



**HANDBOOK FOR MINNESOTA CITIES**

**Chapter 10  
City Licensing**

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## HANDBOOK FOR MINNESOTA CITIES

# Chapter 10 City Licensing

*Understand the basic concepts in licensing such as city authority, constitutional issues, pre-emption and fees. Learn about licensed activities such as liquor, animals, peddlers, businesses, telecommunications and more.*

### RELEVANT LINKS:

[Minn. Stat. § 176.182, subd. 2.](#)

[Minn. Stat. § 270C.72.](#)

## I. Licensing generally

A license represents a regulatory device that ensures compliance with established rules and regulations that govern a specific occupation, profession, commercial trade, or other activity. The license does not represent a contract between a regulating entity and individuals or corporations. Rather, it allows the license holder to do something that the license holder could not do without the license.

### A. State laws applicable to city licensing

#### 1. Proof of workers' compensation coverage

A city cannot issue a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with state law workers' compensation insurance coverage requirements. This includes requiring every applicant for a city license provide the name of the insurance company, the policy number, and the dates of coverage or a permit to self-insure.

#### 2. State tax clearance required

Cities also must require applicants for any city-issued license to provide their Social Security number and Minnesota business identification number on all license applications. Under state law, "license" includes any permit, registration, certification, or other form of approval authorized by statute or rule that the city issues as a condition of either doing business or conducting a trade, profession, or occupation in Minnesota.

A city must revoke and may not issue, transfer, or renew, any license for the conduct of a profession, occupation, trade, or business, if the Minnesota Department of Revenue notifies the city that the applicant either owes the state at least \$500 in delinquent taxes, penalties, or interest or has not filed returns.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

## RELEVANT LINKS:

[Department of Revenue Steps for submitting Annual License Information](#)

[Vill. of Brooklyn Center v. Rippen](#), 96 N.W.2d 585 (Minn. 1959). [Minnetonka Elec. Co. v. Vill. of Golden Valley](#), 273 Minn. 301, 141 N.W.2d 138 (1966).

[Minn. Stat. § 412.221.](#)

[Minnetonka Elc Co. v. Vill. of Golden Valley](#), 273 Minn. 301, 141 N.W.2d 138 (1966). [City of Birchwood Vill. v. Simes](#), 576 N.W.2d 458 (Minn. Ct. App. 1998). [Mangold Midwest Co. v. Vill. of Richfield](#), 274 Minn. 347, 143 N.W.2d 813 (1966). But cf. [State v. Kuhlman](#), 729 N.W.2d 577 (Minn. 2007). [State v. Westrum](#), 380 N.W.2d 187 (Minn. Ct. App. 1986). [Eureka Twp. V. Petter](#), A17-0020 (Minn. Ct. App. Sept. 5, 2017) (unreported).

Before requiring the city to revoke a license, the Minnesota Department of Revenue must send notice to the applicant of its 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. A city that receives notice from the Department of Revenue may only issue, transfer, renew, or decide to not revoke the applicant's license, *if* the Department of Revenue issues a tax clearance certificate and the department or the applicant forwards a copy of the clearance to the authority.

Upon request, the city must provide the Department of Revenue with a list of all license applicants, including the name, address, business name and address, Social Security number, and business identification number of each applicant. The department may request a list of license applicants only once each calendar year. The Department of Revenue requests the information on an annual basis by December 31 on the department's annual license document.

## B. State laws pre-empting or limiting city licensing

Municipal regulatory powers come from either a statute or, in the case of charter cities, from a city's charter. As a result, a city may license a business or activity, either (1) when expressly allowed to do so by state statute; or (2) when implied by statute, such as when a license is necessary for a city to perform its general statutory powers (like preventing public nuisance or protecting the general welfare). This means cities may license certain businesses and activities peculiarly local in nature and not pre-empted by the state. Keep in mind that licenses are simply one way a city may regulate a given activity. A license provides the licensee a special privilege not accorded to others and which the licensee, would not enjoy otherwise.

Municipalities often regulate activities that are also subject to state regulations. If the state law, however, so fully regulates a particular field of business or activity, that no room for local regulation exists, then the state law pre-empt local regulations (this is known as "field preemption"). For example, the courts have found that the state legislation establishing a conservation district that regulated docks and boat sizes fully occupied that field of legislation, leaving no room for local regulation. Courts generally consider four factors when considering pre-emption: (1) the subject matter regulated; (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern; (3) whether any partial legislation on the subject matter demonstrates an intent to treat the subject matter as being solely a state concern; and (4) whether the nature of the subject matter is such that local regulation will have an adverse effect on the general state population. If pre-emption does not apply, then cities can adopt local regulations that may differ from state law, so long as the local regulation complements or furthers state law (provided no direct conflict exists between the state regulations and the local ordinance).

## RELEVANT LINKS:

[Minn. Stat. § 326B.44.](#) See,  
[Minn. Stat. § 326B.475.](#)

[Minn. Stat. § 326B.43.](#)  
[Minn. Stat. § 326B.46.](#)  
[Minn. Stat. § 326B.805.](#)

[Minnesota Department of Labor & Industry Website.](#)

[Plumbing Plan Review Agreements from Department of Labor & Industry.](#)

[Minn. Stat. § 221.81, subd. 3b.](#)  
[Minn. Stat. § 160.02, subd. 25.](#)

Finally, cities cannot license where the state has expressly pre-empted local licensing authority. For example, a city may not license attorneys, doctors, or engineers.

### 1. Plumbers

State licensing laws specifically prohibit local licensing of plumbing contractors (except for those cities that licensed plumbers before state licensing commenced).

However, cities with a population of 5,000 or more may, by ordinance, adopt local regulations providing for plumbing permits, approval of plans and specifications and inspections on plumbing. With some limited exceptions, state law requires plumbers to have some level of state licensure and state bonding. A state plumber license is not required for workers who install building sewer or water service and who have completed state-prescribed pipe laying training.

Minnesota's Department of Labor & Industry (DLI) reviews proposed plumbing projects to ensure compliance with the Minnesota Plumbing Code. Cities may enter into agreements with the state to perform plumbing plan and specification reviews. Cities of the first class have their own plumbing programs. A number of other cities have plan review agreements with DLI, and take responsibility for plan review on most plumbing projects. However, some projects in cities of the first class and cities with plan review agreements still require state review by the DLI. These projects include:

- Hospitals, nursing homes, supervised living facilities, free-standing outpatient surgical centers, correctional facilities, boarding care homes, or residential hospices, and similar state-licensed facilities.
- Public buildings owned and paid for by the state or a state agency regardless of cost, and school district building projects or charter school building projects regardless of cost.
- Projects of a special nature, including dialysis facilities and other projects for which a department plan review is requested by either the municipality or the state.

### 2. Building movers

Building movers include people, corporations, or other entities that raise, support off the foundation, and move buildings on and over public streets and highways. Building movers do not include people who move manufactured homes or modular homes, farmers moving their own farm buildings, or people moving buildings less than 16 feet wide by 20 feet long. A building mover may not move a building on or across a street or highway without first obtaining a permit from the road authority that has jurisdiction over the street or highway.

## RELEVANT LINKS:

[Minn. Stat. § 221.81, subd. 3c.](#)

[Minn. Stat. § 160.02, subd. 25.](#)

[Minn. Stat. § 221.031, subd. 6.](#)

[Minn. Stat. § 28A.04.](#)

[Minn. Stat. § 28A.06.](#)

[Minn. Stat. § 28A.0753.](#)

[Minn. Stat. § 326B.34.](#)

[Minn. Stat. § 326B.44.](#)

A city, as a road authority, must not issue a permit to move a building unless the applicant has a current state-issued license. A city, outside of its capacity as the controlling road authority, may not require a license, bond, cash deposit or additional insurance to move buildings, other than the license and insurance coverage required by the Commissioner of Transportation.

In its capacity as a road authority, however, a city may charge a fee for services performed and may, by ordinance, require a permit which reasonably regulates the hours, routing, movement, parking, or speed limit for a building mover operating on streets or highways under its jurisdiction. A building mover must comply with the State Building Code as well.

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.

### **3. Food manufacturer, processor, or distributor and dairy plants**

The state licenses food manufacturers, processors, distributors, sellers, and handlers, as well as food storage facilities. Cities generally may not license these entities or activities. Local ordinances regulating where a manufacturer, processor, or distributor locates its plant do apply. State law also governs all delivery equipment a food manufacturer, processor, or distributor uses and exempts local licensing. Delivery equipment approved by the state must carry a state-issued certificate of approval at all times.

### **4. Alarm & communications services**

State law prohibits a city from requiring a licensed power limited technician, technology system contractor, or individual employed by a technology system contractor from obtaining any authorization, permit, franchise, or license from, or pay any fee, franchise tax, or other assessment to, the city as a condition for performing any work within the scope of a state license. State law does not prohibit a unit of local government from charging a franchise fee to the operator of a cable communications company

## **C. Inspections**

### **1. Plumbing**

Any city having a system of waterworks or sewerage, regardless of population, may, by ordinance, adopt local regulations providing for plumbing permits, approval of plans and specifications, and inspections of plumbing, as long as the regulations do not conflict with the state plumbing code.

