized by issuance of the permit. The fee for such permit shall be as established by the city.

(Ord. No. 01-2001, § 472.05, 2-25-2001)

**Secs. 38-2—38-18. Reserved.**

**ARTICLE II. LICENSE AND PERMITS**

**Sec. 38-19. Required.**

(a) *Applicability of article.* Except as otherwise provided in this Code, all licenses and permits granted by the city shall be governed by the provisions of this article.

(b) *Acts prohibited.* No person shall conduct any activity or use any property for which a license or permit is required by law or this Code without a currently valid license or permit for such activity or use.

(c) *Application; issuance.* Every applicant for a license shall submit an application to the clerk on a form provided by the city. It shall be accompanied by payment of the prescribed fee.

- (1) *Criminal history background.* When applicable, the Police Department is authorized to do a criminal background investigation on applications for city licenses. Before the investigation is undertaken, the applicant must authorize the Police Department in writing to undertake the investigation and to release the information to the City Council, City Manager and other city staff as appropriate.
- (2) *Issuance.* If, after investigation, the clerk is satisfied that all requirements of law and this Code have been met, the clerk shall present the application to the Council for action, or, if the license or permit does not require Council approve, the clerk shall issue the license or permit.
- (3) *Denial for background.* Except in the case of exceptions set forth by state law, should the city deny the applicant's request for a license, due partially or solely to the applicant's prior conviction of a crime, the City Manager shall notify the applicant in writing of the following:
  - a. The grounds and reason for denial.
  - b. The applicant complaint and grievance procedure set forth in state statutes.

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- c. The earliest date the applicant may reapply for a license.
- d. That all competent evidence of rehabilitation will be considered upon reapplication.

(d) *Bond.* Where a bond is required for any license or permit, the bond shall be a corporate surety bond executed on a form approved by the City Attorney and shall be filed with the clerk before the license or permit is issued. Unless otherwise determined by the city, a bond shall be in the amount of \$5,000.00, conditioned that the licensee or permittee shall comply with the applicable ordinances and laws pertaining to the licensed or permitted activity and that the licensee or permittee will indemnify the city and save it harmless from all loss or damage by reason of inadequate work performed by him or by reason of accident caused by the negligence of the licensee or permittee, his agent or employees.

(e) *Insurance.*

- (1) When a licensee or permittee is required to have in force a policy of insurance, the policy shall be approved as to substance and form by the City Attorney. The policy shall provide that it is noncancelable without 15 days' notice to the city, and the coverage shall be for the term of the license or permit. Satisfactory evidence of coverage by insurance shall be filed with the clerk before the license or permit is issued. Each license or permit shall terminate upon termination of the required insurance coverage.
- (2) Unless otherwise provided, a required policy of liability insurance shall provide for protection in at least the following amounts:
  - a. One million dollars per occurrence.
  - b. Two million dollars annual aggregate limit.

(Code 1987, § 400.01; Ord. 15-2002, 8-25-2002)

**Sec. 38-20. Fees.**

- (a) *Fee established.* License fees are as established by the city.
- (b) *Prorated fees.* License fees shall not be prorated unless otherwise specified by this Code or by law.
- (c) *Refunds.* License fees shall not be refunded in whole or in part unless otherwise specified by this Code or by law.

(Code 1987, § 400.05; Ord. No. 01-2001, 2-25-2001)

**Sec. 38-21. Duration.**

Unless otherwise specified, a license shall be valid for 12 calendar months or the part of a year for which it is issued and shall expire on January 31.

(Code 1987, § 400.10)

**Sec. 38-22. Transfers.**

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

(Code 1987, § 400.15)

**Sec. 38-23. Duplicate.**

A duplicate license to replace a lost original may be issued by the Council at its discretion, under such regulations as it may prescribe, and on the payment of a fee as established by the city.

(Code 1987, § 400.20; Ord. No. 01-2001, 2-25-2001)

**Sec. 38-24. Late applications.**

Failure to secure initially, or to renew upon expiration, a license or permit or such as required shall be an offense constituting a misdemeanor, and each successive day shall constitute a separate and distinct offense.

