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CHAPTER 5 – BUSINESS REGULATIONS

Article 1 – Alcoholic Beverages

SECTION 5-101: DEFINITIONS

All words and phrases herein used are to have the definitions applied thereto, as defined in the Liquor Control Act of the State of Nebraska. (Neb. Rev. Stat. §53-103)

SECTION 5-102: CONSUMPTION IN PUBLIC PLACES OR PLACES OPEN TO THE PUBLIC; RESTRICTIONS

A. Except when the Nebraska Liquor Control Commission has issued a license as provided in Neb. Rev. Stat. §53-186(2), it is unlawful for any person to consume alcoholic liquor upon property owned or controlled by the State or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property. (Neb. Rev. Stat. §53-186(1))

B. It is unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, cafe, or club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for such premises pursuant to the Nebraska Liquor Control Act.

C. It is unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, cafe, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the Act.

D. This section does not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages.
(Neb. Rev. Stat. §53-186.01) (Am. by Ord. No. 1468, 10/8/03)

SECTION 5-103: LICENSES; CITY POWERS AND DUTIES

A. The City Council is authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, bottle club, or craft brewery licensees carried on within the corporate limits of the City. (Neb. Rev. Stat. §53-134.03)

B. During the period of 45 days after the date of receiving from the Nebraska Liquor Control Commission an application for a new license to sell alcoholic liquor at retail, a bottle club license, or a craft brewery license, the City Council may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant. (Neb. Rev. Stat. §53-131(2))

C. The City Council, with respect to licenses within the corporate limits of the

City and with respect to Class D-1 licenses outside the corporate limits but within the extraterritorial zoning jurisdiction of the City, has the following powers, functions, and duties with respect to retail, bottle club, and craft brewery licenses:

1. To cancel or revoke for cause retail, bottle club, or craft brewery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;
2. To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act or any ordinance, resolution, rule, or regulation adopted by the City Council has been or is being violated and at such time examine the premises of such licensee in connection with such determination;
3. To receive a signed complaint from any citizen within its jurisdiction that any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the Act;
4. To receive retail license fees, bottle club license fees, and craft brewery license fees as provided in Neb. Rev. Stat. §53-124 and pay the same, after the license has been delivered to the applicant, to the city treasurer;
5. To examine or cause to be examined any applicant or any retail licensee, bottle club licensee, or craft brewery licensee upon whom notice of cancellation or revocation has been served as provided in the Act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the City Council may authorize its agent or attorney to act on its behalf;
6. To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in Neb. Rev. Stat. §53-1,1114, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the Commission within 30 days after the date of the order by filing a notice of appeal with the Commission, which shall handle the appeal in the manner provided for hearing on an application in Neb. Rev. Stat. §53-133.

7. Upon receipt from the Commission of the notice and copy of application as provided in Neb. Rev. Stat. §53-131, to fix a time and place for a hearing at which the City Council shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license.
 - a. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in the City one time not less than seven and not more than 14 days before the time of the hearing. Such notice shall include but not be limited to a statement that all persons desiring to give evidence before the City Council in support of or in protest against the issuance of such license may do so at the time of the hearing.
 - b. The hearing shall be held not more than 45 days after the date of receipt of the notice from the Commission and after such hearing the City Council shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The city clerk shall mail to the Commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the Commission. If the Commission refuses to issue such a license, the cost of publication of notice shall be paid by the Commission from the security for costs. (Neb. Rev. Stat. §53-134)

D. When the Nebraska Liquor Control Commission mails or delivers to the city clerk a license issued or renewed by it, the clerk shall deliver the license to the licensee upon proof of payment of:

1. The license fee if by the terms of Neb. Rev. Stat. §53-124(5) the fee is payable to the city treasurer;
2. Any fee for publication of notice of hearing before the City Council upon the application for the license;
3. The fee for publication of notice of renewal, if applicable, as provided in Neb. Rev. Stat. §53-135.01; and
4. Occupation taxes, if any, imposed by the City.

E. Notwithstanding any ordinance or charter power to the contrary, the City shall not impose an occupation tax on the business of any person, firm, or corporation licensed under the Nebraska Liquor Control Act and doing business within the corporate limits of the City in any sum which exceeds two times the amount of the license fee required to be paid under the Act to obtain such license.

