

CHAPTER 52 - BUSINESS REGULATIONS

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BUSINESS REGULATIONS**52.01 AUCTIONS AND AUCTIONEERS.**

(a) License REPEALED Ord. No. 3569 04/21/03

(b) Obstructing Streets; Noise. No licensed auctioneer or other person shall open or conduct any auction in such a situation or in such a manner as to cause any obstruction to free passage by the public in any street, road, alley or other public place in the city; nor shall any licensed auctioneer or other person ring or cause to be rung any bell, or beat or cause to be beaten any drum, on any street or in any other public place in the city, as a means of attracting attention to any auction.

52.02 BINGO. Repealed. Ord. No. 2773 09/16/85.

52.03 CHARITABLE SOLICITATIONS: PERMIT. Every charitable organization soliciting for a charitable purpose, as defined in Minnesota Laws, chapter 309, Sections 1 and 2, except those registered with the state or exempted under subdivision 1 or subparagraphs (a) and (b) of subdivision 2 of section 2 of such chapter 309, which solicits contributions from persons in the city by any means whatsoever shall, prior to any solicitation, file with the city clerk a registration statement containing the same information required by subdivision 1 of section 3 of such chapter 309.

No person shall solicit contributions, as defined in subdivision 5 of section 1 of such chapter 309, unless (1) registered with the state, (2) exempted from registration with the state under subdivision 1 or subparagraphs (a) and (b) of subdivision 2 of section 2 of such chapter 309, or (3) registered with the city clerk.

A person soliciting a contribution from any person within the city shall upon request of the person solicited or upon request of a police officer produce evidence of such exemption or registration.

52.04 CIRCUSES, CARNIVALS, SHOWS. (a) Licenses Required. No person shall conduct any circuses or carnivals for which pay, remuneration or compensation of any kind shall be demanded, acquired, received or solicited or at which donations are accepted, or shall take part in such activity in any capacity whatever unless a license from the city has been issued for such activity.

(b) Application for License. An application for a license for a carnival, circus or similar show shall be made to the city clerk, showing; the name and address of the person and the location, time and date of the proposed showing.

(c) Use of Public Property. No person shall occupy public property for a circus or carnival without the express consent of the city council.

(d) Types of Performances Permitted. No entertainment duly licensed as hereinbefore provided, shall in whole or in part, be of a brutal, immoral or indecent character and shall in no particular involve any violation of any law of this state or of any ordinance of the city. Any violation of this section shall forfeit all rights and privileges by such license granted.

(e) Police Supervision. Every show, performance, exhibition or entertainment, duly licensed as herein provided, shall at all times be subject to police supervision for the preservation of good order and the prevention of offenses against the laws of the state or of the ordinances of the city; and for the purpose or such supervision the chief of police or any police officer of the city, duly detailed for such service, shall at all times during which such entertainment is open to the public have unrestrained access to any and all parts of any building to which the public is admitted.

(f) Bond. If required by the city council, the licensee shall file with the city a bond in the penal sum of \$1,000, conditioned to on payment by the licensee of damages caused to city property occupied or used by the licensee.

52.05 CIGARETTES AND CIGARETTE PAPERS. Repealed. Ord. No. 3391 11/02/98.

52.06 FORTUNETELLING, PHRENOLOGY, ETC. (a) No person shall within the city engage in the business of fortunetelling, palmistry, phrenology, astrology or mind reading without a license therefor. Any person desiring a license for the operation of any of the businesses set forth in this section shall file application with the city clerk, which application shall contain the name and place of residence of the applicant, the exact location of the premises where the applicant proposes to operate and the names and places of residence of all persons to be employed. All licenses issued under this section shall expire on June 30 of each year. No license issued under this section shall be transferable either as to location or as to licensee.

(b) The license as required by this section shall not be in lieu of any other license, and shall be in addition to any other license required by this Code or any other ordinances of the city or the laws of the state.

52.07 GAMBLING DEVICES. Repealed. Ord. No. 2773 - 09/16/85.

52.08 GARAGE SALES. (a) Prohibition on Sales. No person shall sell or offer for sale any new, used or secondhand goods or merchandise from a dwelling or residentially zoned area where the general public is invited to purchase, trade, or bargain for such goods or merchandise, commonly known as garage, backyard or residential sales, except in accordance with the provisions of this chapter.

(b) Regulation of Sales. (1) No dwelling or residentially zoned area shall be used for such sales more often than three sales per year not to exceed 4 days per sale in one calendar year.

(2) No sale shall be held between the hours of 10:00 p.m. and 8:00 a.m.

(3) Property sold or offered for sale shall consist only of property of the offeror, or relatives or friends of the offeror. No property shall have been bought for resale or received on consignment for the purpose of sale. No property shall be placed or displayed on public property including a street, boulevard or sidewalk.