(Code 1987, § 400.25)

**Sec. 38-25. Inspection.**

(a) *Authorized personnel.* Any city official or employee having a duty to perform with reference to a license under this Code and any police officer may inspect and examine any license, business, or premises to enforce compliance with applicable provisions of this Code. Subject to the provisions of subsection (b) of this section, he may, at any reasonable time, enter any licensed premises or premises for which a license is required in order to enforce compliance with this Code.

(b) *Search warrants.* If the licensee objects to the inspection of his premises, the city official or employee charged with the duty of enforcing the provisions of this Code shall procure a valid search warrant before conducting the inspection.

(Code 1987, § 400.30)

**Sec. 38-26. Duties of licensee.**

(a) *Compliance required.* Every licensee and permittee shall have the duties set forth in this section.

(b) *Inspection.* He shall permit at reasonable times inspections of his business and examination of his books and records by authorized officers or employees.

(c) *Compliance with law.* He shall comply with laws, ordinances, and regulations applicable to the licensed business, activity, or property.

(d) *Display of license.* He shall display the license or other insignia given him as evidence of the license in a conspicuous place on the premises, vehicle, or device to which the license relates. If the license is not so related, the license shall be carried on the licensee's person whenever he is carrying on the licensed activity.

(e) *Unlawful disposition.* The licensee shall not lend or give to any other person his license or license insignia.

(Code 1987, § 400.35)

**Sec. 38-27. Suspension or revocation.**

The Council may suspend for a period not exceeding 60 days or revoke any license or permit for violation of any provision of law, ordinance, or regulation applicable to the licensed or permitted activity or property. Except where mandatory revocation is provided by law without notice and hearing and except where suspension may be made without a hearing, the holder of the license or permit shall be granted a hearing upon at least ten days' notice before revocation or suspension is ordered. The notice shall state the time and place of the hearing and the nature of the charges against the licensee. On revocation, suspension or expiration without renewal of any license or permit, the clerk shall inform the head of the Police Department thereof who shall

thereupon secure the license or permit and deliver it to the clerk. Failure of any holder of a license or permit to deliver the same to any police officer on demand after revocation, suspension, or termination shall be a misdemeanor.

(Code 1987, § 400.40)

**Secs. 38-28—38-114. Reserved.**

**ARTICLE III. TRANSIENT MERCHANTS, HAWKERS, PEDDLERS AND SOLICITORS\***

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

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DIVISION 1. GENERALLY

**Sec. 38-115. 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:

*Peddler* means a person who goes from house to house, door to door, business to business, street to street, or any other type of place to place for the purpose of offering for sale, selling or attempting to sell, and delivering goods immediately upon the sale of the goods, wares, products, merchandise, or other personal property that the person is carrying or transporting; the term does not include vendors of milk, bakery products or groceries who distribute their products to regular customers on established routes. The term "peddler" means the same as the term "hawker."

*Person* means any person, individual, co-partnership, limited liability company and corporation, both as principal and agent, who engage in, do, or transact any temporary and transient business in the city regulated by this section.

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

*Transient merchant* means a person, whether as owner, agent, consignee, or employee who engages in a temporary business out of a vehicle, trailer, boxcar, tent, or other portable shelter, store front, or from a parking lot for the purpose of displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, or other personal property and who does not remain or intend to remain in any one location for more than four consecutive days.

(Ord. No. 03-2008, § 485.01, 3-11-2008)

**Sec. 38-116. Exemptions.**

(a) *Applicability of article.* For the purpose of the requirements of this article, the terms "peddler," "solicitor," and "transient merchant" shall not apply to and shall not include the following:

- (1) Sale of personal property at wholesale to dealers;

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- (2) The sale of papers or newspaper subscriptions;
- (3) Calling upon residents in connection with a regular route service for the sale and delivery of perishable daily necessities of life such as food, bakery products and dairy products. This article shall also not apply to any person who makes initial contacts with people for the purpose of establishing or trying to establish a regular customer delivery route for sale and delivery of perishable daily necessities of life such as food, bakery products and dairy products;
- (4) Calling upon residents at the request of said residents;
- (5) A sale required by statute or by order of any court or prevent the conduct of a bona fide auction sale pursuant to law;
- (6) Sales commonly known as garage sales, rummage sales, estate sales, as well as those persons participating in an organized, multiperson bazaar or flea market;
- (7) A person issued an invitation by the owner or legal occupant of a residential premises shall be exempt from the definitions of peddlers, solicitors, and transient merchants.

