

BEERS AND LIQUORS

300 3.2 PERCENT MALT LIQUOR

300.01 Definition of Terms.

Subsection 1. As used herein the term "person" shall mean and include all natural person or persons, co-partnerships, corporations, and associations of persons: and shall include the agent or manager of any of the aforesaid. The singular number shall include the plural. The masculine pronoun shall include the feminine and neuter.

Subsection 2. "3.2 malt liquor" shall mean any drinkable malt 3.2 percent beverage with an alcoholic content of more than $\frac{1}{2}$ of 1 percent liquor by volume and not less than 3.2 percent by weight .

Subsection 3. "Original Package" as used herein shall mean the sealed container in which the liquor is placed at the place of manufacturer or as hereafter defined by law.

300.02 License Required.

No person shall sell, vend, deal in or dispose of, by gift, sale or otherwise, or keep or offer for sale, any 3.2 percent intoxicating malt liquor within this city without first having received a license therefore as hereinafter provided. Licenses shall be of two kinds: "on sale" and "off sale".

300.03 Applications for Licenses.

All applications for licenses to sell 3.2 percent liquor shall be made on forms supplied by the city with such information as the council may require from time to time. It shall be unlawful to make any false statement in an application.

300.04 License Fees.

All applications for licenses shall be accompanied with payment of the license fee hereinafter indicated, which fee shall be paid into the general fund of the city. Said fee shall be refunded upon rejection of the application. Annual fees shall be adjusted at the first meeting in January of each year. Each applicant shall pay to the city Clerk a non-refundable fee of \$5.00 for receiving and filing each application.

300.05 Illegal Consumption

Subsection 1. There shall be no sale or consumption of intoxicating malt liquor on any public street or alley, on any city owned property, or on any lot used for public gatherings unless such establishment as may be located thereon is duly and properly licensed to sell intoxicating malt liquor for on premises consumption.

Nor shall there be any sale or consumption of intoxicating malt liquor in any theater, in any city owned building, in any recreation hall or center, dance hall or in any building used for public gatherings unless such establishment is duly and properly licensed to sell intoxicating malt liquor for on premises consumption.

Subsection 2. No person shall drink any liquor containing more than $\frac{1}{2}$ of 1 percent of alcohol by volume as a beverage in any theater, picture show, hall, dance, ball park or any place of public gathering nor in any place of business while open to the public, excepting such places as have been by law duly licensed for such purpose, or cause to be given to any other person in any of said places, such liquor as a beverage, within the City of Wheaton.

Subsection 3. No person and no corporation engaged in business and maintaining a place of business within the City of Wheaton, their agent, servants or employees shall knowingly permit any person to drink any such liquor as a beverage within the place of business operated or maintained by said person, persons or corporation and while open to the public unless said place of business has obtained a license permitting same to be consumed therein.

300.06 Sale to Minors

No sale of any 3.2 percent malt liquor shall be made to any person under guardianship, nor to any person under 21 years of age.

300.07 Inspection of Premises

All premises where any license hereunder is granted shall be open to inspection by any police or health officer or other properly designated officer or employee of the city at any time.

300.08 Licenses Non-transferable.

All licenses granted under this ordinance shall be issued to the applicant only and shall be issued for the premises described in the application. Such license shall not be transferred to another place without the approval of the city council.

300.09 No license shall be granted for sale within three hundred feet of any public school building, church or hospital.

300.10 Hours of Operation.

No sale of any 3.2 percent malt liquor shall be made on any week-day between the hours of 1:00 o'clock a.m. and 8:00 o'clock a.m., nor on Sunday between the hours of 1:00 o'clock a.m. and 12:00 o'clock noon.

Hours of operation for the sale of all 3.2 percent malt liquor in the City of Wheaton shall conform to Minnesota State Statute Chapter #340A.504.

300.12 Miscellaneous Provisions

In any place licensed for "on sales" windows in the front of any such place shall be of clear glass, and the view of the whole interior shall be unobstructed by screens, curtains, or partitions. There shall be no partition, box, stall, screen, curtain or other device which shall obstruct the view of any part of said room from the general observation of persons in said room, provided however, that partitions, subdivisions, or panels not higher than fifty-four inches from the floor shall not be construed as in conflict with the foregoing; and provided, however, such license shall entitle the holder thereof to serve 3.2 percent malt liquors in a separate room to banquets or dinners at which are present not less than 12 persons.

300.13 Revocation of Licenses.

Any license granted hereunder may be revoked or suspended by the council without notice to the grantee. Hearing will first be held by the council and the revocation then made for cause. Any violation of any provision or condition of this ordinance or any statement in the application shall be grounds for revocation. No portion of the licenses fee paid into the city treasury shall be returned upon revocation.

300.14 Penalty

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05.

BEERS AND LIQUOR

301 INTOXICATING LIQUOR

301.01 Definition of Terms.

M.S.A. §340A, as amended, is hereby adopted and made part of this ordinance in all respects as if set out in full herein. Section 1 of Chapter 46, Special Session Laws of M.S.A. §340A for 1933-34, is hereby adopted and made part of this ordinance in all respects as if set out in full herein.