## RELEVANT LINKS:

[Minn. Stat. § 326B.44.](#)

[Minn. Stat. § 144.653.](#)

[Minn. Stat. § 299F.47.](#)

[Minn. Stat. § 326B.36.](#)

[Minn. Stat. § 412.221, subd. 32.](#)

[City of St. Paul v. Dalsin](#), 245 Minn. 325, 71 N.W.2d 855 (1955).

[State v. United Parking Stations](#), 50 N.W.2d 50 (Minn. 1951).

## 2. Water softener installers

Any city may pass an ordinance establishing regulations, reasonable standards, and inspections for persons engaged in the business of installing water softeners. This applies in limited situations and only to those companies or individuals not licensed as a contractor by the commissioner.

## 3. Hospitals and other health care facilities

The commissioner of health may enter into agreements with cities for locally employed inspectors to perform the inspection of hospitals and other health care facilities.

## 4. Limited school inspections

If a city had already inspected public school buildings and charter schools between Jan. 1, 1987, and Jan. 1, 1990, then that city can continue to provide those inspections. In all other instances, the state fire marshal performs these inspections.

## 5. Electrical inspection

A city may pass an ordinance providing for electrical inspections that mirror the statutorily required electrical inspection in state law. A city shall not require any individual, partnership, corporation, or other business association, holding a license from the Commissioner of Administration, to pay any license or registration fee.

A city may, by ordinance, require each individual, partnership, corporation, or other business association doing electrical work within the city to have on file, with the city, a copy of the current license issued by the commissioner.

## II. City authority to license

When not pre-empted or limited by state law, cities often have authority to license, including express authority provided for in a state licensing law.

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

If not specifically allowed by state statute, local licensing authority may arise out of either the city's right to exercise its police power to protect and promote the public welfare or the city's general welfare clause. The Supreme Court has cited the general welfare clause as 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 the ordinance.

## RELEVANT LINKS:

[Minn. Stat. § 412.221, subs. 19, 20, 21, 25, 27, 30.](#)  
[Minn. Stat. § 28A.065](#)  
(carnivals, circus & fairs).

[Minn. Stat. § 330.025](#)  
(auctioneers).  
[Minn. Stat. § 325.742](#) (precious metal dealers).

9 McQuillin Mun. Corp. § 26:6  
(3d ed.).

6A McQuillin Mun. Corp. §  
24:9 (3d ed.).  
[City of St. Paul v. Dalsin](#), 245  
Minn. 325, 71 N.W.2d 855  
(1955). [Ukkonen v. Gustafson](#),  
244 N.W.2d 139 (Minn. 1976).

Licensing ordinances are typically found invalid when found when the court found them unconstitutional or adopted without a reasonable basis. Home rule charters generally include similar specific and general welfare authority to license and regulate businesses or other activities.

State law provides specific statutory authority to license many different businesses or activities, including:

- auctioneers,
- transient merchants and dealers,
- hawkers,
- peddlers,
- solicitors and canvassers,
- baggage wagons,
- dray drivers, taxicabs,
- automobile rental agencies,
- liveries,
- riding academies,
- circuses,
- theatrical performances,
- amusements or shows of any kind,
- keeping of billiard tables
- bowling alleys,
- devices commonly used for gambling purposes,
- public dances and dance halls,
- restaurants and public eating houses (except for restaurant or delicatessen in a grocery store)
- precious metal dealers

Some cities also license emergency wrecker services, nuisance wildlife removal businesses, rental housing and coin-operated devices (vending machines).

Section III of this chapter discusses, in more detail, some of the more commonly city-licensed businesses.

## A. Constitutionality and reasonableness

The terms and conditions set forth in licensing ordinances, like other regulatory ordinances, must be reasonable in their terms and conditions and cannot place unnecessary, unreasonable, or oppressive restrictions that conflict with the state or federal constitution. This represents a question of fact in every case. Courts presume municipal ordinances constitutional, placing the burden of proving them unconstitutional on the party challenging the ordinance.

## RELEVANT LINKS:

*Vill. of Schaumburg v. C.B.E.*, 444 U.S. 620, 100 S. Ct. 826 (1980).

*Working America, Inc. v. City of Bloomington*, 142 F.Supp.3d 823 (D.Minn. 2015).

*City of St. Paul v. Dalsin*, 245 Minn. 325, 71 N.W.2d 855 (1955).

*Sverkerson v. City of Minneapolis*, 283 N.W. 555 (Minn. 1939) (required proof of insurance).

*State v. United Parking Stations, Inc.*, 50 N.W.2d 50 (Minn. 1951).  
[Minn. Stat. § 87A.08](#) (shooting ranges).

U.S. Const. art. IV, § 2.  
*Working America, Inc. v. City of Bloomington*, 142 F.Supp.3d 823 (D.Minn. 2015).

Licensing ordinances that have survived challenges have included terms that set forth, among other things, 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.

Licensing ordinances also should address procedure—such as who investigates the applicant; who decides whether the applicant is qualified; and what procedural rights an applicant has in case of a denial, suspension or revocation.

Courts, in general, allow a city to license most businesses or activities, and rarely deem an ordinance in violation of any constitutional rights. However, the licensing of solicitors has spurred constitutional concerns and various courts have found several city-licensing provisions unconstitutional for unlawfully restricting solicitors' rights of free speech. Indeed, courts recognize solicitation as a form of expression entitled to the same constitutional protections as traditional speech. Ordinances that treat individuals differently depending on the function or purpose of their speech have been found to be unconstitutional. As a result, cities should take special care and should consult their city attorney in drafting ordinances that restrict solicitors.

## B. Licenses as a regulatory device

As stated above, licensing represents a means of regulation. The power to regulate includes authority to provide standards for a certain business or activity, 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, a licensing ordinance may require an applicant to furnish liability insurance as a condition of a license.

In limited situations, cities regulate certain business or activities to prevent nuisances from arising. For instance, state law specifically allows cities, by ordinance, to regulate the days and hours of shooting range operations.

## C. Discrimination against applicants

Courts have found some city ordinances that discriminate between categories of applicants (by either refusing to grant licenses to one set of applicants and not the other, or by granting similar licenses on different terms) unconstitutional.

## RELEVANT LINKS:

U.S. Const. Amend. XIV, § 1.  
*Kalra v. State of Minnesota*, 580  
F. Supp. 971 (D. Minn. 1983).

LMC Model, *Fee Schedules:  
Fixing Fees via Ordinance or  
Resolution*.  
Minn. Stat. § 340A.408.  
Minn. Stat. § 340A.26.  
Minn. Stat. § 340A.28.  
Minn. Stat. § 28A.09.  
Minn. Stat. § 624.20, subd. 1(d).  
Minn. Stat. § 458A.  
Minn. Stat. § 473.448.  
Minn. Stat. § 103I.111.

*Barron v. City of Minneapolis*,  
212 Minn. 566, 4 N.W.2d 622  
(1942).

LMC Model, *Fee Schedules:  
Fixing Fees via Ordinance or  
Resolution*. See Section II.D.1.  
below.

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

Courts have ruled that non-citizens fall within the protection of the equal protection and due process clauses and, as a result, cities may not adopt an ordinance that denies a license based on non-U.S. citizenship.

Requiring applicants for a liquor license to be state residents is unsettled law. Adding additional eligibility criteria for liquor licenses, beyond what state law requires, may be questionable and should be avoided. Because of the complexities in licensing requirements, cities should consult their city attorney.

## D. License fees

When a city properly requires a license, it generally may set a fee for the license. Statutes granting authority to issue licenses often do not specify maximum fees; however, in a few cases, the statutes either set maximum fees for city licenses or prohibit fees all together. For instance, state law sets maximum fees for off-sale liquor licenses and it requires that a retail on-sale intoxicating license fee cover only the costs of issuing, inspecting, and other directly related costs for enforcement. These liquor fee requirements apply to more than just retail sale of liquor and include, for example, small brewers, brewer taprooms, and micro-distilleries. Limits on license fee for certain vending machines also may apply, depending on what is being sold and the types of inspections required. Such fees must be based on the city's costs involved in administering the license program and not on the value of the items sold. As another example, state law limits the amount charged for license fees that municipalities may impose when permitting the sale and storage of legal fireworks.

Complete prohibitions on cities charging license fees also exist in state law. Some include prohibitions on charging license fees on certain transit commissions and licensed well contractors.

Cities often ask if council can set fees by resolution rather than ordinance. Councils should set most fees via ordinance. Although cities find fixing license fees by resolution more convenient, a court may not find fixing fees in such a manner valid, except, of course, in those rare instances when the enabling state statute allows fee setting by resolution. The League Research Department has prepared an informational table which lists when the law allows fee setting by resolution, when a public hearing or individual notice is required, and those instances when state law limits the fee amount.

