PART IV

REGULATORY AND DEVELOPMENT FUNCTIONS OF CITIES

CHAPTER 11: CITY LICENSING

I. General licensing 2
A. State law applicable to city licensing 2
B. Pre-emption and limitations 3
C. Plumbers and building movers 3
II. City authority to license 3
A. Constitutionality and reasonableness 4
B. Licenses as a regulatory device 5
C. Discrimination against applicants 5
D. License fees 5
E. Issuing licenses 8
III. Licensed activities 15
A. Rental housing 15
B. Liquor 16
C. Municipal liquor 24
D. Solid-waste collection 29
E. Animals 30
F. Peddlers and transient merchants 32
G. Telecommunications 33
H. Entertainments 33
I. Tobacco and related products 33
J. Tear gas 35
K. Pawnbrokers 35
L. Secondhand goods dealers 36
M. Amusement machines 36
N. Tattoos or body art establishments 36
O. Massage 38
P. Adult uses 38
Q. Taxis 38
IV. How this chapter applies to home rule charter cities 38

This chapter last revised 12/1/2011

I. General licensing

A license is a regulatory device to ensure compliance with established rules and regulations governing a specific occupation, profession, commercial trade, or other activity. It is a grant of special privilege, not a contract between a regulating entity and individuals or corporations. It gives the holder a privilege to do something that the license holder could not do without the license.

A. State law applicable to city licensing

1. Proof of workers' compensation coverage

Minn. Stat. § 176.182, subd. 2.

A city must not issue a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirements in state law. Every applicant for a city license must comply by providing the name of the insurance company, the policy number, and dates of coverage or a permit to self-insure.

2. State tax clearance required

Minn. Stat. § 270C.72.

Cities must require that applicants for any city-issued license provide the applicant's Social Security number and Minnesota business identification number on all license applications. Under this law, "license" means any permit, registration, certification, or other form of approval authorized by statute or rule a city issues as a condition of doing business or conducting a trade, profession, or occupation in Minnesota, specifically including, but not limited to, authorization to operate concessions or rides at county and local fairs, festivals, or events.

A city may not issue, transfer, or renew, and must revoke, a license for the conduct of a profession, occupation, trade, or business, if the Minnesota Department of Revenue notifies the city that the applicant owes the state at least $500 in delinquent taxes, penalties, or interest or has not filed returns. A city that receives notice from the department may issue, transfer, renew, or not revoke the applicant's license only if the department issues a tax clearance certificate and the department or the applicant forwards a copy of the clearance to the authority. (Before requiring the city to revoke a license, the Minnesota Department of Revenue sends notice to the applicant of the state's intent to require revocation of the license and of the applicant's right to a hearing held by the department.) A city must revoke a license within 30 days after receiving notice from the department to revoke.

State codes for city license.

Upon request, the city must provide the Department of Revenue with a list of all applicants, including the name, address, business name and address, Social Security number, and business identification number of each applicant. However, the department may request a list of the applicants only once each calendar year.

B. Pre-emption and limitations

Village of Brooklyn Center v. Rippen, 255 Minn. 334, 96 N.W.2d 585 (1959); But cf. *In re Ind. School Dist. No. 381 in Lake County*, 298 Minn. 124, 213 N.W.2d 631 (Minn. 1973); *Minnetonka Elec. Co. v. Village of Golden Valley*, 273 Minn. 301, 141 N.W.2d 138 (1966).

Another limitation on local licensing is that a city may license only those businesses and activities subject to local regulation. The general welfare clause extends to subjects that are peculiarly local. For example, cities may license the sale of cigarettes in city boundaries. If an activity covers a number of cities and towns (for example, recreational boating) it is a statewide problem and not subject to local regulation.

City of Birchwood Village v. Simes, 576 N.W.2d 458 (Minn. Ct. App. 1998); *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966); But *cf.* *State v. Kuhlman*, 729 N.W.2d 577 (Minn. 2007).

State law may so fully occupy a particular field of legislation that there is no room for local regulation, and any city regulation is void as conflicting with state law. This may occur when another unit of government, such as a legislatively created lake conservation district, has such a broad range of powers that there is no room for other units of local government to exercise authority and control.

State v. Westrum, 380 N.W.2d 187 (Minn. Ct. App. 1986).

One final limitation is in professional fields where the state has pre-empted local licensing authority. For example, a city may not license attorneys, doctors, or engineers.

C. Plumbers and building movers

Minn. Stat. § 326B.44; See, Plumbing License Required Statewide, MN DOLI;

Minn. Stat. § 326B.475;

Minn. Stat. § 326B.46, subd. 2;

Minn. Stat. § 326B.43;

Minn. Stat. § 326B.46;

Minn. Stat. § 326B.835;

Minn. Stat. § 32.104;

Minn. Stat. § 221.81;

Minn. Stat. § 17.037, subd. 3;

Minn. Stat. § 221.031, subd. 6.

State licensing laws specifically prohibit local licensing of plumbing contractors (except for those cities that licensed plumbers before state licensing commenced). Cities with a population of 5,000 or more may issue plumbing permits and regulate plumbers in other ways. All plumbers must have some level of state license and state bonding. Master plumbers, or journeyman plumbers, with restricted licenses may engage in plumbing anywhere in the state except in cities or towns with over 5,000 inhabitants. Cities may enter into agreements with the state to perform plumbing plan and specification reviews under strict and detailed requirements. A state plumber's license is not required for: workers who install building sewer or water service and complete prescribed pipe laying training; residential building contractors; dairy plants (except for the city in which a plant is located); building movers; or food manufacturers, processors, or distributors (except for the city in which the plant is located). Building movers must comply with state law, displaying the mover's name, address, and U.S. Department of Transportation number on the power unit of a vehicle used to move buildings and on buildings being moved.

II. City authority to license

A state licensing law may allow local licenses. When a city official proposes local licensing of any activity or occupation, the city must determine whether the state already licenses that activity and, if so, whether the law forbids or allows that local license.

Licensing is the exercise of the police power in protecting and promoting the public welfare. Cities have adequate legislative authority for any licensing ordinance, as long as it is constitutional, reasonable, and not pre-empted by state regulation. A number of statutes apply to cities' abilities to license a variety of businesses and activities such as liquor, beer, tobacco, and certain potentially offensive trades.

Minn. Stat. § 412.221, subds. 19, 20, 21, 25, 27, 30.

The statutory city code section of state law gives statutory cities specific authority to license auctioneers, transient merchants and dealers, hawkers, peddlers, solicitors and canvassers, baggage wagons, dray drivers, taxicabs, automobile rental agencies and liveries, riding academies, circuses, theatrical performances, amusements or shows of any kind, devices commonly used for gambling purposes, public dances and dance halls, and restaurants and public eating houses. Some cities also license emergency wrecker services, nuisance wildlife removal businesses, bowling allies, rental housing and coin-operated devices (vending machines).

Minn. Stat. § 412.221, subd. 32.

This statute also contains what is known as the "general welfare clause." Minnesota courts have given broad interpretation to the general welfare clause. The Supreme Court has said it is adequate authority for many licensing ordinances. In fact, no Minnesota court has invalidated a licensing ordinance on the grounds that the general welfare clause did not authorize it. As a general rule, therefore, statutory cities may, in the absence of other specific authority, regulate by license any activity, which if unregulated might adversely affect the public health, morals, safety or comfort of citizens in the community. Home rule charters generally include similar specific and general welfare authority to license and regulate businesses or other activities.

A. Constitutionality and reasonableness

32 Dunnell Minn. Digest Municipal Corporations §§ 5.08(d), 6.01(b).).

Licensing ordinances, like other regulatory ordinances, must meet the test of reasonableness. This is a question of fact in every case. An ordinance that is sufficiently reasonable to be a proper exercise of the police power under the due process clause of the Constitution is likely to satisfy any other test of reasonableness the courts will impose.

A licensing ordinance should be complete and detailed. The method of applying for the license; license term; qualifications of the license applicant; bond and insurance requirements; reasons for denial, revocation, and suspension of a license; transferability of the license; and any limitations or regulations concerning the license should all be set out in the ordinance. Also, procedural matters—such as who investigates the applicant; who decides whether the applicant is qualified; and what procedural rights the applicant has in case of a denial, suspension or revocation of a license—should all be set forth in the ordinance.

Village of Schaumberg v. C.B.E., 444 U.S. 620, 100 S. Ct. 826 (1980);

Int'l Soc'y for Krishna Consciousness v. Eaves, 601 F.2d 809 (5th Cir. 1979).

Case law indicates a city may license most businesses or activities without violating constitutional restrictions. The courts do, however, pay special attention to the licensing of solicitors. Courts have found several city-licensing provisions to be unconstitutional restrictions on solicitors' rights of free speech. As a result, cities should take special care in drafting ordinances that restrict solicitors.

B. Licenses as a regulatory device

Jefferson Highway Transp. Co. v. City of St. Cloud, 155 Minn. 463, 193 N.W. 960 (1923); *City of St. Cloud v. Willenbring*, 195 Minn. 70, 261 N.W. 585 (1935); *Sverkerson v. City of Minneapolis*, 204 Minn. 388, 283 N.W. 555 (1939).

Licensing is a means of regulation. The power to regulate includes authority to provide standards and to attach requirements for meeting those standards. Even if the enabling statute or charter does not so provide, the city can require a reasonable bond to ensure compliance with standards and to protect the city. Furthermore, the licensing ordinance may require an applicant to furnish liability insurance as a condition of getting a license.

In re Wilson, 32 Minn. 145, 19 N.W. 723 (1884); *State v. United Parking Stations, Inc.*, 235 Minn. 147, 50 N.W.2d 50 (1951); *City of St. Paul v. Clark*, 194 Minn. 183, 259 N.W. 824 (1935).

In limited situations, cities may set closing hours for businesses that may need special regulation to prevent nuisances from arising. Courts are divided as to when limits on the hours of operation can be imposed, but businesses such as pool halls, pawnshops, public dance halls, and adult entertainment businesses are examples of the types of businesses for which regulating hours of operation may be appropriate.

32 Dunnell Minn. Digest Municipal Corporations § 6.00.

Again, court cases indicate cities may regulate a licensed business or activity as long as it is reasonable and appropriate.

C. Discrimination against applicants

61 A.L.R. 337;

112 A.L.R. 63;

32 Dunnell Minn. Digest *Municipal Corporations* § 6.03;

U.S. Const. art.4, § 2.

State statutes or city ordinances that discriminate against non-citizens by refusing to grant licenses to them or by granting them on different terms are unconstitutional. The courts have held these statutes or ordinances invalid because they violate the U.S. Constitution which entitles the citizens of each state to all privileges and immunities of citizens in the several states.

U.S. Const. Amend. XIV, § 1;

Kalra v. State of Minnesota, 580 F. Supp. 971 (D. Minn. 1983).

In addition, Minnesota courts have said non-citizens are within the protection of the equal protection and due process clauses and cities may not pass an ordinance that denies a license based on non-U.S. citizenship.

Peoples Super Liquor Stores, Inc. v. Jenkins, 432 F. Supp. 2d 200, 217 (D. Mass. 2006); *cf.* 45 Am Jur 2d *Intoxicating Liquors* § 115.

Requiring that applicants for a liquor license be state residents is unsettled law. For that matter, adding eligibility criteria beyond state law may be questionable. Cities might simply mirror state law requirements in city ordinance. Consulting the city attorney on this point is essential.

D. License fees

Minn. Stat. § 340A.408. subd. 3; Minn. Stat. § 340A.408, subd. 2(a); Minn. Stat. § 28A.09; Minn. Stat. § 624.20, subd. 1(d).