For purposes of this Ordinance, a restaurant is defined as follows: an eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus, and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by M.S.A. §157.16, as it may be amended from time to time, and meet the definition of either a small establishment, medium establishment or large establishment as defined in M.S.A. §157.16, Subd. 3d, as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this chapter unless it meets the definitions of small establishment, medium establishment or large establishment.

301.02 License Required.

No person shall directly or indirectly, upon any pretense or by any device manufacture, import, sell, exchange, barter, dispose of or keep for sale any intoxicating liquor without first having obtained a license therefore as hereinafter provided. A license shall be for one of the following: on-sale, off-sale wine license, and Sundays.

- Section 1. On-Sale Licenses. On-sale licenses may be granted to entities allowed under state statute. Not more than four such licenses shall be granted at any one time.
- Section 2. Wine License. The City Council may issue an on-sale wine license with approval of the liquor control director to a restaurant having facilities for seating at least 25 guests at one time. A wine license authorizes the sale of wine on all days of the week between the hours of 11:00 a.m. and 1:00 a.m. The city holder of an on-sale wine license who is also licensed 3.2 malt liquors at on-sale, and whose gross receipts are at least 60 percent attributable to the sale of food may also sell intoxicating malt liquors at on-sale without an additional license.
- Section 3. Off-Sale Licenses. Off-sale licenses may be granted to permit the sale of intoxicating liquor at retail in the original package and such license may be issued only to liquor stores. No more than four off-sale licenses will be granted.
- Section 4. Sunday Licenses. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant (as defined in Section 301.01 herein), club, bowling center, or hotel which has a seating capacity of at least 30 persons, which

holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food.

301.03 Municipal Liquor Store.

The governing body of said city may, in its discretion, direct the establishing and conducting of an exclusive liquor store municipally, owned and operated for the sale of intoxicating liquor or retail, either on-sale or off-sale, or both. During all the time such exclusive liquor store shall be operated and maintained, no other on-sale or off-sale licenses shall be granted to any other party. If a municipal liquor store is established and operated, all provisions of this ordinance except the provisions with respect to licenses and bonds shall apply thereto so far as the same shall be applicable.

301.04 Application for License.

Every person desiring a license for either a license under this Ordinance shall file a verified written application therefore with the clerk of the municipality in the form to be prescribed by the City Council and with such additional information as the City Council of the municipality may require. A proof of liability insurance with limit, pursuant to M.S.A. §340.A, as amended, shall accompany each such application for a license.

301.05 Fees.

All applications for licenses shall be accompanied by a receipt from the City Administrator for the required fee for the respective licenses. All said fees shall be paid into the general funds of the municipality and are non-refundable. The annual fee for all on-sale licenses shall be set at the first meeting January of each year. All licenses shall expire on the last day of December in each year. Where such licenses shall be issued for less than one year, the charge may be a pro rata share of the annual license fee.

301.06 Granting of Licenses.

The City Council may, in its discretion, grant or refuse any license applied for. No off-sale license shall become effective until approved by the City Council. All licensed premises shall have the granted license posted in a conspicuous place therein at all times. No license shall be transferable either as to licensee or premises without the approval of the City Council.

301.07 Conditions of License.

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| Subsection 1. | All the licenses granted hereunder shall be subject to the following conditions, and all other conditions of this ordinance and all other ordinances of this city, applicable thereto and all regulations by the commissioner applicable thereto and the provisions of said Chapter. |
| Subsection 2. | Every licensee shall be responsible for the conduct of his place of business and the condition of sobriety and order thereon. No on-sale dealer shall sell liquor by the bottle or container for consumption on the premises. No dealer license for off-sale only shall permit the consumption of any liquor on such licensed premises. |
| Subsection 3. | No off-sale license shall be issued for any place where 3.2 percent malt beverages shall be sold for consumption on the premises. |

- Subsection 4. No liquor shall be sold to any minor. No license shall be granted to any minor, and no minor shall be employed in any room, constituting the place in which intoxicating liquors are sold retail at on-sale.
- Subsection 5. No licensee shall keep, possess or operate, or permit the keeping, possession or operation of, on the premises, or in any room adjoining the licensed premises controlled by him, any slot machine dice or other gambling devices or apparatus nor permit any gambling therein or permit the licensed premises or any room in the same or any adjoining buildings, directly or indirectly under his control to be used as a resort for prostitutes or other disorderly persons.
- Subsection 6. No license shall be issued to any person who shall hereafter be convicted of any willful violation of any law of the United States, or the State of Minnesota, or of any local ordinance with regard to the manufacture, sale, distribution of possession for sale or distribution intoxicating liquors, or to any person whose license under this ordinance shall be revoked for any willful violation of any of such laws or ordinances.
- Subsection 7. No license shall be granted to any manufacturer or distiller of intoxicating liquors, nor to anyone interested in the ownership or operation of any place where intoxicating liquor is manufactured or distilled nor to a person operating a licensed place owned by a manufacturer, distiller, or exclusive wholesale distributing agent unless such interest was acquired at least six months prior to January 1, 1934; and no equipment or fixtures in any licensed place shall be owned in whole or in part by any such manufacturer or distiller.
- Subsection 8. No license shall be issued in conjunction with any business either for on-sale or off-sale until such business has been in continuous operation in the premises proposed to be licensed for at least six months immediately preceding the date of application for such license.
- Subsection 9. No license shall be granted for operation on any premises upon which taxes or assessments of the city are delinquent and not paid.
- Subsection 10. All premises where any license hereunder is granted shall be open to inspection by any police or health officer or other properly designated officer or employee of the city at any time during which the place so licensed shall be open to the public for business.
- Subsection 11. No license shall be granted within 300 feet of any school building, church or hospital.