When setting fees, cities should consider a number of things. First, cities should not view municipal licensing as a significant source of revenue. Generally, license fees must approximate the direct and indirect costs associated with issuing the license and policing the licensed activities. License fees that significantly exceed these costs generally are considered taxes that a city does not have the authority to enact.

## RELEVANT LINKS:

*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). *Lyons v. City of Minneapolis*, 63 N.W.2d 585 (Minn. 1954). *State ex rel. Remick v. Clousing*, 285 N.W. 711 (Minn. 1939).

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

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

This means a license fee may not be so high as to, be prohibitive or produce any substantial revenue beyond the actual cost to issue the license and to supervise, inspect, and regulate the licensed business.

Unless otherwise specified by state law, the amount of a license fee largely lies within the discretion of the city council. A court will not presume a particular license fee exceeds the amount the city may legally charge. One who claims a fee unreasonable usually must produce some evidence supporting this contention. 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.

Second, the fee amount should sufficiently reimburse the city for all expenses related to license regulations, but should not cover other unrelated expenses. 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 involving gasoline stations. In other words, the city may not recover expenses it incurs merely because of the nature of having the business located in its city. License fees that yield incidental revenue beyond the expense of providing services generally are not objectionable.

Last, cities should know that courts likely would invalidate an ordinance that requires a license for a non-nuisance-prone activity, if the fee exceeds the cost of issuing the license and the ordinance does not either require inspection of the business or impose other cost generating regulations concerning it. Because a license enables cities to enforce regulations, licensing ordinances should contain standards to guide the conduct of the licensed business or activity.

Cities must set their license fees based on their particular situation and not based solely on what fees have been found to be reasonable in other cities. The reasonableness of a fee amount must take into consideration factors specific to the business or activity, such as the kind of business, the degree of inspection and regulation of that business or activity and the value of the dollar at the time other similar fees were set—all of which vary greatly from one city to another. Basing a fee *solely* on what other cities charge has not withstood challenge.

### 1. Fix license fees by ordinance

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 probably is invalid, unless the enabling authority for the license permits the use of a resolution (which is rare).

## RELEVANT LINKS:

Handbook, *Meetings Motions Resolutions and Ordinances*. LMC Model, *Fee Schedules: Fixing Fees via Ordinance or Resolution*.

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

A.G. Op. 125a-66 (Aug. 12, 2003).

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

An ordinance requiring a license but allowing the council to establish the fee on a case by case basis also likely would not survive challenge. If the council, by resolution and without publication, could change its scale of fees, then it conceivably could adopt a new resolution each time it receives an application for a license. This type of ad hoc decision making could lead to discrimination in favor of particular license applicants.

Some cities adopt a fee schedule to set or change licensing and other regulatory fees. The fee schedule lists each fee charged by the city for each type of license. Cities usually include the fee schedule as an appendix to the city's ordinance book. Fee schedules take the place of listing individual dollar amounts in each separate licensing or regulatory section of the ordinance book. By using a fee schedule, a city can revise all its fees at once in a single ordinance revision, rather than revising many separate ordinance provisions. The schedule also generally makes it easier to handle publishing concerns. Cities should use caution with fee schedules, because they can blur the distinctions between different types of licensing fees. Often State statutes impose unique notice or hearing provisions regarding a change in licensing fees. In other instances, State statutes may prescribe dollar limitations on certain fees. Cities must heed these requirements in changing their fees even when using a blanket fee schedule.

## 2. Pro rata fees

If the fee amount covers more than the cost of just issuing the 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.

Keep in mind that a court may find, as reasonable, a high "per diem" fee even when the fee amounts to more than the proportionate amount of the corresponding annual fee.

## 3. Installment payments

Except for a very few large fees, most cities require payment of the entire license fee before issuing a license. Generally, city councils view installment payments as unwise since this type of payment instills less financial burden on licensees, which may decrease motivation to comply with laws and city ordinances. Also, installment payments often result in granting licenses to less stable or financially responsible people. However, the attorney general has ruled on several occasions that the council may permit payment of liquor license fees in installments. Three criteria must exist to make the installment payment of license fees permissible:

## RELEVANT LINKS:

*Minneapolis Brewing Co. v. Bagley*, 142 Minn. 16, 170 N.W. 704 (1919).  
9 McQuillin Mun. Corp. § 26:120 (3d ed.).

[Minn. Stat. § 340A.408, subd. 3a.](#)  
[Minn. Stat. § 471.707.](#)

[Minn. Stat. § 415.19.](#)

- First, the ordinance should provide for installment payment.
- Second, the payment of each installment should come 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 does not pay any installment, the city will revoke the license.
- Third, the licensee should bear responsibility 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.

## 4. Refunds

A business or activity cannot recover a license fee it voluntarily paid unless a statute or charter authorizes recovery. Cities should work with their city attorneys to determine if a refund of a license fee is authorized. Generally, 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

Although no general requirement to notify licensees of a possible license fee increase exists, specific laws may mandate such notification. 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.

In addition to notice of fee increase by ordinance, state law requires cities to also notify applicants applying for a license or a license renewal of the availability of ordinance notification. The ordinance notification law requires a city that sends out information via email to allow businesses to sign up for email notification of proposed ordinances, which includes notification from the city of the ordinance at least 10 days before the initial hearing on the proposed ordinance. If the city doesn't send out information via email, it must post the notification of the proposed ordinance in the same location as it posts other public notices.

## E. Issuing licenses

The council's authority to grant or refuse a license varies with the nature of the business or activity.

## RELEVANT LINKS:

*State ex rel. Howie v. Common Council of Northfield*, 101 N.W. 1063 (Minn. 1904).  
[State ex rel. Gopher Sales Co. v. City of Austin](#), 75 N.W.2d 780 (Minn. 1956).

[Polman v. City of Royalton](#), 249 N.W.2d 466 (Minn. 1977).  
[Wajda v. City of Minneapolis](#), 246 N.W.2d 455 (Minn. 1976).  
See also, [Anton's Inc. v. City of Minneapolis](#), 375 N.W.2d 504 (Minn. Ct. App. 1985).

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

*State v. Bratrud*, 297 N.W. 713 (Minn 1941).

[Minn. Stat. § 471.87.](#)

[A.G. Op. 90-A \(Aug. 15, 1934\)](#).  
LMC information memo,  
[Official Conflict of Interest](#).  
Handbook, [Elected Officials and Council Structure and Role](#).

At one end of the spectrum are licenses that will be issued to anyone that applies as long as the applicant pays the required fee and meets the other conditions specified by the ordinance. When the applicant complies with the requirements, the city must issue the license, such as a dog license.

On the other end of the spectrum lies licenses for those types of businesses or activities that present such potential abuses that the city may prohibit them altogether or, in lieu of the prohibition, may decide to limit their number or impose qualifications. When the council imposes such a limit, the council cannot grant licenses to all qualified applicants.

When dealing with licenses available only in a limited quantity, the burden rests with the unsuccessful applicant to show that council's action in granting the license to the successful applicant constituted a clear abuse of discretion. In light of the council's broad discretion in licensing cases, courts do not often overturn a council's denial of these types of licenses.

## 1. Discretion in administering licenses

After adopting a licensing ordinance, a council's continued role in the licensing process depends on the amount of discretion involved in granting the license. In the case of the keeping of animals, for example, issuing a license may represent a purely ministerial act. In such a case, issuing a license to keep an animal can fall within duties of a clerk or an administrative officer. The person applying for an animal license, however, should have the opportunity to appeal a denial. This chance to appeal protects the denied applicant's due-process rights.

In other instances, such as licensing liquor sales, dance halls, theaters or activities that have the potential to cause problems, discretion becomes an essential part of license administration. Making an administrative official, rather than the council, responsible for licensing in these instances not only seems impractical, it may be illegal.

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

## 2. Issuing licenses to councilmembers

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 constitutes a privilege, not a contract.

In instances other than contracts, councilmembers who have a personal interest in a matter before the council, such as a license application, should disqualify themselves from participating in the discussion or from voting on the matter.

## RELEVANT LINKS:

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

*State v. Havorka*, 110 N.W. 870 (Minn. 1907). *Paron v. City of Shakopee*, 32 N.W.2d 603 (Minn. 1948). *Ukkonen v. Gustafson*, 244 N.W.2d 139 (Minn. 1976). *Tamarac Inn, Inc. v. City of Long Lake*, 310 N.W.2d 474 (Minn. 1981).

This may include situations when a councilmember holds a license and the council is considering disciplinary action against a license holder of a similar license, or is considering the granting of a similar license. The councilmember could have a sufficient personal interest in the outcome of that council action so may not want to participate in the vote on the matter.

Typically, this potential competitive interest likely would not make the vote illegal; however, the interested councilmember may prefer to avoid the possibility of criticism by removing him- or herself from the disciplinary proceedings, if any, or abstaining from the vote.

### 3. Number of licenses

Just as cities have discretion in setting higher license fees for businesses and activities that require a higher level of investigation and inspections, cities 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 in the public interest to do so.