52.09 GOING-OUT-OF-BUSINESS SALES. (a) License. It shall be unlawful for any person to advertise or conduct any sale of goods, wares or merchandise, at retail, which is represented as a bankrupt, insolvent, assignee, adjusters, trustees, executors, administrators, receivers, wholesalers, jobbers, manufacturers, liquidators, closing stock, fire or water damage, closing out, going-out-of-business or any other sale which is by representation or advertisement intended to lead the public to believe that the person conducting such sale will not continue in the same business after all of the goods, wares or merchandise have been sold without first obtaining from the city clerk a license to conduct such a sale, to be known as going-out-of-business sale license. Such licenses shall be issued by the city clerk upon production of a receipt from the city treasurer showing payment of the fee as set forth in Section 51.01 herein.

(b) Exemption of Certain Sales. The provisions of this section shall not apply to the advertisement or conduct of sales by sheriffs, constables, marshals or other public or court officers in performance of their official duties as such or to trustees in bankruptcy or any other person or persons acting under the direction or authority of any court, state or federal, selling merchandise in the course of their official duties.

(c) Extension of License. If at any time during the period for which the going-out-of-business sale license has been issued a sworn application is filed with the city clerk indicating that all of the goods, wares or merchandise have not been sold and that the licensee has in good faith attempted to sell or otherwise dispose of all goods, wares, or merchandise during the period for which the going-out-of-business license has been originally issued, the city council may extend the license for an

additional period not to exceed 30 days and upon payment of an additional fee as set forth in Section 51.01 herein, the license shall continue as authorized.

(d) Sale of Items on Consignment. No person possessing a going-out-of-business sale license shall sell goods, wares or merchandise "on order" on a consignment sale basis or other similar basis where the title to the goods, wares or merchandise is in a person other than the licensee and the goods, wares or merchandise may be returned to such person if not sold, without loss to the licensee.

52.10 HANDBILL DISTRIBUTION. (a) Placing on Vehicles. No person shall within the city distribute printed advertising by placing it within or upon parked automobiles.

(b) Residential or Commercial Properties. No person shall within the city distribute printed advertising to residences or on commercial properties except by placing it on the porch of such residence or by delivering it to the occupant of such residential or commercial properties.

(c) Posting on Poles, Posts and Trees. No person shall nail, paste or in any manner affix or attach any sign, handbill, poster, election advertising, notices or similar items of any nature or kind to any lamppost, telephone pole, electric light pole or upon any tree standing or growing upon any street or public grounds within the city.

52.11 SCRAP DEALERS, PAWNBROKERS AND SECONDHAND DEALERS.

(a) Definitions. As used in this section, the terms shall have the following meaning:

Scrap Dealer: A person engaged in the business of purchasing, selling, exchanging or dealing in junk, rags, metals, hides, scrap, glass, paper or similar material.

Pawnbroker: A person engaged in the business of loaning money or pawning or pledging.

Secondhand Dealer: A person engaged in the business of purchasing, selling, exchanging or dealing in used personal property, including antiques.

(b) Specified. No person shall engage in the business of a scrap dealer or pawnbroker unless licensed to do so by the city. No license shall be required of secondhand dealers, but they shall be required to register with the city clerk and comply with paragraphs (e), (f) and (g) herein.

(c) License. A person desiring a license shall make application in writing to the city clerk. When appropriate, the application shall state the place of residence and business, the nature of the business, the names of the persons conducting the business and such other information as the city clerk may request. A license shall be issued by the city clerk. The term of a license shall be one year, expiring on July 1 of each year. A license shall not be transferable.

(d) Bond. Prior to the issuance of a license, a scrap dealer or pawnbroker shall file a bond with the city clerk. The bond shall be conditioned on the faithful and honest conduct of the business and on payment by such dealer of damages incurred by any person injured by the willful, malicious or wrongful act of the licensee in the conduct of the business. The amount of the bond shall be \$1,000.

(e) Pawnbrokers and Secondhand Dealer's Register. A person licensed as a pawnbroker or registered as a secondhand dealer shall keep in his place of business, a register in which he shall enter in writing the following information:

(i) a minute description of each article of personal property acquired by him by purchase or received on deposit or as a pledge in the course of his business, mentioning particularly in such entry any prominent, distinguishing mark or number,

- (ii) the date and time when the property was received,
- (iii) the name and address of the person from whom it was acquired,
- (iv) the price paid or loaned,
- (v) the date of birth of the seller and
- (vi) the type of identification presented by the seller.

This information shall be obtained at the time each transaction takes place and shall be immediately entered into the register. The register shall be kept clean and legible and without erasure or defacement of any entry. Each page of the register shall be prenumbered. Each page shall have a carbon copy which shall be forwarded to the police department on Friday of each week. The type of register to be used shall be approved by the police before use.

A scrap dealer licensee shall not be required to furnish such required description of any property which comes from manufacturers or wholesale dealers having an established place of business or of any property secured at open sale or from any bankrupt stock or from any other person having an established place of business; however, such property must be accompanied by a bill of sale or other evidence.