301.08 Hours of Operation.

Hours of operation for the sale of all intoxicating liquor in the City of Wheaton shall conform to Minnesota State Statute Chapter 340A.504.

No sale of intoxicating liquor shall be made on Sundays after 1 a.m. unless licensed to do so. Licensed sales of intoxicating liquor shall be allowed on Sundays between the hours of 10 a.m. and 1 a.m. Monday morning. No on-sale shall be made between 1 a.m. and 8 a.m. of any day during which an on-sale licensee may sell intoxicating liquor under the laws of the

State of Minnesota. No off-sale shall be made before 8 a.m. or after 10 clock p.m. of any day during which an off-sale licensee may sell intoxicating liquor under the laws of the State of Minnesota.

301.09 Restrictions.

The view of the interior from the exterior of on-sale establishments shall be unobstructed by screen, partition or otherwise. There shall be no partitions, boxes, stalls, curtains, or other devices which shall obstruct the view of any part of said room from the general observation of persons in said room. No liquor shall be sold to any intoxicated person. It shall be unlawful for any person or persons to mix or prepare liquor for consumption in any public place of business where no on-sale license is held or to consume liquor in said places. No liquor shall be sold or consumed on any roadway or in any automobile with in the city.

301.10 Revocation of License.

A hearing shall be held by the council, and the council may revoke a license upon a finding of a violation of any provision or condition of this ordinance or state licensing law, or upon a finding of any falsification of any statement in any application. Any such license shall be revoked automatically upon the conviction of the licensee of a felony offense. No portion of the license fee paid into the city treasury shall be returned upon revocation.

301.11 Penalties.

Section 1. Criminal Penalty. Any person, firm, or corporation who violates any provision of this Ordinance shall, upon conviction, be guilty of a petty misdemeanor and punished by a fine of not more than \$700.

Section 2. Civil Penalty. When after a hearing the City Council makes a finding that there has been a violation of any provision or condition of this ordinance or state licensing law, or upon a showing of any falsification of any statement in any application, the City Council may impose any of the following as a civil penalty: suspension of a license for up to 60 (sixty) days, revoke the license or permit, or impose a civil fine not to exceed \$2,000 for each violation.

AMENDMENT TO ORDINANCE SECTION 301.02

**AN ORDINANCE DEALING WITH THE REQUIRING A LICENSE FOR THE SALE
OF INTOXICATING LIQUOR IN THE CITY OF WHEATON**

Findings.

1. The existing Ordinance lists the types of intoxicating liquors which require a license to manufacture, import, sell, exchange, barter, dispose of or keep for sale in the City of Wheaton.
2. Intoxicating liquor containing up to 6% alcohol is not presently addressed by the Ordinance.
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to modify its Ordinance in order to allow licensing for the manufacture, import, sell, exchange, barter, dispose of or keep for sale of intoxicating liquor containing up to 6% alcohol.

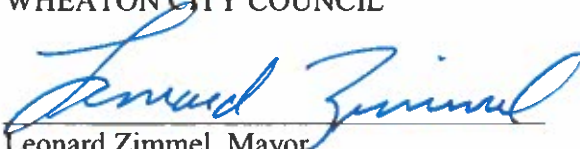
**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS
FOLLOWS:**

1. That Wheaton City Ordinance Section 301.02 is hereby amended to add a Subsection 5, which shall read as follows:

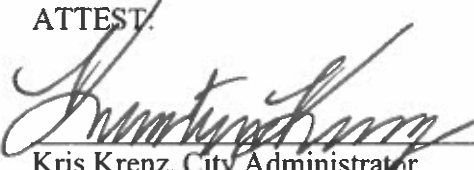
“Subsection 5. 6.0 Percent Malt Liquor. On-sale licenses may be granted to entities allowed under state statute. Not more than four such licenses shall be granted at any one time.”

PASSED AND ADOPTED this 26th day of July, 2018

WHEATON CITY COUNCIL


Leonard Zimmer, Mayor

ATTEST:


Kris Krenz, City Administrator

Adoption:

Motion:

Seconded:

Published:

BEERS AND LIQUORS

302 RESTRICTION OF THE SALE OF INTOXICATING LIQUORS AND INTOXICATING MALT LIQUORS

302.01

The City Council shall establish a City of Wheaton liquor Board of Hearing and Review consisting of five council members, which shall be the hearing group for the purpose of providing a hearing to any person receiving notice pursuant to this Ordinance.

Upon receipt of request for hearing by any person under this ordinance, the liquor board shall set a time and place for said hearing and give reasonable notice by U.S. Mail to all persons concerned, including the person requesting the hearing and the person signing the original application for restriction. At said hearing the liquor board shall hear from all persons interested or concerned on the issues presented at said hearing including the alleged defender and the person requesting the restriction. The liquor board of review shall reach a finding of fact and conclusion in writing.

