

# CHAPTER 4. LICENSING AND BUSINESS REGULATIONS

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## 📖 **Section 400 - Tobacco Sales**

**400.01 Purpose.** Because the City recognizes that many persons under the age of 18 years purchase tobacco, tobacco products and tobacco related devices, and such sales, possession and use are violations of state and federal laws, and because studies which the City hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking, and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government, this section shall be intended to regulate the sale of tobacco, tobacco products and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products and tobacco related devices and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minnesota Statutes Section 144.391, as it may be amended from time to time.

(Am. Ord. 2012-03, passed 3-19-12)

**400.02 Definitions and Interpretations.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa.

The term “shall” means mandatory and the term “may” means permissive. The following terms shall have the definitions given to them.

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

**400.02.2.** “Individually packaged” shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco shall include, but shall 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 six or fewer packs or other containers as described in this subdivision shall be considered “individually packaged.” Cartons or other packaging containing more than six packs or other containers as described in this subdivision shall not be considered “individually packaged.”

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

**400.02.4.** “Minor” shall mean any natural person who has not yet reached the age of 18 years.

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

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

**400.02.7.** “Sale” shall mean any transfer of goods for money, trade, barter or other consideration.

**400.02.8.** “Self-service merchandising” shall:

**400.02.8.1.** Mean open displays of tobacco, tobacco products or related devices in a way where a person shall have access to the product without the assistance or intervention of an employee maintaining the “self-service merchandising;” and

**400.02.8.2.** Not include vending machines.

**400.02.9** “Tobacco” or “tobacco products” shall have the meanings given to them in Section 609.685 of the Minnesota Statutes and as the same may from time to time be amended and shall also include Electronic Delivery Devices.

(Am. Ord. 2011-03, passed 04-04-11; Am. Ord. 2013-13, passed 11-18-13)

**400.02.10.** “Tobacco related devices” shall mean any tobacco product as well as a pipe, rolling papers or other device used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products and shall include Electronic Delivery Devices.

(Am. Ord. 2013-13, passed 11-18-13)

**400.02.11.** “Training program” shall mean every licensee shall have in effect a training program for employees that instructs them about the law prohibiting the sale of tobacco to minors, related civil and criminal penalties and the licensee’s policy regarding the sale of tobacco products including, without limitation, the penalties for violating this section and applicable provisions of state law.

**400.02.12.** “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.

**400.02.13** “Electronic Delivery Device” shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic Delivery Device include any component part of such a product whether or not sold separately. Electronic Delivery Device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

**400.02.14** “Smoke” or “smoking” shall mean inhaling or exhaling smoke from any lighted or heated cigarette, cigar, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling vapor from any Electronic Delivery Device, as defined in Section 400.02. Smoking shall include carrying a lighted or heated cigarette, cigar, or pipe or any other lighted or heated

tobacco or plant product intended for inhalation or carrying an Electronic Delivery Device that is turned on or otherwise activated.

(Am. Ord. 2013-13, passed 11-18-13)

**400.03 License.** No person shall sell or offer to sell any tobacco, tobacco products or tobacco related device without first having obtained a license from the City for each location within the City from which the sales shall be conducted.

**400.03.1 Application.** An application for a license to sell tobacco, tobacco products or tobacco related devices shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business address and telephone numbers, the name and address of the business for which the license is sought, and any additional information the City shall deem necessary. Each location shall be required to obtain a separate license. Every person applying for a license to sell at retail any tobacco product shall certify on the annual license application that the person has implemented a training program, as required by 400.02.11. Upon receipt of a completed application, the City Clerk shall forward the application to the Council for action at a regularly scheduled Council meeting. If the City Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

**400.03.1.1 Background Check.** A background check is required to be made pursuant to Minnesota Statutes 299C.72, as it may be amended from time to time, with regard to the Applicant (as defined in Ordinance No. 2009-09) for a license under this Section 400. An application for such license is not complete until and unless the Applicant (as defined in Ordinance No. 2009-09) shall execute and deliver a consent authorizing a background check. The background check on an Applicant (as defined in Ordinance No. 2009-09) for a license under this Section 400 must be completed before the City Council considers an application.

(Am. Ord. 2009-09, passed 10-19-09) (Am. Ord. 2014-12, passed 11-3-2014)

**400.03.2 Action.** The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the City Clerk shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with the notice of the applicant's right to appeal the Council's decision.

**400.03.3 Term.** All licenses issued under this section shall be issued for one calendar year from January 1 to December 31. Licenses issued for 1997 shall be issued from April 1 to December 31.

**400.03.4 Transfers.** All licenses issued under this section 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. No refund shall be provided to the existing licensee.

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

**400.03.6 Display.** All licenses shall be conspicuously posted at the place for which the license shall be issued and shall be exhibited to any person upon request.

**400.03.7 Renewals.** The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 45, but no more than 60, days before the expiration of the current license. The issuance of a license issued under this section shall be considered a privilege and shall not be an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

(Am. Ord. 2012-03, passed 3-19-12)

**400.04 Fees.** No license shall be issued under this section until the appropriate license fee shall be paid in full. The fee for a license under this section shall be as set by the Fee Schedule, as it may be amended from time to time. The license fee shall not be prorated for any partial year.

(Am. Ord. 2008-11, passed 12-15-08)

**400.05 Basis for Denial of License.** The following shall be grounds for denying the issuance or renewal of a license under this section, and if a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

**400.05.1.** The applicant is under the age of 18 years.

**400.05.2.** The applicant has been convicted within the past five years of any violation of a federal, state or local law, ordinance provision or other regulation relating to tobacco, tobacco products or tobacco related devices. This provision may be waived by the City Council.

**400.05.3.** The applicant has had a license to sell tobacco, tobacco products or tobacco related devices revoked within the preceding 12 months of the date of application.

**400.05.4.** The applicant fails to provide any information required on the application, or provides false or misleading information.

**400.05.5.** The applicant is prohibited by federal, state or other local law, ordinance or other regulation, from holding a license.

**400.06 Prohibited Sales.** It shall be a violation of this section for any licensee or employee, or agent of any licensee to sell or offer to sell any tobacco, tobacco product or tobacco related device:

**400.06.1.** To any person under the age of 18 years;

**400.06.2.** By means of any type of vending machine;

**400.06.3.** By means of loosies;

**400.06.4.** By any other means, or to any other person, prohibited by federal, state or other local law, ordinance provision or other regulation;

**400.06.5.** 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; or

**400.06.6.** By any means, to any person or in any manner or form prohibited by federal, state or other local law, ordinance provision or other regulation.

**400.07 Vending Machines.** It shall be unlawful for any person to allow the sale of tobacco products or tobacco related devices within the City by means of a vending machine.

**400.08 Self-Service Sales.** It shall be unlawful for a licensee under this section to allow the sale of loosies or individually packaged tobacco, tobacco products or tobacco related devices by any means where by the customer may have access to the items without having to request the item from the licensee or the licensee's employee. All loosies or individually packaged tobacco, tobacco products and tobacco related devices shall be stored behind a counter or other area not freely accessible to customers.

**400.09 Responsibility.**

**400.09.1.** All licensees under this section shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder.

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

now mandates at least one unannounced compliance check per year for each licensed establishment.

**400.10 Signage.** Each licensee shall have easily readable sign(s), clearly posted near the cashier(s) which indicates to the City Clerk and purchaser, the year of birth to be of legal age to purchase tobacco products. “You must have been born on or before today’s date in the year \_\_\_\_\_, to be of legal age to purchase tobacco products” shall be considered to be acceptable signage.

**400.11 Other Illegal Acts.** Unless otherwise provided, the following acts shall be a violation of this section.

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

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

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

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

**400.11.5 Use of False Identification.** It shall be a violation of this section 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.

**400.11.6 Smoking in Retail Establishments.** Smoking shall not be permitted and no person shall smoke within the indoor area of any Retail Establishment with a tobacco license. Smoking for the purposes of sampling tobacco, tobacco products, or Electronic Delivery Devices is prohibited.

(Am. Ord. 2013-13, passed 11-18-13)

**400.12 Investigation; Resolution of Complaint of License Violations**

**400.12.1 Purpose.**

**400.12.1.1** It shall be the purpose of this section to provide for the effective and uniform enforcement of the Minnesota tobacco laws, as well as the provisions of this chapter.

**400.12.1.2** This section is intended to provide for the investigation of violations of applicable law by individuals or establishments licensed by the City to sell tobacco.

**400.12.2 Policy** It shall be the policy of the Hermantown Police Department to investigate all allegations of tobacco violations within the City.

#### **400.12.3 Responsibility of Licensee.**

**400.12.3.1** Every licensee shall be responsible for the conduct of sales of tobacco in the licensed establishment. Any violation of the Minnesota tobacco laws or the provisions of this chapter committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee.

**400.12.3.2** Any sale of tobacco in or from any place licensed under this chapter by any clerk or other employee in the place shall be deemed the act of the employer and/or licensee as well as that of the person actually making the sale. The licensee and/or employer shall be subject to all the penalties provided by this Section 400 for the sale equally with the person actually making the sale.

#### **400.12.4 Complaints.**

**400.12.4.1 Citizen Complaints.** All complaints made by a citizen regarding any violations of this chapter or Minnesota law, as it may be amended from time to time, by any person or establishment within the City limits shall be investigated to the extent that sufficient information shall be available to proceed with an investigation.

**400.12.4.2 Anonymous Complaints.** Anonymous complaints shall be investigated to the extent that information received shall be sufficiently reliable and complete to permit a proper investigation.

**400.12.4.3 Officer Complaints.** A police officer observing a violation shall investigate the violation in accordance with established Hermantown Police Department procedures.

**400.12.4.4 Authorization to Enter Premises.** Police officers may enter any business establishment licensed by the City to sell tobacco for the purpose of investigating complaints or to determine whether the licensed establishments shall be in compliance with the laws pertaining to the sale of tobacco.

#### **400.12.5 Procedure.**

**400.12.5.1 Officer Investigation.** A police officer shall investigate all complaints alleging tobacco violations in accordance with established Hermantown Police Department procedures. A police officer who investigates a complaint of tobacco violations or who observes a tobacco violation shall complete an investigation report which shall be submitted to the Chief of Police. The report shall include the violation, the action taken by the officer and any additional relevant information.

**400.12.5.2 Review by Chief of Police and City Council.** The Chief of Police shall review all investigation reports and prepare a finding of fact/disposition report upon conclusion of the investigation. A copy of this report shall be forwarded to the City Council and to the named licensee and a copy of the report shall be placed in the licensee's permanent file.

**400.12.6 Notice of Administrative Penalties.** Where a complaint has been made against a licensee under the provisions of this section, proper notice shall be forwarded to the licensee when an investigation under this section has been completed. The notice shall include the name of the licensee and shall be sent to the business establishment address of the licensee. The notice shall contain the nature of the complaint, findings of fact and the conclusions or result of the investigation. The notice shall be signed by the Chief of Police and a copy shall be forwarded to the City Council. The notice shall be retained in the permanent files of the licensee.

**400.12.7 Hearings.** If a person accused of violating this section so requests, within ten (10) days of the mailing of the notice sent pursuant to Section 400.12.6, a hearing shall be scheduled, the time and place of which shall be published and provided to the alleged violator.

**400.12.8 Hearing Officer.** The City Administrator shall serve as the hearing officer for hearings with respect to administrative financial penalties. An independent person appointed by the City Council shall act as a hearing officer for the suspension or revocation of a license.

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

**400.12.10 Appeals.** Appeals of any decision made by the hearing officer shall be filed in the district court venued in St. Louis County, Duluth within thirty (30) days of the decision of the hearing officer. The appeal will be handled by the district court in the same manner and procedure as provided in Minnesota Statutes section 462.361.

**400.12.11 Administrative Penalties.** The following administrative penalties shall be imposed on a licensee for violations of this Section 400 of the Hermantown Code.

**400.12.11.1** For the first violation, the licensee shall pay the City of Hermantown an administrative penalty of Five Hundred and No/100 Dollars (\$500.00), provided that such penalty shall be reduced to Two Hundred Fifty and No/100 Dollars (\$250.00) if the licensee and all of the licensee's employees who sell tobacco participate in a training program conducted by the Hermantown Police Department within sixty (60) days of the date of the first violation.

**400.12.11.2** For the second violation the licensee shall pay the City of Hermantown an administrative penalty of One Thousand and No/100 Dollars (\$1000.00), provided that such penalty shall be reduced to Five Hundred and No/100 Dollars (\$500.00) if the licensee and all of the licensee's employees who sell tobacco participate in a training program conducted by the Hermantown Police Department within sixty (60) days of the date of the second violation.

**400.12.11.3** For the third violation the licensee shall pay to the City of Hermantown an administrative penalty of One Thousand and No/100 Dollars (\$1,000.00) and the licensee's license shall be suspended for thirty (30) days.

**400.12.11.4** For the fourth violation the licensee shall pay to the City of Hermantown an administrative penalty of One Thousand and No/100 Dollars (\$1,000.00) and the licensee's license shall be revoked.

**400.12.12 Occurrence of Violations.** For purposes of determining the number of occurrences of violations, the City Council shall consider a violation as a second occurrence if it occurred within thirty-six (36) months of the first violation; shall consider a violation as a third occurrence if it occurred within forty-eight (48) months of the first violation; and shall consider a violation as fourth occurrence if it occurred within sixty(60) months of the first violation. If there is a change of ownership (meaning at least fifty percent (50%) of the ownership is transferred to an unrelated party) of the licensed establishment, previous violation(s) will not apply. For purposes of this Section 400.12.8, violations occurring prior to the effective date of this Ordinance shall be disregarded. Further, for purposes of this Section 400.12.8, a first violation shall be disregarded if a second violation does not occur within thirty-six (36) months of such first violation. If another violation occurs more than thirty-six (36) months after the occurrence of a disregarded first violation, then that violation shall be deemed the first violation for purposes of this Section 400.12.8.

**400.12.13 Misdemeanor Prosecution.** Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this section in addition to any administrative penalty, suspension or revocation.

**400.12.14 Continued Violation.** Each violation, and every day that violation occurs or continues, shall constitute a separate offense.

**400.12.15 Failure to Pay.** A failure to pay an administrative penalty imposed by operation of this Section 400 within the time limit set for the payment of such fine shall be grounds for the suspension of the licensee's license until the administrative penalty is paid.