Exemptions from this article shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

(b) *Nonprofit organizations and free expression.* Any organization, society, association, or corporation with a nonprofit status approved by the state or federal government desiring to solicit or to have solicited in its name money, donations of money or property, or financial assistance of any kind or desiring to sell or distribute any item of literature or merchandise for which a fee is charged or solicited from persons other than members of such organizations for a charitable, religious, patriotic, or philanthropic purpose by going from house to house, door to door, business to business, street to street, or other type of place to place, or when such activity is for the purpose of exercising that person's state or federal constitutional rights relating to the free exercise of religion or speech, is exempt from the licensing requirements of section 38-150, provided there is a registration filed in writing on a form to be provided by the City Clerk which contains the following information:

- (1) Organization's name and specific cause for which exemption is sought;
- (2) Names and addresses of the officers and directors of the organization;
- (3) Period during which solicitation is to be conducted;
- (4) Whether or not any commission, fee, wages or emoluments are to be expended in connection with such solicitation and the amount thereof; and
- (5) Names and addresses of all persons involved in canvassing efforts.

Persons exercising constitutional rights may lose their exemption from licensing if the person's exercise of constitutional rights is merely incidental to a commercial activity. Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of section 38-150.

(c) *Farm produce, horticultural, fireworks.* No license shall be required for any person to sell or attempt to sell or to take or attempt to take orders for any product grown, produced, cultivated, or raised on any farm. For the purposes of this article, the term "product"

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means any horticultural product grown, produced or cultivated and/or sold by any person in this state. Persons exempt from this subsection shall register with the city as required in subsection (b) of this section. The sale of fireworks shall be regulated by chapter 38, article V. Notwithstanding any provision of chapter 129, pertaining to zoning, to the contrary, no conditional use permit or zoning approvals relating to accessory uses shall be required for sales regulated by this section.

(Ord. No. 03-2008, § 485.20, 3-11-2008)

**Sec. 38-117. Prohibited activities.**

(a) *Loud noises and speaking devices.* A person licensed under this article may not shout, cry out, blow a horn, ring a bell, or use any sound amplifying device upon any of the streets, alleys, parks, or other public places of the city or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, alleys, parks, or other places, for the purpose of attracting attention to any goods, wares, or merchandise which such license proposes to sell.

(b) *Use of streets.* A person licensed or regulated under this article does not have an exclusive right to any location in the public streets, nor is such person permitted a permanent stationary location thereon. A person licensed under this article may not operate in a congested area where such operation might impede or inconvenience the public use of streets.

(c) *Private property.* Issuance of a license under this article does not permit the license holder to conduct the licensed activity on private property without the ongoing permission of the property owner or the property owner's authorized agent. If such property is conspicuously posted by the owner or person in control with a sign stating, "No Trespassing," or "No Solicitors or Peddlers" or similar language, the entry thereon by any person subject to the licensing or registration requirements of this article without the permission of the owner or agent shall be a public nuisance punishable as a misdemeanor.

(d) *Practices prohibited.* No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

- (1) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right-of-way;
- (2) Creating a direct threat to the health, safety, or welfare of any individual or the general public;
- (3) Entering upon any residential premises for the purpose of carrying on the licensee's or registrant's trade or business between the hours of 7:00 p.m. and 9:00 a.m. Monday through Saturday, and peddling or soliciting is prohibited on Sundays, unless such person has been expressly invited to do so by the property owner or occupant thereof;
- (4) Harassing, intimidating, abusing, or threatening a person, continuing to offer merchandise for sale to any person after being told not to do so by that person, or failing or refusing to leave the premises of the resident occupant after being told to do so by the resident occupant.

(Ord. No. 03-2008, § 485.35, 3-11-2008)

**Sec. 38-118. Records.**

The Chief of Police must report to the City Clerk all convictions for violation of this article. The City Clerk must maintain a record for each license issued and record the reports of violations there. Any report of violation according to this section is grounds for revocation of the license.