BEERS AND LIQUORS

303 UNDERAGE PERSONS

303.01 3.2 Percent Malt Liquor

It shall be unlawful for any:

- Subsection 1. Licensee or his employee to sell or serve 3.2 percent malt liquor to any persons under 21 years of age or to permit any person under 21 years of age to consume intoxicating malt liquor on the licensed premises.
- Subsection 2. Person other than the parent or legal guardian to procure 3.2 percent malt liquor for any person under 21 years of age for consumption in their own home.
- Subsection 3. Person to induce a person under 21 years of age to purchase or procure 3.2 percent malt liquor.
- Subsection 4. Persons under 21 years of age to misrepresent his/her age for the purpose of obtaining 3.2 percent malt liquor.
- Subsection 5. Any person under 21 years of age to have in his possession any 3.2 percent malt liquor with intent to consume same at a place other than the household of his parent or guardian.

303.02 Intoxicating Liquor.

It shall be unlawful for Underage Persons:

- Subsection 1. To enter any premises licensed for the retail sale of alcoholic beverages or any liquor store for the purpose of purchasing, or having served or delivered to him or her, any alcoholic beverage containing more than one-half of one percent of alcohol by volume, or
- Subsection 2. To consume any alcoholic beverage, on premises licensed for retail sale of alcoholic beverages, or any municipal liquor store, or to purchase, attempt to purchase or have another purchase for him or her any alcoholic beverage, or,
- Subsection 3. Any person to misrepresent or misstate his or her age, or the age of any person for the purpose of inducing any licensee or employee of any licensee, or any employee of any municipal liquor store, to sell, or serve or deliver any alcoholic beverage to underage persons, or,
- Subsection 4. A underage person to have in his possession any intoxicating liquor with intent to consume same at a place other than the household of his parent or guardian.
- Subsection 5. Persons other than the parent or legal guardian to procure intoxicating liquor for any person under 21 years of age for consumption in his own home.

303.03 Penalty.

Violation of any provision of this ordinance shall be a misdemeanor punishable pursuant to W.M.C. 005.05

303.04 Regulating the use of alcoholic beverages and controlled substances at open house parties; Providing definitions and prescribing a penalty.

Subsection 1: Definitions.

“Adult” means any person eighteen (18) years of age or older.

“Alcoholic Beverage” means any beverage containing more than one half of 1% alcohol by weight.

“Resided” or “Premises” means a home, apartment, condominium, premises, or other dwelling unit or meeting room or hall, whether occupied on a temporary basis or permanent basis, whether occupied as a dwelling or for a social function, owned, rented, leased, or under the control of any person or persons including the curtilage of such residence or premises.

“Open House Party” means a social gathering of persons at a residence or premises, other than the owners thereof, or those with rights of possession, or their immediate family members.

“Controlled Substance” means any drug, agent, or substances, or defined by Minnesota State Statutes.

“Control” means the right of possession of a residence or premises.

Section 2. Acts Prohibited.

No adult having control of any residence or premises shall allow an open house party to take place at the residence or premises if any alcoholic beverage or controlled substance is possessed or consumed at the open house party by any person under 21 years of age where the adult knew or reasonably should have known that any alcoholic beverage or controlled substance was in the possession of or being consumed by such person under 21 years of age at the open house party, and where the adult failed to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or controlled substance by such person under 21 years of age at the open house party.

Section 3. Penalty.

Any persons violating this ordinance shall be guilty of a misdemeanors punishable pursuant to W.M.C. 005.05.

BEERS AND LIQUORS

304 VACATION OF PREMISES

304.01 Consumption.

It is unlawful for any person, including employees of licensed premises or of the cleaning service, to consume, or any licensee to permit consumption of, intoxicating liquor or non-intoxicating malt liquor in any quantity, on licensed premises more than sixty minutes after the hour when a sale thereof can legally be made.

304.02 Removal of Containers.

It is unlawful for any on-sale licensee to permit any glass, bottle, or other container, containing intoxicating liquor or non-intoxicating malt liquor in any quantity, to remain upon any table, bar, stool, or other place where customers are served, more than sixty minutes after the hour when a sale thereof can legally be made. No unconsumed intoxicating liquor or non-intoxicating malt liquor shall be removed from the premises for consumption at a different place by any employee or patron.

304.03 Closing.

It is unlawful for any person, other than an on-sale licensee's bona fide employee actually engaged in the performance of his duties, to be on premises licensed under this Chapter more than sixty minutes after the legal time for making licensed sales. Provided, however, that this Subdivision does not apply to licensees, employees of licensees, and patrons on licensed premises for the sole purpose of preparing, serving, or consuming food or beverages other than intoxicating liquor or non-intoxicating malt liquor in any quantity.

304.04 Conduct on Licensed Premises.

Except as herein provided, every licensee under this Chapter shall be responsible for the conduct of his or her place of business, and shall maintain conditions of sobriety and order therein.