Whenever a city properly requires a license, it may set a fee for the license. In general, statutes granting authority to issue licenses do not specify maximum fees. In a few cases, however, the statutes set maximum fees for city licenses or prohibit fees. For instance, state law sets maximum fees for off-sale liquor licenses. State law requires that a retail on-sale intoxicating license fee cover the costs of issuing, inspecting, and other directly related costs of enforcement. Certain vending machines are subject to a variety of limits on license fees depending on what is being sold and who is responsible for inspections. State law limits the license fees municipalities may impose for a permit for the sale and storage of legal fireworks.

Orr v. City of Rochester, 193 Minn. 371, 258 N.W. 569 (1935).

Municipal licensing should not be viewed as a significant source of revenue. Generally, license fees must approximate the direct and indirect costs in issuing the license and policing the licensed activities. License fees that significantly exceed these costs are generally considered to be taxes that a city does not have the authority to enact. This means a license fee may not be so high as to produce any substantial revenue beyond what it actually costs to issue the license and to supervise, inspect, and regulate the licensed business.

In addition, a city's power to regulate and license does not necessarily include the power to prohibit. The courts have reached a variety of conclusions in cases where people have challenged a city's fee for a specific license, but several general rules seem discernible from the decisions.

City of Mankato v. Fowler, 32 Minn. 364, 20 N.W. 361 (1884); *Minneapolis St. Ry. Co. v. City of Minneapolis*, 236 Minn. 109, 52 N.W.2d 120 (1952); *Crescent Oil Co. v. City of Minneapolis*, 177 Minn. 539, 225 N.W. 904 (1929); *State ex rel. Remick v. Clousing*, 205 Minn. 296, 285 N.W. 711 (1939); *Lyons v. City of Minneapolis*, 63 N.W.2d 585 (Minn. 1954).

First, the amount of the fee is largely within the discretion of the city council. The courts will not presume the particular license fee exceeds the amount the city may legally charge. One who asserts that a fee is unreasonable must usually produce some evidence. Without any evidence to that effect, a court will seldom substitute its judgment for that of a local council to declare a license or ordinance unreasonable because of the fee charged for the license.

Crescent Oil Co. v. City of Minneapolis, 177 Minn. 539, 225 N.W. 904 (1929); *Ramaley v. City of St. Paul*, 222 Minn. 406, 33 N.W.2d 19 (1948).

Second, the fee may be sufficient only to reimburse the city for all expenses related to license regulations. For example, in setting the fee for a gas station, the city may not recoup through the license fee the cost of extra police protection needed for occasional crime epidemics in which gasoline stations are the favorite scenes of operation. In other words, the city may not recover expenses it incurs merely because the business is there. License fees that are otherwise low enough are not objectionable because they yield incidental revenue beyond the expense of providing services.

Barron v. City of Minneapolis, 212 Minn. 566, 4 N.W.2d 622 (1942); *City of St. Paul v. Traeger*, 25 Minn. 248 (1878).

Last, the courts are likely to void an ordinance licensing a non-nuisance-prone activity if the fee is in excess of the cost of issuing the license, and the ordinance says nothing about inspection of the business and has no regulations concerning it. A license is a method of enforcing regulations; therefore, standards to guide the conduct of the licensed business or activity should be a vital part of the licensing ordinance.

Note: Attempts to establish license fees by comparison with those that courts have held reasonable or unreasonable in other situations may not work. The reasonable character of a particular fee depends on the kind of business, amount of inspection and regulation, the worth of the dollar at the time of the litigation, and other local factors—all of which vary greatly from one city to another. Care should be taken not to base a fee solely on what other cities are charging.

1. Fix license fees by ordinance

32 Dunnell Minn. Digest *Municipal Corporations* § 5.00.

Most cities fix license fees in the licensing ordinance. Although fixing license fees by resolution would eliminate the necessity of amending the ordinance and publishing it every time the city changes the fee, this procedure is probably invalid unless the enabling authority for the license permits the use of a resolution, which is rare, or the council passes the resolution with the same formality as an ordinance. In that case, it would have the effect of an ordinance, but the procedure of separating the fee provision from the ordinance would have no advantage.

Bills v. City of Goshen, 20 N.E. 115 (Ind. 1889).

An ordinance requiring a license and providing that the council is to establish the fee in each instance is void. If the council, by resolution without publication, could change its scale of fees, it could conceivably adopt a new resolution each time it receives an application for a license, which might lead to discrimination in favor of particular license applicants.

Handbook, Chapter 7.

One trend growing in popularity is the use of a fee schedule ordinance. The fee schedule ordinance is a list of each fee charged by the city for a license. By removing specific dollar amounts from individual licensing ordinances and referencing a fee schedule ordinance, the city may pass a single ordinance adopting a new fee schedule each time it changes a fee. This makes it easier to handle publication and allows the council to do with one ordinance what would otherwise have to be done by several ordinances—each amending a specific license fee. Notice must still be given regarding certain fee increases, such as liquor license fee increases.

2. Pro rata fees

Moore v. City of St. Paul, 48 Minn. 331, 51 N.W. 219 (1892); *City of Duluth v. Rosenblum*, 180 Minn. 352, 230 N.W. 830 (1930); *Village of Minneota v. Martin*, 124 Minn. 352, 145 N.W. 383 (1914) .

If the fee is large enough to cover more than the cost of issuance of a license, the city should provide for a pro rata fee for those who get licenses during the year, assuming all licenses for the activity expire the same day. Failure to do so may make the ordinance void for discrimination against the short-term licensee. This does not apply where the license fee covers only the cost of issuing the license. An ordinance may be invalid if it provides for a substantial daily fee without any special concessions for longer licensees. On the other hand, a per diem license fee may properly be much larger than the daily proportion of a legitimate annual fee.

3. Installment payments

A.G. Op. 218g-6 (May 11, 1943); A.G. Op. 218g-6 (Apr. 21, 1951); A.G. Op. 218g (Nov. 15, 1965).

Except for a very few large fees, most cities require payment of the entire license fee before issuing a license. The attorney general has ruled on several occasions that the council may permit payment of liquor license fees in installments. The theory is that the power to fix the annual fee includes the power to say when it is payable. Three qualifications are necessary to make the installment payment of license fees permissible:

- First, the ordinance should provide for installment payment.
- Second, the payment of each installment should be due before the beginning of the period to which it relates. For example, if the council allows payment of license fees on a quarterly basis and the license year begins Jan. 1, the second quarter fee should be due before April 1. The ordinance should provide that if a business doesn't pay any installment, the city will revoke the license.
- Third, the licensee should be liable for the full year's license fee upon receiving the license, whether or not the business continues to operate. The city may seek to recover the unpaid installments as they fall due even though the business ceases operation. To minimize problems, the ordinance should contain an express provision to this effect.

The fact that ordinance provisions permitting installment payment are rare in Minnesota may indicate council opinion that installment payments are unwise because they give irresponsible licensees less financial interest in seeing that the laws and ordinances are observed in their establishments. Installment payments may also encourage the granting of licenses to less stable or financially responsible people.

4. Refunds

Minneapolis Brewing Co. v. Bagley, 142 Minn. 16, 170 N.W. 704 (1919); 32 Dunnell Minn. Digest *Intoxicating Liquors* § 6.04.

A business or activity cannot recover a license fee it voluntarily paid unless a statute or charter authorizes recovery. Most statutes authorizing city licensing do not contain refund provisions. A business owner probably has no right to a refund of a pro rata portion of the license fee when the licensee sells the business during the period of the license.

5. Notice of fee increase

Minn. Stat. § 340A.408, subd. 3a; Minn. Stat. § 471.707.

Although there is no general requirement to notify licensees of a possible license fee increase, specific laws may apply. For instance, cities may increase fees for liquor licenses and vending machines only after notice and a hearing. Existing licensees must receive a mailed notice at least 30 days before the hearing on the proposed change. These provisions supersede any charter provisions.

E. Issuing licenses

The council's authority to grant or refuse a license varies with the nature of the business or activity. At one extreme is a license available to anyone who applies, pays the required fee, and meets any other conditions specified by the ordinance. When the applicant has complied with the requirements, the city must issue the license. A dog license is an example of this type of license.

State ex rel. Howie v. Common Council of Northfield, 94 Minn. 84, 101 N.W. 1063 (1904); *State ex rel. Gopher Sales Co. v. City of Austin*, 246 Minn. 514, 75 N.W.2d 780 (1956).

At the other end of the scale are licenses for businesses or activities subject to such potential abuses that the city may prohibit them altogether or, in lieu of prohibition, may limit their number or impose qualifications. When the council imposes such a limit, no matter what specific standards are in the ordinance, the council will not be able to grant licenses to all qualified applicants. In this case, the council is acting in a quasi-judicial capacity and no one can force it to issue a license to a particular applicant.

Polman v. City of Royalton, 311 Minn. 555, 249 N.W.2d 466 (1977); *Wadja v. City of Minneapolis*, 310 Minn. 339, 246 N.W.2d 455 (1976); But *cf*. *Anton's Inc. v. City of Minneapolis*, 375 N.W.2d 504 (Minn. Ct. App. 1985).

When dealing with a license that is available only in a limited quantity, the burden is on the unsuccessful applicant to show that council's action in granting the license to the successful applicant constituted a clear abuse of discretion. In view of the council's broad discretion in licensing cases, a court is not likely to overturn a council decision denying a license in these instances. Most licensing situations are between these two extremes.

1. Discretion in issuing licenses

After adopting the licensing ordinance, the council's role in the licensing process relates to the amount of discretion involved in granting the license. In the case of the keeping of animals, for example, issuing a license may be a purely ministerial act involving no discretion. In such a case, issuing a license to keep an animal is the proper role for the clerk or an administrative officer. The person applying for an animal license should be given the chance to appeal a denial if the clerk denies the license for some reason. This chance to appeal protects the person's due-process rights.

State ex rel. Labovich v. Redington, 119 Minn. 402, 138 N.W. 430 (1912).

In other instances, such as licensing liquor sales, dance halls, theaters or activities that have the potential to cause problems, discretion is an essential part of license administration. Making an administrative official, rather than the council, responsible for licensing would be impractical and perhaps illegal.

State v. Brattrud, 210 Minn. 214, 297 N.W. 713 (1941).

The duty of the mayor and clerk of statutory cities to attach their signatures to licenses is a ministerial function, not a discretionary one. They may not refuse to sign unless the license is illegal.

2. Issuing licenses to councilmembers

Minn. Stat. § 471.87.

With some specific exceptions, no councilmember may have a direct financial interest in a contract with the city. This, however, does not apply to the granting of licenses—at least where the licensee does not need to furnish a bond—because a license is a privilege and not a contract.

A.G. Op. 90-A (Aug. 15, 1934); LMC information memo, *Official Conflict of Interest;* Handbook, Chapter 6.

It is a generally accepted principle that council members with a personal interest in a matter before the council, other than a contract, such as a license application, should disqualify themselves from participating in the discussion or from voting on the matter.

Another possible conflict of interest may arise when a councilmember holds a license and the council is considering disciplinary action against the holder of a similar license, or is considering the granting of a similar license. The councilmember could have a sufficient personal interest to preclude voting legally on the matter.

In the typical case, however, the interest may not be as competitive or adverse so as to make voting illegal—although the councilmember may prefer to avoid even the possibility of criticism by staying out of the disciplinary proceedings, particularly in abstaining from voting on the issue.