Cities should use caution in restricting licenses since courts will closely scrutinize such limitations. Indeed, anti-trust problems also 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 remaining portion of the term of councilmembers. In the absence of a special charter provision, a statute, or an ordinance restriction, no legal barrier to this practice exists.

### 5. Right to renewal

When a license comes up for renewal, the licensee sits 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 courts, however, will review the non-renewal of an existing license with increased scrutiny, similar to a revocation. A city may deny the renewal of a business license if the licensee fails to comply with the ordinance and even, in some instances, for other reasons not specifically addressed in the licensing ordinance, so long as those reasons are not unnecessary, unreasonable, or oppressive to the licensee's business or licensed activities. The city always should give the licensee notice of the alleged violations of the licensing ordinance and the reason for the denial.

## RELEVANT LINKS:

45 Am Jur 2d Intoxicating Liquors § 114.

[Working America, Inc. v. City of Bloomington](#), 142 F.Supp.3d 823 (D.Minn. 2015).

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

[Wajda v. City of Minneapolis](#), 246 N.W.2d 455 (Minn. 1976).

*In Re Walker's License*, 210 Minn. 337, 300 N.W. 800 (1941). [Peterson v. Minneapolis City Council](#), 274 N.W.2d. 918 (Minn. 1979).

*State ex rel. Labovich v. Redington*, 138 N.W. 430 (Minn. 1912). [Franklin Theater Corp. v. City of Minneapolis](#), 293 Minn. 519, 293 N.W.2d 558 (1972). *State v. Scatena*, 87 N.W. 764 (Minn. 1901).

## 6. Refusal to issue license

Refusing a license also involves the exercise of reasonable discretion. A city council does not have to issue a license to every applicant.

An ordinance, however, cannot authorize the council to discriminate between applicants either 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.

If the applicant has a history of dishonesty, or habitually resorts 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 one type of citizen group and not another, or to prohibit the business altogether, the aggrieved party would have a legal remedy.

## 7. Grounds for denying a license

Before denying a license, the city should make a finding of justifying the denial and support that finding with evidence. When a city exercises discretion and acts in a quasi-judicial, the courts will not overturn a city's denial of a license when the city has provided a clear record supported by evidence justifying its actions.

Without clear findings of fact in the record, licensees have a better chance at claiming the city violated constitutional provisions, exceeded its statutory authority, made its decision based on an unlawful procedure, acted arbitrarily or capriciously, made an error of law, or lacked substantial evidence in view of the entire record submitted. However, proof in the record of one or more of the following common reasons often justify denial of a license:

- The applicant does not comply with (valid) prerequisites and conditions in the ordinance.
- 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).
- The granting a license would threaten the safety, health, morals, and welfare of the public.
- The applicant made material misrepresentations in the application.

## RELEVANT LINKS:

[Minn. Stat. § 340A.415.](#)

2-27 Antieau on Local Government Law, § 27.18 (2d ed. 2010). *State ex rel. Peterson v. City of Alexandria*, 297 N.W. 723 (Minn. 1941). *Standard Oil Co. v. City of Minneapolis*, 204 N.W. 165 (Minn. 1925).

[Sabes v. City of Minneapolis](#), 120 N.W.2d 871, 875 (Minn. 1963).

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

[E.T.O., Inc. v. Town of Marion](#), 375 N.W.2d 815 (Minn. 1985). [Warsett v. City of Crystal](#), 246 N.W.2d 182 (Minn. 1976). A.G. Op. 218-G-14 (Oct. 21, 1941). A.G. Op. 218-G-14 (April 8, 1940).

[Klingner v. City of Braham](#), 130 F. Supp. 2d 1068 (D. Minn. 2001). A.G. Op. 218-G-14 (April 8, 1940).

[Greater Duluth COACT v. City of Duluth](#), 701 F. Supp. 1452, 1457 (D. Minn. 1988).

## 8. Power to suspend or revoke licenses

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.

The same holds true for suspensions. Because suspension represents a less drastic penalty than revocation, the council probably has power to provide for suspensions whenever it has power to revoke. Suspension may occur without subsequent revocation.

The power to revoke or suspend is not an absolute power. The city must exercise honest and reasonable discretion and cannot act in an arbitrary or capricious manner. In addition, the law or ordinance must state the grounds for suspension or revocation and must reasonably relate to the public health, safety, morals or welfare. Loss of the qualifications necessary to receive the license justifies revocation, as well as proof that misrepresentations on the application acted as the basis for establishing the necessary qualifications in the first place. Violation of any reasonable regulations related to the licensed business or activity also can result in revocation or suspension.

In some instances, unprofessional or dishonorable conduct may lead to suspension or revocation when the dishonesty or unprofessionalism relates to the licensed business. The attorney general found that willful misconduct of a law substantiating a license revocation or suspension need not result in an actual conviction; rather, proof of intentionally or knowingly engaging in the misconduct suffices. 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

Federal courts are divided on whether licensees deserve due process in licensing. In the Eighth Circuit (the federal court to which Minnesota looks for guidance), due process applies if licensees can show either a property or deeply rooted fundamental interest in the renewal, transfer, or grant of the license.

If a property interest or fundamental interest exists in the grant, renewal, or transfer of the license, then cities must provide the licensee with sufficient due process. To meet constitutional requirements of providing due process when acting on license applications, suspensions or revocations, the city should provide:

## RELEVANT LINKS:

*Sabes v. City of Minneapolis*, 120 N.W.2d 871 (Minn. 1963).  
*State v. City of Duluth*, 147 N.W. 820 (Minn. 1914). *Greater Duluth COACT v. City of Duluth*, 701 F. Supp. 1452 (D. Minn. 1988). *Trumbull Div., Owens-Corning Fiberglass Corp. v. City of Minneapolis*, 445 F. Supp. 911, 917 (D. Minn. 1978).  
*In re License of West Side Pawn*, 587 N.W.2d 521 (Minn. Ct. App. 1998).

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

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

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

- 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 does not suffice, unless the licensee receiving that notice had previous actual knowledge of the charges, the charges were proven, and the licensee had ample opportunity to be heard. The city still needs to reference the reason for the revocation or denial. To satisfy the due process notice standards, the notice must be mailed first class, addressed to the licensee, state the alleged ordinance violations, and inform the addressee that the council will consider suspending the license at an upcoming meeting.
- A hearing before the council or other licensing body. The council may, but need not, appoint a hearing examiner. The hearing should include a presentation of evidence to support the charges. 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 need not follow formal rules of evidence at the hearing, but the licensee should have ample opportunity to present a defense, including the following:
  - The right to cross-examine the witnesses who testify against the applicant or licensee.
  - The right 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.

If the council finds a revocation or suspension necessary, it should adopt a resolution revoking or suspending the license as of a specified date. The resolution need not 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. The licensee should receive this notice even if the licensee had attended 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.

In an appeal, a court reviews the record kept by the municipal body. Accordingly, the city should thoroughly document and state, in detail, the reasons for the council's actions. The Administrative Procedures Act does not require transcribing notes, unless someone requests them for purposes of rehearing or court review. A tape recording suitable for transcription should suffice.

## RELEVANT LINKS:

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

[Minn. Stat. § 340A.415.](#)

[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. 2001). [Stewart v. City of Red Wing](#), 554 F. Supp. 2d 924 (D. Minn. 2008). [McCaughtry v. City of Red Wing](#), 808 N.W.2d 331 (Minn. 2011), remanded to [McCaughtry v. City of Red Wing](#), 816 N.W. 2d 816 (Minn. App. 2012), affirmed at [McCaughtry v. City of Red Wing](#), 831 N.W.2d 518 (Minn. 2013).

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 applicant or licensee can appeal via a writ of certiorari filed with the court of appeals. Again, the courts will not substitute their judgment for that of the city unless the court deems the city acted in an arbitrary or capricious manner. Generally, when the city clearly documents its reasons for its actions and cites specific evidence supporting those findings, the reviewing court will uphold the city's decision.

### b. Necessary revocation

Except when a statute or ordinance provides otherwise, revocation for particular violations or other cause is discretionary, not mandatory.

If the council believes a particular revocation does not further a 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. However, councils may find it difficult to administer automatic revocations for certain acts. In some cases, state law requires mandatory revocation for failure to conform to specific parts of the liquor or beer laws.

## III. Licensed activities

The following subsections represent a selection of commonly licensed activities in cities. This list does not represent all the 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

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. Some of the goals of a rental housing licensing program 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.

## RELEVANT LINKS:

*City of Golden Valley v. Wiebesick*, 899 N.W.2d 152 (Minn. 2017).

*Dakota Liquor, Inc. v. City of Prior Lake*, A08-1783 (Minn. Ct. App. July 28, 2009)(unpublished decision).

LMC information memo, *Liquor Licensing and Regulation*.

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

Minn. Stat. § 340A.707.

Inspections of rental housing represent a common, but often controversial, condition for issuing or renewing rental licenses. If the owner or tenant refuses to consent to the inspection, then the city can pursue an administrative warrant based on reasonableness and a balancing of "the need to search against the invasion which the search entails." The Minnesota Supreme Court has found that, to obtain these warrants, a city need not prove individualized suspicion of a code violation where the warrant issued by a district court satisfies an ordinance containing reasonable standards. Cities should work closely with the city attorney to ensure the reasonableness of all components of a particular rental ordinance.