(Am. Ord. 2012-03, passed 3-19-12)

#### **400.13 Exceptions and Defenses.**

**400.13.1.** Nothing in this section shall prevent the providing of tobacco, tobacco products or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony.

**400.13.2.** It shall be an affirmative defense to the violation of this section for a person to have reasonably relied on proof of age as described by state law.

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

**400.15 Affirmative Defense.** It shall be an affirmative defense to the violation of this section for a person to have reasonably relied on proof of age as described by state law.

## **Section 410 - Pawnbrokers**

**410.01 Purpose.** The City Council finds that the use of services provided by pawnbrokers provides an opportunity for the commission of crimes and their concealment because pawn businesses have the ability to receive and transfer property stolen by others easily and quickly. The City Council also finds that consumer protection regulation is warranted in transactions involving pawnbrokers. The City Council further finds that the pawn industry has outgrown the City's current ability to effectively or efficiently identify criminal activity related to pawn shops. The purpose of this section is to prevent pawn businesses from being used as facilities for the 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 businesses, decrease and stabilize costs associated with the regulation of the pawn industry, and increase identification of criminal activities in the pawn industry through the timely collection and sharing of pawn transaction information, this section also implements and establishes the required use of the automated pawn system (APS).

(Ord. 2005-07, passed 3-7-05)

**410.02 Definitions.** When used in this section, the following words shall mean:

**410.02.1.** "Pawnbroker" shall mean any natural person, partnership, corporation or other legal entity either as principal, or agent or employee thereof, who loans money on deposit or pledge of personal property, or other valuable thing, or who deals in the purchasing of personal property, or other valuable thing on condition of selling the same back again at a stipulated price, or who loans money secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged. To the extent that a pawnbroker's business includes buying personal property previously used, rented or leased, or selling it on consignment, the provisions of this section shall be applicable.

**410.02.2.** "Reportable transaction" means every transaction conducted by a pawnbroker 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 the pawnbroker's point-of-sale software, is reportable except:

**410.02.2.1.** The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the pawnbroker must maintain a record of such purchase or consignment which describes each item, and must mark each item in a manner which relates it to that transaction record.

**410.02.2.2.** Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

**410.02.3.** "Billable transaction" means every reportable transaction conducted by a pawnbroker except renewals, redemptions or extensions of existing pawns on items previously reported and continuously in the pawnbroker's possession is a billable transaction.

**410.02.4.** "City Council" means the City Council of the City of Hermantown.

**410.02.5.** "Chief of Police" means the Chief of Police of the Hermantown Police Department or his or her designee.

**410.02.6.** "License fees."

**410.02.6.1.** The annual license fees for licenses issued under this section shall be as set from time to time by the City Council.

**410.02.6.2.** The billable transaction fee shall be as set from time to time by the City Council shall reflect the cost of processing transactions and other related regulatory expenses as determined by the City Council, and shall be reviewed and adjusted, if necessary, at least annually at the time all other fees and charges of the City are reviewed. Licensees shall be notified in writing 30 days before any adjustment is implemented.

**410.02.6.3.** Billable transaction fees shall be billed monthly and are due and payable within 30 days after the date of the billing. Failure to do so is a violation of this section.

(Ord. 2005-07, passed 3-7-05)

### **410.03 Application required.**

**410.03.1.** An application form provided by the Police Department must be completed by every applicant for a new license or for renewal of an existing license. Every new applicant must provide all the following information:

**410.03.1.1.** If the applicant is a natural person:

**410.03.1.1.1.** The name, place and date of birth, street residence address, and home phone number of applicant.

**410.03.1.1.2.** Whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places used.

**410.03.1.1.3.** 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 M.S. Section 333.01.

**410.03.1.1.4.** The street residence address(es) at which the applicant has lived during the preceding five years.

**410.03.1.1.5.** The type, name and location of every business or occupation in which the applicant has been engaged during the preceding five years and the name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding five years.

**410.03.1.1.6.** 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 must furnish information as to the time, place, and offense of all such convictions.

**410.03.1.1.7.** The physical description of the applicant.

**410.03.1.1.8.** Applicant's current personal financial statement and true copies of the applicant's federal and state tax returns for the two years prior to application.

**410.03.1.1.9.** If the applicant does not manage the business, the name of the manager(s) or other person(s) in charge of the business and all information concerning each of them required in 410.03.1.1.1 through 410.03.1.1.8, inclusive, of this section.

**410.03.1.2.** If the applicant is a partnership:

**410.03.1.2.1.** The name(s) and street residence address(es) of all general and limited partners and all information concerning each general partner required in 410.03.1.1 of this section.

**410.03.1.2.2.** The name(s) of the managing partner(s) and the interest of each partner in the licensed business.

**410.03.1.2.3.** 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 M.S. Section 333.01, a certified copy of such certificate must be attached to the application.

**410.03.1.2.4.** A true copy of the federal and state tax returns for partnership for the two years prior to application.

**410.03.1.2.5.** If the applicant does not manage the business, the name of the manager(s) or other person(s) in charge of the business and all information concerning each of them required in 410.03.1.1.1 through 410.03.1.1.8, inclusive, of this section.

**410.03.1.3.** If the applicant is a corporation, limited liability company or other organization:

**410.03.1.3.1.** The name of the corporation, limited liability company or other organization, and if incorporated or organized, the state of incorporation or organization.

**410.03.1.3.2.** A true copy of the Certificate of Incorporation, Certificate of Organization, Articles of Incorporation or Articles of Organization, or Association Agreement, and By-laws or Operating Agreement shall be attached to the application. If the applicant is a

foreign corporation or other foreign entity, a Certificate of Authority as required by M.S. Section 303.06, must be attached.

**410.03.1.3.3.** The name(s) and street residence addresses of all of the officers or managers and the names of the person(s) who will be in charge of the business and all information concerning each manager, proprietor, or agent required in 410.03.1.1.1 through 410.03.1.1.8, inclusive, in this section.

**410.03.1.3.4.** A list of all persons who control or own an interest in excess of five percent in such organization or who are officers or managers of such organization and all information concerning said persons required in 410.03.1.1.1 through 410.03.1.1.8, inclusive in this section. This section, however, shall not apply to a corporation whose stock is publicly traded on a stock exchange and is applying for a license to be owned and operated by it.

**410.03.1.4.** For all applicants:

**410.03.1.4.1.** Whether the applicant holds a current pawnbroker, precious metal dealer or secondhand goods dealer license from any other governmental entity.

**410.03.1.4.2.** Whether the applicant has previously been denied, or had revoked or suspended, a pawnbroker, precious metal dealer, or secondhand dealer license from any other governmental unit.

**410.03.1.4.3.** The street address of the business premises of the applicant.

**410.03.1.4.4.** If the applicant does not own the business premises, a true and complete copy of the executed lease for the business premises.

**410.03.1.4.5.** The legal description of the premises to be licensed.

**410.03.1.4.6.** Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.

**410.03.1.4.7.** Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application must be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed.

**410.03.1.4.8.** Such other information as the City Council or Police Department may require.

**410.03.1.5 Background Check.** A background check is required to be made pursuant to Minnesota Statutes 299c.72, as it may be amended from time to time, with regard to the Applicant (as defined in Ordinance No. 2009-09) for a license under this Section 410. An application for such license is not complete until and unless the Applicant (as defined in Ordinance No. 2009-09) shall execute and deliver a consent authorizing a background check.

The background check on an Applicant (as defined in Ordinance No. 2009-09) for a license under this Section 410 must be completed before the City Council considers such application.

**410.03.2.** When a licensee places a manager in charge of a business, or if the named manager(s) in charge of a licensed business changes, the licensee must complete and submit the appropriate application within 14 days. The application must include all information required by 410.03.1.1.10, 410.03.1.2.5 or 410.03.1.3.3 (whichever section is applicable) of this section for the new managers.

**410.03.2.1.** Upon completion of an investigation of a new manager, the licensee must pay an amount equal to the cost of the investigation to assure compliance with this section. If the investigation process is conducted solely within the State of Minnesota, the fee shall be as set by the Fee Schedule, as it may be amended from time to time. If the investigation is conducted outside the State of Minnesota, the City may recover the actual investigation costs not exceeding \$10,000.

**410.03.3.** All applications for a license under this section must be signed and sworn to under oath or affirmation by the applicant. If the application is that of a natural person, it must be signed and sworn to by such person; if that of a corporation, by an officer thereof if that of a limited liability company, by a manager thereof; 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.

**410.03.4.** The Chief of Police must investigate into the truthfulness of the statements set forth in the application and shall provide its findings thereon to the City Council. The applicant must furnish to the Chief of Police such evidence as the Chief of Police may reasonably require in support of the statements set forth in the application.

**410.03.5.** Any City Council member may request a public hearing be held by the City Council with respect to any application under this section.

**410.03.6.** No licenses under this section will be issued to an applicant if:

**410.03.6.1.** The applicant is a minor at the time that the application is filed;

**410.03.6.2.1.** The applicant or any officer, partner, member, manager or persons in charge of the business to be licensed has been convicted of any crime directly related to the occupation licensed as prescribed by M.S. Section 364.03, Subd. 2, and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensee under this chapter as prescribed by M.S. Section 364.03, Subd.3; or

**410.03.6.2.2.** Is not of good moral character or repute.

(Ord. 2005-07, passed 3-7-05; Am. Ord. 2008-08, passed 7-21-08; Am. Ord. 2008-11, passed 12-15-08)

**410.04 Bond required.** Before a license will be issued, every applicant must submit a \$5,000 bond on the forms provided by the City. All bonds must be conditioned that the applicant as principal on the bond will observe all laws in relation to pawnbrokers, and will conduct business in conformity thereto, and that the applicant as principal will account for and deliver to any person legally entitled any goods which have come into the possession of applicant as principal through his, her or its business as a pawnbroker, or in lieu thereof, will pay the reasonable value in money to the person. The bond shall contain a provision that no bond may be canceled except upon 30 days written notice to the City.

(Ord. 2005-07, passed 3-7-05)

**410.05 Records required.** At the time of any reportable transaction other than renewals, extensions or redemptions, every licensee must immediately record in English the following information in a computerized record approved by the Chief of Police:

**410.05.1.** 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 an item.

**410.05.2.** The purchase price, amount of money loaned upon, or pledged therefor.

**410.05.3.** The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.

**410.05.4.** Date, time and place the item of property was received by the licensee, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records.

**410.05.5.** Full name, current street residence address, current residence telephone number, date of birth and accurate description of the person from whom the item of the property was received, including: sex, height, weight, race, color of eyes in and color of hair.

**410.05.6.** The identification number and state of issue from any of the following forms of identification of the seller:

**410.05.6.1.** Current valid Minnesota driver's license.

**410.05.6.2.** Current valid Minnesota identification card.

**410.05.6.3.** Current valid photo identification card issued by another state or province of Canada.

**410.05.7.** The signature of the person identified in the transaction.

**410.05.8.** The licensee must also take a digital color photograph or digital color video recording of:

**410.05.8.1.** Each customer involved in a billable transaction.

**410.05.8.2.** Every item pawned or sold that does not have a unique serial or identification number permanently engraved or affixed. Each photograph must be at least two inches in length by two inches in width and must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate. Such photographs must be available to the Chief of Police upon request. The major portion of the photograph must include an identifiable front facial close-up of the person who pawned or sold the item. Items photographed must be accurately depicted. The licensee must inform the person that he or she is being photographed by displaying a sign of sufficient size in a conspicuous place in the premises. If a video photograph is taken, the video camera must zoom in on the person pawning or selling the item so as to include an identifiable close-up of that person's face. Items photographed by video must be accurately depicted. Video photographs must be electronically referenced by time and date so they can be readily matched and correlated with all other records of the transaction to which they relate. The licensee must inform the person that he or she is being videotaped orally and by displaying a sign of sufficient size in a conspicuous place on the premises. The licensee must keep the exposed videotape for 180 days.

**410.05.9.** Licensees must submit the photograph or video tape taken pursuant to 410.05.8 by submitting them to the Chief of Police as digital images, in a format specified by the Chief of Police, electronically cross-referenced to the reportable transaction they are associated with. Notwithstanding the digital images may be captured from required video recordings, this provision does not alter or amend the requirements in 410.05.8.

**410.05.10.** For renewals, extensions and redemptions, the licensee shall provide the original transaction identifier, the date of the current transaction, and the type of transaction.

**410.05.11.** The records must at all reasonable times be open to inspection by the Chief of Police. Data entries shall be retained for at least three years from the date of transaction. Entries of required digital images shall be retained a minimum of 180 days.

(Ord. 2005-07, passed 3-7-05)

#### **410.06 Daily reports to police.**

**410.06.1.** Effective no later than 60 days after the Chief of Police provides licensees with computerized record standards, licensees must submit every reportable transaction to the Chief of Police daily in the following manner:

**410.06.1.1.** Licensees must provide to the Chief of Police all information required in 410.05 by transferring it from their computer to the Automated Pawn System via modem. 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 Chief of Police using procedures that address security concerns of the licensees and the City. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs all patrons that all transactions are reported to the Police Department daily.

**410.06.1.2.** Licensees will be charged for each billable transaction.

**410.06.1.2.1.** If licensee is unable to successfully transfer the required reports by modem, the licensee must provide the Police Department printed copies of all reportable transactions along with the video tape(s) for that date, by 12:00 p.m. the next business day;

**410.06.1.2.2.** If the problem with the modem is determined to be in the licensee's system and is not corrected by the close of the first business day following the failure, the licensee must provide the required reports as detailed in this section and must be charged a \$50 reporting failure penalty, daily, until the error is corrected; or

**410.06.1.2.3.** If the problem is determined to be outside the licensee's system, the licensee must provide the reports required in 410.06.1.2.1 and resubmit all such transactions via modem when the error is corrected.

**410.06.1.2.4.** If a licensee is unable to capture, digitize or transmit the photographs required in 410.05.8, the licensee must immediately take all required photographs with a still camera, cross-reference the photographs to the correct transaction, and make the pictures available to the Police Department upon request.

**410.06.1.2.5.** Regardless of the cause or origin of the technical problems that prevented the licensee from transmitting their reportable transactions to the Police Department, upon correction of the problem, the licensee shall transmit every reportable transaction from every business day the problem existed.

**410.06.1.2.6.** Notwithstanding the provisions of 410.06 hereof, the Police Department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.