3. Number of licenses

Troje v. City Council of City of Hastings, 310 Minn. 183, 245 N.W.2d 596 (1976); *Minneapolis Taxi Owners Coalition, Inc. v. City of Minneapolis*, 572F.3d 502 (8th Cir. 2009).

Just as cities can set higher-than-normal license fees for businesses and activities that require a higher level of investigation and inspections, they also have the power to limit the number of licenses issued for a particular type of business or activity if the business or activity may create a nuisance that threatens the public welfare. For example, a city may choose to award only one license for garbage collection if it finds it is in the public interest to do so.

For most licensed businesses, however, limiting the number is inappropriate. Anti-trust problems may arise if the number of licenses unreasonably restricts trade.

4. Extending licenses beyond council term

In general, the council may grant a license extending for a limited amount of time beyond the term of office of some of the current council members. It is common practice to have all licenses expire at the same time, usually without regard to the fact that a portion of the term of the license is beyond the political year of the council. In the absence of a special charter provision, or statutory or ordinance restriction, there is no legal barrier to this practice.

5. Right to renewal

State v. Havorka, 100 Minn. 249, 110 N.W. 870 (1907); *Paron v. City of Shakopee*, 266 Minn. 222, 32 N.W.2d 603 (1948); *State ex rel. Interstate Airparts Co. v. Minneapolis-St. Paul Metro. Airports Comm'n* 223 Minn. 175, 25 N.W.2d 718 (1947); *Ukkonen v. Gustafson*, 309 Minn. 260, 244 N.W.2d 139 (1976); *Tamarac Inn, Inc. v. City of Long Lake*, 310 N.W.2d 474 (Minn. 1981).

When a license comes up for renewal, the licensee is in the same position as any other applicant unless a statute or charter provides otherwise. At the end of a license period, the licensee has no vested right in the license. The council determines which applications to approve. The courts, however, will review the non-renewal of an existing license with increased scrutiny, as if the license were being revoked. A city may deny the renewal of a business license if the licensee violates a condition that is not a specific term of the licensing ordinance, as long as that condition is not unnecessary, unreasonable or oppressive. The city should always give the licensee notice of the alleged violations of the licensing ordinance and the reason for the denial.

6. Refusal to issue license

45 Am Jur 2d *Intoxicating Liquors* § 114.

Refusing a license also involves the exercise of reasonable discretion. A city council does not have to issue a license to every applicant, regardless of a person's character. An ordinance, however, cannot authorize the council to discriminate between applicants by granting a license to one and refusing a license to another without good reason, or to prohibit the business altogether by refusing to issue any licenses.

State ex rel. Minces v. Schoenig, 72 Minn. 528, 75 N.W. 711 (1898); But *cf. State ex rel. Gopher Sales Co. v. City of Austin*, 246 Minn. 514, 75 N.W.2d 780 (1956).

If the applicant is notoriously dishonest, or in the habit of resorting to fraudulent tricks and devices in conducting sales, the city council may refuse to issue a license. But, if the council arbitrarily refuses to grant a license to discriminate between citizens or to prohibit the business altogether, the aggrieved party would have a legal remedy.

54 A.L.R. 1104; 92 A.L.R. 400.

Courts generally have followed the rule that a statute or ordinance may not grant unrestricted discretion to a council or administrative official in matters such as licensing. Courts have also recognized that the nature of some matters makes it impossible to specify standards or place restrictions on the exercise of licensing authority.

7. Grounds for denying a license

45 Am Jur 2d *Intoxicating Liquors* §§ 114-117.

Before denying a license, the city makes a finding of fact of the condition that exists and must be able to support that finding with evidence. When a city exercises discretion and acts in a quasi-judicial manner when dealing with a license application, the courts will not overturn a city's denial of a license provided the city has a clear record supported by evidence justifying its actions. Failure to have a finding of fact supported by evidence makes it easier for an unsuccessful applicant to claim his or her due process rights were violated, and that the city acted arbitrarily and capriciously. The following are common examples of reasons that may be sufficient grounds for denying a license:

- The applicant does not comply with the prerequisites and conditions in the ordinance. The prerequisites and conditions must be valid.

State ex rel. Powell v. State Med. Examining Bd. 32 Minn. 324, 20 N.W. 238 (1884); *Reyburn v. Minnesota State Bd. of Optometry*, 247 Minn. 520, 78 N.W.2d 351 (1956); *In Re Walker's License*, 210 Minn. 37, 300 N.W. 800 (1941); *Peterson v. Minneapolis City Council*, 274 N.W.2d. 918 (Minn. 1979).

- The applicant is not of "good moral character," and the license is for a profession or occupation that affects the public health, safety, morals. or general welfare. The ordinance does not need to define "good moral character," or phrases like "professional misconduct." However, the city cannot disqualify a person from a licensed occupation because of a prior conviction of a crime, unless the crime directly relates to the occupation for which the person is seeking the license.

State ex rel. Labovich v. Redington, 119 Minn. 402, 138 N.W. 430 (1912).

- Granting a license would be a menace to the safety, health, morals, and welfare of the public.

Franklin Theater Corp. v. City of Minneapolis, 293 Minn. 519, 198 N.W.2d 558 (1972); *State v. Scatena*, 84 Minn. 281, 87 N.W. 764 (1901).

- There has been a material misrepresentation in the application.

8. Power to suspend or revoke licenses

Minn. Stat. § 340A.415; 9. 2-27 *Antieau on Local Government Law*, § 27.18 (2d ed. 2010); *State ex rel. Peterson v. City of Alexandria*, 210 Minn. 260, 297 N.W. 723 (1941); *Standard Oil Co. v. City of Minneapolis*, 163 Minn. 418, 204 N.W. 165 (1925).

Most laws granting particular licensing authority say nothing about suspension or revocation. An exception is the Intoxicating Liquor Act, which authorizes revocation or suspension for violation of any statute or ordinance relating to the sale of intoxicating liquor. Even where the statute or charter is silent with reference to revocations, the power to revoke is implied.

State ex rel. Clapp v. Peterson, 50 Minn. 239, 52 N.W. 655 (1892); *State ex rel. Douglas v. Megaarden*, 85 Minn. 41, 88 N.W. 412 (1901); But *cf Johnson v. Village of Cohasset*, 263 Minn. 425, 116 N.W.2d 692 (Minn. Ct. App. 1962); *Martin v. County of Dodge*, 146 Minn. 129, 178 N.W. 167 (1920).

The same is true of suspensions. Because suspension is a less drastic penalty than revocation, the council probably has power to provide for suspensions whenever it has power to revoke. Power to revoke carries with it the power to suspend, pending revocation. Suspension may occur without subsequent revocation.

Bainbridge v. City of Minneapolis, 131 Minn. 195, 154 N.W. 964 (1915); *State ex rel. Peterson v. City of Alexandria*, 210 Minn. 260, 297 N.W. 723 (1941); *State ex rel. Powell v. State Med. Examining Bd.* 32 Minn. 324, 20 N.W. 238 (1884); *Reyburn v. Minnesota State Bd. of Optometry*, 247 Minn. 520, 78 N.W.2d 351 (1956); A.G. Op. 218-G-14 (Oct. 21, 1941); A.G. Op. 218-G-14 (April 8, 1940).

The power to revoke or suspend is not an absolute power, even in the case of beer and liquor licenses. The city must exercise honest and reasonable discretion. In addition, the law or ordinance must state the grounds for suspension or revocation and must be reasonably related to the public health, safety, morals or welfare. Loss of the qualifications necessary to receive the license is sufficient grounds for revocation. So, too, is proof that because of misrepresentations on the application or otherwise, the licensee did not possess the necessary qualifications in the first place. Violation of any reasonable regulations related to the licensed business or activity is a proper ground. Unprofessional or dishonorable conduct may be sufficient for suspension or revocation where this relates to the licensed business. In a 1940 Opinion the Attorney General found that where a violation of a statute or ordinance is grounds for revocation or suspension, it may not be necessary that there be a conviction to justify revocation or suspension. Best practice requires cities to work closely with the city attorney when dealing with revocation or suspension of a license.

a. Due process procedures for denying, revoking, or suspending licenses

Hornsby v. Allen, 330 F.2d 55 (5th Cir. 1964); *Barnes v. Merritt*, 376 F.2d 8 (5th Cir. 1967), *appeal after remand* 428 F.2d 284 (5th Cir. 1970); *Parks v. Allen*, 409 F.2d 210 (5th Cir. 1969); *Mayhue's Super Liquor Store Inc. v. Meiklejohn*, 426 F.2d 142 (5th Cir. 1970); *Block v. Thompson*, 472 F.2d 587 (5th Cir. 1973); *Turner v. Thompson*, 421 F.2d 771 (5th Cir. 1970); *Smith v. Thompson*, 377 F. Supp. 556 (M.D. Ga. 1974).

The federal courts have emphasized the need for due process in licensing. A number of cases have held that due process and equal protection safeguards apply even to proceedings that grant, revoke or transfer liquor licenses—a field where state courts have in the past allowed for considerable local discretion.

Hornsby v. Allen, 330 F.2d 55 (5th Cir. 1964); *Jones v. State Bd. of Health*, 301 Minn. 481, 221 N.W.2d 132 (1974).

An applicant or licensee is entitled to proper notice and a fair hearing prior to denial of a new license, a renewal or transfer, or prior to a revocation or suspension of a license.

Sabes v. City of Minneapolis, 265 Minn. 166, 120 N.W.2d 871 (1963); *Hornsby v. Allen*, 330 F.2d 55 (5th Cir. 1964); *Hanson v. Michigan State Bd. of Med*., 236 N.W. 225 (Mich. 1931); *State v. City of Duluth*, 125 Minn. 425, 147 N.W. 820 (1914).

The following steps may be necessary to meet constitutional requirements of due process in acting on license applications, suspensions or revocations:

Sabes v. City of Minneapolis, 265 Minn. 166, 120 N.W.2d 871 (1963); *In re License of West Side Pawn,* 587 N.W.2d 521 (Minn. App. 1998).

- A notice that specifies the time and place of the hearing, a statement of the charges, the facts supporting the grounds for the charges, and the applicant's right to be present and represented by counsel. A notice that the council will consider revocation due to the conduct and operation of the licensee's business is inadequate, unless a licensee receiving such notice has previously had actual knowledge of the charges, the charges were proved, and the licensee had ample opportunity to be heard. The city still needs to reference the reason for the revocation or denial. A first class mailed notice addressed to the licensee, which notifies the licensee of alleged ordinance violations and that the council would consider suspending the license at an upcoming meeting, and that contains all of the information required by law, is constitutionally sufficient to satisfy due-process notice requirements absent more stringent statutory conditions.

Hymanson and Lucky Lanes Inc. v. City of St. Paul, 329 N.W.2d 324 (Minn. 1983).

- A hearing before the council or other licensing body. The council may, but does not need to, appoint a hearing examiner to conduct an initial liquor license revocation proceeding. The hearing should include a presentation of evidence to support the charges. If the law or ordinance authorizes suspension or revocation for law violations and the licensee has been convicted of the violation, proof of conviction is sufficient. The licensee should then have ample opportunity to refute the charges, to plead for retention of the license, or to justify the actions for which the city is seeking suspension or revocation. The council does not need to follow formal rules of evidence at the hearing, but the licensee should have ample opportunity to present a defense, including the following:
- The right of the licensee to cross-examine the witnesses who testify against the applicant or licensee.
- The right of the applicant to produce witnesses on his or her behalf.
- A full consideration and a fair determination according to the evidence of the controversy.
- A record or transcript of the hearing.