The register and records shall at all times be open for inspection by any law enforcement officer. Upon the request of a law enforcement officer, the licensee or registered secondhand dealer shall show the property to the officer.

(f) Dealing with Minors. A licensee under this section or a registered secondhand dealer shall not purchase property from or exchange property with a minor. A licensee shall not loan money to a minor or make or accept a pawn or pledge from a minor.

(g) Lost or Stolen Property. A licensee under this section or a registered secondhand dealer shall keep property in his possession when notified to keep it by a law enforcement officer and when told it may be lost or stolen. A licensee or registered secondhand dealer shall turn such property over to a law enforcement officer when required to do so. The officer shall give a receipt for property he receives.

(h) Storage of Motor Vehicles. (1) For the purposes of this section the terms shall have the following meaning:

Motor Vehicle: Every vehicle which is self-propelled and not deriving its power from overhead wires.

Vital Component Parts: Those parts of a motor vehicle that are essential to the mechanized functioning of the vehicle, including but not limited to the motor, drive train and wheels.

(2) No person shall, for a period longer than 30 consecutive days, place, park, permit to remain, store, keep or leave upon private property other than a licensed scrap yard, a motor vehicle that lacks vital component parts, or which is used for the sale of parts; or which is used as a source of parts for other motor vehicles; or which is kept for scrap; or which is not properly licensed; or which is kept pending repair; or which is kept for restoration.

(3) This subsection (h) shall not apply to motor vehicle parts or portions thereof kept in an enclosed garage or storage building.

(i) Payment of Real Estate Taxes. All real estate taxes due and payable in the calendar year preceding the term of the license, and applicable to the licensed premises, shall be paid in full prior to issuance of any license pursuant to this section. Ord. No. 2596 11/01/81. Ord. No. 3096 10/21/91.

Ord. No. 3262 09/05/95.

52.12 MECHANICAL-AMUSEMENT DEVICES. (a) Definition. For the purpose of this section "mechanical amusement device" is hereby defined as a machine, which, upon the insertion of a coin or slug, operates or may be operated for use as a game, contest or amusement of any description, or which may be used for any such game, contest or amusement and which contains no automatic payoff device for the return of money, coins, checks, tokens or merchandise, or which provides for no such pay-off by any other means or manner, except that this provision shall not prohibit the licensing of a machine which returns slugs which may be used only in the machine licensed and which in itself does not constitute a gambling device.

(b) License Required. No person shall maintain or keep any mechanical-amusement device which is available for public use, within the city without first obtaining a license therefor.

Such license, when properly issued, shall give the licensee the right to keep and maintain one mechanical-amusement device for the use of the public for the fee paid at the premises described in the license for the period set forth in the license.

The licensee shall be permitted to change such mechanical-amusement devices at any time.

(c) Application for License. Any person desiring a license to maintain or keep mechanical-amusement devices for public use shall file with the city council a written application therefor. Such application shall be accompanied by the license fee and shall contain the name of the applicant and the location where such mechanical-amusement device shall be kept available for public use.

(d) Issuance of License. It shall be the duty of the city clerk to issue a written license to the applicant of the license to keep or maintain a mechanical-amusement device for public use after the city council has approved such application. No license issued under this section shall be transferable to any other person or location.

(e) Awards. No person shall give, award or turn over to any person operating a mechanical-amusement device any award, prize, merchandise or anything of value because of or by reason of such person operating such device.

52.13 SIGN ERECTORS LICENSE. Repealed. Ord. No. 2616 02/16/82.

52.14 TAXICABS AND BUSES. No person shall operate a motor vehicle, including taxicabs and buses, used for carrying passengers for hire, unless the person shall at all times have on file with the city clerk a certificate of insurance showing coverage with limits as follows:

- (a) bodily injury and property damage in a minimum amount of \$300,000 combined single limit; or
- (b) \$100,000 - bodily injury each person;
\$300,000 - each occurrence;
\$50,000 - property damage per occurrence.

The insurance policy and certificate shall not be cancelled or altered in any manner without ten (10) days prior written notice to the City Manager of Winona. Ord. No. 3170 03/15/93.

52.15 REGULATION OF SAUNAS AND MASSAGE PARLORS. Repealed. Ord. No. 2865 02/17/87.

52.16 REGULATION OF THE PRACTICE OF MASSAGE. Repealed. Ord. No. 2865 02/17/87.

52.17 REGULATION OF VARIOUS COMMERCIAL ADULT-ORIENTED SERVICES. (a) Statement of Policy. In order to protect the public health, safety and welfare and to guard against the inception and transmission of disease, the City Council of the City of Winona deems it necessary to provide for the special and express regulation of businesses or commercial enterprises which operate as massage parlors, saunas, rap parlors, conversation parlors, adult sensitivity groups, adult encounter groups, personal escort services, dancing services, hostess services and similar adult-oriented services operating under different names. The City Council further finds that commercial enterprises such as the type described above, and all other similar establishments whose services include sessions offered to adults, conducted in private by members of the same or the opposite sex, and employing personnel with no specialized training, are susceptible to operation in a manner contravening, subverting or endangering the morals of the community by being the sites of acts of prostitution, illicit sex and occasions of violent crimes, thus requiring close inspection, licensing and regulation.