(Ord. 2005-07, passed 3-7-05)

**410.07 Receipt required.** Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three years. The receipt must include at least the following information:

**410.07.1.** The name, street residence address and telephone number of the licensed business.

**410.07.2.** The date and time the item was received by the licensee.

**410.07.3.** Whether the item was pawned or sold, or the nature of the transaction.

**410.07.4.** An accurate description of each 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.

**410.07.5.** The signature or unique identifier of the licensee or employee that conducted the transaction.

**410.07.6.** The amount advanced or paid.

**410.07.7.** The monthly and annual interest rates, including all pawn fees and charges.

**410.07.8.** The last regular day of business 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.

**410.07.9.** The full name, current street residence address, current residence telephone number, and date of birth of the pledger or seller.

**410.07.10.** The identification number and state of issue from any of the following forms of identification of the seller or pledger:

**410.07.10.1.** Current valid Minnesota driver's license.

**410.07.10.2.** Current valid Minnesota identification card.

**410.07.10.3.** Current valid photo driver's license or identification card issued by another state or province of Canada.

**410.07.11.** Description of the pledger or seller including approximate sex, height, weight, race, color of eyes and color of hair.

**410.07.12.** The signature of the pledger or seller.

**410.07.13.** All printed statements as required by M.S. Section 325J.04 Subd. 2, or any other applicable statutes.

(Ord. 2005-07, passed 3-7-05)

**410.08 Redemption period.** Any person pledging, pawning or depositing an item for security must have a minimum of 90 days from the date of that transaction to redeem the item before it may be forfeited and sold. During the 90 day holding period, items may not be removed from the licensed location except as provided in 410.15 hereof. 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, or with approval of the Chief of Police. Written authorization for release of property to persons other than original pledger must be maintained along with original transaction record in accordance with 410.05.

(Ord. 2005-07, passed 3-7-05)

**410.09 Holding period.** Any item purchased or accepted in trade by a licensee must not be sold or otherwise transferred for 30 days from the date of the transaction. An individual may redeem an item 72 hours after the item was received on deposit, excluding Sundays and legal holidays.

(Ord. 2005-07, passed 3-7-05)

**410.10 Police order to hold property.**

**410.10.1.** Whenever the Chief of Police notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within 72 hours and will remain in effect for 15 days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, pursuant to 410.10.2 or 410.10.3, whichever comes first.

**410.10.2.** Whenever the Chief of Police notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the Chief of Police. The order to hold shall expire 90 days from the date it is placed unless the Chief of Police determines the hold is still necessary and so notifies the licensee in writing.

**410.10.3.** If an item is identified as stolen or evidence in a criminal case, the Chief of Police may:

**410.10.3.1.** Physically confiscate and remove it from the business premises, pursuant to a written order from the Chief of Police, or

**410.10.3.2.** Place the item on hold or extend the hold as provided in 410.10.2 and leave it in the business premises. 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 the case number related to the confiscation. When an order to hold/confiscate is no longer necessary, the Chief of Police shall so notify the licensee.

(Ord. 2005-07, passed 3-7-05)

**410.11 Inspection of items.** At all times during the terms of the license, the licensee must allow law enforcement officials to enter the premises where the licensed business is located, including all off-site storage facilities as authorized in 410.15 hereof, during normal business hours, except in an emergency, for the purpose of inspecting such premises and inspecting the items, wares and merchandise and records therein to verify compliance with this section or other applicable laws.

(Ord. 2005-07, passed 3-7-05)

**410.12 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's records, the transaction date, the name of the item and the description or the model and serial number of the

item as reported to the Police Department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used.

(Ord. 2005-07, passed 3-7-05)

#### **410.13 Prohibited acts.**

**410.13.1.** No person under the age of 18 years may pawn or sell or attempt to pawn or sell goods with any licensee, nor may any licensee receive any goods from a person under the age of 18 years.

**410.13.2.** No licensee may receive any goods from a person of unsound mind or an intoxicated person.

**410.13.3.** No licensee may receive any goods, unless the seller presents identification in the form of a valid driver's license, a valid State of Minnesota identification card, or current valid photo driver's license or identification card issued by the state or providence of residency of the person from whom the item was received.

**410.13.4.** No licensee may receive any item of property that possesses an altered or obliterated serial number or operation identification number or any item of property that has had its serial number removed.

**410.13.5.** 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.

**410.13.6.** 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; nor present a false or altered identification, or the identification of another; to any licensee.

(Ord. 2005-07, passed 3-7-05)

**410.14 Denial, suspension or revocation.** Any license under this section may be denied, suspended or revoked for one or more of the following reasons:

**410.14.1.** The proposed use does not comply with any applicable zoning code, rule or regulation.

**410.14.2.** The proposed use does not comply with any health, building, building maintenance or other provisions of the Hermantown Ordinance Code or other applicable law, rule or regulation.

**410.14.3.** The applicant or licensee has failed to comply with one or more provisions of this section.

**410.14.4.** The applicant is not a citizen of the United States or a resident alien, or upon whom it is impractical or impossible to conduct a background or financial investigation due to the unavailability of information.

**410.14.5.** Fraud, misrepresentation or bribery in securing or renewing a license.

**410.14.6.** Fraud, misrepresentation or false statements made in the application and investigation for, or in the course of, the applicant's business.

**410.14.7.** Violation within the preceding five years, of any law relating to theft, damage or trespass to property, sale of a controlled substance, or operation of a business.

**410.14.8.** The owner or person in charge of the premises licensed or to be licensed would not qualify for a license under the terms of this section.

(Ord. 2005-07, passed 3-7-05)

**410.15 Business at only one place.** A license under this section authorizes the licensee to carry on its business only at the permanent place of business designated in the license. Upon written request, the Chief of Police or his or her designee may approve an off-site locked and secured storage facility. The licensee shall permit inspection of such off-site facility in accordance with 410.11. All provisions of this section regarding record keeping and reporting apply to any off-site storage facility and its contents. Property shall be stored in compliance with all provisions of any other applicable code, statute, rule or regulation. The licensee must either own the building in which the business is conducted, and any approved offsite storage facility, or have a lease on the business premise that extends for more than six months.

(Ord. 2005-07, passed 3-7-05)

**410.16 Separability.** Should any section, subsection, clause or other provision of this section be declared by a court of competent jurisdiction to be invalid such decision shall not affect the validity of the ordinance as a whole or any part other than the part so declared invalid.

(Ord. 2005-07, passed 3-7-05)

## **Section 420 - Christmas Tree Sales**

**420.01 Permit Required.** No person, firm or corporation may be in the business of selling Christmas trees within the City without first obtaining a permit for that purpose.

**420.02 Fees and Term.** Permits shall be obtained from the City Clerk. The fee shall be as set by the Fee Schedule, as it may be amended from time to time and shall be valid for the calendar year of issuance.

(Am. Ord. 2008-11, passed 12-15-08)

**420.03 Lots.** All lots used for displaying or holding trees shall be cleaned prior to January 15 of the following year. The Zoning Inspector shall inspect all such lots on that date, and if the premises have been cleaned up to his or her satisfaction, the City Clerk shall refund an amount as set by the Fee Schedule, at it may be amended from time to time.

(Am. Ord. 2008-11, passed 12-15-08)

**420.04 Eligibility.** No permit shall be issued to any person, firm or corporation during the year in which the applicant has forfeited a portion of the permit fee.

## 📖 **Section 430 - Gambling**

**430.01 Purpose.** The purpose of this section shall be to ensure greater control by the City over gambling (“Hermantown Charitable Gambling as defined in Section 430.03”) conducted within the City; to increase the accountability of organizations that conduct Hermantown Charitable Gambling; and to encourage expenditure of revenue derived from Hermantown Charitable Gambling conducted within the City for lawful purposes that benefit residents of the City. This section shall be enacted in accordance with M.S. Chapter 349, as it may be amended from time to time, in particular, M.S. Section 349.213, as it may be amended from time to time, which allows a local authority to adopt more stringent regulation of any form of lawful gambling than that adopted by the state legislature.

**430.02 Definitions.** Whenever the following terms appear in this section, they shall have the meanings given them in this subsection:

**430.02.1.** “Eligible Organization” shall mean any fraternal, religious, veterans, or other nonprofit organization with its principal place of business in the City that conducts activities primarily to or for the benefit of citizens of the City, which shall have been in existence for at least three years and which shall have at least 15 members.

**430.02.2.** “Member” as defined by Minnesota Statute Section 349.12 and as it may be amended from time to time.

**430.02.3.** “Lawful purpose” shall mean one or more of the following:

**430.02.3.1** Benefitting persons by enhancing their opportunity for religious or educational advancement, by relieving or protecting them from disease, suffering or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded;

**430.02.3.2** Initiating, performing or fostering worthy public works or enabling or furthering the erection or maintenance of public structures;

**430.02.3.3** Lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; or

**430.02.3.4** The improving, expanding, maintaining or repairing real property owned or leased by an organization. “Lawful purpose” shall not include the erection or acquisition of any real property, unless the Minnesota Gambling Control Board specifically authorizes the expenditures after finding the property shall be used exclusively for one or more “lawful purposes.”

**430.02.4.** “Pull-tab” shall mean a single folded or banded ticket or a card with a face covered to conceal one or more numbers or symbols, where one or more of each set has been designated in advance as a winner. “Pull-tab” also shall include a ticket sold in a gambling device known as a ticket jar.

**430.03 Eligible Organizations May Conduct Hermantown Charitable Gambling.** Only Eligible Organizations may operate, conduct, sell pull-tabs or operate pull-tab dispensing devices within the City. The conduct, operation or sale of pull-tabs or pull-tab dispensing devices is hereinafter referred to as “Hermantown Charitable Gambling.”

**430.04 Requirements for Conduct of Hermantown Charitable Gambling.** An Eligible Organization may conduct Hermantown Charitable Gambling within the City only if:

**430.04.1.** The Eligible Organization shall have received a license authorizing it to conduct Hermantown Charitable Gambling from the Gambling Control Board of the State of Minnesota.

**430.05 Disapproval of Licenses.** The City Council of the City shall disapprove, pursuant to and in accordance with M.S. Section 349.213 Subd. 2, as it may be amended from time to time, all gambling licenses applied for from the Gambling Control Board of the State:

**430.05.1.** For Hermantown Charitable Gambling to be conducted within the City by organizations that are not Eligible Organizations;

**430.05.2.** For the conduct of Hermantown Charitable Gambling not permitted under this;

**430.05.3.** By an organization the City Council of the City determines has not complied with the provisions of this Section 430 in any material respect;

**430.05.4.** By an organization that fails to provide the City with the certifications required under 430.07;

**430.05.5.** By an organization that fails to demonstrate to the City Council of the City that the revenues derived by the organization from Hermantown Charitable Gambling conducted by it within the City shall be intended to be used or shall have been used to benefit the residents of the City;

**430.05.6.** By an organization that fails to pay the investigation fee required to be paid to the City under 430.08;

**430.05.7.** By an organization that fails to provide the reports required by 430.11 to the City.

**430.06 Limitations on Hermantown Charitable Gambling.** The following limitations shall be applicable to the conduct of Hermantown Charitable Gambling within the City:

**430.06.1 Restrictions on Premises with Liquor Licenses.** No Hermantown Charitable Gambling shall be conducted on any premises for which an on-sale liquor license or an on-sale 3.2 malt liquor license shall have been issued, provided that unless the Eligible Organization shall own the premises or leases the premises, and, if it leases the premises, the lease shall be for a period of at least one year and it shall pay no more than (i) the amount allowed under Minnesota Statute Section 349.18 or (ii) \$1,300 per month, whichever is less, to the owner of the premises under the lease. Provided further, that no premises for which an on-sale liquor license or an on-sale 3.2 malt liquor license has been issued shall be subject to leases for the conduct of Hermantown Charitable Gambling with more than two Eligible Organizations at any one time, and no more than one Eligible Organization shall conduct Hermantown Charitable Gambling on any premises for which an on-sale liquor license or an on-sale 3.2 malt liquor license shall have been issued at one time.

(Am. Ord. 2003-08, passed 9-15-03; Am. Ord. 2009-10, passed 11-16-09) (Am. Ord. 2015-010, passed 10-5-15)

**430.06.2 Prize Limits.** The prize limits set forth in M.S. Section 349.211, as it may be amended from time to time, shall be applicable to all Hermantown Charitable Gambling conducted by Eligible Organizations within the city.

**430.06.3 Organizations Conducting Hermantown Charitable Gambling for Own Account.** Organizations conducting Hermantown Charitable Gambling within the city shall conduct the Hermantown Charitable Gambling for the account of the Eligible Organization that conducts, or shall be licensed by the Minnesota Gambling Control Board to conduct the Hermantown Charitable Gambling. Without limiting the generality of the foregoing, no Eligible Organization conducting Hermantown Charitable Gambling with the city shall sublease its licensed premises, nor shall any Eligible Organization conducting Hermantown Charitable Gambling within the City enter into any contract or agreement with a person or organization that is not its employee to manage or conduct the Hermantown Charitable Gambling to be conducted by the Eligible Organization within the City.

**430.07 Use of Profits.**

**430.07.1.** Profits from Hermantown Charitable Gambling conducted by Eligible Organizations within the City may be expended only for lawful purposes and only if authorized at a regular meeting of the Eligible Organization and only if the expenditures shall benefit the residents of the City. Any Eligible Organization seeking to initially conduct Hermantown Charitable Gambling within the City shall, at the time it serves notice on the City of its initial

application for a gambling license from the Minnesota Gambling Control Board, certify to the City its intentions with respect to the expenditure of the revenue derived from the Hermantown Charitable Gambling to be conducted by the Eligible Organization within the City. Any Eligible Organization that has conducted Hermantown Charitable Gambling within the City shall, at the time it serves notice on the City of its application for a renewal of a gambling license or of its application for an additional gambling license from the Minnesota Gambling Control Board, certify and describe to the City the expenditures made by the Eligible Organization, during the preceding two calendar years, to benefit residents of the City.

**430.07.2.** The City shall disapprove the issuance of a license by the Minnesota Gambling Control Board to any Eligible Organization that shall not provide the City with the certifications required by this subsection. In addition, the City shall disapprove the issuance of a license by the Minnesota Gambling Control Board to any Eligible Organization that shall be unable to demonstrate to the City Council of the City that the revenues derived from Hermantown Charitable Gambling conducted by it within the City shall be intended to be or shall have been utilized by the Eligible Organization to benefit the residents of the City.