304.05 Sale by Employee.

Any sale of intoxicating liquor or non-intoxicating malt liquor in any quantity in or from any premises licensed under this Chapter by any employee authorized to make such sale in or from such place is the act of the employer as well as the person actually making the sale, and every such employer is liable to all of the penalties provided by law for such sale, equally with the person actually making the sale.

304.06 Private Parties on Licensed Premises.

All provisions of this Ordinance shall apply equally to the licensed premises during private parties or when otherwise closed to the public.

304.07 Penalty.

Any person who violates, neglects, refuses to comply with, or assists or participates in any way in the violation of any of the provisions or requirements of this ordinance is guilty of a misdemeanor and is subject to a penalty of 90 days in jail and/or a \$1000 fine for each violation. Each day such violation continues shall constitute a separate offense.

LICENSED PLACES AND OCCUPATIONS

350 CIGARETTES: RETAIL SALE

350.10 Purpose.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both State and Federal laws; and because studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minnesota Statute Section 144.391.

350.20 Definitions and Interpretations.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

Subsection 1. Tobacco or Tobacco Products.

"Tobacco products" shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff flowers; cavendish; shorts, plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.

Subsection 2. Tobacco Related Devices.

"Tobacco related devices" shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

Subsection 3. Self-Service Merchandising.

"Self-Service Merchandising" shall mean open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without the assistance or intervention of the licensee

or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subsection 4. Vending Machine.

"Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco related device.

Subsection 5. Individually packaged.

"Individually packaged" shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

Subsection 6. Loosies; "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.

Subsection 7. Minor; "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subsection 8. Retail Establishment.

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

Subsection 9. Moveable Place of Business.

"Moveable Place of Business" shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Subsection 10. Sale.

A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subsection 11. Compliance Checks.

"Compliance checks" shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance Checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices for educational, research and training purposes as authorized by State and Federal laws. Compliance

checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to tobacco, tobacco products, and tobacco related devices.

350.30 License.

No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the city.

Subsection 1. Application.

An application for a license to sell tobacco, tobacco products, or tobacco related devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicants residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the city Council for action at its next regularly scheduled meeting. If the City Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subsection 2. Action.

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

Subsection 3. Term.

All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.

Subsection 4. Revocation or Suspension.

Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Subsection 5. Transfers.

All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

Subsection 6. Moveable Place of Business.

No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

Subsection 7. Display.

All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subsection 8. Renewals.

The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

350.40 Fees.

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be in an amount set from time to time in a fee schedule, adopted by resolution of the City Council.

350.50 Basis for Denial of License.

The following shall be grounds for denying the issuance or renewal of a license under this ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section:

- A. The applicant is under the age of 18 years.
- B. The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.
- C. The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked within the preceding twelve months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

350.60 Prohibited Sales.

It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, or tobacco related device and whereby there

is not a physical exchange of the tobacco, tobacco product, or tobacco related device between the licensee or the licensee's employee, and the customer.

- D. By means of loosies as defined in Section 200 of this ordinance.
- E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- F. By any other means, to any other persons, on in any other manner or form prohibited by Federal, State, or local law, ordinance provision, or other regulation.

350.70 Vending Machines.

It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

350.80 Self-Service Sales.

It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices, except cartons or multi-packs, by any means where by the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, and tobacco related devices, except cartons and multipacks, shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public.

Any retailer selling tobacco, tobacco products, or tobacco related devices at the time this ordinance is adopted shall comply with this Section within thirty (30) days following the effective date of this ordinance.

350.90 Responsibility.

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

350.100 Compliance Checks and Inspections.

All licensed premises shall be open to inspection by the Wheaton Police Department or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel.

Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained or attempted to be obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

350.110 Other Illegal Acts.

Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subsection 1. Illegal Sales.

It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor.

Subsection 2. Illegal Possession.

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

Subsection 3. Illegal Use.

It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.

Subsection 4. Illegal Procurement.

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

Subsection 5. Use of False Identification.

It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

350.120 Violations.

(Note: This section attempts to implement the administrative penalty provisions now required by State law.)

Subsection 1. Notice.

Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

Subsection 2. Hearings.

If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subsection 3. Hearing Officer.

The City Council of the City of Wheaton shall service as the hearing panel.

Subsection 4. Decision.

If the hearing panel determines that a violation of this ordinance did occur, that decision, along with the hearing panel's reasons for finding a violation and the penalty to be imposed under Section 1300 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing panel finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subsection 5. Appeals.

Appeals of any decision made by the hearing panel shall be filed in the district court for the jurisdiction of the City of Wheaton in which the alleged violation occurred.

Subsection 6. Misdemeanor Prosecution.

Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the city elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subsection 7. Continued Violation.

Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

350.130 Penalties.

Subsection 1. Licensees.

Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$100 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty four (24) month period; and \$250 for a third or subsequent offense at the same location within a twenty four (24) month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

Subsection 2. Other Individuals.

Other individuals, other than minors regulated by subdivision 3 of this subsection, found to be in violation of this ordinance shall be charged an administrative fee of \$50.

Subsection 3. Minors.

Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be charged an administrative fee of \$50.00.

Subsection 4. Misdemeanor.

Nothing in this Section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this ordinance.