## B. Liquor

In Minnesota, unlike most other states, state law generally gives cities the authority to issue retail liquor licenses. Cities may further limit the sale of intoxicating liquor, but must do so in a local ordinance that the city consistently applies. State law lists many different types of liquor licenses, including new niche and specialty liquor licenses. The League publishes an information memo that discusses liquor licensing and regulation of liquor sales by cities in detail.

### 1. Retail sales

“Retail sales” of alcoholic beverages simply means sales of liquor directly to the consumer. For example, when private parties rent out public facilities and provide, but do not sell, intoxicating liquor, no “retail sale” of alcoholic beverages has occurred and no city liquor license is required. For purposes of this law, a “public facility” includes 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. Cities may completely ban consumption of intoxicating beverages on public property.

Keep in mind that a law passed in 2007 allows nonprofit organizations to conduct on premises auctions or raffles of wine, beer, or intoxicating liquors under certain conditions. Cities do not license or regulate this activity. The statute, however, does not authorize on-premises consumption of alcohol.

Cities issue numerous types of both on-sale retail licenses and off-sale retail licenses. Four overarching points to keep in mind about city license sales of intoxicating liquor:

- It is the retail sale of liquor that is regulated by city licensure.
- On-sale means liquor is consumed on the licensed premises.
- Off-sale means liquor is purchased on the licensed premises, but consumed elsewhere.

## RELEVANT LINKS:

[Minn. Stat. § 340A.416.](#)

LMC information memo, [Liquor Licensing and Regulation](#).  
Information Brief: Research  
Dept. Minnesota House of  
Representatives: [Retail Liquor  
License Overview](#).

[Minn. Stat. § 340A.101, subd. 7.](#)  
[Minn. Stat. § 340A.404, subd.  
1\(4\).](#) [Minn. Stat. § 340A.408,  
subd. 2\(b\).](#)

[Minn. Stat. § 340A.504, subds.  
3, 4.](#)

[Minn. Stat. § 340A.406.](#)

[Minn. Stat. § 340A.301.](#)

- 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 engage in retail sales and generally are licensed by the state, not cities).

## 2. City authority to issue liquor licenses

Before a statutory city—or a charter city with a population of less than 10,000—has the authority to issue any license to sell intoxicating liquor, residents of the city may have to vote on the issue in a local option election (depending on the city’s status as “wet” or “dry”). If the voters give the city approval to issue liquor licenses, the city becomes a “wet” city.

Conversely, in a “dry” city, the voters have denied the city the authority to issue licenses for the sale of liquor. Voters, at a subsequent election, may reverse either decision, whether wet or dry.

The history of “wet” and “dry” cities provides some insight into state law. In 1965, all cities and their respective counties became wet unless city residents already had chosen to be dry in a local option election. Currently, it appears that a city that never has held a local option election represents 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 can be issued.

## 3. Types of city-issued liquor licenses

The following lists various retail liquor licenses (or licenses for liquor consumption) that cities may issue. For information on who can obtain each type of license, and who determines the fee for each license, see the LMC information memo, *Liquor Licensing and Regulation*. Remember, fees 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 on-sale license.
- Club on-sale license.
- Sunday on-sale liquor licenses.
- Combination on-sale/off-sale intoxicating liquor licenses.
- Brew pubs—on-sale intoxicating liquor licenses.

## RELEVANT LINKS:

[Minn. Stat. § 340A.411.](#)

[Minn. Stat. § 340A.404, subd. 5.](#)  
[Minn. Stat. § 340A.4011.](#)

[Minn. Stat. § 340A.4041.](#)

[Minn. Stat. § 340A.410, subd. 10.](#)

[Minn. Stat. § 340A.404, subd. 10\(c\).](#)

[Minn. Stat. § 340A.403.](#)

[Minn. Stat. § 340A.404, subd. 1\(a\).](#)

[Minn. Stat. § 340A.404, subd. 1\(6\) d.](#)

[Minn. Stat. § 340A.404, subd. 1.](#)

[Minn. Stat. § 340A.301, subd. 6\(b\).](#)

[Minn. Stat. § 340A.22, subd. 2.](#)

[Minn. Stat. § 340A.4175.](#)

[Minn. Stat. § 340A.404, subd. 10a.](#)

[Minn. Stat. § 340A.404, subd. 14.](#)

[Minn. Stat. § 340A.101, subd. 20.](#)  
[Minn. Stat. § 340A.405, subd. 1.](#)  
[Minn. R. § 7515.0440.](#)

[Minn. Stat. § 340A.408, subd. 3.](#)

- Malt liquor (3.2 percent) on-sale licenses (also known as “beer” licenses).
- On-sale wine licenses: for restaurants and bed & breakfast facilities.
- Culinary class limited on-sale wine license.
- Temporary on-sale intoxicating liquor licenses.
- Temporary on-sale liquor licenses for microbrewers.
- Temporary 3.2 percent malt on-sale liquor licenses.
- Auto racing facility liquor licenses.
- Owner of a summer collegiate league baseball team, or 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.
- Sports facilities, restaurants, clubs, or bars located on land owned or leased by the Minnesota Sports Facilities Authority.
- Brewer taproom license.
- Microdistillery license and Cocktail room license.
- Temporary wine festival license. The state may only approve one temporary wine festival license in a calendar year. Wine may be sold off-sale by the bottle, provided that no more than six bottles per customer are sold.
- Temporary farm winery license for on-sale at a county fair located within the municipality of intoxicating liquor produced by the farm winery.
- 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**

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 becomes effective):

- Off-sale intoxicating liquor licenses.

## RELEVANT LINKS:

[Minn. Stat. § 340A.408.](#) [Minn. Stat. § 340A.412, subd. 6.](#)

[Minn. Stat. § 340A.101, subd. 3\(a\).](#)

[Minn. Stat. § 340A.405, subd. 4.](#)

[Minn. Stat. § 340A.406.](#)

[Minn. Stat. § 340A.404, subd. 5b.](#)

[Minn. Stat. § 340A.414, subd. 9.](#)

[Minn. Stat. § 340A.404, subd. 1.](#)

Department of Public Safety,  
Alcohol and Gambling  
Enforcement Division.

[Minn. Stat. § 340A.414.](#)

[Minn. Stat. § 340A.404, subd. 12.](#)

[Minn. Stat. § 340A.4042, subd. 1.](#)

[Minn. Stat. § 340A.4042, subd. 2.](#)

[Minn. Stat. § 340A.413.](#) *State ex rel. Howie v. Common Council of City of Northfield*, 101 N.W. 1063 (Minn. 1904).

- Off-sale 3.2 percent malt liquor (beer) licenses.
- Brew pubs—off-sale.
- Temporary off-sale wine license (for auctions).
- Combination on-sale/off-sale intoxicating liquor licenses.

### c. Other city-issued liquor licenses

- Strong beer (more than 3.2 percent malt liquor) authorization.
- One-day consumption and display permits (often called “set-ups”).
- 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.

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 liquor licenses:

- 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.
- 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.
- Wine educator license. The state licenses specially trained individuals to provide “wine education” in any city in Minnesota, except for cities that have adopted an ordinance prohibiting it.
- Malt liquor educator license. The state licenses specially trained individuals to provide “malt liquor education” in any city in Minnesota, except for cities that have adopted an ordinance prohibiting it.

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.

## RELEVANT LINKS:

[Polman v. City of Royalton](#), 249 N.W.2d 466 (Minn. 1977).  
LMC information memo, [Liquor Licensing and Regulation](#).  
Minn. Stat. § 340A.413, subd. 4.

[Polman v. City of Royalton](#), 249 N.W.2d 466 (Minn. 1977).

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

## 5. Number of liquor licenses

Note: A city may impose its own limits, and issue fewer licenses than state law allows. 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 probably count as both an on-sale and an off-sale license.

In the alternative, state law does not specify limits on 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.
- On-sale 3.2-percent malt liquor licenses.
- Off-sale 3.2-percent malt liquor licenses.
- Consumption-and-display permit approvals

As a result, cities may decide how many of these types of licenses to issue or allow. 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.

The city council can decide later to increase the number of available liquor licenses (not, however, beyond the limit in state law) but must do so by revising its ordinance. The decision to revise the ordinance to allow additional licenses represents a legislative decision.

A court may only overturn such a legislative decision of a city council when it determines that “the city council 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.

## RELEVANT LINKS:

See Section III-B-14: *Liquor elections and liquor licensing*.

[House Research: Special Liquor Laws Lookup](#).

[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*.

[Minn. Stat. § 340A.509. Minn. Stat. § 412.221, subd. 32. \*BZAPS, Inc. v. City of Mankato\*, 268 F 3d 603 \(8th Cir. 2001\); cert. denied, \*Bzaps, Inc. v. City of Mankato\*, 536 U.S. 904, \(U.S. 2002\).](#)

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

[Minn. Stat. § 340A.504, subd. 6.](#)

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

State law limits the maximum fee for many liquor licenses. Where no state law restriction exists, the city likely can set the fee at any reasonable amount.