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(Ord. No. 03-2008, § 485.40, 3-11-2008)

**Secs. 38-119—38-149. Reserved.**

DIVISION. 2. LICENSE

**Sec. 38-150. Required.**

It is unlawful to engage in the business of peddler, solicitor, or transient merchant in the city without first obtaining a license therefor as provided by this article, unless exempt from such license pursuant to the requirements of section 38-116. In addition, no person shall conduct business as a transient merchant within the city limits without first having obtained the appropriate license from the county as required by Minn. Stats. ch. 329.

(Ord. No. 03-2008, § 485.05, 3-11-2008)

**Sec. 38-151. Application.**

(a) *Form.* Applications for a city license under this article must be filed in writing with the City Clerk on a form provided by the city.

(b) *Contents.* The application must contain the following:

- (1) Applicant's full legal name and other names under which the applicant conducts business or to which the applicant officially answers;
- (2) Physical description of the applicant (hair color, eye color, height, weight, distinguishing marks or features) or a copy of a current driver's license;
- (3) Complete permanent home and local address of the applicant; and in the case of transient merchants, the local address from which proposed sales will be made with a letter of signed permission from the property owner;
- (4) Applicant's phone number;
- (5) A brief description of the nature of the business and the goods to be sold or services to be provided;
- (6) The name, address and phone number of the employer, principal, or supplier of the applicant, together with credentials establishing the exact relationship;
- (7) The dates during which the applicant intends to conduct business and the names of its agents conducting business in the city;
- (8) The supply source of goods, or property prepared to be sold, or orders taken for the sale thereof, the location of such goods or products at the time of the application, and the proposed method of delivery;
- (9) A recent photograph (approximately two inches by two inches) of the applicant, showing the head and shoulders of the applicant in a clear and distinguishing manner, to be used on the identification card prepared by the city;
- (10) A statement as to whether or not the applicant has been convicted of any crime or violation of any municipal ordinance other than traffic violations, the nature of the offense, and the punishment or penalty assessed therefor;
- (11) The names of up to three other municipalities where the applicant conducted similar business immediately preceding the date of the current

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application and the addresses from which such business was conducted within those municipalities;

- (12) The applicant's driver's license number or other acceptable state-issued identification;
- (13) The license plate number and description of the vehicle to be used in conjunction with the licensed business, if applicable;
- (14) Proof of county license (applicable to transient merchants only).

(Ord. No. 03-2008, § 485.10, 3-11-2008)

**Sec. 38-152. Fee.**

At the time of filing the application, the license fee as established by the city must be paid to the City Clerk.

(Ord. No. 03-2008, §§ 485.15, 485.45, 3-11-2008)

**Sec. 38-153. Investigation and issuance.**

The license application for nonexempt applicants must be referred to the Chief of Police or delegate who must immediately conduct a CCH investigation of the applicant as authorized by section 34-19 and a driver's license check, and promptly return the application to the City Clerk with a recommendation.

(Ord. No. 03-2008, § 485.25, 3-11-2008)

**Sec. 38-154. License requirements.**

(a) *Contents.* The license and identification badge must contain the signature of the issuing officer and show the name, address, and photograph of the licensee, the date of issuance and expiration, and the license number.

(b) *Duration.* Each license shall be valid only for the period specified therein, and no license may extend beyond December 31 of the year in which it was granted.

(c) *Nontransferable.* No license is transferable from one person to another. Each person involved in any activity regulated by this article shall be separately licensed even though associated with an organization licensed hereunder.

(d) *Identification.* Each licensee must wear the identification badge supplied by the city upon approval of the license, conspicuously showing his name and the organization for which he is working and must carry his city issued license when conducting the business or activity required to be licensed.

(Ord. No. 03-2008, § 485.30, 3-11-2008)

**Secs. 38-155—38-176. Reserved.**

**ARTICLE IV. TREE REMOVAL AND TREATMENT CONTRACTORS**

DIVISION 1. GENERALLY

**Secs. 38-177—38-205. Reserved.**

DIVISION 2. LICENSE

**Sec. 38-206. Required.**

If shall be unlawful for any individual, partnership, or corporation to conduct as a business the cutting, trimming, pruning, removal, spraying, or otherwise treating of trees, shrubs, or vines in the city without first having secured a license from the city to conduct such business.