In the case of commercial enterprises such as those described above which are currently licensed, such establishments may be allowed to retain their licenses but not beyond _____, 1987, provided that the establishments do not violate the provisions of this ordinance and that the City Council determines that it is in the City's best interest to renew the licenses annually pursuant to the procedures set forth in this ordinance.

(b) Definitions. For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

(1) The term "massage" means the rubbing, stroking, kneading, tapping or rolling of the body of another with the hands or objects for the exclusive purpose of physical fitness, relaxation, beautification and for no other purpose.

(2) The term "masseur" means a male person who practices or administers a massage.

(3) The term "masseuse" means a female person who practices or administers a massage.

(4) The term "massage parlor" means any establishment or place providing the to the public at large massage services, other than a hospital, sanitarium, rest home, nursing home, boarding home, or other institution for the hospitalization or care of human beings duly licensed under the provisions of Minnesota Statutes, Section 114.50 through 144.69, and other than a health and fitness club as described in Section(s) of this ordinance.

(5) The term "massage services" means a business offering or providing massages to others where a fee is charged whether or not the massage services are rendered at the licensed location.

(6) The term "sauna" means any public facility used for the purpose of bathing, reducing or relaxing, utilizing steam as a cleaning, reducing or relaxing agent.

(7) The terms "rap parlor" or "conversation parlor" or "adult encounter group" or "adult sensitivity group" mean any person, establishment or business advertising, offering, selling, trading or bartering the services of itself, or its employees or agents as nonprofessional counselors, or teachers or therapists who may talk to, discuss or have conversation with patrons or who deal in any way with a patron's physical senses, whether or not other goods or services are simultaneously advertised, offered, sold, traded or bartered and regardless of whether said goods or services are also required to be licensed.

(8) The terms "personal escort service" or "model service" or "dancing service", or "hostess service" mean any person, establishment or business advertising, offering, selling, trading, or bartering the services of itself or its employees or agents as hostesses, models, dancers, escorts, dates

or companions whether or not goods or services are simultaneously advertised, offered, sold, traded or bartered and regardless of whether said goods or services are also required to be licensed.

(9) The term "similar adult-oriented services" is meant to include all other services which fall within the definitions of subparagraphs (4) - (8) of this section but are operated under different names.

(10) The term "certificate" as used herein means a certificate issued by the City authorizing the holder thereof to practice or administer a massage in the City of Winona.

(c) License Required.

(1) No person shall engage the business of operating an enterprise as defined in section (b) (4) through (9) of this ordinance, either exclusively or in connection with any other business enterprise, or hold himself or herself out as being a masseur or masseuse or engage in or offer his or her services as a model, hostess, dancer, escort or counselor in a rap parlor, conversation parlor, adult sensitivity group or adult encounter group without a license.

(2) No person shall hold out any establishment as providing services as defined in section (b) (4) through (9) of this ordinance, unless such establishment is licensed as provided in this section. Whenever any establishment ceases to be licensed as a massage parlor, sauna, rap parlor, conversation parlor, adult encounter group, adult sensitivity group or model service, personal escort service, dancing service, hostess service or similar adult-oriented service, whether through the suspension, cancellation, revocation, non-renewal or lapse of its license, its owners shall immediately remove from public view any sign or display which identifies the establishment as being an enterprise as defined in section (b) (4) through (9) or this ordinance.

(d) Contents of Application for License.

Application for a license shall be made only on the forms provided by the City Manager. Four complete copies of the application must be submitted to the City Manager's office containing the following:

(1) Address and legal description of the property to be used.

(2) The name, address and telephone number of two persons who shall be residents of Winona County who may be called upon to attest to the applicant's, manager's or operator's character.

(3) Whether the applicant, manager or operator has ever been convicted of a crime or offense and, if so, complete and accurate information as to the time, place, and nature of such crime or offense, including the disposition thereof.

(4) The names and addresses of all creditors of the applicant, owner, lessee or manager insofar as and regarding credit which has been extended for the purposes of constructing, equipping, maintaining, operating, furnishing or acquiring the premises, personal effects, equipment or anything incidental to the establishment, maintenance and operation of a massage parlor, sauna, rap parlor, conversation parlor, adult encounter group, adult sensitivity group, personal escort service, model service, dancing service, hostess service or similar adult-oriented service.