Minn. Stat. § 340A.415; Minn. Stat. ch. 14; *CUP Foods, Inc. v. City of Minneapolis,* 633 N.W.2d 557 (Minn. App. 2001).

The court may review the record kept by the municipal body. The Administrative Procedures Act does not require transcribing notes of the liquor license hearing unless someone requests them for purposes of rehearing or court review. A tape recording suitable for transcription should be adequate. Accordingly, the record should be thoroughly documented and state, in detail, the reasons for the council's actions.

Flame Bar v. City of Minneapolis, 295 N.W.2d 586 (Minn. 1980).

Revocation and suspension of licenses is a responsibility of the council. If the council, as a result of the hearing, is satisfied the revocation or suspension is necessary, it should adopt a resolution revoking or suspending the license as of a specified date. The resolution doesn't need to recite the charges in the revocation or suspension. The council should send the licensee notice of the revocation along with its findings or reasons for action. This notice should be sent even if the licensee was present at the meeting where the council made its decision. A licensee may appeal a denial, revocation or suspension to the court within the statutory time limit for appeal.

Micius v. St. Paul City Council, 524 N.W.2d 521 (Minn. App. 1994).

When the issuing or the denial of a license involves discretion, or when a license has been suspended or revoked following a quasi-judicial hearing, the courts have said the only appropriate appeal by the applicant or licensee is a writ of certiorari filed with the court of appeals. Again, the courts will not substitute their judgment for that of the city if the city's actions are clearly documented and supported by evidence, and are not arbitrary or capricious.

b. Necessity for revocation

Minn. Stat. § 340A.415.

Except when a statute or ordinance provides otherwise, revocation for particular violations or other cause is discretionary, not mandatory. In other words, the council is under no obligation to revoke. If the council believes a particular revocation is not in the public interest, it may keep the license in force. The council may, by ordinance, provide for mandatory revocations, even if state law doesn't require it, if the city provides notice and a hearing. In some cases, the law requires mandatory revocation for failure to conform to specific parts of the liquor or beer laws.

Councils may find it difficult to administer automatic revocations for certain acts. This is particularly true if the cause for automatic revocation is not an actual court conviction.

City of Mankato v. Mahoney, 542 N.W.2d 689 (Minn. App. 1996).

If the court finds the council's action to be "arbitrary and capricious," it will not sustain a license revocation.

III. Licensed activities

The following subsections represent a selection of commonly licensed activities in cities. These are not the only activities a city may license. Any city with questions about licensing an activity not covered in this *Handbook* should contact its city attorney. In addition, the League maintains files of sample ordinances and other information that might be of assistance.

A. Rental housing

2-29D *Antieau on Local Government Law*, § 29D.01 (2d ed. 2010).

Cities have an important interest in ensuring that rental housing does not endanger the health or safety of tenants and the community as a whole. Cities may adopt an ordinance requiring landlords to obtain licenses for rental properties

Camara v. Municipal Court of San Francisco, 387 U.S. 523 (U.S. 1967); *Rozman v. City of Columbia Heights*, 268 F.3d 588 (8th Cir. Minn. 2001);

Stewart v. City of Red Wing, 554 F. Supp. 2d 924 (D. Minn. 2008).

The goals of a rental housing licensing program are many and may include:

- Addressing life, safety, general welfare, and health issues.
- Providing minimum standards for safe housing conditions related to safe living conditions such as cooking, heating, light, and ventilation.
- Providing minimum standards for building maintenance.
- Preventing blight due to dilapidated or substandard rental housing stock.

Inspecting rental housing is a basis for issuing or renewing a rental license. The League has sample rental housing licensing ordinances cities can use as guides for developing their own regulations. However, cities must work closely with the city attorney to ensure that all components of a particular ordinance are reasonable.

B. Liquor

Dakota Liquor, Inc. v. City of Prior Lake, A08-1783 (Minn. Ct. App. July 28, 2009); LMC information memo, *Liquor Licensing and Regulation*.

In Minnesota, unlike most other states, cities issue retail liquor licenses rather than a state agency. Cities may further limit the sale of intoxicating liquor, but must do so in a local ordinance that is consistently applied. There are many different types of liquor licenses currently allowed by state statute. In addition, the current legislative trend appears to favor the creation of new niche and specialty liquor licenses. The League publishes an information memo that discusses, in great detail, liquor licensing and regulation of liquor sales by cities.

1. Retail sales

Minn. Stat. § 340A.301, subd. 6; Minn. Stat. § 340A.707; Minn. Stat. § 340A.101; Minn. Stat. § 340A.414, subd. 1.

"Retail sales" of alcoholic beverages are simply sales of liquor directly to the consumer. For example, when private parties rent out public facilities and provide, *but do not sell*, intoxicating liquor there is no "retail sale" of alcoholic beverages and no city liquor license is required. For purposes of this law, a "public facility" is a park, community center, or other accommodation or facility owned or managed by or on behalf of a subdivision of the state, including any county, city, town, township, or independent district of the state. But cities may still completely ban consumption of intoxicating beverages on public property.

Not *all* retail sales of liquor are subject to city licensing. For example, a law passed in 2007 allows auctioning of wine by nonprofit organizations under certain conditions. Cities do not license or regulate this activity.

Cities do issue numerous types of both *on-sale* retail licenses and *off-sale* retail licenses, which are briefly described in this chapter. Four overarching points to keep in mind when cities license sales of intoxicating liquor:

- It is the retail *sale* of liquor that is regulated by licensure.
- On-sale means liquor is consumed on the licensed premises.
- Off-sale means liquor is purchased on the licensed premises, but consumed elsewhere.
- License fees should be limited to covering the costs of issuing, inspecting, and other directly related costs of enforcement.

(Note: Wholesalers and manufacturers of intoxicating liquor do not make retail sales and are generally licensed by the state, not cities.)

2. City authority to issue liquor licenses

Minn. Stat. § 340A.416.

Before a statutory city—or a charter city with a population of less than 10,000—issues any license to sell intoxicating liquor, residents of the city may have to vote on the issue in what is known as a local option election. If the voters give the city approval to issue liquor licenses, the city is a known as a "wet "city. Conversely, in a "dry" city, the voters have denied the city the authority to issue licenses for the sale of liquor. Either decision, to be wet or dry, may be reversed by voters at a subsequent election.

A little history makes this more understandable. In 1965, all cities and their respective counties became wet unless city residents had already chosen to be dry in a local option election. Currently, it appears that if a city has never held a local option election it is a wet city. However, cities, that have held such an election where voters chose to remain dry, must hold a local option election before any liquor licenses are issued.

3. Types of city-issued liquor licenses

LMC information memo, *Liquor Licensing and Regulation;* Information Brief: Research Dept. Minnesota House of Representatives: *Retail Liquor License Overview*.

What follows is a list of retail liquor licenses that cities may issue. For information on who can obtain each type of license, and who determines the fee for each license, see the information memo. Remember, fees that are not set by state law, but set by the city must relate to all costs associated with the license.

a. On-sale licenses

- Intoxicating liquor license on-sale.

Minn. Stat. § 340A.101, subd. 7; Minn. Stat. § 340A.404, subd. 1(4); Minn. Stat. § 340A.408, subd. 2(b).

- Club on-sale license.

Minn. Stat. § 340A.504, subds. 3, 4.

- Sunday on-sale liquor licenses.

Minn. Stat. § 340A.406.

- Combination on-sale/off-sale intoxicating liquor licenses.

Minn. Stat. § 340A.301, subd. 7(b).

- Brew pubs—on-sale intoxicating liquor licenses.

Minn. Stat. § 340A.411.

- Malt liquor (3.2 percent) on-sale licenses (also known as “beer” licenses)

Minn. Stat. § 340A.404, subd. 5; Minn. Stat. § 340A.4011.

- On-sale wine licenses: for restaurants and bed & breakfast facilities.

Minn. Stat. § 340A.4041.

- Culinary class limited on-sale wine license.

Minn. Stat. § 340A.410, subd. 10.

- Temporary on-sale intoxicating liquor licenses.

Minn. Stat. § 340A.404, subd. 10(c).

- Temporary on-sale liquor licenses for microbrewers.

Minn. Stat. § 340A.403.

- Temporary 3.2 percent malt on-sale liquor licenses.

Minn. Stat. § 340A.404, subd. 1(a).

- Auto racing facility liquor licenses.

Minn. Stat. § 340A.404, subd. 1(6) d.

- Owner of a summer collegiate league baseball team, or to a person holding a concessions or management contract with the owner, for beverage sales at a ballpark or stadium located within the city for the purposes of summer collegiate league baseball games at the ballpark or stadium.

Minn. Stat. § 340A.301, subd. 6(b).

- Brewer taproom license.

Minn. Stat. § 340A.404, subd. 5a.

- Temporary wine festival license:

Minn. Stat. § 340A.404, subd. 10a.

- Temporary farm winery license for on-sale at a county fair located within the municipality of intoxicating liquor produced by the farm winery.

Minn. Stat. § 340A.404, subd. 14.

- Private, nonprofit college license to a private college located in the city. Alternatively, the city may issue it to any entity holding a caterer's permit and a contract with the private, nonprofit college for catering on the premises of the private, nonprofit college, or for any portion of the premises as described in the approved license application.

b. Off-sale

Minn. Stat. § 340A.101, subd. 20; Minn. Stat. § 340A.405, subd. 1; Minn. R. § 7515.0440.

Off-sale licenses allow the sale of alcoholic beverages in their original packages for consumption off the licensed premises. Cities issue the following off-sale licenses (but the commissioner of Public Safety must give final approval before a license to sell liquor off-sale is effective):

Minn. Stat. § 340A.408, subd. 3.

- Off-sale intoxicating liquor licenses.

Minn. Stat. § 340A.408; Minn. Stat. § 340A.412, subd. 6.

- Off-sale 3.2 percent malt liquor (beer) licenses.

Minn. Stat. § 340A.301, subd. 7(b).

- Brew pubs—off-sale.

Minn. Stat. § 340A.405, subd. 4.

- Temporary off-sale wine license (for auctions).

Minn. Stat. § 340A.406.

- Combination on-sale/off-sale intoxicating liquor licenses.

c. Other city-issued liquor licenses

Minn. Stat. § 340A.404, subd. 5b.

- Strong beer (more than 3.2 percent malt liquor) authorization.

Minn. Stat. § 340A.414, subd. 9.

- One-day consumption and display permits (often called "set-ups").

Minn. Stat. § 340A.404, subd. 1.

- Convention centers outside the seven-county metro area: a city may issue an on-sale intoxicating liquor license, on-sale wine license, or on-sale malt liquor license to a convention center within the city.

Department of Public Safety, Alcohol and Gambling Enforcement Division.

Note: The commissioner of the Department of Public Safety must approve many of the city-issued licenses and permits before they are effective. Contact the Department of Public Safety's Alcohol and Gambling Enforcement Division (AGED) for further information.

4. Licenses issued by the state with some city involvement

Cities do not issue these licenses but do play a minor role in the following types of licenses:

Minn. Stat. § 340A.414.

- ***Consumption and display permits.*** The city council must approve this state issued one-year permit. The state fee is $200 and a city may charge an additional fee up to $300 for this permit.

Minn. Stat. § 340A.404, subd. 12.

- ***Caterer's permit.*** The only involvement a city has with a caterer's permit is that the permit holder must notify the chief of police of the city where an event will be held.

5. Number of liquor licenses

Minn. Stat. § 340A.413; *State ex rel. Howie v. Common Council of City of Northfield,* 94 Minn. 81, 101 N.W. 1063 (1904); LMC information memo *Liquor Licensing and Regulation;* Minn. Stat. § 340A.413, subd. 4.