350.140 Exceptions and Defenses.

Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation for a person to have reasonably relied on proof of age as described by State law.

350.150 Severability and Savings Clause.

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

350.160 Effective Date.

This ordinance shall take effect upon the passage and publication of this ordinance and a notice for two consecutive weeks stating that printed copies are available at the office of the city clerk.

350.170 Repealer.

The former Wheaton City Ordinance, found at number 350 of the Wheaton City Code, and relating to the sale, possession, and use of tobacco, tobacco products and tobacco related devices is hereby repealed.

LICENSED PLACES AND OCCUPATIONS

350 TOBACCO AND ELECTRONIC DELIVERY DEVICES: RETAIL SALE

350.10 Facts and Purpose.

Because the city recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 18 violates both state and federal laws; and because studies, which the city accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of smokers begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because the CDC reports that as of November 20, 2019, there have been 2,290 cases of e-cigarette product use associated lung injury nationwide resulting in 47 deaths (widely known as “vaping” injuries and deaths); and because three of those deaths have occurred in Minnesota; and because the Surgeon General and the FDA Commissioner has labeled the recent uptick in youth use of electronic delivery devices as an “epidemic;” and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports and advisory, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking—50 Years of Progress* (2014), *Preventing Tobacco Use Among Youth and Young Adults* (2012), and *Surgeon General's Advisory on E-Cigarette Use Among Youth* (2018); the Centers for Disease Control and Prevention in their studies, *Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011– 2018*(2019), *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997*(1998), and *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products* (available at: https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html) (2019); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D'Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455–459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking

behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327–333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326–7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673–677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740–746; Minnesota Department of Health. (2018). *Data Highlights from the 2017 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking*. University of California - San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco/>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326–333, copies of which are adopted by reference.

350.20 Definitions.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissive. The following terms shall have the definitions given to them:

Subsection 1. Electronic Delivery Device.

“Electronic delivery device” means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. ELECTRONIC DELIVERY DEVICE includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. 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 that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

Subsection 2. Flavored Product.

“Flavored product” means any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or

smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

Subsection 3. Licensed Products.

"Licensed products" collectively refers to any tobacco, tobacco-related device, or nicotine or lobelia delivery product.

Subsection 4. Nicotine Or Lobelia Delivery Product.

"Nicotine or lobelia delivery product" means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Subsection 5. Tobacco.

"Tobacco" shall mean Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco does not include any product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose. For the purpose of this Tobacco Sale Ordinance, tobacco-related device does not include electronic delivery devices.

Subsection 6. Tobacco Related Devices.

"Tobacco related devices" shall mean any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco-related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco. For the purpose of this Tobacco Sale Ordinance, tobacco does not include electronic delivery devices.

Subsection 7. Self-Service Display.

"Self-Service Merchandising" shall mean open displays of licensed products in any manner where any person shall have access to the licensed products, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical

exchange of the licensed products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subsection 8. Vending Machine.

"Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed products.

Subsection 9. Loosies;

"Loosies" shall mean the common term used to refer to single cigarettes, cigars, and any other licensed product that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor."

Subsection 10. Retail Establishment.

"Retail Establishment" shall mean any place of business where licensed products are available for sale to the general public. Retail establishments includes, but is not be limited to, grocery stores, tobacco products shops, gasoline service stations, convenience stores, bars, and restaurants.

Subsection 11. Moveable Place of Business.

"Moveable Place of Business" shall refer to any form of business operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Subsection 12. Sale.

A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subsection 13. Compliance Checks.

"Compliance checks" shall mean the system the city uses to investigate and ensure that those authorized to sell licensed products and electronic delivery devices are following and complying with the requirements of this ordinance. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance checks may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

350.30 License.

No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city. No license shall be issued to sell electronic delivery devices, in

accordance with Section 350.60, Sub. 1 of this Ordinance.

Subsection 1. Application.

An application for a license to sell licensed products shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicants residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the city Council for action at its next regularly scheduled meeting. If the City Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subsection 2. Action.

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

Subsection 3. Term.

All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.

Subsection 4. Revocation or Suspension.

Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Subsection 5. Transfers.

All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.

Subsection 6. Moveable Place of Business.

No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

Subsection 7. Display.

All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

Subsection 8. Renewals.

The renewal of a license issued under this section shall be handled in the same

manner as the original application. The request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.

Subsection 9. Issuance is a Privilege Not a Right. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

350.40 Fees.

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be in an amount set from time to time in a fee schedule, adopted by resolution of the City Council.

350.50 Basis for Denial of License.

The following shall be grounds for denying the issuance or renewal of a license under this ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section:

- A. The applicant is under the age of 21 years.
- B. The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to licensed products or electronic delivery devices.
- C. The applicant has had a license to sell licensed products or electronic delivery devices revoked within the preceding twelve months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

350.60 Prohibited Sales.

Subsection 1. Electronic delivery devices.

No person shall sell or offer for sale any electronic delivery device.

Subsection 2. In general.

It shall be a violation of this ordinance for any person to sell or offer to sell any licensed product:

- A. By means of any type of vending machine.
- B. By means of loosies as defined.
- C. Containing opium, morphine, jimson weed, bella donna, strychnos,

cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

- D. By any other means, to any other persons, on in any other manner or form prohibited by Federal, State, or local law, ordinance provision, or other regulation.