(5) If the application is made on behalf of a joint business venture, partnership or any legally constituted business association other than a corporation, it shall submit, along with its application accurate and complete business records showing the names and addresses of all partners, officers and owners and, in the case of a corporation, the names and addresses of all officers, general managers and members or the Board of Directors.

(6) If the application is made on behalf of a joint business venture, partnership, legally constituted business association or corporation, the applicant shall also submit the names and

addresses of any and all creditors who have extended credit for the acquisition, maintenance, operation or furnishing of the establishment.

(7) All applicants shall furnish to the City, along with their applications, complete and accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon which the enterprise is proposed to be located in the furnishings thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreement, security agreement and any other documents establishing the interest of the applicant or any other person in the operation, acquisition or maintenance of the enterprise offering services as defined in section (b) (4) through (9) of this ordinance.

(8) The application shall also contain blueprints, diagrams, plans, layouts and the like, showing the construction, revision, remodeling, alteration or additions of or to the premises and specifically showing the layout, design and arrangement of the bathing and restroom facilities and the size and type of equipment and facilities to be used.

(9) All applicants shall state whether they are licensed in other communities, and if so, where.

(10) All applicants shall state any other licenses for which they have applied within the last ten years and any denial, suspension or revocation of a license along with an explanation of any such denial, suspension or revocation.

(e) License Fee, License Investigation and License Year. The annual license fee and the annual fee for the investigation for the purposes of issuing a license shall be as set forth in Section 51.01. The license fee and fee for the investigation of the license shall be paid when the application is filed. In the event that the license is denied upon application the license fee shall be refunded, however, no part of the license investigation fee shall be returned to the applicant. In the event that the license once issued is revoked, cancelled or surrendered, no part of the annual license fee or fee for the investigation for the issuance of a license shall be returned to the applicant unless by express action of the City Council. A separate license shall be obtained each calendar year for each place of business. The licensee shall display the license in a prominent place on the licensed premises at all times. A license, unless revoked, is for the calendar year or a part thereof for which it has been issued. The fee for the investigation for issuance of a license must be tendered with each new application for a license, if the establishment has violated the provisions of this ordinance or if the Police Department has received an inordinate number of complaints concerning the establishment or if the City Council should act requiring that the investigation fee be paid. The investigation fee must also be paid at any time when there is a proposed change of ownership or reapplication for a license wherein additional or different parties other than the original licensee and parties are proposing to be licensed. All licenses granted herein are nontransferable.

(f) Conditions Governing Issuance of a License.

(1) Licenses shall be issued only if the applicant and all of its owners, managers, employees, agents or interested parties are persons of good moral character and repute.

(2) Licenses shall be issued only if the applicant and all of its owners, managers, agents, employees or interested parties are free of convictions for offenses which involve moral turpitude or which relate directly to such person's ability, capacity or fitness to perform the duties and discharge the responsibility of the licensed activity.

(3) Licenses shall be issued only to applicants who have not, within three years prior to the date of application, had a license of this type revoked or suspended in or by any community or political entity and whose owners, managers, or any interested parties have not been similarly revoked or suspended.

(4) Licenses shall be issued only to applicants who have answered fully and truthfully all of the information requested in the application, who have paid the full license fee and fee for investigation and have cooperated fully and truthfully with the City in the review of the application.

(5) If the applicant is a natural person, a license shall be granted only if such person is 18 years of age or older.

(6) Licenses may only be granted when the premises involved are in complete conformity with the zoning code of the City of Winona.

(7) Licenses shall be granted only to establishments which meet the fire and building code requirements of the City of Winona.

(8) A license shall not be granted if granting a license (a) would be inconsistent with the comprehensive development plans of the City of Winona or (b) would otherwise have a detrimental effect upon other property or properties in the vicinity.

(g) Certificate Required. No person shall engage in or hold himself or herself out as being engaged in the practice of massage nor shall any person administer or practice massage commercially or for hire, or for the exchange of any valuable consideration without first having obtained a certificate as herein provided, except that a certificate shall not be required for any person who is currently registered by the State Board of Medical Examiners or except as elsewhere provided in this ordinance.

(h) Contents of the Application for Certificate. Application shall be made only on forms provided by the City Manager. The application shall include the following information together with any other information which the City Manager may require:

(1) Evidence of the applicant's educational qualifications, including originals or certified copies of degrees, diplomas or certificates, if any.

(2) Evidence of applicant's practical qualifications to practice massage.

(3) Evidence that the applicant is of good moral character.

(4) The names and addresses of two persons, residents of Winona County, who can attest to the applicant's character.

(5) Whether the applicant has ever been convicted of a crime or offense and, if so, information as to the time, place and nature of such crime or offense.

(6) Evidence in the form of a current certificate from a licensed physician practicing in Minnesota indicating (a) that within the past 30 days he has examined the applicant, and (b) that such examination was for the purpose of determining whether applicant had any communicable disease and (c) that as a result of such examination he believes that applicant is not suffering from any communicable disease.

(7) Evidence that the applicant is at least 18 years of age.