**430.08 Investigation Fee.** Each Eligible Organization that applies to the Minnesota Gambling Control Board for a license or a renewal of a license to conduct Hermantown Charitable Gambling within the City shall pay to the City a non-refundable investigation fee as set forth by the Fee Schedule, as it may be amended from time to time. No more than one investigation fee shall be paid by one Eligible Organization in any calendar year. If the fee shall not be paid to the City with any notice of any such application, the City shall disapprove the issuance of a license by the Minnesota Gambling Control Board to the organization.

**430.08.1 Background Check.** A background check is required to be made pursuant to Minnesota Statutes 299C.72, as it may be amended from time to time, with regard to the Applicant (as defined in Ordinance 2009-09) for a license under this Section 430. An application for such license is not complete until and unless the Applicant (as defined in Ordinance No. 2009-09) shall execute and deliver a consent authorizing a background check. The background check on an Applicant (as defined in Ordinance No. 2009-09) for a license under this Section 430 must be completed before the City Council considers such application.

(Am. Ord. 2009-09, passed 10-19-09) (Am. Ord. 2014-12, passed 11-3-2014)

**430.09 Compliance with Chapter 349.** Eligible Organizations conducting Hermantown Charitable Gambling within the City shall comply with all applicable provisions of Minnesota Statute Chapter 349, as it may be amended from time to time.

**430.10 Prohibition of Conduct of Hermantown Charitable Gambling Off Licensed Premises.** An Eligible Organization licensed by the Minnesota Gambling Control Board shall not conduct Hermantown Charitable Gambling within the City on premises other than on the Eligible Organization's licensed premises.

**430.11 Reports to City.**

**430.11.1 Licensed Organization.** Every Eligible Organization that is licensed by the Minnesota Gambling Control Board to conduct Hermantown Charitable Gambling within the City shall file the following reports with the City at the times indicated:

**430.11.1.1.** A copy of any report filed by the Eligible Organization with the Minnesota Gambling Control Board at the same time as the report shall be filed with the Minnesota Gambling Control Board.

**430.11.1.2.** No later than February 1 of each year, a certificate signed by a duly authorized representative of the Eligible Organization and the lessor of any premises leased by the Eligible Organization for the conduct of Hermantown Charitable Gambling that sets forth and certifies the amount paid to the lessor by the Eligible Organization during the preceding calendar year.

**430.11.1.3.** No later than February 1 of each year, a certificate signed by a duly authorized representative of the Eligible Organization that describes the expenditures made by the organization from revenues derived from Hermantown Charitable Gambling conducted by it within the City during the preceding calendar year.

(Section 430 was Amended by Ordinance 2011-05, passed 08-15-11)

## 📖 **Section 440 - Sale of Toxic Substances**

**440.01 Definition.** For purposes of this section, “toxic substance” shall mean:

**440.01.1.** Glue, cement or aerosol paint containing toluene, benzene, xylene, amyl nitrate, butyl nitrate, nitrous oxide or containing other aromatic hydrocarbon solvents, but does not include glue, cement or paint contained in a packaged kit for the construction of a model automobile, airplane or similar item;

**440.01.2.** Butane or a butane lighter; or

**440.01.3.** Any substance declared to be toxic to the central nervous system and to have a potential for abuse, by the State Commissioner of Health.

**440.02 Use for Intoxication Prohibited.** No person shall use or possess, or intentionally aid another to use or possess, any toxic substance with the intent of inducing intoxication, excitement or stupefaction of the central nervous system, except under the direction and supervision of a medical doctor.

## 📖 **Section 450 - Wrecker Services**

**450.01 Purpose and Intent.** The City desires to establish a procedure for selecting one or more tow truck operator(s) when these are needed by the City.

**450.02 Authority to Contract for Tow Services.** The City may enter into a contract on behalf of the City with any person, firm, entity or corporation who will obtain or provide adequate facilities within the City to handle the tow and storage of vehicles requested by the City. This contract shall set forth the fees, which fees shall not be exceeded in any case involving a tow or storage requested by the City.

**450.03 Bond.** Every towing operator to whom a contract is awarded for towing and storage shall, upon the execution of the contract, file with the City Clerk a bond in form and substance acceptable to the City Attorney in such amount as may be determined by the contract. This bond shall be conditioned that the principal will indemnify any and all persons, firms or corporations, including the City and St. Louis County or other government agencies of the state, for any loss sustained by any unlawful or unauthorized damage to a vehicle which it tows at the request of the City or stores pursuant to the provisions of this section and any contract entered into where the City is a party thereof.

**450.04 Statements.** The towing operator who has entered into a contract pursuant to this section shall forward to the Chief of Police of the City a copy of each bill or statement prepared for each owner of a vehicle towed or stored at the request of the City.

**450.05 Exclusion.** Nothing contained in this section shall be deemed to prohibit, limit or restrict equipment, storage facilities or the use or operation of towing services by the City, St. Louis County, Hermantown School District or any other governmental entity.

**450.06 Request for Proposals.** Each two years, the City, by and through its purchasing agent, shall solicit proposals for a contract for towing services to be provided pursuant to this section. One or more companies may be awarded a contract for towing services. The proposals will be awarded based upon satisfaction of the following criteria:

**450.06.1.** Police requests within the City must be a priority and must receive an immediate response.

**450.06.2.** Wrecker availability is the responsibility of the service provider 24 hours per day 365 days per year. Additional wreckers or related equipment that are needed to provide the requested services are the responsibility of the approved wrecker service.

**450.06.3.** Should the City experience a severe snowstorm or other natural disaster, wreckers must be made available to the City in the event abandoned vehicles have to be removed from debris or snow removal.

**450.06.4.** A secured storage/impoundment location must be made available within close proximity to the City Hall, preferably within the City limits.

**450.06.5.** An insurance certificate demonstrating liability coverage with a combined single limit in the amount of at least the then applicable liability limits established by the applicable Minnesota law in a statutory cite of this state.

**450.06.6.** Police authorization must be required to release all vehicles. A tow slip must be required to be presented by the owner of any towed vehicle.

**450.06.7.** Rates and proposals are required as follows:

**450.06.7.1.** The wrecker service must identify customer towing rates:

**450.06.7.1.1.** For police requested tow of private vehicles (paid by owner); and

**450.06.7.1.2.** For requested tow of City owned vehicles (paid by City).

**450.06.7.2.** The Chief of Police, Purchasing Agent and City Clerk shall review the proposals and submit a report and recommendation to the City Council with regard to them.

**450.06.7.3.** The Council is the authority on contract for towing services.

**450.07 Exemption to Fees.** No emergency wrecker service summoned by the Chief of Police shall charge or receive any fee from any person or from the City where service is not actually provided.

**450.08 Driving Wrecker to the Scene of an Accident.** No person shall drive a wrecker, licensed or unlicensed, to the scene of an accident or collision on the streets of the City, unless that person has been called to the scene by the Chief of Police or his designee or has been requested by the owner or operator of a disabled vehicle or his agent.

**450.09 Soliciting Wrecker Business at the Scene of Accident Prohibited; Presence Is Evidence of Violation.** No person shall solicit in any manner, directly or indirectly, on the streets of the City the business of towing any vehicle which is disabled on the street regardless of whether the solicitation is for the purpose of soliciting the business of towing, removing, repairing, wrecking, storing, trading or purchasing the vehicle. Proof of the presence of any person engaged in providing wrecker service or the presence of any wrecker or motor vehicle owned or operated by any person engaged in providing wrecker service business, either as owner, operator, employee or agent, on any street in the City at or near the scene of an accident within an hour after the happening of the accident which has not been called to the scene by the Chief of Police or the owner or operator of a disabled vehicle or his or her agent shall be prima facie evidence of a solicitation in violation of this subsection.

## **📖 Section 460 - Door-to-Door Sales, Solicitation and Advocacy**

**460.01 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 section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**460.01.1.** “Commercial Door-to-Door Advocate” shall mean a peddler, hawker, solicitor or professional fundraiser.

**460.01.2.** “Non-Commercial Door-to-Door Advocate” shall mean a person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs and pamphleteering.

**460.01.3** “Peddler” or “Hawker” shall mean a person who goes from house-to- house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personal property that the person is carrying or otherwise transporting.

**460.01.4.** “Person” shall mean any natural individual, group, organization, corporation, partnership, limited liability company, legal entity or association. As applied to groups, organizations, corporations, partnerships, limited liability company(ies), legal entity(ies) and associations, the term shall include each member, shareholder, equity owner, governor, director, manager, officer, partner, associate, agent or employee.

**460.01.5** “Professional fundraiser” shall mean any person, who, for compensation, performs any solicitations or other services for a religious, political, social, or other charitable organization.

**460.01.6.** “Regular business day” shall mean any day during which the City Hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be counted as “regular business days.”

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

**460.02 Prohibited Activities.** No commercial door-to-door advocate or non-commercial door-to-door advocate shall conduct his/her/its activities in any of the following manners:

**460.02.1.** Calling attention to him/her/its and/or his/her/its activity by means of blowing any horn or whistle, ringing any bell, crying out or by any other noise, so as to be unreasonably audible within an enclosed structure;

**460.02.2.** Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way;

**460.02.3.** Conducting his/her/its activities in such a way as to create a threat to the health, safety, privacy and welfare of any individual or the general public:

**460.02.4.** Conducting his/her/its activities before 9:00 a.m. or after 8:00 p.m.;

**460.02.5.** failing to provide proof of identification, when requested, or using the identification of another person:

**460.02.6.** Making any false or misleading statements about the activities being conducted or including untrue statements of endorsement: and/or

**460.02.7.** Remaining on the property of another when requested to leave, or to otherwise conduct his/her/its activities in a manner a reasonable person would find obscene, threatening, intimidating or abusive.

### **460.03 Exclusion by Placard.**

**460.03.1** No commercial door-to-door advocate or non-commercial door-to-door advocate, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting his/her/its activities when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating "No Solicitors."

**460.03.2.** No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard under this section.

**460.04 Commercial Door-to-Door Advocates Prohibited.** The action of any commercial door-to-door advocate of going in and upon private property in the City of Hermantown, not having received prior consent or invitation to do so by one who has the right to consent or issue an invitation, for the purpose of soliciting an invitation to make a sale or for the purpose of direct sales or soliciting orders for the sale of goods, services, wares, produce or merchandise is hereby declared to be a nuisance and is prohibited.

### **460.05 Exceptions to Definitions.**

**460.05.1.** For the purpose of the requirements of this section, the following activities are not prohibited:

**460.05.2.** Non-commercial door-to-door advocates. Nothing within the ordinance codified herein shall be interpreted to prohibit or restrict non-commercial door-to-door advocates except as provided by Section 460.02 or Section 460.03. No person is prohibited from going house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement for the primary purpose of exercising that person's state or federal constitutional rights such as the freedom of speech, freedom of the press, freedom of religion, and the like. This exemption will not apply if the person's exercise of constitutional rights is merely incidental to what would reasonably be considered to be primarily a commercial activity.

**460.05.3.** Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise or other personal property to a retailer of the items being sold by the wholesaler.

**460.05.4.** Any person making deliveries of perishable food and dairy products to customers on his or her established regular delivery route.

**460.05.5.** 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.

**460.05.6.** Any person conducting the type of sales commonly known as garage sales, rummage sales, or estate sales.

**460.05.7.** Any person participating in an organized multi-person bazaar or flea market.

**460.05.8.** Any person conducting an auction as a properly licensed auctioneer.

**460.05.9.** Any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this section shall not excuse any person from complying with any other applicable statutory provision, local ordinance or the provisions of Section 460.02 or Section 460.03 of the ordinance codified herein.

#### **460.06. Penalties.**

**460.06.1.** Ordinance violation. A person convicted of this section is guilty of an ordinance violation.

**460.06.2.** Penalty. A person convicted of violating this section is subject to the maximum ordinance fine as set by the Hermantown Fee Schedule, as it may be amended from time to time.

#### **460.07. Severability.**

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

(Ord. 2010-07, passed 9-8-10)

## **📖 Section 470 - Adult-Oriented Business**

### **470.01 Findings and Purpose.**

**470.01.1.** The purpose of this section is to control, through licensing and zoning regulations, certain land uses that have a direct and detrimental effect on the character of the City's residential and commercial neighborhoods.

**470.01.2.** The Hermantown City Council makes the following findings about the effect adult uses and sexually-oriented businesses have on the character of the City's neighborhoods. In making the findings, the City Council accepts the recommendations of City administrative staff that has studied the experiences of other areas about such businesses. Such studies and information reviewed by City administrative staff are on file in the office of the Hermantown City Clerk. Based upon studies and findings, the Hermantown City Council concludes:

**470.01.2.1.** Adult uses and sexually-oriented businesses can contribute to an increase in crime in the area where such businesses are located. This can be a burden to City crime-prevention programs and law enforcement services. In order to lessen the burden upon crime prevention programs, all adult-uses and sexually-oriented businesses, other than adult accessory uses, as defined and regulated in and by this section, shall be located in a newly designated C-1A zone district.

**470.01.2.2.** Adult uses and sexually-oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can increase neighborhood blight. These businesses also can impair the character and quality of the residential housing in the area where such businesses are located. This situation could lessen the amount of desirable housing for residents. In order to lessen these burdens, all adult uses and sexually-oriented businesses, other than adult accessory uses, as defined in and regulated by this section, shall be located in a newly designated C-1A zone district.

**470.01.2.3.** Adult uses and sexually-oriented businesses have adverse secondary impacts of the types discussed above.

**470.01.2.4.** It is necessary to provide for the special and express regulation of businesses, establishments or commercial enterprises that operate as adult body painting studios, adult bookstores, adult cabarets, adult car washes, adult companionship establishments, adult hotels or motels, adult massage parlors or health clubs, adult mini-motion picture theaters, adult modeling studios, adult motion picture arcades or theaters, adult novelty businesses, adult saunas and similar adult-oriented services operating under different names to protect the public health, safety and welfare, and to guard against the inception and transmission of disease.

**470.01.2.5.** The commercial enterprises such as the types described above and all other similar establishments whose services include sessions offered to adults conducted in private by members of the same or opposite sex, are susceptible to operations contravening subverting or endangering the morals of the City by being the site of acts of prostitution, illicit sex and occasions of violent crimes, and thus requiring close inspection, licensing and regulation.

