

CHAPTER 9

LICENSES AND BUSINESS REGULATIONS

ARTICLE XI. SALE OF PERMITTED CONSUMER FIREWORKS

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

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

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

- **Adult** - a person 18 years of age or older.
- **Business** - refers to the business of selling, storing or displaying any form of permitted consumer fireworks.
- **Issuing Authority** - the City of Oakdale Administration Department.
- **Licensed Premises** - the premises described in the approved license application and approved site plan for the sale, display and storage of permitted consumer fireworks.
- **Licensee** - the person to whom a license is issued under this Chapter, including any agents or employees of the person.
- **Movable Place of Business** - a business whose physical location is not permanent or is capable of readily being moved or changed, including without limitation commercial transactions conducted in whole or in part from motorized vehicles, non-permanent stands, mobile sales, kiosks, trailers, tents or carts.
- **Permitted Consumer Fireworks** - those non-explosive, non-aerial pyrotechnic entertainment devices containing only the limited amounts of pyrotechnic chemical compositions permitted by Minnesota Statutes § 624.20, subd. 1(c).
- **Person** - one (1) or more natural persons; a partnership, including a limited partnership; a corporation, including a foreign, domestic or nonprofit corporation; a trust; a political subdivision of the State; or any other business organization.
- **Transient Merchant** - any person who engages in or transacts any temporary and transient business in the city, either in one locality or in traveling from place to place in the city selling merchandise and who, for the purpose of carrying on such business, hires, leases, occupies or uses a building, stand, tent, trailer, cart, structure, vacant lot or motor vehicle for the exhibition and sale of such merchandise.

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

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

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

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

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

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

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

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

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

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

- (a) **Verification.** Applications for a license under this Chapter shall be submitted to the Issuing Authority who shall verify the information on the application form. The Issuing Authority is empowered to conduct any and all investigations to verify the information on the application, including ordering a computerized criminal history inquiry and/or a driver's license history inquiry on the applicant.
- (b) **Consideration.** After verifying the information contained on the license application, the Issuing Authority shall then route the application to the city Fire Department which shall review the site plan and determine if the manner of storage, display or sales area of the licensed premises constitutes a fire

or safety hazard. In assessing the potential hazard, reference shall be made to all applicable state and federal laws, rules and regulations, as well as the administrative standards for the storage, display and sales of permitted consumer fireworks established by the State Fire Marshal. If the Fire Department finds no hazard with the proposed site plan, the Issuing Authority shall grant the license in accordance with this Chapter. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises.

- (c) **Denial of Application.** If the application is denied, the Issuing Authority shall notify the applicant of that determination in writing. The notice shall be mailed by certified and regular mail to the applicant at the address provided in the application and it shall inform the applicant of the applicant's right, within twenty (20) days after the date of the notice to request an appeal of the denial to the City Council. If an appeal to the City Council is timely received by the Issuing Authority, the hearing before the City Council shall take place within a reasonable period thereafter.

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

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

Sec. 9-116. License Restrictions.

- (a) **License Display.** A license issued under this Chapter must be posted in a conspicuous place in the premises for which it is used. The license issued is only effective for the compact and contiguous space specified in the approved license application.
- (b) **Licensed Premises.** A separate license is required for each place of business.
- (c) **Change in Ownership.** Any change, directly or beneficially, in the ownership of the licensed business shall require the application for a new license and the new owner must satisfy all current eligibility requirements.

- (d) **Non-transferable.** Each license under this Chapter shall be issued to the applicant only and shall not be transferable to any other person. No licensee shall loan, sell, give or assign a license to another person.
- (e) **Location Restrictions.** A license under this Chapter authorizes the licensee to carry on its business only at the permanent place of business designated on the license.

Sec. 9-117. Restrictions Regarding Operation.

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

Sec. 9-118. Sanctions for License Violations.

- (a) **Suspension or Revocation.** The City Council may suspend or revoke a license issued pursuant to this Chapter for a violation of:
 - (1) Fraud, misrepresentation, or false statement contained in a license application or a renewal application.

- (2) Fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business.
- (3) Any violation of this Chapter or state law.
- (4) A licensee's criminal conviction that is directly related to the occupation or business licensed as defined by Minnesota Statutes §364.03, subd. 2 provided that the licensee cannot show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the licensed occupation or business as defined by Minnesota Statutes §364.03, subd. 3.
- (5) Conducting the licensed business or occupation in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the community.
- (6) Any significant unauthorized deviation, enlargement or alteration of the approved site plan for the storage and sales display areas of the licensed premises shall, in and of itself, constitute a basis for license revocation.

(b) **Notice of Hearing.** A revocation or suspension by the City Council shall be preceded by written notice to the licensee and a hearing. The notice shall give at least five (5) days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice shall be mailed by regular and certified mail to the licensee at the most recent address listed on the license application.

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

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