(i) Certificate Fee, Certificate Investigation Fee and Certificate Year. The annual certificate fee and the investigation fee for the purposes of issuing a certificate shall be as set forth in Section 51.01. The certificate fee and fee for the investigation of the certificate shall be paid when the application is filed. In the event that the certificate is denied upon application, the certificate fee shall be refunded; however, no part of the certificate investigation fee shall be returned to the applicant. In the event that the certificate once issued is revoked, cancelled or surrendered, no part of the annual certificate fee or fee for the investigation for the issuance of a certificate shall be returned to the applicant unless by express action of the City Council. A separate certificate shall be obtained each calendar year. The certificate

holder shall display the certificate in a prominent place on the premises of the certificate holder at all times. A certificate, unless revoked, is for the calendar year or a part thereof for which it has been issued. The fee for the investigation for issuance of a certificate must be tendered with each new application for a certificate if the applicant has violated the provisions of this ordinance. A certificate permitting the holder thereof to practice massage is nontransferable.

(j) Conditions Governing Issuance of the Certificate. (1) Certificates shall be issued only to persons of good moral character and repute and persons who are in good health and free from any communicable disease.

(2) Certificates shall be issued only to persons free of convictions of offenses which involve moral turpitude or which relate directly to the person's ability, capacity or fitness to perform the duties and discharge the responsibilities of the occupation.

(3) Certificates shall not be issued to persons who, within one year prior to the date of application, have been denied certification licensing or who have had their certificate or license revoked or suspended by any community political entity or by the State of Minnesota.

(4) Certificates shall be issued only to persons who have fully and truthfully answered all of the information requested in the application and have paid the full certification fee and certification investigation fee.

(5) Certificates shall be issued only to persons 18 years of age or older.

(k) Granting or Denial of Licenses and Certificates. License applications and certificate applications shall be reviewed by the Police Department, Planning Department and such other departments as the City Manager shall deem necessary. The review of license applications shall include an inspection of the premises covered by the application to determine whether the premises conform to all applicable code requirements. Licenses shall be issued upon the approval of the City Council only after a public hearing has been conducted.

A license permitting the conduct of an establishment offering services as a massage parlor, sauna, rap parlor, conversation parlor, adult encounter group, adult sensitivity group, personal escort service, model service, dancing service, hostess service or other similar adult-oriented service is nontransferable and nonrenewable and application must be made each year for a license permitting and allowing the conduct of such business for the succeeding year.

A certificate permitting the holder thereof to practice or administer massage commercially is nonrenewable and nontransferable and application must be made each year for a certificate permitting and allowing the holder thereof to administer or practice massage for the succeeding year.

(l) Restrictions and Regulations. (1) The licensee and any persons in his and her employ or agents or officers thereof and any and all persons with an interest in said business shall comply with all applicable ordinances, regulations and laws of the City of Winona, the State of Minnesota, and the United States.

(2) If the licensee is a partnership or corporation, the applicant shall designate a person to be manager and in responsible charge of the business and employees. Such person shall remain responsible for the conduct of the business and employees until another suitable person has been designated in writing by the licensee. The licensee shall promptly notify the Police Department in writing of any such change indicating the name, address and telephone number of the new manager and the effective date of such change.

(3) Every licensee shall allow an examination and inspection of every part of the premises by any police, fire or building authority of the City during normal business hours four times each

year. Refusal to allow such inspection or to answer the request of City police, fire or building authority to be admitted to a licensed premises shall be grounds for suspension or revocation of all licenses.

(4) The licensed premises shall not be open for business nor shall patrons be permitted on the premises between the hours of 9:00 p.m. and 8:00 a.m. on any day.

(5) Upon demand of any police officer, any person employed in any licensed premises shall identify himself by giving his true legal name and his correct address.

(6) No person under 18 years of age shall be employed in an establishment requiring a license under the provisions of this ordinance.

(7) The licensee shall furnish the Police Department with a list of current employees, indicating their names and addresses and designating the duties of the employees within the licensed premises. The licensee shall promptly notify the Police Department of any additions or deletions in the list of employees or changes in their job descriptions or duties.

(8) The licensed premises must be kept and maintained in a sanitary condition defined as being free from the vegetative cells of pathogenic microorganisms and all equipment, personal property, tables, beds, towels, clothing and the like used in or for the licensed premises shall also be maintained in a sanitary condition as defined herein.

(9) No licensee shall employ any person as a masseur or masseuse without first insuring that said employee possesses a valid certificate for the administration or practice of massage except as otherwise provided in this ordinance.

(10) Every person to whom a certificate is issued shall appear personally at the Police Department to receive delivery of the certificate and upon such appearance, shall be photographed for identification purposes. One copy of the photograph shall be permanently affixed to the certificate and a second copy thereof shall be kept in the files of the Police Department.