**470.01.2.6.** Control and regulation of commercial establishments of these types, in view of the abuses often perpetrated, require intensive efforts by the police department and other departments of the City. These types of establishments can diminish the ability of the City to

protect and promote the general health, welfare, morals and safety of the City. It is necessary for the City to provide services to all areas of the City. In order to reduce the demand on law enforcement services and other government services, commercial establishment of these types, other than adult accessory uses, as defined in and regulated by this section, shall be allowed only in the newly designated C1-A zone district.

**470.01.2.7.** The City Council will adopt land use regulations pursuant to Ordinance No. 99-06. and the licensing regulations pursuant to this section, recognizing that it has an interest in the present and future character of the City's residential and commercial neighborhoods. These regulations are to lessen the detrimental and adverse effects adult uses and sexually-oriented businesses have on adjacent land uses and to protect and promote the health, safety and welfare of the residents of Hermantown.

**470.01.2.8.** It is not the intent of the City Council to prohibit adult uses or sexually-oriented business establishments from having an opportunity to locate in Hermantown. It also is not the intent of the City Council to regulate these businesses on the basis of content, but only on the basis of likely adverse secondary effects.

**470.02 Definitions.** For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**470.02.1.** "Adult use" shall mean any or all of the following: adult body painting studios, adult bookstores, adult cabarets, adult car washes, adult hotels or motels, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health/sports clubs, adult saunas/steam rooms/bath houses, adult companionship establishments, adult rap/conversation parlors, adult novelty businesses, adult motion picture arcades, adult modeling studios and all other premises, enterprises, establishments, businesses and places open to some or all members of the public, in person or via electronic or Internet means, at or in which there is an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas which the public could see. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by state-licensed or registered persons. Activities classified as obscene, as defined by M.S. Section 5617.241, as it may be amended from time to time, are not lawful and are not included in the definition of adult uses.

**470.02.2.** "Adult use, accessory." The offering of goods and/or services classified as printed matter and/or video tapes on a limited scale that is incidental to the primary business activity in the establishment and where such items occupy no more than:

**470.02.2.1.** Ten percent of the floor space of the establishment dedicated to retail sales or one hundred square feet, whichever is less; and

**470.02.2.2.** Ten percent of the wall space of the establishment dedicated to retail sales or one hundred square feet, whichever is less.

(Am. Ord. 2002-03, passed 3-4-02; Am. Ord. 2002-04, passed 5-20-02)

**470.02.3.** “Adult use, principal” shall mean the offering of goods and/or services classified as adult uses as a primary or sole activity of a business or establishment, and include but are not limited to the following:

**470.02.3.1.** “Adult body painting studio” shall mean an establishment or business that provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of specified anatomical areas.

**470.02.3.2.** “Adult bookstore” shall mean an establishment, building or business engaging in the barter, rental or sale of items or merchandise consisting of printed matter, pictures, slides, records, audiotapes, videotapes, computer or video disks, motion picture film or any other similar materials, if one or both of the areas described in 470.02.3.2.1 and 470.02.3.2.2 that follow have products or materials distinguished or characterized by an emphasis on matters depicting, describing or related to specified sexual activities or specified anatomical areas.

**470.02.3.2.1.** More than ten percent of the floor space of the establishment dedicated to retail sales or more than one hundred square feet of floor space, whichever is smaller.

**470.02.3.2.2.** More than ten percent of the internal wall space of the establishment dedicated to retail sales or more than one hundred square feet of wall space, whichever is smaller.

(Am. Ord. 2002-03, passed 3-4-02)

**470.02.3.3.** “Adult cabaret” shall mean an establishment, building or business that provides dancing or other live entertainment if such dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, presentation, display, depiction, or description of specified sexual activities or of specified anatomical areas.

**470.02.3.4.** “Adult car wash” shall mean a wash facility for any type of motor vehicle that allows employees, agents, independent contractors or persons to appear in a state of partial or total nudity in terms of specified anatomical areas.

**470.02.3.5.** “Adult companionship establishment” shall mean an establishment or business if such establishment excludes minors because of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**470.02.3.6.** “Adult entertainment facility” shall mean a building or space in which an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and in which may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

**470.02.3.7.** “Adult establishment” shall mean an establishment, building or business engaging in any of the following activities or which uses any of the following business procedures or practices, either:

**470.02.3.7.1.** Any business conducted exclusively for the patronage of adults and about which minors are specifically excluded from patronage either by law or by the operators of such business; or

**470.02.3.7.2.** Any business that offers its patrons services, products or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas.

**470.02.3.7.3.** Specifically included in the term, but without limitation are adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health clubs, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult car washes, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel and adult body painting studios.

**470.02.3.8.** “Adult hotel or motel” shall mean a hotel or motel from which minors are specifically excluded from patronage and in which material is presented that is distinguished or characterized by matter depicting, describing or relating to sexual activities or specified anatomical areas.

**470.02.3.9.** “Adult massage parlor, health/sport club” shall restrict minors because of age and provide the services of massage, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**470.02.3.10.** “Adult mini-motion picture theater” shall mean a business, building or establishment in an enclosed building with a capacity for less than 50 persons used for presenting visual media material if:

**470.02.3.10.1.** Such business as a prevailing practice excludes minors by virtue of age;  
or

**470.02.3.10.2.** Said material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.

**470.02.3.11.** “Adult modeling studio” shall mean an establishment or business whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted by such customers.

**470.02.3.12.** “Adult motion picture arcade” shall mean any building or place to which the public is allowed or invited in which coin or slug-operated or electronically, electrically or

mechanically controlled still or motion picture machines, projectors, computers or other image-producing devices that show images to five or fewer persons per machine at once, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

**470.02.3.13.** “Adult motion picture theaters” shall mean a business premises within an enclosed building with a capacity of 50 or more persons used for presenting visual media material if said business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

**470.02.3.14.** "Adult novelty" shall mean materials or devices that simulate human genitals or devices for sexual stimulation or which depict or relate to specified sexual activities or specified anatomical areas.

(Am. Ord. 2002-03, passed 3-4-02)

**470.02.3.15.** “Adult novelty business” shall mean an establishment, building or business engaging in the barter, rental or sale of adult novelties, if one or both of the areas described in 470.02.3.15.1 and 470.02.3.15.2 that follow have products or materials distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas:

**470.02.3.15.1.** More than ten percent of the floor space of the establishment that is dedicated to retail sales or more than one hundred square feet of floor space, whichever is smaller.

**470.02.3.15.2.** More than ten percent of the internal wall space of the establishment that is dedicated to retail sales or more than one hundred square feet of wall space, whichever is smaller.

(Am. Ord. 2002-03, passed 3-4-02)

**470.02.3.16.** “Adult printed matter” shall mean printed matter that is distinguished or characterized by an emphasis on matters depicting, describing or related to specified sexual activities or of specified anatomical areas.

**470.02.3.17.** “Adult sauna/steam room/bathhouse” shall mean a sauna/steam room/bathhouse that excludes minors because of age, or which provides a steam bath or heat bathing room used for bathing, pleasure, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna/steam room/bathhouse is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**470.02.3.18.** “Adult video tapes” shall mean tapes that are distinguished or characterized by an emphasis on matters depicting, describing or related to specified sexual activities or of specified anatomical areas.

**470.02.3.19.** Those uses excluding bars which are not open to the public generally but only to one or more classes of the public and excluding any minor by reason of age, a minor being a person under the age of 18 years.

**470.02.4.** “Booths, stalls or partitions” shall mean enclosures specifically offered to persons for a fee or as an incident to performing sexual conduct, or enclosures which are part of a business operated on the premises which offers movies or any other type of entertainment dispensed for a fee. This definition does apply to enclosures which are private offices used by the managers, owners or persons employed on the premises for use during the course of business which are not held open to the public or members of the establishment for hire or for a fee or for the purpose of viewing movies or any other type of entertainment.

**470.02.5.** “Clean” shall mean the absence of dirt, grease, rubbish, garbage, semen, bodily excrement and other offensive, unsightly or extraneous matter.

**470.02.6.** “Entity” shall mean any corporation, limited liability partnership, partnership, limited liability company, joint venture or any other legally recognized business organization.

**470.02.7.** “Licensed family day-care home, licensed group family day-care home, licensed child-care center” shall mean a facility holding a license from St. Louis County or Minnesota pursuant to M.S. Chapter 245A, as it may be amended from time to time, and/or Minnesota Rules, Chapter 9502 or Chapter 9503, as they may be amended from time to time.

**470.02.8.** “Minor” shall mean any natural person under the age of 18 years.

**470.02.9.** “Nudity” shall mean the showing of the human male or female genitals or pubic area with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any portion thereof below a point immediately above the top of the areola; or the depiction or showing of the covered male genitals in a discernibly turgid state.

**470.02.10.** “Public library” shall mean any library that provides free access to all residents of a City or county without discrimination and is organized under the provisions of M.S. Chapter 134, as it may be amended from time to time.

**470.02.11.** “Public park” shall mean a park, reservation, open space, playground, beach or recreation or community center in the City owned, leased or used wholly or in part, by the City, county, state, school district or federal government for recreation purposes.

**470.02.12.** “Place of worship” shall mean a building or space that is principally used as a place where people of the same faith or religion regularly assemble for worship.

**470.02.13.** “School” shall mean a building or space that is principally used as a place where 25 or more persons receive a full course of educational instruction. Any post-secondary or post-high school educational building, including any college or any vocational-technical college, shall not be deemed a “school” for purposes of this section.

**470.02.14.** “Sexually-oriented business” shall mean an adult book store, adult body painting studio, adult car wash, adult cabaret, adult hotel or motel, adult companionship establishment, adult motion picture theater, adult mini-motion picture theater, adult massage parlor, adult entertainment facility, adult health or sports clubs, adult novelty business, adult modeling studio or adult sauna, as defined herein. Activities classified as obscene as defined by M.S. Section 617.241, as it may be amended from time to time, are not lawful and are not included in the definition of adult uses.

(Am. Ord. 2002-03, passed 3-4-02)

**470.02.15.** “Specified anatomical areas” shall mean anatomical areas consisting of:

**470.02.15.1.** Less than completely and opaquely covered human genitals, pubic region or pubic hair, buttock, anus or female breast or breasts below a point immediately above the top of the areola or any combination of the foregoing; and

**470.02.15.2.** Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**470.02.16.** “Specified sexual activities” shall mean activities consisting of the following:

**470.02.16.1.** Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation or fondling of unclothed genitals, pubic region, buttock or female breast, flagellation or torture in a sexual relationship, or the use of excretory functions in a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, sodomy, zooerasty;

**470.02.16.2.** Human genitals in the state of sexual stimulation, arousal or tumescence;

**470.02.16.3.** Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus or masturbation;

**470.02.16.4.** Fondling or touching of human genitals, pubic region or pubic hair, buttocks or female breast or breasts;

**470.02.16.5.** Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such person;

**470.02.16.6.** Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being;

**470.02.16.7.** Human excretion, urination, menstruation, vaginal or anal irrigation; or

**470.02.16.8.** Any combination of the above.

### **470.03 Licenses.**

**470.03.1 License Required.** No person, firm or corporation shall own or operate an adult use, principal or sexually-oriented business in Hermantown without having first secured a license as provided herein.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.2 Application.** The City shall provide an application form for any license required hereunder. This application shall include:

**470.03.2.1.** The name, residence, phone number and birth date of the applicant, if an individual; and if an entity, the names, residences, phone numbers and birth dates of those owners holding more than 5% of the ownership interests in such entity;

**470.03.2.2.** The name, address, phone number and birth date of each operator and manager of such operation, if different from the owners;

**470.03.2.3.** The address and legal description of the building, establishment or premises where the adult use or sexually-oriented business is to be located;

**470.03.2.4.** A statement detailing each misdemeanor or felony relating to a sex offense and/or the operation of adult uses or sexually-oriented businesses and related activities of which the applicant or, for an entity, the owners of more than 5% of the ownership interest of such entity, have been convicted, and whether the applicant has ever applied for or held a license to operate a similar type of business in other cities;

**470.03.2.5.** The activities and types of business to be conducted;

**470.03.2.6.** The hours of operation;

**470.03.2.7.** The provisions made to restrict access by minors;

**470.03.2.8.** A building plan of the premises detailing all internal operations and activities, including floor plan and provisions designed to prevent the display or perception by the public from any sidewalk or other public right-of-way of any adult use materials depicting, describing or related to specified sexual activities or specified anatomical areas by any visual or auditory media, including display, decoration, sign, show window, sound transmission or any other means;

**470.03.2.9.** A description or building plan that details all proposed interior and exterior changes to an existing building or structure; and

**470.03.2.10.** A plan of the exterior of the premises detailing all activities designed to prevent, deter and curtail any criminal activity or secondary effects. This plan includes but is not necessarily limited to parking lot design, parking lot lighting, exterior lighting and placement of screening material.

### **470.03.3 License Fees.**

**470.03.3.1.** Each application for a license shall be accompanied by a receipt from the City Clerk for payment in full of the required application and investigative fee for the license as established from time to time by resolution of the City Council. All fees shall be paid into the general fund of the City.

**470.03.3.2.** All licenses shall expire on the last day of December in each year. The City shall issue each license for one year, except that if part of the license year has elapsed when the application is made, the City may issue a license for the remainder of the year. The fee for any license shall not be prorated in such event.

**470.03.3.3.** The annual fee for an adult use or sexually-oriented business license shall be as established from time to time by resolution of the City Council.

**470.03.3.4.** Each application shall contain a provision on the application in bold print stating that any withholding of information or the providing of false or misleading information will be grounds for the denial or revocation of a license and shall be a violation of this section punishable as a misdemeanor. Any changes in the information provided on the application or provided during the investigation shall be reported to the City Council by the applicant or licensee. If said changes take place during the investigation, the data shall be provided to the Chief of Police in writing and they shall report the changes to the City Council. Failure to report said changes by the applicant(s) or the licensee may result in a denial or revocation of a license.

### **470.03.4 Granting of License.**

**470.03.4.1.** The City shall investigate all facts set out in the application. After the City finishes its investigation, the City shall hold a public hearing and shall give everyone present an opportunity to be heard for or against the granting of the license a chance to present his or her views. After the investigation and public hearing, the City Council shall grant or refuse the application.