State law limits the number of most, but not all liquor licenses that cities issue. A chart in the League's liquor information memo outlines the maximum number of each type of licenses that cities may issue. Note: A city may impose its own limits, and issue fewer licenses than state law allows, as long as they do not exceed statutory limits. State law limits the number of the following types of licenses, based on population:

- Off-sale intoxicating.
- On-sale intoxicating.
- Temporary on-sale intoxicating.
- Temporary consumption and display permits.

On-sale intoxicating liquor licenses issued to restaurants, theaters, hotels, and bowling centers do not count against the total number of on-sale licenses that a city may issue. Although the statutes are silent regarding on-sale/off-sale combination licenses, these licenses are probably counted as both an on-sale and an off-sale license.

There are no specific limits in state law for the following types of licenses:

- On-sale intoxicating club licenses.
- On-sale intoxicating liquor licenses issued to restaurants, theaters, hotels, and bowling centers.
- Wine licenses.
- Sunday liquor licenses.
- On-sale 3.2-percent malt liquor licenses.
- Off-sale 3.2-percent malt liquor licenses.
- Consumption-and-display permits approvals

Cities may therefore decide how many of these types of licenses to issue or allow. Note: A city council may decide to issue fewer licenses than allowed by state law but a city *must* designate the number of available liquor licenses by ordinance.

Polman v. City of Royalton, 311 Minn. 555, 249 N.W.2d 466 (1977).

The city council can later decide to increase the number of available liquor licenses (not however, beyond the limit in state law) but must do so by revising the ordinance. The decision to revise the ordinance to allow additional licenses is a legislative decision. A court will only overturn such a legislative decision of a city council when it determines that "the city council has acted arbitrarily, capriciously, or unreasonably"- a standard that gives a city council significant local control of the number of liquor licenses available in their city.

See Section IIIB: 14: *Liquor elections and liquor licensing*.

The council may issue more licenses than the number limited by statute if the voters approve this at a special election, discussed subsequently in this Chapter. Or, a city may get special legislation to increase the number or types of liquor licenses they can issue.

6. Liquor license fees

Minn. Stat. § 340A.408, subd. 2; *Dunham's Food & Drink, Inc. v. City of West St. Paul*, 526 N.W.2d 413 (Minn. App.1995); LMC information memo, *Liquor Licensing and Regulation*.

The maximum fee for many liquor licenses is limited by statute. Where there is no state restriction, the city can probably set the fee at any reasonable amount. However, state law requires that the fee amount reflect the cost of issuing the license, inspecting the premises, enforcing liquor license regulations and other costs directly related to the cost of licensing the sale of liquor in that city. License fees may not be used as a means of raising revenues. (See the League's liquor memo, which contains a chart of the various license fees.)

7. Location

Minn. Stat. § 340A.509; Minn. Stat. § 412.221, subd. 32; *BZAPS, Inc. v. City of Mankato*, 268 F 3rd 603 (8th Cir. 2001).

While state law restricts the location of establishments that sell intoxicating liquor, cities may also set their own restrictions for both intoxicating and malt liquor (beer) licenses. For example, cities may deny an application for a license to sell liquor or beer near a school, church or public building if the council considers a license in such a location detrimental to the welfare of the community and the local ordinance lists this restriction. The city may include such restrictions on the proximity of 3.2 percent malt liquor and liquor establishments to schools, churches, post offices or other institutions in either the licensing ordinance or a city zoning ordinance.

8. Licensees

Kalra v. State of Minnesota, 580 F. Supp. 971 (D. Minn. 1983); A.G. Op. 218g (May 22, 1952).

Residency requirements in a local licensing ordinance are hard to justify. One U.S. Minnesota District Court case found that a city ordinance (and a state statute) requiring that all liquor license holders be eligible to vote or residents violates equal protection clause. Contrarily, one attorney general's opinion found in favor of such requirements. That said, such a requirement poses some risk of legal challenge to the city.

9. Hours of sale

Minn. Stat. § 340A.504, subd. 6.

Cities may also impose tighter restrictions on the hours of sale and such other reasonable restrictions they feel are necessary. Restrictions on the hours of sale must be uniform for on- and off-sale intoxicating and for 3.2 percent malt liquor (beer) licenses. Although the statutes permit cities to restrict the hours of sale, this statute does not authorize cities to restrict the days of sale beyond those days on which the state prohibits the sale of alcohol. Also, the statute that allows cities to impose further restrictions on the sale and possession of alcoholic beverages only applies when no state regulations govern the area.

10. Adult uses and liquor

Knudtson v. City of Coates, 519 N.W.2d 166 (Minn. 1994); LMC *Adult Use Packet* contains a sample ordinance prohibiting nudity in liquor establishments. Contact the Research department at 800.925.1122 for a copy.

Prohibiting nudity and other adult uses, by ordinance, in the licensed establishment is also a popular restriction in order to minimize the secondary effects of mixing alcohol with adult entertainment.

11. Renewal of liquor licenses

Minn. Stat. § 340A.412, subd. 8; *Country Liquors v. City of Minneapolis*, 264 N.W.2d 821 (Minn. 1978); A.G. Op. 218g (Jan. 14, 1952); *Arbuckle's Bar and Grill, Inc. v. City of St. Paul,* CX-98-185 (Minn. Ct. App. July 14, 1998); *Tamarac Inn, Inc. v. City of Long Lake*, 310 N.W.2d 474 (Minn. 1981) *dist. by; Thompson v. Lake Edward Tp.,* (Minn. Ct. App. 2000); and *Tabaka v. Wabedo Tp.,* (Minn. Ct. App. 2005).

Liquor licenses last for a period of one year. All liquor licenses a city issues (except those issued in the states three largest cities) must expire on the same date. Although no constitutional property right exists in owning a liquor license, a city cannot arbitrarily and capriciously refuse to renew a license. The statutes allow non-renewal for conviction of state law or local ordinance violations. Minnesota case law has upheld a city council's decision not to renew a liquor license for public welfare reasons, for liquor law violations, for allowing nude dancing in violation of the local ordinance, for the applicant's failure to pay taxes and an applicant's problems at a previously licensed location. However, Minnesota case law has also found that a city council arbitrarily denied a license renewal based on unsuitable premises (where the applicant operated the bar for many years) and for ordinance violations (where other licensed facilities also violated the ordinance but were granted a license renewal.)

Minn. Stat. § 340A.412, subd. 2.

A city can refuse to accept a license renewal application if it is incomplete and not accompanied with all required fees, insurance policies, and certificates.

As stated earlier, a city council has wide discretion in making licensing decisions. But the council must not act arbitrarily. Good practice suggests working closely with the city attorney and documenting reasons for denials, suspensions, or revocations of license applications or renewals.

12. Revocation and suspension of liquor licenses

Minn. Stat. § 340A.415; Minn. Stat. §§ 14.57 to 14.69; *Gar-Dar, Inc. v. City of Minneapolis,* C5-97-715, (Minn. Ct. App. Oct. 1997); A.G. Op. 218g-14 (Nov. 5, 1976).

There are due process requirements that must be met before a license is revoked. The city must provide a hearing to the licensee or permit holder in accordance with the Administrative Procedures Act for contested cases; however, a city need not use a state hearing examiner to conduct a hearing. The council should consult an attorney when it is considering a liquor license revocation or suspension.

Minn. Stat. § 340A.415; *Metro Bar & Grill Inc., v. City of St. Paul,* 2001 WL 436087, C6-00-1156 (Minn. Ct. App. May 1, 2001); *C. L. Hinze, Inc. v. City of St. Paul,* 1996 (Minn. Ct. App. Aug. 8, 1996).

State law authorizes revocation or suspension of a liquor license if a licensee violates a statute, rule or ordinance relating to the sale of intoxicating liquor. Note: In some cases, state law requires mandatory revocation for failure to conform to specific parts of the liquor or beer laws. A council may either suspend, for a period not to exceed 60 days, or revoke a liquor license. This includes on-sale and off-sale liquor licenses and wine licenses. In order to revoke or suspend a license or permit, the council must find that the license holder failed to comply with an applicable statute, regulation or ordinance relating to intoxicating liquor. A city has broad discretion to revoke a liquor license if it articulates written reasons for its decisions that are supported by findings and evidence in the record that the holder failed to comply with any applicable statutes, regulations or ordinances relating to intoxicating liquor.

If, as a result of the hearing, the council feels a revocation or suspension is in order, the council should adopt a resolution revoking the license or permit as of a specified date. The resolution does not need to restate the charges.

The 3.2 percent malt liquor law does not require a hearing on the issue of revocation or suspension. To avoid legal questions, beer license revocation proceedings should include a hearing held by the council after adequate notice to the licensee. The notice should state the time and place of the hearing, and advise the licensee of the nature of the charges or the grounds upon which the city is seeking the revocation.

13. Split liquor and liquor licensing

Minn. Stat. § 340A.601, subds. 5, 6; LMC information memo, *Liquor Licensing and Regulation*; Minn. Stat. § 340A.301, subd. 6.

A city may be known as "split liquor" if it combines a private-public system, issuing private on-sale licenses and operating a municipal liquor store. The council of any city owning a municipal liquor store, with approval of a majority of those voting on the question at a special election, may authorize on-sale liquor licenses to clubs, hotels, and restaurants and certain brewers. (Note: cities with a municipal liquor store do not issue off-sale licenses, other than 3.2 "beer" licenses.)

LMC information memo, *Liquor Licensing and Regulation*.

The city may continue to operate an off-sale or on-sale municipal liquor store or both, and it may resume operations of any such municipal liquor store if it has previously been discontinued. A city may not, after an election has authorized the split liquor plan, establish an on-sale municipal liquor store for the first time and still continue to issue private licenses. The split liquor election is outlined in the next section. (For a detailed discussion, see the League's liquor information memo.)

14. Liquor elections and liquor licensing

There are several special elections that cities may hold on liquor issues. These elections are necessary in order to issue intoxicating liquor licenses or particular kinds of liquor licenses. These include the following:

Minn. Stat. § 340A.416.

- Local option election. This election is when the voters are asked whether the city should allow the sale of liquor. If the voters approve, a dry city will become a wet city.

Minn. Stat. § 340A.504, subd. 3.

- Sunday liquor election. This election is where the voters are asked if the city should issue licenses that allow the on-sale of intoxicating liquor on Sundays in conjunction with the sale of food.

Minn. Stat. § 340A.504, subd. 3.

- Split liquor election. This election can only occur in a city with a municipal liquor store. It's an election where voters are asked if the city should be allowed to issue private on-sale liquor licenses while continuing to operate the city's liquor store.

Minn. Stat. § 340A.413, subd. 3.

- Election to increase the number of licenses. This election may be held in any city that is wet. In this election, the voters are asked if the city should be allowed to issue more licenses than the number that is allowed by statute.

LMC information memo, *Liquor Licensing and Regulation*.

For a detailed discussion of liquor elections, see the League's liquor information memo. The memo also includes sample language for these ballot questions.

15. State restrictions related to liquor licensing

Minn. Stat. § 340A.412, subd. 4; Minn. Stat. § 340A.402; Minn. Stat. § 340A.412; Minn. Stat. § 340A.410, subd. 6; Minn. Stat. § 340A.408, subd. 3, 5; Minn. Stat. § 340A.408, subd. 3a; Minn. Stat. § 340A.504; Minn. Stat. § 340A.412, subd. 10; Minn. Stat. § 340A.504, subd. 7; Minn. Stat. § 340A.503; Minn. Stat. § 340A.409, subd. 1; Minn. Stat. § 340A.509; LMCIT risk management memo, *Alcohol in the City – Liability and Insurance Issues*.