(11) Except as otherwise provided in this ordinance, any person acting as a masseur or masseuse shall have his or her certificate displayed in a prominent place at his or her place of employment and upon demand by any police officer or other authorized officer or agent of the City of Winona, any person engaged in practicing massage shall identify himself or herself giving his or her true legal name, correct address and phone number.

(12) Except as otherwise provided in this ordinance, any person practicing massage within the City of Winona shall initially advise the City of his or her address and telephone number and shall further advise the City of any changes in address or telephone number within 30 days of such change.

(13) Except as otherwise provided in this ordinance, it is unlawful for a masseur to practice massage upon any person except a male and for a masseuse to practice massage on any person except a female.

(14) Any masseur or masseuse practicing massage shall remain fully clothed in a nontransparent uniform or clothing at all times. At all times during the operation of any enterprise as defined in section (b) (4) through (9), of this ordinance, both employees and customers must be and remain fully clothed in nontransparent clothing.

(m) Construction and Maintenance Requirements. (1) Each licensed premises shall have a separate restroom and separate locker room for members of each sex.

(2) All massage rooms, locker rooms, restrooms and bathrooms used in connection therewith shall be constructed of materials, including ceramic tile, quarry tile, glazed finish cement block

or other similar material, which are impervious to moisture, bacteria, mold or fungus growth and shall be maintained in a sanitary condition defined as being completely free from the vegetative cells of pathogenic microorganisms. The floor-to-wall joints shall be constructed to provide a sanitary cove with a minimum radius of one inch. All equipment, personal property, beds, towels, clothing and the like used in the massage parlor shall be of a sanitary design and kept in a sanitary condition.

(3) All restrooms shall be provided with mechanical ventilation with 2 cfm per square feet of floor area, a hand washing sink equipped with hot and cold running water under pressure, sanitary towels and a soap dispenser.

(4) All rooms in the licensed premises including, but limited to, massage rooms, sauna rooms, restrooms, bathrooms, rap rooms, conversation rooms, modeling rooms, dancing rooms, janitor's closets, hallways and reception areas shall be illuminated with not less than 30 foot candles of illumination, measured 30 inches from the floor.

(5) Each licensed premises shall have a janitor's closet which shall provide for the storage of cleaning supplies. Such closet shall have mechanical ventilation with 2 cfm per square foot of floor area. Such closet shall include a mop sink.

(6) Floors, walls and equipment in massage rooms, sauna rooms, restrooms, bathrooms, rap rooms, conversation rooms, modeling rooms and dancing rooms must be kept in a state of good repair and sanitary at all times. Linen and other materials shall be stored at least 12 inches off the floor. Clean towels, washcloths and linens must be available for each customer.

(7) Individual lockers shall be made available for use by patrons. Such lockers shall have separate keys for locking.

(8) Such establishments shall provide adequate refuse receptacles which shall be emptied as required.

(n) Health and Disease Control. No person while afflicted with any disease in a communicable form or while a carrier of such disease or while afflicted with boils, infected wounds, sores or any acute respiratory infection shall work in or use the services of any licensed premises and no person known or suspected of being afflicted with any such disease or condition shall be employed or permitted in such area or capacity.

(o) Revocation, Suspension or Nonrenewal of License. (1) The license may be revoked, suspended or not renewed by the City Council upon recommendation of the City Manager by showing that the licensee, its owners, manager, employees, agents or any other interested parties have engaged in any of the following conduct:

(i) Fraud, deception or misrepresentation in connection with the securing of the license.

(ii) Habitual drunkenness or intemperance in the use of drugs including, but not limited to, the use or drugs defined in either 26 U.S.C.S. 4731 or Minnesota Statutes, Section 152.02, barbiturates, hallucinogenic drugs, amphetamines, benzedrine, dexedrine or other sedatives, depressants, stimulants or tranquilizers.

(iii) 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 from engaging in conduct involving moral turpitude.

(iv) Failure to fully comply with any requirements of the ordinances of the City of Winona regarding fire code requirements, building code requirements or ordinances, the violation of which involves moral turpitude or failure to comply fully with any requirements of this ordinance.

(v) Conviction of an offense involving moral turpitude by any court of competent jurisdiction.

(vi) Operation of the establishment without a valid license or during periods in which the license has been suspended or revoked.

(vii) Engaging in any conduct which would constitute grounds for refusal to issue a license herein.

(2) The licensee may appeal such suspension, revocation or nonrenewal to the City Council. The Council shall consider the appeal pursuant to the procedures set forth in Section 51.03 of the Winona City Code. The Council may appoint a committee of the Council or an independent hearing officer to hear the matter, report findings of fact and a recommendation for disposition to the Council. Hearings on the appeal shall be open to the public and the licensee shall have the right to appear and be represented by legal counsel and to offer evidence in its behalf. At the conclusion of the hearing, the Council may order:

(i) That the revocation, suspension or nonrenewal be affirmed.