**470.03.4.2.** The City shall only issue a license to the applicant. The license may not be transferred to another holder. The City shall only issue a license for the premises or location described in the application. When a licensed adult use or sexually-oriented business is sold or transferred, the existing licensee shall immediately notify the City Council of the sale or transfer. If the new owner or operator is to continue operating the adult use or sexually-oriented business, the proposed new owner or operator must immediately apply for a license pursuant to

this section and cannot conduct an adult use or sexually- oriented business until such new owner or operator is issued a license under this section.

**470.03.5 Persons Ineligible for License.** The City shall not grant a license to, nor may one be held by, any person or entity who:

**470.03.5.1.** Has been convicted of a felony or been convicted of a misdemeanor involving sexual activities;

**470.03.5.2.** Is not the owner of the establishment for which the license is issued;

**470.03.5.3.** Has not paid the license and investigative fees required by this section;

**470.03.5.4.** Is not a citizen of the United States;

**470.03.5.5.** Has had an adult use or sexually-oriented business or similar license or permit revoked under an ordinance or statute similar to this; and/or

**470.03.5.6.** Already has been issued a license under this section.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.6 Places Ineligible for License.**

**470.03.6.1.** No license shall be granted for adult uses or sexually- oriented businesses on any premises where a licensee has been convicted of a violation, or where any license hereunder has been revoked for cause, until one year has elapsed after such conviction or revocation.

**470.03.6.2.** No license shall be granted for any adult use or sexually- oriented business that does not meet all City code requirements, all building and fire code requirements and all provisions of state and federal law.

**470.03.6.3.** No adult use, principal, shall be granted for adult uses or sexually-oriented businesses for any premises not located in a CI-A Zone District.

**470.03.7 Nonconforming Uses.** Any adult use or sexually-oriented business existing on the effective date of the adoption of this section may be continued as nonconforming uses, subject to the following provisions:

**470.03.7.1.** No such adult use or sexually-oriented business shall be expanded or enlarged except in conformity with the provisions of this section.

**470.03.7.2.** Such use shall not be moved to another lot or to any other part of the parcel of land upon which the same was constructed or was conducted at the time it became a nonconforming use unless such movement shall eliminate the nonconformity.

**470.03.7.3.** If such use is changed to a conforming use, it shall not thereafter be changed to a nonconforming use.

**470.03.7.4.** Such use may be changed to lessen the nonconformity of the use. Once such use has been changed, it shall not thereafter be so altered to increase the nonconformity.

**470.03.7.5.** If at any time such use shall be destroyed to the extent of more than 60% of its fair market value, with said value to be determined by the Assessor for the City, then without further action by the City Council, the use of such land shall from and after the date of such destruction be subject to all of the regulations specified by this section.

**470.03.7.6.** If such use is discontinued and cessation of use continued uninterrupted for a period of six months following written notice of such fact being given to the owner by the Zoning Official, any future use of land shall be made to conform with all regulations specified by this section.

**470.03.7.7.** If such use or adjuncts thereof which are or become nuisances shall not be entitled to continue as nonconforming uses.

**470.03.7.8.** The provisions of 470.03.2.10 shall be applicable to any such use involving adult video tapes or adult printed matter.

#### **470.03.8 Conditions of License.**

**470.03.8.1.** Every license shall be granted subject to the condition in the following subdivisions and all other provisions of this section, and of any applicable sections of the Hermantown City Code, state and federal law,

**470.03.8.2.** All licensed premises shall have the license posted in a conspicuous place.

**470.03.8.3.** No minor shall be allowed in or on the premises of an adult use or sexually-oriented business.

**470.03.8.4.** A designated inspection or law enforcement officer shall have the right to enter, inspect and search premises during business hours.

**470.03.8.5.** Every licensee shall be responsible for the conduct of their place of business and shall maintain conditions of this section and the 2001 Hermantown Code.

**470.03.8.6.** No adult goods, materials or services shall be offered, sold, transferred, conveyed, given, displayed or bartered to any minor.

**470.03.8.7.** All performers, dancers and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas in the licensed premises where such entertainment can be seen by patrons of the licensed premises shall remain at all times a

minimum distance of ten feet from all patrons, customers or spectators and shall dance or provide such entertainment on a platform intended for that purpose, which shall be raised at least two feet from the level of the floor on which the patrons, customers or spectators are located.

**470.03.8.8.** No dancer, performer or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas shall fondle or caress any patron, customer or spectator.

**470.03.8.9.** No patron, customer or spectator of a licensed facility shall directly pay any gratuity to any dancer, performer or person, providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas. Neither shall any dancer, performer or other person solicit any pay or gratuity from any patron, customer or spectator.

**470.03.9 Adult Use, Principal; Conditions.** The City permits adult use, principal, only in the C-1A Zone District. Adult use, principal, licenses shall be subject to the following conditions:

**470.03.9.1.** No adult use, principal, sexually-oriented business shall be located within the C-1A Zone District closer than 1,000 feet from any preexisting residential lot line, place of worship, school, public park, open space, licensed family day-care home, licensed group family day-care home, public library or licensed child-care or day-care center. Measurements shall be made in a straight line, without regard to City boundaries, intervening structures or objects, from the nearest property line of the actual business premises of the adult use, principal, or sexually-oriented business to the nearest property line of the premises or building used as a dwelling or residence, place of worship, school, public park, open space, licensed family day-care home, licensed group family day care home, public library or licensed child-care or day-care center.

**470.03.9.2.** All adult uses and sexually-oriented businesses must follow and comply with all of the provisions of this section and the Hermantown City Code.

**470.03.9.3.** No building owner or operator shall have more than one of the following uses, tenants or activities in the same building or structure: adult body painting studio, adult book store, adult cabaret, adult car wash, adult companionship establishment, adult entertainment facility, adult hotel or motel, adult modeling studio, adult sauna/steam room/bath house, adult motion picture theater, adult mini-motion picture theater, adult massage parlor, adult health/sports club or adult novelty business.

**470.03.9.4.** An adult use principal sexually-oriented business shall not sell or dispense 3.2 malt liquor, wine or intoxicating liquors, nor shall it be located in a building that contains a business that sells or dispenses 3.2 malt liquor, wine or intoxicating liquors.

**470.03.9.5.** No adult use, principal, sexually-oriented businesses shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the adult use establishment that is prohibited by any ordinance of Hermantown, the laws of the State of Minnesota or the United States of America. Nothing in this section shall be construed as

authorizing or permitting conduct that is prohibited or regulated by other statutes, ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale or distribution of obscene material generally, or the exhibition, sale or distribution of specified materials to minors.

**470.03.9.6.** No adult use, principal, sexually-oriented business shall be conducted in any manner that permits the perception or observation from any property not licensed as an adult use of any materials depicting, describing or related to specified sexual activities or specified anatomical areas by any visual or auditory media, including display, decoration, sign, show window, sound transmission or other means.

**470.03.9.7.** All adult use, principal, sexually-oriented businesses shall prominently display a sign at the entrance and located within two feet of the door opening device of the adult use establishment, "This business sells or displays activities and/or material containing adult themes. Persons under age 18 years of age shall not enter."

**470.03.9.8.** No person under the age of 18 shall be permitted on or in the premises of an adult use or sexually-oriented business establishment. No person under the age of 18 shall be permitted access to material displayed, offered for sale, given, transferred, conveyed or rented by an adult use or sexually-oriented business. Proof of age may be established only by a valid driver's license or identification card issued by Minnesota, some other state or a province of Canada, and the proof of age shall include a photograph and date of birth of the licensed person, a valid military identification card issued by the United States Department of Defense or in the case of a foreign national from a nation other than Canada, a valid passport.

**470.03.9.9.** Adult use, principal, sexually-oriented businesses shall not be open between the hours of 1:00 a.m. and 10:00 a.m. on the days of Monday through Saturday, nor between 1:00 a.m. and 12:00 noon on Sunday nor between 8:00 p.m. on December 24 and 12:00 noon on December 25.

**470.03.10 Adult Use, Accessory Allowed in C, C-1A and C-1 Zone Districts.** Adult use, accessory is hereby added as a use allowed in a C, C-1A or C-1 Zone District without a separate Commercial Industrial Development Permit, provided that a Commercial Industrial Development Permit has been issued for the principal business activity to be conducted on the premises on which the Adult Use, accessory activity is to be conducted.

(Am. Ord. 2002-03, passed 3-4-02; Am. Ord. 2002-04, passed 5-20-02)

**470.03.10.1.** The adult use, accessory, shall comprise no more than one or both of the areas described in subsections 470.03.10.1.1 and 470.03.10.1.2 that follow:

**470.03.10.1.1.** No more than ten percent of the floor space establishments dedicated to retail sales or no more than one hundred square feet of floor space, whichever is smaller.

**470.03.10.1.2.** No more than ten percent of the internal wall space of the establishment dedicated to retail sales or no more than one hundred square feet of wall space, whichever is smaller.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.10.2.** Display areas for adult video tapes and adult novelties shall be restricted from general view and shall be located in a separate room, for which the access is in clear view and in the control of the person responsible for the business establishment. The sign required by 470.03.9.7 shall be placed at the entrance to such separate room.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.10.3.** Unless located in the separate room required by 470.03.10.2, adult printed matter shall not be accessible to minors and shall be covered with a wrapper or other means to prevent display of any materials other than the publication title.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.10.4.** A Commercial-Industrial Development Permit has been issued for the principal business activity to be conducted on the premises on which the Adult use, accessory activity is to be conducted.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.10.5.** Persons under the age of 18 may not be prohibited in the establishment.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.10.6.** The business must be conducted so as to fully comply with the provisions of M.S. Section 617.291 - 617.296.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.10.7.** No Adult use, principal may be conducted in the establishment.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.10.8.** No use of adult novelties or viewing of adult videos shall be allowed in the establishment.

(Am. Ord. 2002-03, passed 3-4-02)

**470.03.11 Revocation, Suspension and Renewal.**

**470.03.11.1.** The City Council may revoke, suspend or not renew a license upon the recommendation of the City Administrator that shows the licensee, its owners, managers, employees, agents or any other interested parties have engaged in any of the following conduct:

**470.03.11.1.1.** Fraud, deception or misrepresentation about securing the license;

**470.03.11.1.2.** Habitual drunkenness or intemperance in the use of drugs including, but not limited to the use of drugs defined in M.S. Section 618.01, as it may be amended from time to time, barbiturates, hallucinogenic drugs, amphetamines, Benzedrine, Dexedrine or other sedatives, depressants, stimulants or tranquilizers;

**470.03.11.1.3.** Engaging in conduct involving moral turpitude or permitting or allowing others within their employ or agency to engage in conduct involving moral turpitude or failing to prevent agents, officers, or employees in engaging in conduct involving moral turpitude;

**470.03.11.1.4.** Failure to follow any requirements of the ordinances of Hermantown about sanitary and safety conditions, zoning requirements, building code requirements or ordinances, or failure to follow the requirements of this section; and/or

**470.03.11.1.5.** Conviction of an offense involving moral turpitude.

**470.03.11.2.** The certificate holder may appeal such suspension, revocation or non-renewal to the City Council. The Council shall consider the appeal at a regularly scheduled public hearing on or after ten days from service of the notice of appeal to the City Administrator. At the conclusion of the hearing, the Council may order:

**470.03.11.2.1.** Revocation, suspension or non-renewal be affirmed;

**470.03.11.2.2.** Revocation, suspension or non-renewal be revoked and that the license be returned to the license holder; and/or

**470.03.11.2.3.** The Council may impose, at their discretion, any additional terms, conditions or stipulations for the suspension or issuance of the license.

#### **470.03.12 Limitations.**

**470.03.12.1.** No more than one adult use license may be directly or indirectly issued to any one person, partnership or corporation or for any one place or location in the City of Hermantown.

**470.03.12.2.** No person, partnership or corporation shall have or possess a direct or indirect interest in more than one adult use license in the City of Hermantown.

**470.03.12.3.** The term “interest” as used in this section includes any pecuniary interest in the ownership, operation, management or profits of an adult use or sexually-oriented business

does not include loans, rental agreements, open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to the establishment.

**470.03.12.4.** A person, partnership or a corporation which receives monies from time to time directly or indirectly from a licensee in the absence of a bona fide consideration therefor, and excluding bona fide gifts or donations, shall be deemed to have a pecuniary interest in such adult use license.

**470.03.12.5.** In determining whether an interest exists, the transactions must have been bona fide and the reasonable value of the goods and things received as consideration for a payment by the goods and things received as consideration for a payment by the licensee and all other facts reasonably tending to prove or disprove the existence of a purposeful scheme or arrangement to evade the restrictions of this section must be considered.

**470.03.12.6.** Upon conviction for violation of this section the City Council may revoke all licenses in which such convicted person, partnership or corporation has an interest.

#### **470.03.13 Payment of Taxes, Assessments, Other Charges.**

**470.03.13.1.** No adult use license shall be granted hereunder for the operation on any premises on which real estate taxes, assessments or other financial claims of the City of Hermantown are delinquent and unpaid.

**470.03.13.2.** In the event the applicant is the owner, either in fee or under a contract for deed of the real estate where the licensed business is to be located and there are delinquent real estate taxes and/or assessments and/or other financial claims of the City of Hermantown against such real estate, the City Council may nevertheless, by affirmative vote of three members of the City Council, authorize and direct the issuance of such license, but only if the applicant shall submit a certified copy of an agreement under any laws of the State of Minnesota for the payment of such delinquent taxes and assessments and other financial claims.

**470.03.13.3.** In the event the applicant does not own the real estate where the licensed business is to be located and there are delinquent real estate taxes and/or assessments and/or other financial claims of the City of Hermantown against such real estate, the City Council may nevertheless, by affirmative vote of three members of the Council, authorize and direct the issuance of such license, but only if the applicant shall submit evidence to the City Council that the owner of said real estate and the applicant have entered into a written rental agreement or lease providing that rent paid shall first be applied to such delinquent real estate taxes and assessments and other financial claims.

**470.03.14 Special Rules for Guiding Board of Appeals and Adjustment in Considering Requests for Interpretations of Uses in C-1A Zone District.** In considering an application of whether a use not specifically listed in this section may be allowed, the Board of Appeals and Adjustment shall allow the proposed use, only if such use is similar to a use allowed with a Commercial Industrial Development Permit or an Adult Use License in the C-1A Zone District.