(Code 1987, § 488.01)

**Sec. 38-207. Application procedure; insurance requirements; certification; fees.**

(a) *Location.* Application for a license under this article shall be made at the office of the City Clerk.

(b) *Form.* The application for a license shall be made on a form approved by the city which shows, among other things, the name and address of the applicant, the number and names of the employees of the applicant, the number of vehicles of applicant, together with a description and license number of each, and the type of equipment proposed to be used.

(c) *Liability insurance.* No license or renewal shall be granted, nor shall the same be effective, until the applicant shall file with the City Clerk proof of a public liability insurance policy covering all operations of such applicant under this article for the sum of at least \$1,000,000.00 per occurrence with an annual aggregate limit of \$2,000,000.00. The city shall be named and the insurance provided shall include the city as an additional party insured. Said policy shall provide that it may not be cancelled by the insurer except after 15 days' written notice to the city, and if such insurance is so cancelled and the licensee shall fail to replace the same with another policy conforming to the provisions of this article, said license shall be automatically suspended until such insurance shall have been replaced.

(d) *Workers' compensation insurance.* Each license applicant shall file with the City Clerk a certificate of insurance for workers' compensation when such insurance is required by state statute.

(e) *Chemical treatment requirements.* Applicants who propose to use chemical substances in any activity related to the treatment or disease control of trees, shrubs, or vines shall file with the City Clerk proof that the applicant or an employee of the applicant administering such treatment has been certified by the Agronomy Division of the Minnesota Department of Agriculture as a commercial pesticide applicator. Such certification shall include knowledge of tree disease chemical treatment.

(f) *Fees.* The annual license fee shall be as established by the city, with the license year being from April 1 to March 31 of the following year.

(Code 1987, § 488.05; Ord. No. 01-2001, 2-25-2001)

**Secs. 38-208—38-230. Reserved.**

## **ARTICLE V. FIREWORKS**

### **DIVISION 1. GENERALLY**

**Sec. 38-231. Purpose.**

The purpose of this article is to regulate the sale of permitted consumer fireworks as described in Minn. Stats. § 624.20, in order to protect the health, safety and welfare of the general public.

(Ord. No. 04-2008, § 906.05, 3-25-2008)

**Secs. 38-232—38-250. Reserved.**

### **DIVISION 2. LICENSE**

**Sec. 38-251. Sale of fireworks.**

It is unlawful to sell fireworks in the city in violation of Minn. Stats. §§ 624.20—624.25, inclusive, which are adopted by reference. The term "consumer fireworks" as defined in this article may, however, be sold upon issuance of a license by the city.

(Ord. No. 04-2008, § 906.10, 3-25-2008)

**Sec. 38-252. Application.**

(a) Each applicant shall file a written and signed application, on a form prepared by the city. Such application shall describe the specific location where, the days when, and the hours during which the applicant intends to offer for sale, expose for sale, or sell at retail any consumer fireworks, and such other pertinent information as the city may deem necessary to enable it to carry out the provisions of this article. No license shall be issued unless the application has been approved by the planning department as meeting the city's zoning regulations, by the Fire Department as meeting the requirements of National Fire Protection Association Standard 1124 (2003 edition), and by the Police Department as meeting the requirements of any other state or local laws.

(b) The application shall contain and the applicant shall provide, at a minimum, the following information:

- (1) Applicant's name, address, phone number, and date of birth;
- (2) The address and phone number of the sale site;
- (3) The dates of actual sale of consumer fireworks;
- (4) The type and quantity, in pounds, of the specific type of fireworks to be at the sale site;
- (5) A statement that applicant understands what constitutes consumer fireworks and what are illegal under state law.

(c) The applicant shall file with the application, evidence that the applicant has liability insurance coverage in an amount of \$1,000,000.00 per occurrence and \$2,000,000.00 as an annual aggregate limit to cover the licensee's negligent acts relative to the sale, possession or use of consumer fireworks. Such insurance shall indicate that the city shall receive notice at least 30 days prior to the cancellation or termination of the coverage. Any license issued under the authority of this article shall immediately terminate upon the cancellation or termination of the insurance coverage required herein.