State law regulates local licensing authority and/or procedure, including:

- Location. What establishments can receive a license (including a prohibition against issuing a license to a club that discriminates on the basis of race).
- Fees, including setting fees, refunds, and procedures for raising fees for on- and off- sale intoxicating liquor licenses and 3.2 percent malt liquor licenses. (Even though the statute does not specifically require it, many cities provide similar notice of fee increases to all liquor license holders.)
- Hours of operation, including permits to sell after 1 a.m. (commonly known as 2 a.m. permits).
- Youth restrictions.
- Insurance requirements including a provision that if an establishment's insurance policy is canceled by the licensee or the insurance company, the insurance company will send notice of the cancellation to the city.

Note: State law insurance requirements are minimum requirements. For risk management purposes, cities should consider requiring proof of insurance from all liquor licenses, regardless of whether it is required by state law. Most cities adopt limits that are higher than state law requires. Even though state law exempts some licensees from the insurance requirement, cities may still require them to carry insurance. In short, the League of Minnesota Cities Insurance Trust (LMCIT) suggests that any alcohol seller should carry liquor liability coverage limits of at least $500,000, and cities should strongly consider requiring higher limits of $1 million or more.

C. Municipal liquor

Minn. Stat. §§ 340A.601 to 340A.604.

Even though cities do not issue licenses to their own municipal liquor store, we address it here. Any Minnesota city with a population of 10,000 or less, except those that have been incorporated for less than two years, has the legal (and statutory) authority to own and operate a retail municipal liquor store with off-sale liquor, on-sale liquor, or both. A recently incorporated city may be able to establish a municipal liquor store in less than two years after incorporating if it was previously an urban town or major part of an urban town. Subsequent changes in population do not affect the ability of a city to operate a liquor store.

Minnesota Municipal Beverage Association, (MMBA) (763) 572-0222 or (800) 848-4912, ext. 3925.

The Minnesota Municipal Beverage Association (MMBA) provides helpful information to municipalities that operate municipal liquor stores. For additional information about municipal liquor store operations, contact the MMBA.

Minn. Stat. § 340A.601, subd. 5.

Once a city establishes a municipal liquor store, all private intoxicating liquor licensing in the city must cease—unless the city has opted for split liquor, or has annexed or consolidated with an area and a private liquor license holder was located in the area. After the voters approve a split liquor system, cities may issue on-sale licenses to hotels, clubs, and restaurants.

1. Establishing a municipal liquor store

Minn. Stat. § 340A.601, subd. 7.

Unless the city has voted to remain dry, the council of any city of less than 10,000 in population may, by ordinance, establish a municipal liquor store (also known as a municipal liquor dispensary). If no private retail liquor licenses are in force in the city, the council may do this at any time. If private licenses are in force, the city must publish a notice of the council's intention to sell intoxicating liquor, which will therefore exclude issuance of retail licenses to private businesses. This notice must be in the legal newspaper at least one year prior to the date the council proposes to begin such sales.

When the city is shifting from private liquor sales to municipal sales, the most appropriate time to begin is when the outstanding private licenses expire. The decision to open a municipal store is probably not in itself sufficient legal justification for revoking a private license. The revocation of a private license is always difficult.

Arens v. Village of Rogers, 240 Minn. 386, 61 N.W.2d 508 (1953).

Generally speaking however, there is no right to engage in or continue to engage in the sale of intoxicating liquor. Even private parties who have previously had licenses to sell have no inherent right to continue such a business in the future. Good practice suggests working closely with the city attorney in a situation where a city wishes to establish a municipal liquor store and has active private liquor licensees.

A.G. Op. 218-C-2 (Nov. 3, 1947).

The statutes do not provide any definite method of financing the acquisition of a municipal liquor store building, fixtures, equipment, and stock. In a published opinion, the Attorney General finds that a city may use money from the general operating fund to establish a municipal liquor store and acquire a stock of liquors.

2. Operation of a municipal liquor store

Minn. Stat. § 340A.601-340A.604; Minnesota Municipal Beverage Association, (MMBA) (763) 572-0222 or (800) 848-4912, ext. 3925.

A municipal liquor store must comply with all state statutes regulating the hours and manner of sale, and with all applicable regulations of the liquor control division. The city may impose regulations that are more stringent if they do not conflict with state laws. Although exempt from the state personal property tax, municipal liquor stores are not exempt from state or national excise taxes. However, tax issues related to municipal liquor stores are beyond the scope of this chapter. Cities may seek guidance on this issue from the city auditor, the MMBA and the city attorney.

Jewell Belting Co. v. Village of Bertha, 91 Minn. 9, 97 N.W. 424 (1903); A.G. Op. 218R (July 13, 1962); A.G. Op. (July 27, 1981).

City councils are responsible for the operation of the municipal liquor store. They may delegate ministerial duties relating to the daily operations of the store to a liquor store manager or commission. The council may not delegate any policy-making powers, nor may it give employees authority to approve disbursement of funds in the liquor account. A city may not contract with a private corporation for the management and operation of a municipal liquor store.

Minn. Stat. § 340A.601, subd. 1; A.G. Op. 218-g-13 (Apr. 5, 1961).

A liquor store manager who acts under the direction of the council is usually in charge of the store but, according to an opinion from the attorney general, cannot share in the profits in addition to receiving a salary.

Minn. Stat. § 340A.601, subd. 1;

Minn. Stat. § 340A.412,subd. 14; Minn. Stat. § 340A.419, subd. 2; Minn. Stat. § 340A.510.

Generally speaking, municipal liquor stores operate in the same manner as an exclusive liquor store or a private establishment with an on-sale intoxicating liquor license, or both, depending on the nature of retail sales made by the municipal liquor store. Therefore, besides intoxicating liquors, municipal liquor stores may sell beverages (either liquid or powder) specifically designated for mixing with intoxicating liquor, all forms of tobacco, soft drinks, beer, liquor-filled candies, food products that contain more than one-half of one percent alcohol by volume; corkscrews or bottle openers; books and videos on the use of alcoholic beverages; magazines and other publications published primarily for information and education on alcoholic beverages; multiple use bags designed to carry purchased items; devices designed to ensure safe storage and monitoring of alcohol in the home, to prevent access by underage drinkers; home brewing equipment; and ice. Municipal liquor stores may serve food for consumption on the premises and operate in generally the same manner as a privately owned establishment. Municipal liquor stores may conduct a wine, malt liquor, or spirits tasting on the premises in compliance with state law.

Remick Music Corp. v Interstate Hotel Co., 58 F. Supp. 523 (D. Neb. 1944), *aff'd* 157 F.2d 744 (8th Cir.) *cert. den.* 329 U.S. 809, 91 L Ed 691, 67 S Ct 622; 17 U.S.C. § 102(A) (2), (7); 17 U.S.C. § 106 (4), (6); 17 U.S.C. § 116 (b).

A municipal liquor store may offer recorded or live entertainment. If it offers music, it must pay performance royalties to the copyright owner (usually the composer or publisher) of works that are played in the store. This would apply to both live performances and also when playing recordings, such as those on jukeboxes, stereo systems, and radios that are placed in the liquor store.

Dreamland Ball Room v. Schapiro, Bernstein & Co., 36 F.2d 354 (7th Cir. 1929); See also, International Municipal Lawyers Association (IMLA): *The ASCAP Licensing Agreement for Local Entities*.

Cities may negotiate performance royalties by dealing directly with the copyright owner—or, if the copyright owner is a member of an organization such as the American Society of Composers, Authors and Publishers (ASCAP) or Broadcast Music Inc. (BMI), the organization collects the payments on behalf of the composer. Often ASCAP and BMI sells blanket licenses that cover all performances of any works of their members. This is generally easier and less expensive than trying to pay a fee for each individual piece. The fee for this type of blanket license is based on the size of the liquor store. A sample license agreement between ASCAP and a city is available on the International Municipal Lawyers Association (IMLA) web site.

Minn. R. 7515.0470.

The city must promptly report any change in location of the municipal liquor store to the liquor control division or any change in the method of sale, such as from on-sale or off-sale to off-sale only.

Minn. Stat. § 412.271, subd. 1.

All liquor store receipts and disbursements must go through the general fund. All liquor store receipts must go to the treasurer, and the city must make all disbursements in the same manner as for all other city disbursements. Although not required by law, the state auditor has recommended cities maintain a separate liquor store fund for each store.

3. Municipal liquor store funds

Minn. Stat. § 426.20.

A city cannot appropriate any funds to the operation of the municipal liquor store unless the city council has first held a public hearing on the proposed transfer. Exceptions to this include funds for capital improvements, bonding costs, and construction and repairs the city can amortize and pay for from liquor store funds.

4. Municipal liquor store financial reporting

Minn. Stat. § 471.6985, subd. 1; Minn. Stat. § 471.697; Forms for cities with a population over 2,500; Minn. Stat. § 471.698; Forms for cities with a population under 2,500.

The city must publish a balance sheet and a statement of operation of the liquor store within 90 days after the close of the fiscal year. This must appear in the official newspaper of the city. The publication requirements of this section shall be *in addition* to any publication or posting requirements for financial reports contained in state law. However, the council may choose to incorporate this information into the reports published pursuant to state law and in accordance with a form and style prescribed by the state auditor.

Minn. Stat. § 471.6985, subd. 2; Minn. Stat. § 471.6985, subd. 2; Minn. Stat. § 471.6985, subd. 2.

The law requires that a certified public accountant attest to financial statements in any city operating a municipal liquor store with total annual sales in excess of $350,000. And a city with a municipal liquor store that has total annual sales in excess of $350,000 must submit these audited financial statements to the state auditor; the financial statements must be attested to by a certified public accountant, public accountant, or state auditor within 180 days after the close of the fiscal year. The state auditor may extend the deadline upon request of the city and a "showing of inability to conform." The state auditor may accept this report in lieu of the municipal liquor store reports described above. Note: Cities should consult the city attorney to ensure that current publication requirements for the municipal liquor store are met.

5. Municipal liquor store profits

A.G. Op. 218R (Jan. 13, 1951); See League information memo, *Public Purpose Expenditures*.

Like other public money, the city may spend liquor store revenues only for a public purpose. Cities may not make donations from liquor store receipts to private charities, organizations, industries, or businesses in order to encourage them to locate within the city. The city cannot use liquor store funds for complimentary advertising as a means of disguising a gift or gratuity.

Minn. Stat. § 426.19, subd. 2; Minn. Stat. § 447.045.

A city may use a surplus in the liquor fund for any legitimate city purpose. For example, store profits may finance city improvements or help to meet current expenses. Profits may go to any special fund not subject to restrictions. The council may irrevocably pledge liquor store profits to the payment of bonds, warrants or certificates of indebtedness for the construction, operation, and maintenance of sewage and sewage disposal plants, waterworks and mains, or city buildings. Before making such a pledge, however, it must be approved by a majority of the voters at either a general or special election. No election is needed if the liquor store money will be used to pay bonds, warrants or certificates of indebtedness to construct, reconstruct, enlarge or equip a municipal liquor store. State law allows cities to contribute liquor store profits toward the construction or improvement of a community or county hospital. Except for these purposes, it is doubtful that the city can pledge future liquor store profits for the repayment of bond issues other than to establish or improve the store's own facilities.

6. City liability in municipal liquor store sales

Minn. Stat. § 340A.603; Minn. Stat. § 340A.801; *Hahn v. City of Ortonville*, 238 Minn. 428, 57 N.W.2d 254 (1953); But *cf. Urban v. American Legion Dept. of Minnesota*, 723 N.W.2d 1 (Minn. Oct 19, 2006).