(Neb. Rev. Stat. §53-132(4)) (Am. by Ord. Nos. 1080, 5/6/81; 1141, 10/5/83; 1468, 10/8/03)

SECTION 5-104: LICENSE REQUIRED

It shall be unlawful for any person to manufacture for sale, sell, keep for sale, or to barter any alcoholic liquors within the City, unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (Neb. Rev. Stat. §53-102)

SECTION 5-105: LICENSE APPLICATION; RETAIL LICENSING STANDARDS

A. The City Council shall only have authority to approve applications and deny licenses pursuant to the Nebraska Liquor Control Act. The Council shall consider the following licensing standards and criteria for the purpose of formulating a recommendation to the Nebraska Liquor Control Commission concerning any applicant for a retail alcoholic liquor license, for the upgrading of a license to sell alcoholic liquor, or for the expansion or change in location of the premises, in accordance with the Nebraska Liquor Control Act:

1. The adequacy of existing law enforcement resources and services in the area;
2. Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, potential traffic and parking problems, and the proximity and availability of on-street and off-street parking;
3. Zoning restrictions and the local City Council's zoning and land use policies;
4. Sanitation or sanitary conditions on or about the proposed licensed premises;
5. The existence of a citizen's protest and similar evidence in support of or in opposition to the application;
6. The existing population and projected growth within the jurisdiction of the City Council and within the area to be served;
7. The existing liquor licenses, the class of each such license, and the distance and times of travel between establishments that issued such licenses;
8. Whether the proposed license would be compatible with the neighborhood or community where the proposed premises are located;
9. Whether the type of business or activity proposed to be operated or presently operated in conjunction with the proposed license is and will be consistent with the public interest as declared in Neb. Rev. Stat. §53-101.01;

10. Whether the applicant can ensure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with Neb. Rev. Stat. §53-102;
11. Whether the applicant has taken every precaution to protect against the possibility of shoplifting of alcoholic liquor, which shall be displayed, kept in and sold from an area which is reasonably secured;
12. Whether the applicant is fit, willing, and able to properly provide the service proposed in conformance with all provisions and requirements of and rules and regulations adopted and promulgated pursuant to the Act;
13. Whether the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensee can conform to all the provisions and requirements of and rules and regulations adopted and promulgated pursuant to the Act;
14. The background information of the applicant established by information contained in the public records of the Commission and investigations conducted by law enforcement agencies;
15. Past evidence of discrimination involving the applicant as evidenced by findings of fact before any administrative board or agency of the City Council, any other governmental board or agency of the City Council, any other governmental unit, or any court of law;
16. Whether the applicant or the applicant's representatives suppressed any fact or provided any inaccurate information to the Commission or City Council or the employees of the Commission in regard to the license application or liquor investigations. The applicant shall be required to cooperate in providing a full disclosure to the investigating agents of the local Council;
17. Proximity of and impact on schools, hospitals, libraries, parks, and public institutions;
18. Whether activities proposed to be conducted on the licensed premises or in adjacent related outdoor areas will create unreasonable noise or disturbance; and
19. Compliance with state laws, liquor rules and regulations, and city ordinances and regulations and whether or not the applicant has ever forfeited bond to appear in court to answer charges of having committed a

felony or charges of having violated any law or ordinance enacted in the interest of good morals and decency or has been convicted of violating or has forfeited bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquor.

B. It shall be the applicant's duty to produce evidence pertaining to the designated criteria prescribed in this section. The burden of proof and persuasion shall be on the party filing the application. When applicable for purposes of this section, "applicant" shall be synonymous with "licensee." (Neb. Rev. Stat. §53-134) (Ord. Nos. 1197, 5/7/86; 1256, 8/14/89; 1264, 11/13/89)

SECTION 5-106: LICENSE APPLICATION; NOTICE OF HEARING; PROCEDURE

A. Notice of a hearing held pursuant to Neb. Rev. Stat. §53-134 shall be given to the applicant by the city clerk and shall contain the date, time, and location of the hearing. Two or more proceedings which are legally or factually related may be heard and considered together unless any party thereto makes a showing sufficient to satisfy the City Council that prejudice would result therefrom.

B. Hearings will be informal and conducted by the city attorney. The intent is an inquiry into the facts, not an adversarial action. Witnesses may present their testimony in narrative fashion or by question and answer.

C. The City Council or the applicant may order the hearing to be recorded by the clerk at the expense of the applicant.

D. The City Council may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent individuals. The city attorney may limit testimony where it appears incompetent, irrelevant, or unduly repetitious. If there is opposition to any application and such opposition desires the opportunity to present arguments and to cross-examine the applicant and any witnesses in favor of such application, they shall choose a spokesperson to perform such function who shall notify the city attorney of the representation prior to the start of the hearing.

E. The order of the proceeding is as follows:

1. Exhibits will be marked in advance by the clerk and presented to the city attorney during the presentation.
2. Presentation of evidence, witnesses, and arguments by applicant.
3. Testimony of any other citizens in favor of such proposed license.
4. Examination of applicant, witnesses or citizens by city attorney, City Council, or duly appointed agent.
5. Cross-examination of applicant, witnesses or citizens by spokesperson for opposition, if any.
6. Presentation of evidence and witnesses by opposition.
7. Testimony of any other citizens in opposition to such proposed license.