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(Ord. No. 04-2008, § 906.20, 3-25-2008)

### **Sec. 38-253. Processing application.**

The application must be filed with the City Clerk together with the permit and inspection fees. Following an inspection of the premises proposed to be licensed, the city shall issue the permit if the conditions for the license approval are satisfied and the location is properly zoned. If the city denies the permit application, the permit applicant may, within ten days, appeal the decision to the City Council.

(Ord. No. 04-2008, § 906.25, 3-25-2008)

### **Sec. 38-254. Issuance.**

The city shall grant a consumer fireworks license to an applicant who complies with the provisions of this article and provides a completed application, license and inspection fees as specified by the city, approved inspection report by the fire marshal, and proof of insurance. A license is an annual license, which shall expire on December 31 of the year of issuance. The license fee shall not be prorated.

(Ord. No. 04-2008, § 906.30, 3-25-2008)

### **Sec. 38-255. Conditions.**

A license to sell consumer fireworks shall be issued subject to the following conditions:

- (1) The license is nontransferable, either to a different person or location.
- (2) The license must be publicly displayed at the licensed premises.
- (3) The premises are subject to inspection by the city Police and Fire Departments at any time when the licensee is engaged in selling or displaying fireworks for sale, to inspect the premises to determine compliance with this article. The licensee must discontinue selling or displaying fireworks for sale until compliance with all provisions of this article, the city fire prevention code, and any other state or federal regulations are met.
- (4) No signs, banners, pennants, or any other form of advertising shall be displayed unless in compliance with chapter 119, pertaining to signs. All permits required by chapter 119, pertaining to signs, shall be obtained.
- (5) Storage and display for sale of consumer fireworks on the premises must be in compliance with the National Fire Protection Association Standard 1124, 2003 edition, which is incorporated herein by reference.
- (6) No person shall sell consumer fireworks to a person younger than 18 years of age. Licensee and licensee's employees selling fireworks must be at least 18 years of age. Vendors of legal fireworks must verify the age of the purchaser by the use of photographic identification.

(Ord. No. 04-2008, § 906.35, 3-25-2008; Ord. No. 06-2008, 5-24-2008)

### **Sec. 38-256. Revocation.**

Following written notice and an opportunity for a hearing, the City Manager may revoke a license for violation of this article or state statute concerning the sale, use or possession of fireworks. If a license is revoked, neither the applicant nor the licensed premises may obtain a license for 12 months.

(Ord. No. 04-2008, § 906.40, 3-25-2008)

**ARTICLE VI. SECONDHAND GOODS DEALERS**

**DIVISION 1. GENERALLY**

**Sec. 38-301. Purpose.**

The purpose of this article is to regulate the sale of certain secondhand goods to protect the health, safety and welfare of the general public. The City Council finds that some secondhand goods dealers potentially provide an opportunity for the concealment of crimes because such businesses have the ability to receive and transfer stolen property easily and quickly. The purpose of this section therefore is to prevent these businesses from being used as facilities for the commission of crimes and assure that such businesses comply with basic consumer protection standards.

**Sec. 38-302. 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:

*Electronic equipment* means televisions, radios, stereos, audio or video players and recorders, digital cameras, camcorders and like equipment but excluding musical instruments and their related amplification equipment.

*Jewelry* means objects of precious metals often set with precious stones but excluding costume jewelry. The term includes all watches.

*Power tools* means any device, either portable or stationary, equipped with an engine, motor, battery or other means of operation, including machine, carpentry and industrial tools or surveying equipment.

*Precious metals and gems* means gold, silver, platinum, sterling silver, precious gems, and coins with a numismatic value or intrinsic value greater than its denominational value, whether as a separate item or in combination as a piece of jewelry or other crafted item. This term does not include items plated with precious metal or metals when the plating equals less than one percent (1%) of the item's total weight.

*Secondhand good* means tangible personal property (excluding motor vehicles) previously owned, used, rented, or leased by a person other than the dealer offering it for sale.

*Secondhand goods dealer* means a person whose regular business includes the purchasing and selling or secondhand goods at their licensed place of business. A secondhand goods dealer does not include a person engaged in pawn transactions.