When cities set an amount, 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

While state law restricts the location of establishments that sell intoxicating liquor, cities also may 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

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 either be eligible to vote or be U.S. residents violates the equal protection clause. In the alternative, 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 and the city should consult with its city attorney.

## 9. Hours of sale

Cities may also impose tighter restrictions on the days or hours of on and off sales, provided that further restricted on-sale hours for intoxicating liquor must apply equally to on-sale hours of 3.2 percent malt liquor (beer). Also, a city may not permit the sale of alcoholic beverages during hours prohibited by state law.

## RELEVANT LINKS:

*Knudtson v. City of Coates*, 519 N.W.2d 166 (Minn. 1994). Contact the Research department at 800.925.1122 for a sample ordinances prohibiting nudity in liquor establishments.

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)(unpublished decision). *Tamarac Inn, Inc. v. City of Long Lake*, 310 N.W.2d 474 (Minn. 1981) dist. by. *Thompson v. Lake Edward Tp.*, C6-00-735 (Minn. Ct. App. 2000) and *Tabaka v. Wabedo Tp.*, No. A04-1260 (Minn. Ct. App. 2005).

Minn. Stat. § 340A.412, subd. 2.

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. 28, 1997)(unpublished opinion).

A.G. Op. 218g-14 (Nov. 5, 1976).

## 10. Adult uses and liquor

Many cities prohibit or regulate nudity and other adult uses, by ordinance, in licensed liquor establishments to minimize the secondary effects of mixing alcohol with adult entertainment. However, because adult uses, such as nude dancing, represent expressive conduct afforded some First Amendment protection, cities should consult with their city attorney when drafting these types of ordinances.

## 11. Renewal of liquor licenses

Liquor licenses last for a period of one year. All liquor licenses issued by a city (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 for 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 for an applicant's problems at a previously licensed location. However, Minnesota case law also has 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 that other licensed facilities also had violated but did not get denied.

A city can refuse to accept a license renewal application if deemed 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 cannot 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

With liquor licenses, cities must provide the licensee or permit holder with a hearing before revoking a license. The hearing must follow the Administrative Procedures Act process 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.

## RELEVANT LINKS:

[Minn. Stat. § 340A.415.](#)

[C. L. Hinze, Inc. v. City of St. Paul](#), No. C8-95-1398 (Minn. Ct. App. Aug. 6, 1996)(unpublished decision).  
[Metro Bar & Grill Inc., v. City of St. Paul](#), 2001, No. C6-00-1156 (Minn. Ct. App. May 1, 2001) (unpublished decision).

[Minn. Stat. § 340A.601, subs. 5, 6.](#)  
LMC information memo, [Liquor Licensing and Regulation](#).  
[Minn. Stat. § 340A.301, subd. 6.](#)

LMC information memo, [Liquor Licensing and Regulation](#).

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.

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. Generally, deference is given to a city's decision to revoke a liquor license if the city articulates written reasons for its decision which has the support of evidence, in the record, that the holder failed to comply with any applicable statutes, regulations or ordinances relating to intoxicating liquor.

If, after a hearing, the council determines 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 a license 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

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).

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 previously discontinued. After an election has authorized the split liquor plan, a city may not establish an on-sale municipal liquor store for the first time and still continue to issue private licenses. For a detailed discussion of split liquor, see the League's liquor information memo.

### 14. Liquor elections and liquor licensing

State law specifies certain liquor license situations that trigger special elections. These include:

## RELEVANT LINKS:

[Minn. Stat. § 340A.416.](#)

[Minn. Stat. § 340A.504, subd. 3.](#)

[Minn. Stat. § 340A.504, subd. 3.](#)

[Minn. Stat. § 340A.413, subd. 3.](#)

LMC information memo, [Liquor Licensing and Regulation](#).

[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.](#) LMC information memo, [LMCIT Liability Coverage Guide](#).  
Section III-K, [Liquor liability](#).

- Local option election for issuing intoxicating liquor licenses. This election asks voters whether the city should have authority to allow the sale of liquor at all. If the voters approve, a dry city becomes a wet city.
- Sunday liquor election. This election asks voters if the city should issue licenses that allow the on-sale of intoxicating liquor on Sundays in conjunction with the sale of food.
- 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.
- Election to increase the number of licenses. This election may be held in any wet city. In this election, the voters are asked if the city should be allowed to issue more licenses than the number allowed by statute.

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. Additional state restrictions related to liquor licensing

In addition to location and hours of operation discussed above, state law provides additional regulations to local licensing authority and/or procedure, including:

- Types and locations. Details 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, including permits to sell after 1 a.m. (commonly known as 2 a.m. permits) Note: municipalities may further limit the hours of on- and off-sale as long provided that further restricted on-sale hours for intoxicating liquor apply equally to on-sale hours of 3.2 percent malt liquor. A city may not permit the sale of alcoholic beverages during hours when the sale is prohibited by this section
- Days. Note: municipalities may further limit the days of on- and off-sale provided that further restricted on-sale hours for intoxicating liquor apply equally to on-sale hours of 3.2 percent malt liquor. A city may not permit the sale of alcoholic beverages during hours when the sale is prohibited by this section. 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.

## RELEVANT LINKS:

[Minn. Stat. § 115A.93.](#)  
[Troje v. City Council of Hastings](#), 245 N.W.2d 596 (Minn. 1976).

[Minn. Stat. § 412.221, subd. 21.](#)  
LMC information memo:  
[Animal Regulation in Cities.](#)

[Minn. Stat. § 346.155.](#)

[Eureka Twp. V. Petter](#), A17-0020 (Minn. Ct. App. Sept. 5, 2017) (unreported).

State law insurance requirements represent 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 higher limits 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. Solid-waste collection

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. The local licensing entity shall submit a list of licensed collectors to the Pollution Control Agency. A licensing authority shall require licensees to impose charges for collection of mixed municipal solid waste that increase with the volume or weight of the waste collected and must prohibit mixed municipal solid waste collectors from imposing a greater charge on residents who recycle than on residents who do not.

## D. Animals

State law allows city councils, by ordinance, to: regulate the keeping of animals; to restrain their running at large; to authorize their impounding and sale or summary destruction; to establish pounds; and to license and regulate riding academies. 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. Because of the many considerations going into regulation of animals, cities should work with their city attorneys, as well as consult state law and rules before adopting a comprehensive animal control ordinance.

### 1. Regulated exotic animals

State law, however, specifically 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. Cities may adopt exotic animal ordinances so long as the ordinance does not conflict with any state law, which means the ordinance cannot forbid what the statute expressly permits.

## RELEVANT LINKS:

[Minn. Stat. § 157.175.](#)

Cities should work with their city attorneys when drafting exotic animal ordinances since any number of state laws could conflict, including, but likely not limited to, fur farming for agricultural purposes and game and fish laws.

Every person that possesses one or more of these regulated animals must be licensed by the USDA and must notify, in writing, the local animal control authority using a registration form prepared by the Minnesota Animal Control Association and approved by the Board of Animal Health. The local animal control authority can perform an initial site inspection and additional site inspection as the licensee acquires another regulated animal. However, state law sets a maximum amount the local animal control authorities can charge for these site inspections. 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

A statutory or charter city may adopt an ordinance permitting local restaurants to allow dogs to join people on restaurant 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:

- 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 hold public hearings to gather feedback, public comment, and background information.

## RELEVANT LINKS:

[Minn. Stat. § 347.542.](#)

[Minn. Stat. §§ 347.50 to 347.56.](#)  
[Minn. Stat. § 609.226.](#)  
[Minn. Stat. §§ 347.40-.56.](#)  
[Hannan v. City of Minneapolis](#),  
623 N.W. 2d 281 (Minn. Ct.  
App. 2001).

[Minn. Stat. § 347.565.](#)

LMC information memo:  
[Animal Regulation in Cities.](#)

[Sawh v. Lino Lakes](#), 823  
N.W.2d 627 (Minn. 2012).

[Minn. Stat. § 412.221, subd. 21.](#)

LMC information memo, [Data Practices: Analyze, Classify and Respond.](#)

### b. Dangerous dogs

State law prohibits dog ownership by those who 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.

Animal control authorities or local law enforcement agencies authorities must enforce the dangerous and potentially dangerous dog laws regardless of whether 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 if the city does not have an animal control operation or law enforcement agency, it seems that if the city already regulates animals, it likely also would have some level of responsibility for enforcing the dangerous and potentially dangerous laws. Cities also must include procedures for enforcing a local ordinance, including due process procedures. Due process simply means the city gives the owner notice and a chance to be heard before the city takes action.

### 3. Animal licensing generally

As stated above, cities adopt ordinances to license dogs and regulate their keeping. The license fee must be reasonable, but substantial enough to cover regulatory costs. Cities usually license dogs once they reach 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 a license fee or payment of the 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.