Subsection 3. Legal age.

No person shall sell any licensed product to any person under the age of 21.

- A. Age verification. Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
- B. No person under the age of twenty-one (21) years shall purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products using a driver's license, a Minnesota identification card, or other form of identification which is false, fictitious, altered, or counterfeited as to age or any other material fact of identification. Use of a false identification to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products is a misdemeanor.
- C. Signage. Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- D. It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in M.S.A. §340A.503, Subd. 6.
- E. Exceptions.
 - 1. Notwithstanding the above-stated provisions, individuals exempted under M.S.A. §609.685 are also exempt from this section.
 - 2. The penalties in this section do not apply to a person under the age of twenty-one (21) years who purchases or attempts to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

Subsection 4. Additional provisions.

- A. No person shall sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes

shall be sold in packages of fewer than twenty (20) cigarettes.

- B. No person shall sell or dispense tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices from a motor vehicle or other movable place of business.
- C. No person shall offer for sale tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any open displays which are accessible to the public without the intervention of a store employee.
- D. No person shall sell, offer for sale, or otherwise distribute any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device.

350.70 Self-Service Sales.

It shall be unlawful for a licensee under this ordinance to allow the sale of licensed products by any self-service displays where the customer may have access to such items without having to request the item from the licensee or the licensee's employee and where there is not a physical exchange of the licensed product between the licensee or the licensee's employee and the customer. All licensed products shall be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted shall comply with this Section within thirty (30) days following the effective date of this ordinance.

350.80 Flavored products.

No person shall sell, offer for sale, or otherwise distribute any flavored products. This does not include any tobacco related products.

350.90 Responsibility.

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products and electronic delivery devices on the licensed premises. The sale, offer to sell, or furnishing of any licensed product and electronic delivery device by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to any civil penalties that the city deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

350.100 Compliance Checks and Inspections.

All licensed premises must be open to inspection by law enforcement or other authorized city officials during regular business hours. From time to time, but at least twice per year, the city will conduct compliance checks. In accordance with state law, the city will conduct at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20 to enter the licensed premises to attempt to purchase licensed products or any electronic delivery devices. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

350.110 Prohibited Furnishing or Procurement.

Unless otherwise provided, the following acts shall be an administrative violation of this ordinance. It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to illegally purchase or attempt to purchase any licensed product.

350.120 Violations.

Subsection 1. Notice.

A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.

Subsection 2. Hearings.

- A. Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
- B. The City Administrator or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.

Subsection 3. Hearing Officer.

The City Council of the City of Wheaton shall serve as the hearing panel.

Subsection 4. Decision.

A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in subsection 5 of this section.

Subsection 5. Appeals.

Appeals of any decision made by the hearing panel shall be filed in the district court for the jurisdiction of the City of Wheaton in which the alleged violation occurred.

Subsection 6. Continued Violation.

Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Subsection 7. Costs.

If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of [\$1,000] must be paid by the person requesting the hearing.

350.130 Penalties.

Subsection 1. Licensees.

Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$200 for a first violation of this ordinance; \$500 for a second violation at the same licensed premises within a twenty four (24) month period; and \$750 for a third or subsequent violation at the same location within a twenty four (24) month period. Upon the third offense, the license shall be suspended for not less than seven days. Upon the fourth violation, the license will be revoked.

Subsection 2. Other Individuals.

Other individuals, other than persons under the age of 21, found to be in violation of this ordinance shall be charged an administrative fee of \$50.

Subsection 3. Misdemeanor.

Nothing in this Section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this ordinance by a person age 21 or older.

350.140 Exceptions and Defenses.

Subsection 1. Religious, Spiritual, or Cultural Ceremonies or Practices.

Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

Subsection 2. Reasonable Reliance.

It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

350.150 Severability and Savings Clause.

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

350.160

Effective Date.

This ordinance shall take effect upon the passage and publication of this ordinance and a notice for two consecutive weeks stating that printed copies are available at the office of the city clerk.

350.170

Repealer.

The former Wheaton City Ordinance, found at number 350 of the Wheaton City Code, and relating to the sale of licensed products and electronic delivery devices is hereby repealed.

LICENSED PLACES AND OCCUPATIONS

352 Places of Entertainment

352.01 License Required.

That no person, association or corporation shall, within this city, exhibit any caravan, carnival or circus, conduct or operate any theater or show, give any street performance or exhibition of any kind, conduct or operate any place of public entertainment of any kind, either directly or indirectly, without first obtaining a license therefor in accordance with the provisions of this ordinance.

352.02 Licensing Procedures.

Any persons, association or corporation desiring a license under the provisions of this ordinance shall make application therefor to the city clerk-treasurer, who may upon the filing of a property receipt signed by the city treasurer, acknowledging payment of the required license fee as hereinafter prescribed, issue to said applicant a license, authorizing said applicant to give such exhibition or performance, or conduct or operate such public entertainment, which license shall be attested by the seal of the said city, state the time for which said license is granted, which in no case shall be no longer than the unexpired portion of the term of the council than acting.