8. Presentation of evidence by city and law enforcement personnel.
9. Cross-examination by applicant.
10. Rebuttal evidence by both parties, and by city administration and agent;
11. Summation by applicant and opposition spokesperson, if any.
12. In all cases, the burden of proof and persuasion shall be on the party filing the application.
13. Any member of the City Council and the city attorney may question any witness, call witnesses, or request information.
14. All witnesses shall be sworn.
15. The City Council may make further inquiry and investigation following the hearing.

F. The City Council or the applicant may order the hearing to be recorded by the clerk, at the expense of the applicant.

(Neb. Rev. Stat. §53-134) (Ord. Nos. 1196, 5/7/86; 1265, 11/13/89)

SECTION 5-107: LICENSEE REQUIREMENTS

It shall be unlawful for any person or persons to own an establishment that sells at retail any alcoholic beverages unless said person: (A) is a resident of the county in which the premises is located; (B) is of good character and reputation; (C) is a citizen of the United States; (D) has never been convicted of a felony or any Class I misdemeanor pursuant to Neb. Rev. Stat. Chapter 28, Article 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state; (E) has never had a liquor license revoked for cause; (F) is a person whose premises for which a license is sought meets standards for fire safety as established by the state fire marshal; or (G) has not acquired a beneficial interest in more than two alcoholic beverage retail establishments since March 4, 1963; provided, the beneficial interest requirement in this section shall not apply to a person applying for an additional license for use in connection with the operation of a hotel containing at least 25 sleeping rooms or where the request is limited to on-premises sale of beer only in a restaurant. (Neb. Rev. Stat. §53-124.03, 53-125) (Am. by Ord. Nos. 1079, 5/6/81; 1141, 10/5/83)

SECTION 5-108: ACTION ON APPLICATION FOR LICENSE

A. Upon receipt from the Nebraska Liquor Control Commission of the notice and copy of the application provided for in Neb. Rev. Stat. §53-131, the city clerk shall present it to the mayor and the City Council at their next meeting and they shall fix a time and place at which a hearing will be had and evidence taken under oath from any person desiring to be heard on the propriety of the issuance of the license in question.

B. Notice of the time and place of such hearing shall be published in a legal newspaper in this city one time not less than seven nor more than 14 days before the time of hearing. The hearing shall be held not more than 45 days after the date of receipt of the notice and copy of the application by the city clerk. After said hearing, the

mayor and City Council shall by resolution, spread at large in the minute record of their proceedings, recommend either the issuance or the refusal of said license. The city clerk shall thereupon mail to the Nebraska Liquor Control Commission by first class mail, postage prepaid, a copy of the resolution, which shall state the cost of the published notice.

(Neb. Rev. Stat. §53-131, 53-132, 53-134)

SECTION 5-109: DISPLAY OF LICENSE

Every licensee under the Nebraska Liquor Control Act shall cause the license to be framed and hung in plain public view in a conspicuous place on the licensed premises. (Neb. Rev. Stat. §53-148)

SECTION 5-110: LOCATION

It shall be unlawful for any person or persons to own, maintain, manage, or hold open to the public any establishment for the purpose of selling at retail any alcoholic liquor within 150 feet of any church, school, hospital, or home for aged or indigent persons or veterans, their wives or children; provided, this prohibition shall not apply to any location within such distance when the said establishment has been licensed by the Nebraska Liquor Control Commission at least two years and to hotels offering restaurant service, regularly organized clubs, or to restaurants where the selling of alcoholic liquors is not the principal business carried on if the said hotel, club, or restaurant was licensed and in operation prior to May 24, 1935. No alcoholic liquor other than beer shall be sold for consumption on the premises within 300 feet from the campus of any college within the City. (Neb. Rev. Stat. §53-177)

SECTION 5-111: CHANGE OF PREMISES

Any retailer licensee desiring to transfer the license from one premises to another shall file a written request for permission to do so with the city clerk and shall also file with said clerk a sworn statement showing that the premises to which removal is to be made complies in all respects with the requirements of the Nebraska Liquor Control Act. The city clerk shall present said application and statement to the next meeting of the mayor and City Council, who shall by resolution approve or disapprove the transfer. If they approve the transfer, such approval shall be endorsed on the license by the mayor and attested by the city clerk. No such transfer is valid until also approved by the Liquor Control Commission and the licensee furnishes proof of payment of the state registration fee.

SECTION 5-112: HOURS OF SALE

A. It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the City except during the hours provided herein. Such limitations shall not apply after 12:00 noon on Sunday to a licensee which is a nonprofit corporation holding a license pursuant to Neb. Rev. Stat. §53-124 (5)(C) and (H).