The Board of Appeals and Adjustment shall not determine an M-1 Manufacturing Use as allowed in a C-1A Zone District.

(Am. Ord. 2002-04, passed 5-20-02)

**470.03.15 Background Check.** A background check is required to be made pursuant to Minnesota Statutes 299C.72, as it may be amended from time to time, with regard to the Applicant (as defined in Ordinance No. 2009-09) for a license under this Section 470. An application for such license is not complete until and unless the Applicant (as defined in Ordinance No. 2009-09) shall execute and deliver a consent authorizing a background check. The background check on an Applicant (as defined in Ordinance No. 2009-09) for a license under this Section 470 must be completed before the City Council considers such application.

(Am. Ord. 2009-09, passed 10-16-09) (Am. Ord. 2014-12, passed 11-3-2014)

#### **470.04 Sign and Window Display Restrictions.**

**470.04.1.** The following sign regulations shall apply to all adult use, principal uses and adult use, accessory uses in the City. These regulations are to protect children from exposure to sexually-oriented or shocking signs and materials and to preserve the value of property near adult uses and sexually-oriented businesses. These regulations are in addition to any other applicable law, rule, ordinance or regulation.

(Am. Ord. 2002-03, passed 3-4-02)

**470.04.2.** All signs shall be flat wall or freestanding signs. No signs shall be located on any roof, or contain any flashing lights, moving elements or electronically or mechanically changing messages.

**470.04.3.** The City's sign regulations for the zone district where the business is located shall regulate the amount of allowable sign area and the number of allowed signs for an adult use or sexually-oriented business as provided in 470.03.10.4 hereof and except that such businesses may have only one sign no larger than 100 square feet in size.

**470.04.4.** No merchandise, photos or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or public right-of-way adjoining the building or structure in which the adult use or sexually-oriented business is located.

**470.04.5.** Window areas shall not be covered nor made opaque in any way. No signs shall be placed in any window. The signs required by 470.03.9.7 may be placed on the door to state hours of operation and admittance to adults only.

**470.04.6.** All license holders under this section shall apply for and pay for any sign permit required by the applicable codes, rules and regulations of the Hermantown City Code.

## **470.05 Sanitation and Health.**

**470.05.1 Partitions Facilitating Sexual Activity.** No license holder shall allow any partition between a subdivision, portion or part of the licensed premises having any aperture which is designed or constructed to facilitate sexual intercourse, sodomy, fondling or other erotic touching of human genitals, pubic region or pubic hair, buttocks or female breast between persons on either side of the partition.

**470.05.2 Restrictions on Booths, Stalls or Partitions.** No license holder shall allow or have on the licensed premises any booths, stalls or partitions used for the viewing of motion pictures or other form of adult use entertainment that have doors, curtains or portal partitions, unless such booths, stalls or partitions have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. The interior of said booths, stalls or partitions shall be lighted in a manner so that the persons within the booths, stalls or partitions are clearly visible from the adjacent public rooms.

**470.05.3 Limit of Persons in Partitioned Area.** Any booths, stalls or partitioned areas of a room, or individual rooms used for the viewing of motion pictures, other forms video entertainment or live entertainment, shall not be occupied by more than one person at a time.

**470.05.4 Authority for Inspection.** The City Council and/or its designates shall have the authority to inspect or cause to have inspected the licensed premises and adjoining areas in order to determine compliance with this section.

**470.05.5 Sanitation Requirement.** All adult uses and sexually-oriented businesses shall at all times be kept clean as herein defined.

**470.05.6 Duty to Supervise.** The license holder shall not permit specified sexual activities to take place on the licensed premises and shall have the affirmative duty to supervise the licensed premises and prevent such activities.

**470.06 Criminal Penalties.** Any violation of this section shall be a misdemeanor.

## **📖 Section 480 - Telecommunications Facilities and Antennas**

**480.01 Purpose.** In order to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community, the City Council finds that the following regulations are necessary in order to:

**480.01.1.** Facilitate the provision of wireless telecommunication services to the residents and businesses of the city;

**480.01.2.** Minimize adverse visual effects of towers through careful design and siting standards;

**480.01.3.** Avoid potential damage to adjacent properties from tower failure through structural standards and set back requirements; and

**480.01.4.** Maximize the use of existing and approved towers and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community.

**480.02 Definitions.** The following words and terms, when used in this chapter , shall have the following meaning unless the context clearly indicates otherwise:

**480.02.1.** “Antenna” shall mean any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure.

**480.02.1.1.** “Antenna - building mounted” shall mean any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building, tank, tower, building mounted mast less than 10 feet tall and 6 inches in diameter, or structure other than a telecommunication tower.

**480.02.1.2.** “Antenna - directional” (also known as a "panel" antenna) shall mean any antenna which transmits and/or received radio frequency signals in a directional pattern of less than 360 degrees.

**480.02.1.3.** “Antenna - ground mounted” shall mean any antenna with its base, single or multiple posts, placed directly on the ground or a mast less than 10 feet tall and 6 inches in diameter.

**480.02.1.4.** “Antenna - omni-directional” shall mean any antenna which transmits and/or receives radio frequency signals in a 360 degree radial pattern. For the purpose of this section, an omni-directional antenna is up to 15 feet in height and up to 4 inches in diameter.

**480.02.1.5.** “Antenna - parabolic” (also known as satellite dish antenna) shall mean any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, bowl, or cornucopia shaped and is used to transmit and/or receive electromagnetic or radio frequency communication/signals in a specific directional pattern. This definition is meant to include, but is not limited to, what are commonly referred to as satellite earth stations.

**480.02.1.6.** “Antenna - portable” shall mean any device used to transmit and/or receive electromagnetic or radio frequency communication/signals in a specific directional pattern, located on a portable or moveable base designed to be placed within for temporary or long-term use at a given site.

**480.02.1.7.** “Antenna - vertical” shall mean a vertical type antenna without horizontal cross-sections greater than one half inch in diameter.

**480.02.1.8.** “Satellite dish or satellite antenna” shall mean any device incorporating a reflective surface that is solid, open mesh, or bar configured to form a shallow dish, cone, horn or cornucopia used to transmit and/or receive electromagnetic signals. This definition includes antennas that are sometimes called “SES,” “TVRO,” “TVBS,” and “DBS”.

**480.02.2.** “Commercial wireless telecommunication services” shall mean a licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

**480.02.3.** “Commercial wireless telecommunication service facility” shall mean a facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking areas, and other accessory development.

**480.02.4.** “Equipment building, shelter or cabinet” shall mean a cabinet or building used by telecommunication providers to house equipment at a facility.

**480.02.5.** “Lattice tower” shall mean a self-supporting support structure, erected on the ground, which consists of metal crossed strips or bars to support antennas and related equipment.

**480.02.6.** “Mono-polar” shall mean a wireless communication facility, which consists of a monopolar structure, erected on the ground to support wireless communication antennas and connecting appurtenances.

**480.02.7.** “Public utility” shall mean persons, corporations, or governments supplying gas, electric, transportation, water sewer, or land line telephone service to the general public. For the purpose of this section, commercial wireless telecommunication service facilities shall not be considered public utility uses, and are defined separately.

**480.02.8.** “Related equipment” shall mean all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit and connectors.

**480.02.9.** “Structure ridgeline” shall mean the line along the top of a roof or top of a structure, if it has no roof.

**480.02.10.** “Telecommunication facility” shall mean a facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking areas, other accessory development and related equipment.

**480.02.11.** “Telecommunication facility - co-located” shall mean a telecommunication facility comprised of a single telecommunication tower or building supporting one or more antennas, dishes, or similar devices owned or used by more than one public or private entity.

**480.02.12.** “Telecommunication facility - commercial” shall mean a telecommunication facility that is operated primarily for a business purpose or purposes.

**480.02.13.** “Telecommunication facility - exempt” shall mean a telecommunication facility that is exempt from special use requirements. Such facilities include the following:

**480.02.13.1.** A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the resident occupying a residential parcel on which the radio or television antenna is located, with an antenna height not exceeding 25 feet;

**480.02.13.2.** A ground or building mounted citizens band radio antenna including any mast, if the height (post and antenna) does not exceed 35 feet;

**480.02.13.3.** A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed 35 feet;

**480.02.13.4.** A ground or building mounted receive only radio or television satellite dish antenna, which does not exceed 36 inches in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located, provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel;

**480.02.13.5.** All antennas operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which existed at the time of the adoption of this section;

**480.02.13.6.** Mobile services providing public information coverage of news events of a temporary nature; and temporary antennas/towers for public service or club use in place for less than seven days;

**480.02.13.7.** Hand held devices such as cell phones, businessband mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices as determined by the Zoning Administrator; and

**480.02.13.8.** City government owned and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems, which existed at the time of the adoption of this section or with heights not exceeding 50 feet.

**480.02.14.** “Telecommunication facility - multiple user” shall mean a telecommunication facility comprised of multiple telecommunication towers or buildings supporting one or more antennas owned or used by more than one public or private entity, excluding research and development industries with antennas to serve internal uses only.

**480.02.15.** “Telecommunications facility - non-commercial” shall mean a telecommunication facility that is operated solely for a non-business purpose.

**480.02.16.** “Telecommunications tower” shall mean a mast, pole, monopole, guyed tower, lattice tower, freestanding tower, or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than ten feet tall and six inches in diameter supporting one or more antenna, dishes, arrays, etc. shall be considered a telecommunications tower.

**480.02.17.** “Amateur radio operator” shall mean a person holding a written authorization to be the control operator of an amateur radio facility. This authorization shall be in the form of a license or permit issued by the Federal Communications Commission or a foreign national or multi-national license or permit recognized by treaty as valid in the United States.

**480.2.18.** “Amateur radio services” shall mean the radio communication services including the amateur-satellite service and the amateur service, which are for the purpose of self-training, intercommunication and technical investigations carried out by amateurs who are duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest, as defined in 47 CFR, Part 97 and regulated thereunder.

**480.03. Towers in Residential Zone Districts (R-1, R-2, R-3, R-3a, S-1).** The construction of any type of telecommunications tower in a residential zone district is prohibited except as follows:

**480.03.1.** Towers supporting amateur radio antennas and conforming to all applicable provisions of the Zoning Ordinance shall be a permitted use in all residential zoning districts provided the following requirements are met:

**480.03.1.1.** Such towers shall be allowed only in the rear yard in the R-3 zone.

**480.03.1.2.** Such towers shall not exceed 75 feet in height.

**480.03.1.3.** Such towers shall conform to the accessory structure setback for the zone district in which it is located. Guy wires shall be set back no less than ten feet from property lines, unless there is written permission from adjacent owners.

**480.03.1.4.** Bracketed towers attached to the principal structure in an R-3 zone are allowed in the R-3 side yard.

**480.03.1.5.** Such towers in R-1 or S-1 may be allowed in a side yard provided there is adequate space to satisfy the setback requirements provided for in this section.

**480.03.2.** Towers supporting amateur radio antennas and conforming to all applicable provisions of the Zoning Ordinance which exceed a height of 75 feet shall require a special use permit.

**480.03.3.** City government owned and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems, exceeding a height of 70 feet shall require a special use permit. Such towers shall conform to the accessory structure setback for the zone district in which it is located. Guy wires shall be set back no less than ten feet from property lines.

**480.03.4.** Towers supporting commercial antennas and conforming to all applicable provisions of the Zoning Ordinance shall require a special use permit and only in the following residentially zoned locations:

**480.03.4.1.** Church sites, when camouflaged as steeples or bell towers. Antennas and all other associated structures shall also be camouflaged.

**480.03.4.2.** Park sites, when compatible with the nature of the park; and

**480.03.4.3.** Government, school, utility and institutional sites.

**480.03.4.4.** Towers shall be set back from all property lines abutting property zoned or used for residential purposes no less than 50% of the tower height. Towers shall be set back from all property lines abutting non-residential property no less than 25% of the total tower height.

**480.03.5.** No tower, the construction of which is permitted by this section 480.3, shall exceed 200 feet in height, except for amateur radio towers.

**480.03.6.** Equipment buildings, shelters or cabinets shall comply with the principal building setbacks for the zone district in which it is located.

#### **480.04 Towers in Industrial Zone Districts (M-1 and M-2).**

**480.04.1.** In all industrial zone districts, towers supporting commercial antennas and conforming to all applicable provisions of the Zoning Ordinance shall be allowed as a permitted use.

**480.04.2.** The maximum height of any tower, the construction of which is permitted by this Section 480.4, including all antennas and other attachments, shall not exceed 180 feet in height.

**480.04.3.** Towers shall be set back from all property lines no less than 25% of the tower height, with a minimum setback of 20 feet. Towers shall be set back from all property lines abutting property zoned or used for residential purposes no less than 50% of the tower height.

**480.04.4.** Equipment buildings, shelters or cabinets shall comply with the principal building setbacks for the zone district in which it is located.

**480.05 Co-location Requirements.** All commercial, wireless telecommunication towers erected, constructed, or located within the city shall comply with the following requirements:

**480.05.1.** A proposal for a new commercial wireless telecommunication tower in excess of 100 feet in height shall not be approved unless the city finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a two mile search radius from the point of the proposed tower or within a one mile search radius for towers of 100 feet and lower in height or within a 1/2 mile search radius for towers 80 feet and lower in height due to one or more of the following reasons:

**480.05.1.1.** The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.

**480.05.1.2.** The planned equipment would cause interference materially impacting the feasibility of other existing or planned equipment at the tower or building, as documented by a qualified and licensed professional engineer approved by the city and the interference cannot be prevented at a reasonable cost.

**480.05.1.3.** Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer approved by the city.

**480.05.1.4.** Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.

**480.05.2.** It shall be the responsibility of the applicant to provide, at no cost to the city, an inventory of available structures in the applicable search area to the city.

**480.05.3.** Any proposed commercial wireless telecommunication service tower shall be designed structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional uses if the tower is over 100 feet in height or at least for one additional use if the tower is 60 to 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

**480.05.4.** The applicant is encouraged to allow the city access to the tower to enhance communications for its police, fire, emergency services and street department, provided that any attached communication equipment does not interfere with the applicant's equipment.

**480.05.5.** As a condition of approval, the applicant shall make available unutilized space, for co-location of other telecommunication facilities, including space for entities providing similar competing services. A good faith effort in achieving co-location shall be required by the host entity.