352.03 License Fee.

The license fee in all such licenses shall be such reasonable sums as shall be fixed and determined by the City Council and certified to the clerk/treasurer upon application for the persons desiring to give such exhibition or entertainment.

352.04 Revocation of Licenses.

The City Council may in its discretion, revoke any license issued under the terms of this ordinance when the good order of the city requires and the city clerk/treasurer shall thereupon forthwith notify the licensee that such license has been revoked. In case of the revocation of any such licensee, the council may return to the licensee the unearned portion of such license fee, computing the earned portion at the short term rate.

352.05 Failure to Secure Required License.

Any person, association, or corporation who shall conduct any caravan, carnival, circus, street performance, exhibition of place of public entertainment of any kind, contrary to the terms of this ordinance shall be guilty of a misdemeanor, punishable pursuant to W.M.C. 005.05.

LICENSED PLACES AND OCCUPATIONS

353 Garbage Collectors

353.01 License Required.

That in the City of Wheaton, no person, persons, or corporations shall engage in the business of collecting or removing dead animals, offal, garbage or any other substance deleterious to health without first obtaining a license therefor in accordance with the provisions of this ordinance.

353.02 Garbage trucks.

No person, persons, or corporation shall convey, haul or transport dead animals, offal, garbage, paper, debris or any other substance deleterious to health unless they convey, haul or transport the same in a vehicle which is covered and which will adequately contain all of said material so as to prevent said material from being cast or in any other manner be placed upon the streets or other property of said city.

353.03 Licensing Procedure.

That anyone desiring a license under the provisions of this ordinance shall make application therefor to the council of said City of Wheaton, which may upon the filing of a proper receipt signed by the City Clerk-Treasurer acknowledging the payment of the license fee, at its discretion, by vote of said council, issue said license. The license fee shall be such reasonable sum as shall be fixed by the City Council.

353.04 Bond.

Before any license shall be issued, the applicant shall furnish to said council a good and sufficient bond running to said city of Wheaton conditioned that said applicant will at all times conduct said business in strict compliance with the terms of this ordinance and with all other ordinances and rules relating thereto, said bond to be approved by said council in open session, and the sureties on said bond shall be subject to the payment of any fine and costs levied and imposed by any court against the licensee for any violation thereof while said bond shall remain in force. The amount of the bond shall be for such reasonable sum as determined by the City Council.

353.05 Revocation.

Any license issued under the terms of this ordinance may be revoked or made void by the City Council after a hearing and each license issued in accordance with this ordinance shall expire one year from the date hereof.

353.06 Penalty.

Violation of any provision of this ordinance shall be a misdemeanor pursuant to W.M.C. 005.05.

LICENSED PLACES AND OCCUPATIONS

354 Regulating the Sale of Merchandise from Out-of-Town Merchants

Subdivision 1. This Section shall cover all transient peddlers, hawkers, or other similar sellers of merchandise who sell said merchandise by contacting Wheaton residents, unsolicited, door-to-door, over the telephone, through the mail, or in any other fashion.

Subdivision 2. Any transient person wishing to sell merchandise in the City of Wheaton shall first make an application to the City Administrator, and pay the application fee set out by the Wheaton City Council.

Subdivision 3. By no later than the second council meeting after the application is made, the Wheaton City Council shall make the decision whether to approve or reject the application.

Subdivision 4. If approved, the transient person shall pay to the City Administrator the sum of \$100 for each day (or part of a day) that the person is in the City of Wheaton for the purpose of selling their merchandise, or \$500 for each and every year of sale provided that the City Council approves such license at by no later than the second council meeting after the new application is submitted.

Subdivision 5. Any person who violates, neglects, refuses to comply with, or assists or participates in any way in the violation of any of the provisions or requirements of this ordinance is guilty of a misdemeanor and is subject to a penalty of 90 days in jail and/or a \$1000 fine for each violation. Each day such violation continues shall constitute a separate offense.

LICENSED PLACES AND OCCUPATIONS

355 Unlicensed Drug & Alcohol Counseling

355.01 Definitions.

The definitions contained in M.S.A. §148C.01, and any subsequent amendments thereto, are hereby incorporated in and made a part of this Ordinance.

355.02 Application.

The provisions of this Ordinance shall apply to any person who is not required to hold a license pursuant to M.S.A. §148C.11.

355.03 Location.

No person or entity shall engage in the practice of alcohol and drug counseling in a program which caters to two or more persons without a license in the City of Wheaton in or within 1500 feet of the following:

- a. Any residential home or site used for residential purposes.
- b. Any place of religious worship.
- c. Any school site.
- d. Any public library.
- e. Any day care or child care facility.
- f. Any public theater.
- g. Any airport.
- h. Any state or federal highway.
- i. Any public park or recreational area site under the control, operation, or management of the county or a city within the county.
- j. Any establishment licensed to sell alcoholic beverages.
- k. Any state or federal governmental building.

355.04 Penalty.

Any person who violates, neglects, refuses to comply with, or assists or participates in any way in the violation of any of the provisions or requirements of this ordinance is guilty of a misdemeanor and is subject to a penalty of 90 days in jail and/or a \$1000 fine for each violation. Each day such violation continues shall constitute a separate offense.