*Unique Identifier* means a serial number, identification number, model number, owner applied identifier or engraving, "operation ID" number or symbol, or other unique marking.

**Sec 38-303. Exemptions.**

This section does not apply to or include the following:

- (a) The sale of secondhand goods where the sale is held on property principally occupied as a dwelling by the seller as long as the sale does not exceed a period of 72 hours and not more than three sales are held by the same person or on the same property in

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any 12 month period. None of the items offered for sale can have been purchased for resale or received on consignment for the purpose of resale. :

- (b) The sale of secondhand goods on property owned, rented or licensed by a charitable or political organization as long as all of the secondhand goods have been donated.
- (c) Secondhand goods dealers that do not receive or sell any of the following:
  - (1) Items with a serial number or other unique identifier;
  - (2) Electronic equipment, including but not limited to audio equipment, video equipment, computers and computer related equipment;
  - (3) Precious jewelry, metals or gems;
  - (4) Power tools; and
  - (5) Firearms.
- (d) Sales by a person licensed as a motor vehicle dealer.
- (e) The sales of goods at an auction held by a licensed auctioneer.

### DIVISION 2. LICENSE

#### **Sec 38-331. License Required.**

- (a) *Acts Prohibited.* No person may engage in the business of secondhand goods dealer without first obtaining a secondhand goods dealer license.
- (b) *Persons Ineligible for License.* A secondhand goods dealer license will not be issued to:
  - (1) A person who has been convicted of any state or federal law relating to receiving stolen property, sale of stolen property or controlled substance, burglary, robbery, theft, damage or trespass to property, operation of a business, or any law or ordinance regulating the business of pawnbroker or secondhand goods dealer;
  - (2) A person who within three years of the license application date had a pawnbroker or secondhand goods dealer license revoked;
  - (3) A secondhand goods dealer license will not be issued to any partnership or corporation if such applicant had a partner, managing partner, proprietor or agent who does not meet the standard set forth in (2) or (3) above.
- (c) *Changes in Ownership.* Any change in the ownership of any licensed secondhand goods store shall require the application for a new license and the new owner must satisfy all current eligibility requirements.
- (d) *Changes in Location.* A license will be issued to the applicant only for the business premises as described in the application. Should the applicant seek to move the business, the license shall not be changed to another location without approval of the Council.
- (e) *Duration.* A secondhand goods dealer license shall be valid for 12 months or the part of the year for which it is issued and shall expire on January 31<sup>st</sup> following the year of issuance.

**Sec 38-332. Application**

- (a) *Contents.* Every applicant for a license shall submit an application to the clerk on a form provided by the City. The application will not be considered unless it is accompanied by payment of the prescribed fee.
- (b) *Criminal history background.* The City, prior to the granting of an initial or renewed secondhand goods dealer license, must conduct a criminal background investigation of the applicant. Any person having a beneficial interest in the license must be investigated. The investigation shall be conducted by the Police Department. Before the investigation is undertaken, the applicant must authorize the Police Department in writing to undertake the investigation and to release the information to the City Council, City Manager and other City staff as appropriate. The fee for the criminal history background check shall be established by the City and shall so be stated in the City's fee schedule. If the Police Department and City Manager determine that a renewal secondhand goods dealer license applicant has fully complied with all requirements of Article VI of this Chapter during the prior 12 months, the City Manager may waive the criminal background investigation requirement and associated fee for that application.

(Code 1987, § 488.05; Ord. No. 12-2014, 12-21-2014)

**Sec 38-333. Issuance**

- (a) *Application Review.* If, after investigation, the City Clerk is satisfied that all requirements of law and this Code have been met, the City Clerk shall issue said license. If the application is incomplete, the City Clerk shall notify the applicant in writing to inform them of the deficient or missing information.
- (b) *Denial.* Any license under this chapter may be denied for one or more of the following reasons:
  - (1) The applicant(s) is ineligible for a license or has failed to comply with one or more provisions of this chapter.
  - (2) The applicant has committed fraud or bribery, or made misrepresentations or false statements in the application, investigation or operation of the second hand good business.
  - (3) The premises do not comply with any health, building, building maintenance or other provisions of this code or state law.
- (c) *Notice of Denial.* Should the city deny the applicant's request for a license, the applicant shall be notified in writing of the following:
  - (1) The grounds and reason for denial.
  - (2) The applicant complaint and grievance procedure set forth in state statutes.
  - (3) If the denial is based upon a criminal conviction that all competent evidence of rehabilitation will be considered upon reapplication.
  - (4) That the application fee is not refundable.
- (d) *Liability insurance.* No license or renewal shall be granted, nor shall the same be