License data generally represents public data under the Minnesota Government Data Practices Act (MGDPA). Because the MGDPA does not specifically classify pet licensing data as “not public”, the data is presumed public. The city appointed “responsible authority” cannot ask about the proposed use of requested data and cannot withhold data based on knowledge or suspicion of a proposed use.

## RELEVANT LINKS:

[Minn. Stat. § 412.221, subd. 21.](#)  
[Minn. Stat. ch. 347.](#)  
[Minn. Stat. § 347.22.](#)

LMC information memo:  
[Animal Regulation in Cities.](#)

[Minn. Stat. § 412.221, subd. 19.](#)  
[Minn. Stat. § 329.11.](#)  
[Minn. Stat. § 329.15.](#)  
[Minn. Stat. § 437.02.](#)

[Reed v. Town of Gilbert](#), 135  
S.Ct. 2218, 2227 (2015).

[Working America, Inc. v. City of  
Bloomington](#), 142 F.Supp.3d  
823 (D.Minn. 2015).

LMC information memo,  
[Regulating Peddlers, Solicitors  
and Transient Merchants.](#)

[Hynes v. Mayor and Council of  
Borough of Oradell](#), 425 U.S.

[Working America, Inc. v. City of  
Bloomington](#), 142 F.Supp.3d  
823 (D.Minn. 2015).

[Watchtower Bible & Tract  
Society of New York, Inc. v.  
Village of Stratton](#), 122 S. Ct.  
2080 (2002).

As a result, no legal basis exists for withholding the data. It is entirely appropriate for the responsible authority to provide a license applicant with a Tennessee warning that informs the applicant of the public nature of the data and the possibility of disclosure upon request, along with the city's reason for collecting the data.

Cities may, by ordinance, prevent animals from running at large. Usually, such a prohibition includes a licensing requirement that finances enforcement.

Cities also may impound and destroy animals found running at large, if this violates the local animal ordinance. Again, cities should work with city attorneys and consult state law and rules for the detailed procedures and considerations involved in impounding or destroying animals.

## E. Peddlers and transient merchants

Both statutory cities and counties have the legal authority to license and regulate transient merchants (including hawkers), peddlers, and solicitors, but must do so within the confines of state and federal constitutions. Home rule charter cities also have express authority to regulate such activities and the charters frequently reflect this authority. Because of First Amendment issues, cities should regulate solicitors, peddlers, and transient merchants cautiously and get city attorneys involved in the drafting of ordinances that establish a licensing scheme for peddlers, transient merchants and solicitors. Solicitation represents a form of expression entitled to the same constitutional protections as traditional speech.

A city's ordinance must not treat individuals differently depending on the function or purpose of their speech. Not only can cities generally not regulate charitable and religious solicitors because of First Amendment rights of free speech and freedom of religion, cities also may not regulate others who may claim to exercise their constitutional rights when peddling, soliciting, and engaging in transient merchant sales. The test focuses on whether the regulation turns at all on the message or purpose of the speech from the licensee (often this involves an analysis of whether the message or purpose has a component of advocacy). If so, then a court likely would see regulation of this activity as regulating speech and would review with strict scrutiny, which means the court would only uphold the ordinance if the court finds the city interest in regulating the activity compelling (not just legitimate) and the court deems the city had no other alternatives.

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.

## RELEVANT LINKS:

Minn. Stat. § 237.162.  
Minn. Stat. § 237.163.  
Minn. Stat. § 216B.36 (public utilities).

*U.S. West Communications Inc. v. City of Redwood Falls*, 558 N.W. 2d 512 (Minn. Ct. App. 1997).  
See LMC information memo, *Cell Towers, Small Cells and Distributed Antenna Systems*.  
See LMC information memo, *Model Right of Way Ordinance*.

See LMC information memo, *Cell Towers, Small Cells and Distributed Antenna Systems*.

See LMC FAQ, 2017 *Telecommunications Right-of-Way User Amendments Permitting Process for Small Wireless Facilities*.

Minn. Stat. § 412.221, subd. 27.

Additionally, courts have invalidated time restrictions or curfews set forth in ordinances when the ordinance or cities, in practice, did not universally apply the same limits to all peddlers, solicitors, and transient merchants.

## F. Utilities and telecommunications providers

Cities do not have the right to franchise telephone companies, although cities do have the right to franchise gas and electric franchises.

Under state law, cities also 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. However, federal regulations may limit this authority. Because of the complexity of this issue, cities wanting to regulate 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.

## G. Wireless telecommunication towers and antennas

Within the confines of applicable federal and state law, cities also have some authority to regulate the siting of wireless telecommunications towers, antennas, and small cell equipment/distributed antenna systems (DAS). Implicit in the cities' rights to manage rights of way and exercise local land use authority, many cities adopt specific telecommunications ordinances or amend their rights-of-way ordinance to address the siting of telecommunication/personal communication structures and equipment. However, state law specifically regulates the siting of small wireless facilities on city-owned structures in the rights-of-way ("collocating"), including limiting the amount cities can charge for rent and setting forth specific collocation permitting criteria. In addition, the Federal Communications Commission has placed additional regulations on wireless telecommunication siting regulations. Again, because of the complexity of this issue, cities wanting to regulate wireless 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, agreements and cost recovery systems.

## H. Entertainments

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

## RELEVANT LINKS:

[Minn. Stat. § 28A.065.](#)

[Minn. Stat. § 437.07.](#)

[Minn. Stat. § 461.12, subd. 1.](#)  
*Tobacco Possession, Sale and Use*, LMC model ordinance.

[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](#).

[Minn. Stat. § 325F.77, subd. 4.](#)

[Minn. Stat. § 609.685, subd. 1\(b\).](#)

## I. Carnival, circus, or fair

No person who obtains a state food handling license for a carnival, circus, or fair shall be required to obtain any additional license or permit from a city to engage in any aspect of food handling or to operate a restaurant. However, a city may require a carnival, circus, or fair to comply with any sanitation, public health, or zoning ordinance, or privilege license requirements when held within the city's jurisdiction.

No city council may permit or allow an itinerant carnival, street show, street fair, sideshow, circus, or any similar enterprise within one mile of the corporate limits of any city of the fourth class without having first obtained in writing the consent thereto from the council of that city of the fourth class.

## J. Tobacco and related products

Cities may license and regulate all retailers that sell tobacco products, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. If a city does not adopt its own tobacco licensing ordinance, then the county must do so.

### 1. Tobacco

State law specifically defines and lists out products that constitute “tobacco”, tobacco related products, electronic delivery devices and nicotine and lobelia delivery products. Consult the statutory resources cited on the left when determining regulation of specific products. The definition of tobacco excludes any tobacco product 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 marketed and sold solely for such an approved purpose.

### 2. Promotional products

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

### 3. Tobacco-related devices

State law defines tobacco-related device to include cigarette papers or pipes for smoking or other devices intentionally designed or intended for use in a manner that enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. State law prohibits the sale or furnishing of pipes, cigarette papers, tobacco related devices, and tobacco to minors. Cities can provide for more stringent regulation of these types of sales.

**RELEVANT LINKS:**

[Minn. Stat. § 609.685, subd. 1\(c\).](#)

[Minn. Stat. § 609.6855.](#)

[Minn. Stat. § 461.19. Tobacco Possession, Sale and Use, LMC model ordinance.](#)

[Minn. Stat. § 461.12.](#)

#### **4. Electronic delivery device**

An electronic delivery device means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that a person can use to simulate smoking through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately.

Electronic delivery device does not include any product approved or certified 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 marketed and sold for such an approved purpose. Selling “nicotine delivery products” to a minor constitutes 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**

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:

- 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.

## RELEVANT LINKS:

[Minn. Stat. § 461.18.](#)

[Minn. Stat. § 461.12, subd. 1.](#)

[Public Law Center, Tobacco-control, Hookah.](#)

[Minn. Stat. § 461.19.](#)

[Minn. Stat. § 624.731, subd. 3.](#)

[Minn. Stat. § 624.731, subd. 9.](#)

[Minn. Stat. § 325J.02.](#)  
[Minn. Stat. § 325J.13.](#)

- Prohibit self-service (vending machines) sales of individual cigarette packages, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products, except in establishments that prohibit minors, and in establishments that derive at least 90 percent of their revenue from the sale of tobacco.

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

## 6. Hookah

A hookah, also known as shisha and nargile, is a waterpipe used for smoking flavored tobacco. Shredded tobacco leaf flavored with molasses, honey or dried fruit commonly is used in the hookah waterpipe. It is unclear if the Clean Indoor Air Act covers hookah; however, many communities have chosen to regulate hookah under their tobacco regulations.

A city ordinance regulating sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products may be more restrictive than state law.

## K. Tear gas and electronic incapacitation devices

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. A person over 18 years of age may possess and use an electronic incapacitation device to defend themselves or their property only if the electronic incapacitation device is labeled with or accompanied by clearly written instructions as to its use and the dangers involved in its use.