The Minnesota Supreme Court has held that a city may be liable under the civil damage statute for injuries suffered by a third party as a result of the intoxication of a person to whom a municipal liquor store illegally sold liquor. To protect themselves, cities should purchase liability insurance covering the operation of their store(s).

Minn. Stat. § 466.15.

Since the tort liability limits do not apply to dram shop actions, cities should consider purchasing insurance in excess of $600,000. Cities must show proof of financial responsibility as required for any other liquor licensee.

See LMCIT risk management memo *Liquor Liability Coverage*.

The League of Minnesota Cities Insurance Trust (LMCIT) offers liquor liability coverage for off-sale municipal liquor stores, on-sale municipal liquor stores, and "special event" sales by an instrumentality of the city—for example, special event malt liquor sales by a fire relief association.

7. Suspending municipal liquor store operations

Minn. Stat. § 340A.604.

The state can suspend a city's liquor store operations when any city officer or employee is convicted of selling intoxicating liquor or 3.2 percent malt liquor (beer):

- To a minor or other ineligible person.
- At a time when the law prohibits the sale.
- For resale.
- If the city has not paid the state tax.

The state can also suspend a city's liquor store's operations when any city officer or employee is convicted of violating gambling laws.

The court must notify the commissioner of the Department of Public Safety within 10 days of the conviction. The commissioner then has the authority to suspend the operation of the municipal liquor store for up to 30 days. The commissioner must notify the city of the effective dates of the suspension. The city has the right to appeal the decision.

8. Abolishing a municipal liquor store

A city may discontinue the operation of a municipal liquor store in several ways:

Minn. Stat. § 340A.412, subd. 4(a)(6).

- The liquor store must cease to operate if the city voters vote to have the city become dry. In this case, it is uncertain whether the municipal store must cease operations immediately after the election, or whether it may continue to operate for the balance of the year.

Minn. Stat. § 340A.602.

- If a city liquor store has a net loss prior to any inter-fund transfers in any two of three consecutive years, the city council must hold a public hearing on the question of whether the city shall continue to operate the liquor store.

Minn. Stat. § 340A.602.

- The hearing must take place not more than 45 days prior to the end of the fiscal year following the three-year period. After the hearing, the council may, on its own motion, or must, upon petition of 5 percent or more of the registered voters of the city, submit the question of whether the city should continue liquor store operations by a date determined by the city council to the voters at the general or special election. The date to discontinue operation, designated by the city council, must not be more than 30 months after the election.

Finally, the council can, at any time, abolish the municipal liquor store or make changes in the manner of sale, such as changing from off-sale only to on- and off-sale. In the first case, the council would repeal the municipal liquor ordinance; in the second case, it would amend the ordinance.

Minn. R. 7515.0470.

After a city abolishes a municipal liquor store, it must negotiate the sale of the fixtures and buildings. The clerk must submit a certified inventory of the stock on hand to the liquor control division, giving the brand names, the size and number of containers, and the details of disposition. The clerk must also submit the retailer's identification card to the division for cancellation.

D. Solid-waste collection

Minn. Stat. § 115A.93.

A person, or entity, may not operate a business to collect mixed municipal solid waste without a license from the city where the solid waste is collected.

E. Animals

Minn. Stat. § 412.221, subd. 21;

LMC information memo: *Animal Regulation in Cities*.

State law allows cities to regulate and license animal ownership by ordinance; While this probably does not authorize a complete prohibition against keeping animals within the city limits, it does permit reasonable regulations preventing a public nuisance. For example, cities may prohibit farm animals from certain districts within the city. All the considerations of city regulation of animals is beyond the scope of this chapter; consult state law and rule before adopting a comprehensive animal control ordinance.

1. Regulated exotic animals

Minn. Stat. § 346.155.

State law regulates the purchase, possession, breeding, and sale of large cats, bears, and nonhuman primates. A regulated animal includes any hybrid or cross between an animal listed above and a domestic animal, and offspring from all subsequent generations of those crosses or hybrids. Every person that possesses one or more of these regulated animals must be licensed by the USDA or must be registered with a local animal control authority. State law also criminalizes negligent failure to control a regulated animal or keep it properly confined if the animal causes harm to another person.

2. Dogs and cats

This section refers specifically to dogs because most cities regulate them by licensure, but a city may apply the same regulatory measures to other animals—such as cats. The League has sample ordinances regulating many different types of animals.

a. Dogs on restaurant patios

Minn. Stat. § 157.175.

A statutory or charter city may adopt an ordinance permitting local restaurants to allow dogs to join people on the restaurant's patios. Cities may charge reasonable fees to cover the cost of issuing such permits and regulating the activity. The ordinance must, at a minimum, contain the following provisions:

"Doggy Dining Companions and Dangerous Dogs." *Minnesota Cities* (May 2009, p. 19).

- A requirement that participating establishments apply for and receive a permit from the city before allowing patrons' dogs on their premises.
- Regulations and limitations as the local government deems necessary to protect the health, safety, and welfare of the public.
- A definition of "designated outdoor area" that is consistent with applicable rules adopted by the Department of Health.

The ordinance must not:

- Prohibit a food and beverage establishment from banning dogs.
- Limit the right of a person with disabilities to access places of public accommodation while accompanied by a service animal.

Before passing ordinances related to animals, cities may consider and holding public hearings to gather background information to support their regulations.

b. Dangerous dogs

Minn. Stat. § 347.542.

Minn. Stat. §§ 347.50 to 347.56; Minn. Stat. § 609.226; Minn. Stat. §§ 347.40-.56; *Hannen v. City of Minneapolis,* 623 N.W. 2d 281 (Minn. Ct. App. 2001);

LMC information memo: *Animal Regulation in Cities*;

"Doggy Dining Companions and Dangerous Dogs." *Minnesota Cities* (May 2009, p. 19).

State law prohibits dog ownership by those who have previously violated laws governing dangerous dogs or other laws related to animals. In addition, state law expressly grants cities authority to regulate potentially dangerous dogs, but specifically prohibits ordinances that deal with specific breeds of dogs. The dangerous and potentially dangerous dog laws must be enforced by animal control authorities or law enforcement agencies regardless of whether or not the city has adopted a local ordinance on the issue. An "animal control authority" is defined as "an agency of the state, county, municipality, or other governmental subdivision of the state which is responsible for animal control operations in its jurisdiction." While the law is not clear on the city's role in enforcing the dangerous and potentially dangerous dog provisions, it seems that if the city already regulates animals it would likely also have some level of responsibility for enforcing the dangerous and potentially dangerous laws. Cities must also include procedures for enforcing a local ordinance including due process procedures. Due process simply means the owner is given notice and a chance to be heard before the city takes action.

3. Licensing dogs, cats and other animals

Minn. Stat. § 412.221, subd. 21.

Cities may license dogs and regulate their keeping by ordinance. The license fee must be reasonable, but should be substantial enough to cover regulatory costs. Cities usually make licensing ordinances apply only to dogs once they are a certain age, usually three to six months old. Whether or not an animal owner may keep an animal on the owner's property without being subject to a license fee depends on the ordinance. Most ordinances require licenses no matter where the animal is kept.

In almost all cases, the city clerk has the duty to collect license fees; keep a list of dogs, cats, and owners; and issue license tags. Some cities, however, give these duties to the city police.

LMC information memo, *Data Practices: Analyze, Classify and Respond.*

License data is generally classified as public data under the Minnesota Government Data Practices Act (MGDPA). If nothing in the MGDPA specifically classifies pet licensing data as not public then the presumption is that it is public data. Because a city appointed person, known as the "responsible authority" is not allowed to ask about the proposed use of requested data and because a responsible authority is not allowed to withhold data based on knowledge or suspicion of a proposed use, there is no legal basis for the data to be withheld. It is entirely appropriate for the responsible authority to provide a license applicant with a Tennessen warning, informing the applicant of the public nature of the data and the possibility that it would be provided upon request, along with the city's reason for collecting the data.

Minn. Stat. § 35.71, subd. 3;
Minn. Stat. ch. 35;
Minn. Stat. ch. 347;
Minn. Stat. § 347.22.

Cities may, by ordinance, prevent animals from running at large. Usually, such a prohibition includes a licensing requirement that finances enforcement. Cities may also impound and destroy animals found running at large if this violates the local animal ordinance. Again, consult state law and rule for the detailed procedures and considerations involved in impounding or destroying animals.

F. Peddlers and transient merchants

Minn. Stat. § 412.221, subd. 19; Minn. Stat. § 329.11 Minn. Stat. § 329.15; Minn. Stat. § 437.02.

Both statutory cities and counties have the legal authority to license and regulate transient merchants including hawkers, peddlers, and solicitors. Home rule charter cities also have express authority to regulate such activities; charters frequently reflect this authority.

City of St. Paul v. Briggs, 85 Minn. 290; 88 N.W. 984 (1902); *Excelsior Baking Co. v. City of Northfield,* 247 Minn. 387, 77 N.W.2d 188 (1956); *State ex rel. Mudeking v. Parr*, 109 Minn. 147, 123 N.W. 408 (1909); But *cf. Dohns v. Holm*, 152 Minn. 529, 189 N.W. 418 (Minn. 1922).

In framing an ordinance, the council must specify precisely the kinds of business practices it intends to regulate. The term "peddler" is not legally synonymous with the terms "solicitor," "canvasser" or "transient merchant." The ordinance should specifically mention and define each term since the courts have been very strict in their definition of what type of activity constitutes what type of business practice.

Int'l Soc'y for Krishna Consciousness v. City of Houston, 689 F.2d 541 (5th Cir. 1982).

Cities generally cannot regulate charitable and religious solicitors because of First Amendment rights of free speech and freedom of religion. Others who are exercising constitutional rights also have special protection from certain types of local regulations regarding peddling, soliciting, and transient merchant sales.

Watchtower Bible & Tract Sock's of New York, Inc. v. Village of Stratton, 122 S. Ct. 2080 (2002);Watchtower Bible & Tract Sock's of New York, Inc. v. Village of Stratton, 122 S.Ct. 2080 (2002);Watchtower Bible & Tract Sock's of New York, Inc. v. Village of Stratton, 122 S.Ct. 2080 (2002); *Bible & Tract Sock's of New York, Inc. v. Village of Stratton,* 122 S. Ct. 2080 (2002).

A U.S. Supreme Court decision prohibits cities from even registering those going from place to place to exercise their constitutional rights of free speech and freedom of religion.

LMC information memo, *Regulating Peddlers, Solicitors and Transient Merchants*.

Regulation of peddlers, solicitors, and transient merchants may take several different forms discussed at length in the LMC information memo, *Regulating Peddlers, Solicitors and Transient Merchants.* Best practice suggests careful city attorney review of ordinances regulating these activities.

G. Telecommunications

Minn. Stat. § 237.162; Minn. Stat. § 237.163; *U.S. West Communications Inc. v. City of Redwood Falls,* 558 N.W. 2d 512 (Minn. Ct. App. 1997).

Cities do not have the right to franchise telephone companies, although cities do have the right to franchise gas and electric franchises. Cities do, by statute, have the right to manage and recover actual expenses for the excavation, disruption, degradation, and management of the use of local rights-of-way by telecommunications service providers. The law does not give cities authority to establish local telecommunication franchise fees for the use of rights-of-way, nor does it permit in-kind services in lieu of payments of permit fees.

See LMCIT risk management memo, *Model Right of Way Ordinance*.