(ii) That the revocation, suspension or nonrenewal be lifted and that the license be returned to the license holder.

(iii) The City Council may base either suspension or issuance of the certificate upon any additional terms, conditions and stipulations which they may, in their sole discretion impose.

(p) Revocation, Suspension or Nonrenewal of Certificate. (1) Certificate may be revoked or suspended by the City Manager or not renewed by the City Council for any of the following:

(i) Fraud, deception or misrepresentation in connection with the securing of certification.

(ii) Habitual drunkenness or intemperance in the use of drugs including, but not limited to, the use of drugs defined either in 26 U.S.C.S. 4731 and Minnesota Statutes, Section 152.02, barbiturates, hallucinogenic drugs, amphetamines, benzedrine, dexedrine or other sedatives, depressants, stimulants or tranquilizers.

(iii) Conduct inimical to the interests of the public health, safety, welfare or morals.

(iv) Engaging in conduct involving moral turpitude.

(v) Failure to fully comply with the requirements of this ordinance.

(vi) Conviction of an offense involving moral turpitude.

(2) The certificate holder may appeal such suspension, revocation or nonrenewal to the City Council. The Council shall consider the appeal pursuant to the procedures set forth in Section 51.03 of the Winona City Code. The Council may appoint a committee of the Council or an independent hearing officer to hear the matter and report findings of fact and a recommendation for disposition to the Council. Hearings on the appeal shall be open to the public and the certificate holder shall have the right to appear and be represented by legal counsel and to offer evidence in behalf of the certification. At the conclusion of the hearing, the Council may order:

(i) That the revocation, suspension or nonrenewal be affirmed.

(ii) That the revocation, suspension or nonrenewal be lifted and that the certificate be returned to the certificate holder.

(iii) The City Council may base either suspension or issuance of the certificate upon any additional terms, conditions and stipulations which they may, in their sole discretion impose.

(q) Prohibited Acts. Except as provided elsewhere in this ordinance, no employer shall employ a person to practice or administer massage nor permit, suffer or allow a person to practice or administer a massage unless that person has been granted a valid certificate pursuant to this ordinance and every employer shall require that the certificate be prominently and openly displayed on the premises in plain view.

(r) Massage Distinguished. The practice of massage is hereby declared to be distinct from the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry and persons duly licensed in this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry, nurses who work solely under the direction of any such persons, athletic directors and trainers are hereby expressly excluded from the provisions of this section. Beauty culturists and barbers, licensed by the State of Minnesota, who do not give, or hold themselves out to give, massage treatments, as defined herein, other than are customarily given in such shops or places of business for the purpose of beautification only, shall be exempt from the provisions of this section.

(s) Exceptions. (1) This ordinance does not apply to bona fide health sports establishments which meet the following criteria:

(i) The establishment has conducted business in the City of Winona for one year and is in good repute.

(ii) The primary purpose of the establishment is health and fitness; massage service is subsidiary.

(iii) No more than 20% of the establishment revenue is derived from massage.

(iv) The financial records of the establishment are at all times available to the City for inspection.

(v) The establishment has an ongoing membership which list is available to City officials for inspection at any time.

Establishments which meet the above provisions shall not be required to pay the annual license fee or investigation fee, unless specifically ordered by the City Council. Masseur and masseuses employed by such establishments are not required to be certified under this ordinance.

(2) In addition, this ordinance does not apply to nor include:

(i) Bona fide legal, medical, psychiatric, psychological, family or marriage counseling services by a person, persons or businesses appropriately licensed by the State of Minnesota or by local units of government or any other appropriate licensing authority.

(ii) Bona fide financial counseling services or bona fide educational institutions completely complying with State and local regulations or the regulation of any licensing authorities.

(iii) Bona fide nonprofit organizations or institutions, including those organized in compliance with Section 501 (c) (3) of the Internal Revenue Code or to seminars, panel discussions or group classes sponsored by such bona fide nonprofit organizations or institutions.

(t) Separability. Every section, provision or part of this ordinance is declared separable from every other section, provision or part to the extent that if any section, provision or part of this ordinance shall be held invalid, such holding shall not invalidate any other section, provision or part thereof.

(u) Penalties. Whoever does any act forbidden by this ordinance or omits or fails to do any act required by this ordinance shall be guilty of a misdemeanor and upon conviction thereof by lawful authority be punished by a fine not to exceed \$700.00 and by imprisonment not to exceed 90 days or both or any combination of either. Each day that a violation exists constitutes a separate and distinct offense.

(v) Liability for the Crimes of Another. Every person who commits or attempts to commit, conspires to commit or aids and abets in the commission of any act constituting a violation of this ordinance or any act which constitutes an omission and, therefore, a violation of this ordinance whether individually or in connection with one or more persons or as principal, agent, or accessory shall be guilty of such offense and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any of the provisions of this chapter is likewise guilty of such offense. Ord. No. 2865 02/17/87.