Cities have the authority to license vendors of tear gas, tear gas compounds, authorized tear gas compounds, or electronic incapacitation devices within their respective jurisdictions; to impose a license fee therefor; to impose qualifications for obtaining a license or the duration of licenses; and to restrict the number of licenses the governing body will issue. The local governing body may establish the grounds, notice, and hearing procedures for revocation of licenses issued. The local governing body also may establish penalties for sale of tear gas, tear gas compounds, authorized tear gas compounds, or electronic incapacitation devices in violation of its licensing requirements.

## L. Pawnbrokers

Cities may regulate pawn transactions and license pawnbrokers, but state law establishes minimum standards any ordinance or regulation must include. Municipalities may provide for more restrictive regulation on pawnbrokers or pawn transactions except that a city ordinance must mirror state law regarding:

## RELEVANT LINKS:

[Minn. Stat. § 325J.13.](#)  
[Minn. Stat. § 325J.08 \(7\) \(10\).](#)

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

Additionally, local ordinances must 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.

Pawnbrokers in business when a municipality adopts an ordinance must apply for a license and pay the required fee within six months of adoption of the ordinance.

## M. Secondhand goods dealers

[Minn. Stat. § 412.221, subd. 32.](#)  
[Minn. Stat. § 471.927.](#)

Cities may, by ordinance, regulate and license 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.

## N. 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 state law) machines. The license fee, however, may not exceed the demonstrated and verifiable actual cost of issuing the license, or \$15 per location plus \$15 per machine.

## O. Tattoos or body art establishments

[Minn. Stat. §§ 146B.01-146B.10.](#)

State law 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 qualify for an exemption from the state requirement and must apply for a waiver. The law defines tattooing and body art as follows:

[Minn. Stat. § 146B.01, subd. 30.](#)

“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.”

## RELEVANT LINKS:

[Minn. Stat. § 146B.01, subd. 18.](#)

[Minn. Stat. § 146B.01, subd. 4.](#)

LMC Codification Service Blog:  
[New Law Regulating Tattoo and Body Art Establishments.](#)

[Minn. Stat. § 146B.08.](#)

[Minn. Stat. § 146B.03.](#)

Minnesota Department of Public Health: [Minnesota Body Art Regulation Brochure.](#)

Tattooing includes “micropigmentation” or “cosmetic tattooing” (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 performed by a licensed medical or dental professional if the procedure falls 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.

Cities should consult the statutes for detailed provisions on procedures and health standards. Some key items, however, include the following:

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.

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

Cities may no longer license persons practicing body art. Beginning on Jan. 1, 2011, the state Department of Health exclusively licenses body art technicians. “Technician” or “body art technician” means any individual who is licensed under state law 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 either engages in the practice of tattooing or has authorization to do so, unless the person is licensed and authorized to perform tattooing under state law or qualifies for one of the statutory exceptions.

### 2. City regulation of body art establishments

Cities that previously regulated body art establishments before 2011 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.

## RELEVANT LINKS:

[Minn. Stat. § 146B.09](#)

[Minn. Stat. § 146B.02, subd. 9.](#)

LMC Codification Service Blog:  
[New Law Regulating Tattoo and Body Art Establishments.](#)

*Hearn v. City of Woodbury*, No. A12-1714 (Minn. Ct. App. May 20, 2013)(unpublished decision).

*In re Kim Yi's, LLC*, No. A15-1672 (Minn. Ct. App. June 13, 2016)(unpublished decision).

[Minn. Stat. § 471.709.](#)

See LMC information memo,  
[Regulation of Adult Entertainment Businesses.](#)

See also, Handbook,  
[Comprehensive Planning Land Use and City Owned Land.](#)

*Cty. of Morrison v. Wheeler*, 722 N.W.2d 329 (Minn. Ct. App. 2006).

Body art establishments 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. Additionally, state law on body art expressly states it does not preempt or supersede any municipal ordinance relating to land use, building and construction requirements, nuisance control, or the licensing of commercial enterprises in general.

Previously enacted city ordinances may contain stricter standards than the state law. In addition, those cities who has maintained its city ordinance may “limit the types of body art procedures that may be performed in body art establishments located within its jurisdiction.”

## P. Massage Parlors

State law does not license massage parlors. A city 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. Although not published, the Minnesota Court of Appeals affirmed a denial of massage parlor licenses when based on other code violations, such as a citation for nudity and sexual contact, failure to conduct a background check on the new employee, and failure to comply with the business-records request.

### 1. Massage therapists in medical settings

However, a city may not require a massage therapist to obtain a license or permit when the therapist works for, or is an employee of, a licensed medical professional or a licensed dental professional. A massage therapist is not limited to providing treatment to patients of the medical or dental professional.

## Q. Adult uses

Cities often use either licensing and/or zoning to regulate adult uses. Cities seek to regulate adult uses to minimize the negative secondary effects these businesses may cause. However, because of First Amendment concerns, the regulation of adult use businesses, such as strip clubs, can get legally complex. Generally, cities adopt new ordinances or amend existing ordinances regulating adult uses to promote the health, human services, police protection, or public safety of their community. The U.S. Supreme Court frequently has recognized nude dancing as protected by the First Amendment.

## RELEVANT LINKS:

[City of Renton v. Playtime Theatres, Inc.](#), 475 U.S. 41 (1986).

[Young v. American Mini Theatres, Inc.](#), 427 U.S. 50 (1976).

[Minn. Stat. § 617.242. Northshor Experience, Inc. v. City of Duluth](#), 442 F.Supp. 2d 713 (D. Minn. 2006).

[Minn. Stat. § 221.091, subd. 2.](#)  
[Minn. Stat. § 412.221, subd. 20.](#)  
[Minn. Stat. § 221.021.](#)  
[Minn. Stat. § 174.30, subd. 6\(a\).](#)  
[Minn. Stat. § 169.011, subd. 27\(3\).](#)

[Minn. Stat. § 326B.835.](#)

Nevertheless, the U.S. Supreme Court has recognized that local governments can use their zoning powers to limit the location of adult establishments so long as the motivation behind passing the ordinance was not regulation of the content itself; but rather, for example, the secondary effects. In these instances, the ordinance should promote a substantial governmental interest and allow reasonable alternative avenues for communication.

A state law, enacted in 2006, requires that anyone intending to open an adult use business provide 60 days advance-notice to the city where the business will locate. The law includes numerous other provisions focused on regulation of adult uses businesses. In 2006, the federal district court in Minnesota granted a preliminary injunction prohibiting the City of Duluth from enforcing the new law since the court found a strong likelihood of success on the licensee's claim that the state law violates the First Amendment. To date, neither a court nor the Legislature has resolved the constitutional questions regarding the state law on adult uses.

As a result, cities probably should not rely on it as the sole mechanism for regulating adult entertainment establishments and, instead, should consider taking proactive measures by adopting local adult use regulations. Because of the common legal challenges to regulations on these types of businesses, a city should consult its city attorney when drafting any adult use ordinances.

## R. Taxis & small vehicle passenger services

If a city licenses small vehicle passenger service (seven or fewer persons, including the driver, e.g., taxicabs, rideshares, pedicabs, or rickshaws) it must do so by ordinance and the ordinance must, at a minimum, provide for driver qualifications, insurance, vehicle safety, and periodic vehicle inspections. The city may enforce the registration requirements in state law. A statutory or home rule charter city that regulates, by ordinance, pedicabs, rickshaws, or other similar vehicles used for passenger service may permit authorized vehicles to be equipped with an electric motor that meets the requirements for an electric-assisted bicycle. However, a city cannot prohibit or deny the use of the public highways within its territorial boundaries by a carrier for transporting within its boundaries to destinations beyond the city's boundaries, or for transporting passengers from points beyond the city's boundaries to destinations within the city's boundaries, or for transporting passengers from points beyond the city's boundaries through the city to points beyond the city's boundaries when the carrier is operating pursuant to a certificate of registration issued under state law (or under a permit issued by the commissioner).

## S. On-site sewage systems

A city may pass an ordinance requiring a license or certification from people who install on-site sewage treatment systems.

## RELEVANT LINKS:

[Minn. Stat. §155A.29. Minn. Stat. §155A.23. Minn. R. 2105.0395.](#)

## T. Mobile Salons

Although cities do not license mobile salons, mobile salons must comply with city ordinances that may otherwise apply to these mobile salons operating in the city. In 2015, the Legislature authorized the Board of Cosmetologist Examiners to adopt rules governing the licensure, operation and inspection of “Mobile Salons” which are operated in a mobile vehicle or mobile structure for exclusive use to offer personal services. The rules adopted by the Board prohibit mobile salons from violating reasonable municipal restrictions on time and place of operation of a mobile salon within its jurisdiction, and also establish penalties, up to and including revocation of a license, for repeated violations of municipal laws. The rules specifically state that mobile salons must comply with all city ordinances that may apply to mobile salons, including those ordinances that specifically regulate wastewater disposal, commercial motor vehicles, vehicle insurance, noise, signage, parking, commerce, and businesses generally.

## IV. How this chapter applies to home rule charter cities

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