Because of the complexity of this issue, cities wanting to regulate telecommunications companies or other users of the public rights-of-way, should consult League publications and work with their city attorney to develop the appropriate ordinance provisions and cost recovery systems.

1. Wireless telecommunication towers and antennas

LMC information memo *Wireless Telecommunications Towers and Antennas* and *Model Site Lease Agreement*.

Cities have the right to zone for wireless telecommunications towers and antennas. Cities can also lease city facilities, such as water towers, for locations for these facilities. Caution should be exercised when doing either of these activities.

H. Entertainments

Minn. Stat. § 412.221, subd. 27.

State law no longer requires a license and police protection for public dances. Cities still have the authority, however, to regulate public dances. Cities may also regulate other types of entertainment not subject to state licensing such as bowling alleys, recreational rides, shooting ranges, and sliding hills.

I. Tobacco and related products

Minn. Stat. § 461.12, subd. 1.

The county must license all retailers that sell tobacco products, unless a city adopts its own tobacco licensing ordinance.

1. Tobacco

Minn. Stat. § 297F.01, subd. 19; Minn. Stat. § 461.12, subd. 1-2, 4-5; Minn. Stat. § 461.18, subd. 1; Minn. Stat. § 609.685, subd. 1; See also, Public Health Law Center at William Mitchell College of Law, *Minnesota's Tobacco Modernization and Compliance Act of 2010 - Information Sheet.*

The Tobacco Modernization and Compliance Act of 2010 defines "tobacco" as: Cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product which includes tobacco products. Tobacco-containing products that can be ingested by any means, not just those that are smoked or chewed, which includes electronic cigarettes or "e-cigarettes" (battery-powered devices used to inhale doses of nicotine or non-nicotine vaporized solution) and tobacco mints or candies known as "dissolvables." Cigars; cheroots; stogies; perique (a strong tobacco produced in Louisiana); and granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco. Snuff; snuff flour; cavendish (a process of curing and a method of cutting tobacco that is softened, sweetened, and pressed into cakes); plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco. Other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or other tobacco-related devices. The definition of tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

2. Promotional products

Minn. Stat. §. 325F.77, subd. 4.

No person shall distribute smokeless tobacco products or cigarettes, cigars, pipe tobacco, or other tobacco products suitable for smoking as defined above, except that single serving samples of tobacco may be distributed in tobacco stores.

3. Tobacco-related devices

Minn. Stat. § 609.685.

State law defines that tobacco-related device means cigarette papers or pipes for smoking, and prohibits the sale of pipes, cigarette papers, and tobacco to minors. Cities can provide for more stringent regulation of these types of sales.

4. Nicotine delivery products

Minn. Stat. § 609.6855.

Selling "nicotine delivery products" to a minor is a crime. Nicotine delivery products include any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined by state law.

5. City ordinances licensing sale of tobacco and tobacco-related products

Minn. Stat. § 461.19.

Cities may regulate the sale of these new forms of tobacco the same way they have always regulated traditional cigarettes, cigars, snuff and chew via a local licensing ordinance. Cities should review their licensing ordinance in light of the Tobacco Modernization and Compliance Act of 2010. Cities may need to amend their ordinance's terms and definitions section to mirror the new expanded definitions.

A city wishing to adopt an ordinance licensing the sale of tobacco and tobacco-related devices must give general notice of the intent to adopt or amend a tobacco ordinance, and must give retailers 30 days' written notice of the time, place, and subject matter of the meeting where the proposed ordinance or amendments are to be considered.

A tobacco licensing ordinance, whether adopted by the county or the city, must contain at least the following provisions:

Minn. Stat. § 461.12.

- Establish an administrative hearing system where an alleged violator has the right to be heard before a designated hearing officer or panel (which could be the city council) and where a fine, instead of a criminal penalty, could be imposed for violating the ordinance. State law establishes a schedule of fines.
- Provide for and conduct at least one unannounced compliance check each year.
- Prohibit self-service (vending machines) sales of individual cigarette packages, except in establishments that prohibit minors, and in establishments that derive at least 90 percent of their revenue from the sale of tobacco.

Minn. Stat. § 461.12, subd. 1.

The ordinance may establish a licensing fee sufficient to cover the costs of enforcing the above provisions.

J. Tear gas

Minn. Stat. § 624.731, subd. 3.

Generally, those over 16 years of age may possess and use an authorized tear gas compound from an aerosol container to defend themselves or their property.

Minn. Stat. § 624.731, subd. 9.

Cities have the authority to license vendors of tear gas compounds, to impose a license fee and qualifications for obtaining a license, to set the duration of licenses, and to restrict the number of licenses. The local governing body may establish the grounds, notice, and hearing procedures for revocation of licenses issued.

K. Pawnbrokers

Minn. Stat. § 325J.02;
Minn. Stat. § 325J. 13.

Cities may regulate pawn transactions and license pawnbrokers, but state law establishes minimum standards that must be included in any ordinance or regulation. A city ordinance must echo the same state statute on these points:

- Requiring a pawnbroker to return pledged goods or pay for them upon payment in full unless it is more than 60 days after the redemption date or law enforcement has taken the goods into custody.

Minn. Stat. § 325J.13;
Minn. Stat. § 325J.08 (7) (10).

- Permitting a pawnshop to remove unredeemed pawned items from the pawnshop or approved storage place without selling the items, so long as the redemption period has expired.

Local ordinances must also allow pawnbrokers to:

- Return pawned goods to the borrower during the redemption period.
- Sell pledged goods or remove them from the pawnshop or other storage after the redemption period ends.
- Sell or remove purchased goods from the pawnshop or other storage 31 days after the purchase date if the pawnbroker buys goods other than through a pawn transaction.

L. Secondhand goods dealers

Minn. Stat. § 412.221, subd. 32;

Minn. Stat. § 471.927.

Cities may, by ordinance, regulate dealers of secondhand goods for the general welfare of city residents. Counties also have the authority to regulate dealers of secondhand goods, but may work in concert with cities on this subject.

M. Amusement machines

Minn. Stat. § 449.15.

A home rule charter or statutory city may impose, by ordinance, a license fee on pinball and video (known as “amusement machines” in the law) machines of no more than the demonstrated and verifiable actual cost of issuing the license, or $15 per location plus $15 per machine.

N. Tattoos or body art establishments

Minn. Stat. §§ 146B.01-146B.10.

State law now governs establishments practicing tattooing or body art. Beginning on Jan. 1, 2011, all body art establishments (and body art technicians) must be licensed in each licensed area by the state department of public health. As discussed below, if an establishment is licensed by a city it may be exempt from the state requirement and must apply for a waiver. The law defines tattooing and body art as follows:

- Tattooing means any method of placing indelible ink or other pigments into or under the skin or mucosa with needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. Tattooing includes “micropigmentation” or “cosmetic tattooing,” which is the use of tattoos for permanent makeup or to hide or neutralize skin discolorations. Body art or body art procedures means physical body adornment using, but not limited to, tattooing and body piercing. Body art does not include practices and procedures that are performed by a licensed medical or dental professional if the procedure is within the professional’s scope of practice.

In addition, the law regulates

- "Tongue bifurcation," meaning the cutting of the tongue from the tip to the base, forking at the end.
- "Branding," meaning an indelible mark burned into the skin using instruments.

The law must be read for the detailed provisions on procedures and health standards. Some key items, however, include the following:

LMC Codification Service Blog: New Law Regulating Tattoo and Body Art Establishments.

Establishments must meet all local and state health and safety codes for buildings and not constitute a public health nuisance. Establishments must maintain records on the licensure and training of employees and on clients serviced at the establishment. Establishments in private homes must be completely separate from living, eating, and bathroom areas in the home.

Minn. Stat. § 146B.08.

The law also contains extensive procedures for the revocation of establishment licenses where violations have occurred. In addition, violations may be punished by a civil penalty not exceeding $10,000 that includes costs for investigation and prosecution of the violation.

1. Body art technicians

Minn. Stat. § 146B.03.

Cities may no longer license persons practicing body art. Beginning on Jan. 1, 2011, body art technicians must be licensed exclusively by the state Department of Health. "Technician" or "body art technician" means any individual who is licensed under state law in each of the following areas as a tattoo technician, body-piercing technician, or both. State law requires that no person may use the title of "tattooist," "tattoo artist," "tattoo technician," "body art practitioner," "body art technician," or other letters, words, or titles in connection with that person's name which in any way represents that the individual is engaged in the practice of tattooing or authorized to do so, unless the person is licensed and authorized to perform tattooing under state law.

2. City regulation of body art establishments

Minnesota Department of Public Health: Minnesota Body Art Regulation Brochure.

Cities that previously regulated body art establishments may continue to do so, but local ordinances must be as strict as the state requirements. These requirements include inspections to ensure health and safety for the establishment and the equipment. Body art establishments that are subject to city ordinances and that meet or exceed Department of Health requirements do not have to have a state license, but owners or operators of each establishment must complete and submit an application for exemption from state licensure.

Minn. Stat. § 146B.02, subd. 9.

The city may have stricter standards than the state law. In addition, a city may choose via local ordinance to "limit the types of body art procedures that may be performed in body art establishments located within its jurisdiction."

LMC Codification Service Blog: New Law Regulating Tattoo and Body Art Establishments.

If a city wishes to continue to regulate this area, the new law must be reviewed carefully and compared to the existing ordinance—particularly the "health and safety standards" portion and the sections regulating home businesses.

O. Massage

State law does not license massage parlors, so cities may regulate them by ordinance and require a license for health and safety reasons. A number of cities currently regulate massage parlors to address concerns related to sterile and sanitary conditions in these businesses. Generally, the license fees cover the costs of inspection and regulation.

P. Adult uses

LMC *Adult Use Packet*; Contact the Research department at 800.925.1122 for a copy; See also, Handbook Chapter 14.

The regulation of adult entertainment businesses, such as strip clubs, is legally complex. Cities often use either licensing or zoning to regulate adult uses, or both. Cities seek to regulate adult uses to minimize the negative secondary effects these businesses may cause.

Minn. Stat. § 617.242; *Northshor Experience, Inc. v. City of Duluth, MN* 442 F.Supp.2d 713 (D. Minn. 2006).

A state law, enacted in 2006, requires that anyone intending to open an adult use business provide notice, 60 days in advance, to the city where the business will locate. The law includes numerous other provisions focused on regulation of adult uses businesses. The new law is the subject of an injunction issued by a federal district court; the court finds that questions about the law's constitutionality are valid and rules that the city may not enforce the new law. Until the constitutional questions regarding the new law are resolved, cities probably should not rely on it as the sole mechanism for regulating adult entertainment establishments.

Instead, cities may consider taking proactive measure to adopt local adult use regulations. However, adopting any regulations of adult uses is legally complex and the city attorney should be involved in the drafting of any adult use ordinances.

Q. Taxis

Minn. Stat. § 221.091, subd. 2; Minn. Stat. § 412.221, subd. 20; Minn. Stat. § 221.091, subd. 2(b); Minn. Stat. § 174.30, subd. 6(a).

If a city licenses small vehicle passenger service (seven or fewer persons, including the driver, e.g., taxicabs) it must do so by ordinance and the ordinance must at least provide for driver qualifications, insurance, vehicle safety, and periodic vehicle inspections. A person who provides small vehicle passenger service to an individual for the purpose of obtaining non-emergency medical care and who receives medical reimbursement for providing the service must comply with the state rules; cities may not license such vehicles.

IV. How this chapter applies to home rule charter cities

This chapter, except as otherwise noted or as the cited statutes may limit, can generally be applied to charter cities.