effective, until the applicant shall file with the City Clerk proof of a public liability insurance policy covering all operations of such applicant under this article for the sum of at least \$1,000,000.00 per occurrence with an annual aggregate limit of \$2,000,000.00. The city shall be named and the insurance provided shall include the city as an additional party insured. Said policy shall provide that it may not be cancelled by the insurer except after 15 days' written notice to the city, and if such insurance is so cancelled and the licensee shall fail to replace the same with another policy conforming to the provisions of this article, said license shall be automatically suspended until such insurance shall have been replaced.

**Sec 38-334. Fees**

- (a) *Fee established.* License fees are as established by the city.
- (b) *Prorated fees.* License fees shall not be prorated.
- (c) *Refunds.* License fees shall not be refunded in whole or in part.

**Sec. 38-335. Inspection.**

- (a) *Authorized personnel.* Any city official or employee having a duty to perform with reference to a license under this Code and any police officer may inspect and examine any license, business, or premises to enforce compliance with applicable provisions of this Code. Subject to the provisions of subsection (b) of this section, the licensee may, at any reasonable time, enter any licensed premises or premises for which a license is required in order to enforce compliance with this Code.
- (b) *Search warrants.* If the licensee objects to the inspection of their premises, the city official or employee charged with the duty of enforcing the provisions of this Code shall procure a valid search warrant before conducting the inspection.

**Sec. 38-336. Duties of licensee.**

- (a) *Compliance Required.* Every licensee shall have the duties set forth in this section.
- (b) *Compliance with Law.* The licensee shall comply with laws, ordinances, and regulations applicable to the licensed business, activity, or property.
- (c) *Display of License.* The licensee shall prominently display the license in a conspicuous place on the premises at all times
- (d) *Unlawful Disposition.* The licensee shall not lend or give to any other person his license.
- (e) *Records.* A licensed secondhand goods dealer at the time of the receipt of an item, must immediately record descriptive information about the transaction. The records as well as the goods received must be open for inspection by the police department at reasonable times. Records required by this subsection must be stored and maintained by the licensee for a period of at least three years. For each transaction, the following information shall be noted in either a computerized record or kept in a journal used for this purpose using indelible ink:
  - (1) Date, time and place of receipt

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- (2) An accurate description of the item including, but not limited to any trademark, identification number, serial number, model number, brand name or other identifying mark on such item
  - (3) The purchase price
  - (4) Name, address, phone number, and date of birth of the person from whom the item was purchased
  - (5) The identification number from any of the following forms of identification of the seller – valid picture driver’s license or official state picture identification
  - (6) An original signature (not a copy) of the person from whom the item was received.
- (f) *Prohibited Acts.* A licensed secondhand goods dealer must not purchase goods from the following individuals:
- (1) A person under the age of 18 years.
  - (2) An intoxicated person
  - (3) A person who is unwilling to present an acceptable form of picture identification or supply any of the other required information referenced in (e) above.
- (g) *Prohibited Goods.* A licensed secondhand goods dealer shall not accept any item of property which contains an altered or obliterated serial number, “an altered or obliterated “operation identification” number or any item of property whose serial number has been removed.
- (h) *Stolen or Lost Goods.* A licensed secondhand goods dealer must report to the police any article received, or sought to be received if the licensee has reason to believe that the article was stolen or lost.
- (i) *Police Orders.* The licensee shall comply with all lawful orders of any law enforcement agency.

**Sec. 38-337. Suspension or Revocation.**

The Council may suspend for a period not exceeding 60 days or revoke any license for violation of any provision of law, ordinance, or regulation applicable to the license or property. The holder of the license shall be granted a hearing upon at least ten days' notice before revocation or suspension is ordered. The notice shall state the time and place of the hearing and the nature of the charges against the licensee.

(Ord. No. 06-2011, 1-1-12)