**480.05.6.** Requests for utilization of facility space shall be made to the Zoning Administrator. Co-location will not be required in cases where the addition of the new service or facilities would

cause quality of service impairment to the existing facility or if it becomes necessary for the host to go off line for a significant period of time.

**480.05.7.** The host is entitled to reasonable compensation from any co-locator for the use of its facility. Such compensation would include reimbursement for the cost of constructing the facility as it relates to any co-locator as well as a proportionate share of any rents paid by the host.

**480.05.8.** The failure of any applicant to make a good faith effort to allow for co-location shall constitute a breach of its agreement with the city and shall authorize the city to disassemble the subject tower at the applicant's cost.

**480.06 Telecommunication Facilities - General Location Standards.** All telecommunication facilities, except exempt facilities, shall be located so as to minimize their visibility and the number of distinct facilities present. To this end all of the following measures shall be implemented for all telecommunications facilities:

**480.06.1.** No telecommunication facility shall be installed at a location where special painting or lighting will be required by FAA regulations unless technical evidence acceptable to the city is submitted showing that this is the only technically feasible location for the facility; and

**480.06.2.** No telecommunication facility shall be installed on an exposed ridgeline, a public trail, public park or other outdoor recreation area, or on property designated as Floodplain or Park or Open Space, unless it blends with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable and a finding is made that no other location is technically feasible; and

**480.06.3.** No telecommunication facility that is readily visible from off-site shall be installed closer than 1/2 mile from another readily visible uncamouflaged or unscreened telecommunication facility unless it is a co-located facility, situated on a multiple-user site, or blends with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable; or technical evidence acceptable to the city is submitted showing a clear need for the facility and the infeasibility of co-locating it on one of the existing sites; and

**480.06.4.** No telecommunication facility that is readily visible from off-site shall be installed on a site that is not already developed with telecommunication facilities or other public or quasi-public uses unless it blends with the surrounding existing natural and man-made environment in such a manner so as to be effectively unnoticeable or technical evidence acceptable to the city is submitted showing a clear need for the facility and the unfeasibility of co-locating it on one of the existing sites.

**480.07 Telecommunications Facilities - Roads and Parking.** All telecommunication facilities, except exempt facilities, shall be served by the minimum roads and parking areas necessary. To this end all of the following measures shall be implemented:

**480.07.1.** Existing roads shall be used for access, whenever possible, and be upgraded the minimum amount necessary to meet standards specified by the Fire Chief and City Engineer. Any new roads or parking areas built shall, whenever feasible, be shared with subsequent telecommunication facilities and/or other permitted uses. In addition, they shall meet the width and structural requirements of the Fire Chief and the City Engineer.

**480.07.2.** Existing parking areas shall, whenever possible, be used.

**480.07.3.** Any new parking areas constructed shall comply with the parking standards established in Section 830.

**480.08. Telecommunications Facilities - Vegetation Protection and Facility Screening.** All telecommunication facilities, except exempt facilities, shall be installed in such a manner so as to maintain and enhance existing native vegetation and to install suitable landscaping to screen the facility, where necessary. To this end all of the following measures shall be implemented for all telecommunication facilities.

**480.08.1.** A landscape plan shall be submitted with project application submittal indicating all existing vegetation, identifying landscaping that is to be retained on the site, any additional vegetation that is needed to satisfactorily screen the facility from adjacent land uses and public view areas, and the type of vegetation to be restored in all areas that will be disturbed. The landscape plan shall be subject to review and approval by the Planning and Zoning Commission; and

**480.08.2.** Existing trees and other screening vegetation in the vicinity of the facility and along the access roads and power/telecommunication line routes involved shall be protected from damage, both during the construction period and thereafter. To this end, the following measures shall be implemented:

**480.08.2.1.** A Tree Preservation Plan shall be submitted with the special use permit application or building permit; and

**480.08.2.2.** Grading, cutting/filling, and the storage/parking of equipment/vehicles shall be prohibited in landscaped areas; and

**480.08.2.3.** All underground lines shall be routed such that a minimum amount of damage is done to tree root systems.

**480.08.3.** All areas disturbed during project construction other than the access road and parking areas shall be replanted with vegetation compatible with the vegetation in the surrounding area (e.g., ornamental shrubs or natural brush, depending upon the circumstances) according to the approved landscape plan.

**480.08.4.** Any existing trees or significant vegetation, on the facilities site or along the affected access area that die, shall be replaced with native trees and vegetation of a size and species acceptable to the Planning and Zoning Commission.

**480.08.5.** No actions shall be taken subsequent to project completion with respect to the vegetation present that would increase the visibility of the facility itself or the access road and power/telecommunication lines serving it.

**480.09 Telecommunication Facilities - Environmental Resource Protection.** All telecommunication facilities shall be sited so as to minimize the effect on environmental resources. To that end the following measures shall be implemented for all telecommunication facilities:

**480.09.1.** Potential adverse visual impacts which might result from project related grading or road construction shall be minimized;

**480.09.2.** Potential adverse impacts upon nearby public use areas such as parks or trails shall be minimized; and

**480.09.3.** Drainage, erosion, and sediment controls shall be required as necessary to abate soil erosion and sedimentation of waterways. Structures and roads on slopes of 10% or greater shall be avoided. Erosion control measures shall be incorporated for any proposed facility which involves grading. Natural vegetation and topography shall be retained to the extent feasible.

**480.10 Telecommunications - Noise and Traffic.** All telecommunication facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to the residents of nearby homes and the users of nearby recreational areas such as public parks and trails. To that end all of the following measures shall be implemented for all telecommunication facilities:

**480.10.1.** Outdoor noise producing construction activities shall only take place on weekdays (Monday through Friday, non-holiday) between the hours of 7:30 a.m. and 5:30 p.m. unless allowed at other times as a condition of the special use permit;

**480.10.2.** Backup generators shall only be operated during power outages and for testing and maintenance purposes. If the facility is located within 100 feet of a residential dwelling unit, noise attenuation measures shall be included to reduce noise levels to an exterior noise level of at least a Ldn of 60 dB at the property line and an interior noise level of a Ldn of 45 dB. Testing and maintenance shall only take place on weekdays between the hours of 7:30 a.m. and 5:30 p.m.; and

**480.10.3.** Traffic, at all times, shall be kept to an absolute minimum, but in no case more than two round trips per day on an average annualized basis once construction is complete.

**480.11 Telecommunication Facilities - Visual Compatibility.**

**480.11.1.** Facility structures and equipment shall be located, designed and screened to blend with the existing natural or built surroundings so as to reduce visual impacts to the extent feasible considering the technological requirements of the proposed telecommunication service and the need to be compatible with neighboring residences and the character of the community.

**480.11.2.** The facility shall be designed to blend with any existing supporting structure and shall not substantially alter the character of the structure or local area; and

**480.11.3.** Following assembly and installation of the facility, all waste and debris shall be removed and disposed of in a lawful manner; and

**480.11.4.** A visual analysis, which may include photo montage, field mock up, or other techniques shall be prepared and submitted by or on behalf of the applicant in conjunction with an application for a special use permit or a building permit, which identifies the potential visual impacts, at design capacity, of the proposed facility. Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunication service. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant.

**480.12 Antennas Mounted on Roofs, Walls and Existing Towers.** The placement of wireless telecommunication antennas on roofs, walls, and existing towers may be approved by the Zoning Administrator, provided the antennas meet the requirements set forth herein, including height requirements, after a submittal of:

**480.12.1.** A final site and building plan as required by the city; and

**480.12.2.** A report prepared by a qualified and licensed professional engineer approved by the city indicating the existing structure or tower's suitability to accept the antenna, and the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings and the precise point of attachment shall be indicated.

**480.13 Construction Requirements.**

**480.13.1.** Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging treatment, except in cases where the color is dictated by federal or state authorities. Materials employed shall not be unnecessarily bright, shiny, or reflective and shall be of a color or type which blend with the surroundings to the greatest extent possible.

**480.13.2.** Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by federal or state authorities. When incorporated into the design or the tower, light fixtures, such as street lights, are permitted.

**480.13.3.** The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

**480.13.4.** Sufficient anti-climbing measures must be incorporated into the facility, as needed, to reduce potential for trespass and injury.

**480.13.5.** All towers, masts and booms shall be made of non-combustible material, and all hardware, such as brackets, turnbuckles, clips and similar type equipment subject to rust or corrosion, must be protected either by galvanizing or sherardizing after forming.

**480.13.6.** A building permit must be obtained from the Building Official prior to the commencement of construction and all work must be done strictly in accordance with the Building Code.

**480.14 Abandoned or Unused Towers or Portions of Towers.** Abandoned or unused towers or portions of towers shall be removed as follows:

**480.14.1.** All abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the Zoning Administrator. In the event that the tower is not removed within 12 months of the cessation of operations at a site, the tower and associated facilities shall be deemed to be a hazardous building within the meaning of M.S. Section 463.15 which may be removed by the City and the cost of removal assessed against the property owner and the property upon which the tower and facilities are located in the manner provided by M.S. Sections 463.15 to 463.26.

**480.14.2.** Unused portions of towers above a manufactured connection shall be removed within six months of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a new application and/or request for variance if applicable.

**480.15 Measurement of Tower Height.** The height of a tower shall be determined by measuring the vertical distance from the tower's point of contact with the ground or rooftop structure to the highest point of the tower, including all antennas or other attachments. When towers are mounted upon other structures, the combined height of the structure and the tower must meet the height restrictions set forth herein for the particular zone district.

**480.16 Process.**

**480.16.1.** It shall be unlawful for any person, firm or corporation to erect, construct and place, place or re-erect, replace, or repair any tower without first making application for a building permit to the Building Official. Upon review of the requested building permit application, it shall be determined by the Building Official after consultation with the Zoning Administrator if a special use permit and/or site plan review is required.

**480.16.2.** If a special use permit is required for a requested tower, the requirements of the Zoning Code shall apply. In all cases where a conditional use permit is required, site plan review will also be required.

**480.16.3.** If a special use permit is not required, but the tower is to be located in an industrial zone district, site plan review shall be required, and the provisions of the Zoning Code shall apply.

**480.16.4.** The applicant shall provide, at the time of application, sufficient information to indicate the construction, installation, and maintenance of the antenna and tower will not create a safety hazard or damage to the property of other persons.

**480.16.5.** Adjustment or replacement of the elements of an antenna already affixed to a tower or antenna shall not require a permit, provided that the replacement does not reduce the safety factor. The Building Official shall issue a decision related to the permit application upon review of all required materials listed in this section and shall respond to the request in an expeditious and reasonable time frame.

**480.16.6.** Special use permit applications, site plan review applications and building permit applications shall be accompanied by payment of a fee as established by the City Council from time to time.

(Ord. 2001-07, passed 8-6-01)

## **Section 490 - Fireworks**

**490.01 Definitions.** For the purposes of this section, the following terms shall have the following meanings:

**490.01.1** “Lawfully permitted fireworks” shall mean wire or wood sparklers of not more than 100 grams of mixture per item, other sparkling items which are nonexplosive and nonaerial and contain 75 grams or less of chemical mixture per tube or a total of 200 grams or less for multiple tubes, snakes and glow worms, smoke devices or trick noisemakers which include paper streamers, party poppers, string poppers, snappers and drop pops, each consisting of not more than 25/100 grains of explosive mixture.

(Ord. 2003-05, passed 6-16-03)

**490.02 Purpose and Intent.** The purpose and intent of this section is to establish requirements for selling lawfully permitted fireworks and to provide for the health, safety, and welfare of the citizens, visitors, and property of Hermantown.

(Ord. 2003-05, passed 6-16-03)

**490.03 Permit for retail sale required.** No person shall store for retail sale, sell at retail or otherwise supply or furnish as part of a commercial retail transaction any lawfully permitted fireworks without first having obtained a permit to do so from the Chief of the Fire Department.

(Ord. 2003-05, passed 6-16-03)

**490.04 Application; premises; fees; term of permit.** Application for a lawfully permitted fireworks retail sales permit shall be made to the fire chief on forms supplied by the Fire Chief.

**490.04.1.** The application shall contain the location of where the lawfully permitted fireworks are to be sold, stored, and any other information the Fire Chief may require;

**490.04.2.** Permits shall be issued only for locations approved by the Fire Chief on private property.

**490.04.3.** Permits shall only be issued to the owner or lessee of the private property;

**490.04.4.** The permit fee shall be as set by the Fee Schedule, as it may be amended from time to time. The permit fee shall be paid at the time of application and shall not be prorated;

**490.04.5.** Permits shall be valid from May 1 to April 30 of each year for which the permit is issued. Permits are nontransferable.

(Ord. 2003-05, passed 6-16-03; Am. Ord. 2008-11, passed 12-15-08)

**490.05 Denial, suspension and revocation of permits.** The fire chief may deny, suspend or revoke any lawfully permitted fireworks retail sales permit for good cause, after giving the permittee or applicant an opportunity to be heard at a hearing before the chief. Without limitations, the following shall be deemed to be good cause for denial , suspension, or revocation of a permit.

**490.05.1.** Storage or sale of lawfully permitted fireworks in a manner that is contrary to this section, the state fire code, M.S. Ch. 624 or 299F or any other applicable law.

**490.05.2.** Securing the permit through misrepresentation, fraud or misstatement of a material fact.

**490.05.3.** Failure to cooperate with the Fire Chief or Fire Marshal in any investigation relating to the permittee's operations or sale or distribution of lawfully permitted fireworks.

(Ord. 2003-05, passed 6-16-03)

**490.06 Sales to persons under 18 prohibited; proof of age.** No person shall sell lawfully permitted fireworks to any person under 18 years of age.

**490.06.1.** Proof of age for purchasing lawfully permitted fireworks may be established only by one of the following:

**490.06.1.1.** A valid license or identification card issued by Minnesota, another state or a province of Canada, and including the photograph and date of birth of the licensed person;

**490.06.1.2.** A valid military identification card issued by the United States Department of Defense;

**490.06.1.3.** A valid passport issued by the United States; or

**490.06.1.4.** In the case of a foreign national, by a valid passport.

(Ord. 2003-05, passed 6-16-03)

**490.07 Penalty.** A violation of this section shall constitute a misdemeanor.

(Ord. 2003-05, passed 6-16-03)