Alcoholic Liquors (except Beer and Wine)	
<i>Monday through Saturday</i>	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 1:00 A.M.
<i>Sunday</i>	
Off Sale	12:00 Noon to 1:00 A.M.
On Sale	12:00 Noon to 1:00 A.M.
Beer and Wine	
<i>Monday through Saturday</i>	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 1:00 A.M.
<i>Sunday</i>	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 1:00 A.M.

B. For the purposes of this section, "on sale" is defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment; "off sale" is defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

C. No person shall consume any alcoholic beverages on licensed premises for a period of time longer than 15 minutes after the time fixed herein for stopping the sale of alcoholic beverages on said premises.

D. Nothing in this section shall be construed to prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section.

(Neb. Rev. Stat. §53-179)

SECTION 5-113: NO DELIVERY AFTER CLOSING HOURS

No retail licensee in this city operating premises open to the public shall act as retailer or keeper of liquor for customers or other persons for the purpose of delivering or disposing of such liquor after closing hours as provided by state law, ordinance or resolution or on days when sales are prohibited.

SECTION 5-114: RENEWAL OF LICENSE

A. The city clerk shall cause to be published in a legal newspaper in this city one time between January 10 and January 30 of each year individual notice of the right of automatic renewal of each retail liquor and beer license (except that notice of the right of automatic renewal of Class C licenses shall be published between July 10 and July 30 of each year) in the following form:

“NOTICE OF RENEWAL OF RETAIL LIQUOR LICENSE

Notice is hereby given that pursuant to Neb. Rev. Stat. §53-135.01, the liquor license may be automatically renewed for one year from May 1, 20____, for the following retail liquor licensee, to-wit:

(Name of licensee, address of licensed premises)

Notice is hereby given that a written protest to the issuance of automatic renewal of license may be filed by any resident of the City of Ainsworth on or before February 10, 20____, in the office of the city clerk and that in the event protests are filed by three or more such persons, hearing will be had to determine whether continuation of said license should be allowed.

(NAME)
(City Clerk)”

B. The city clerk shall file or cause to be filed with the Nebraska Liquor Control Commission proof of publication of said notices on or before February 6 each year.

SECTION 5-115: PROTESTS AGAINST RENEWAL

If written protests are filed with the city clerk by three or more city residents against the automatic renewal of a license, the clerk shall present the same to the mayor and City Council at their next meeting and they shall by resolution direct the licensee to submit an application in the same manner as would be required for an original license. The city police chief shall serve said resolution on said licensee by delivering to him/her personally a true and certified copy thereof. Upon receipt by the city clerk from the Nebraska Liquor Control Commission of the notice and copy of application, the same procedure shall be followed as is provided for in the case of an application for an original license.

SECTION 5-116: PREMISES ALSO USED AS DWELLING

Except in the case of hotels and clubs, no alcoholic liquor shall be sold at retail upon any premises which has any access which leads from such premises to any other portion of the same building used for dwelling or lodging purposes and which is permitted to be used by the public. Nothing herein shall prevent any connection with such premises and such other portion of the building which is used only by the licensee, family, or personal guests. (Neb. Rev. Stat. §53-178)

SECTION 5-117: SANITARY CONDITIONS

It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons and said licensed premises shall be subject to any health in-

spections the City Council or the city police may make or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for or renewal of a liquor license. (Neb. Rev. Stat. §53-118)

SECTION 5-118: ENTRY OF PREMISES FOR INSPECTION

Any police officer shall have the right to enter any licensed premises at any time for the purpose of determining whether or not the licensee is violating any provision of the Nebraska Liquor Control Act or of this article and for that purpose to examine and inspect said premises.

SECTION 5-119: OWNER OF PREMISES

The owner of any premises used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall knowingly permit the licensee to use the said licensed premises in violation of any city code section or Nebraska statute. (Neb. Rev. Stat. §53-1,101)

SECTION 5-120: EMPLOYER

The employer of any officer, director, manager, or employees working in a retail liquor establishment shall be held to be liable and guilty of any act of omission or violation of any law or ordinance and each such act or omission shall be deemed and held to be the act of the employer and will be punishable in the same manner as if the said act or omission had been committed personally. (Neb. Rev. Stat. §53-1,102)

SECTION 5-121: HIRING MINORS

It shall be unlawful for any person to hire a minor regardless of sex under the age of 19 years to serve or dispense alcoholic liquors, including beer, to said licensee's customers. (Neb. Rev. Stat. §53-102)

SECTION 5-122: MINOR'S PRESENCE

It shall be unlawful for any person or persons who own, manage, or lease an establishment selling alcoholic beverages at retail to allow any minor under the age of 18 years to frequent or otherwise remain in the said establishment unless the said minor is accompanied by a parent or legal guardian and unless said minor remains seated with and under the immediate control of the said parent or legal guardian. (Neb. Rev. Stat. §53-147)

SECTION 5-123: SALE TO MINORS AND INCOMPETENTS

It shall be unlawful for any person or persons to sell, give away, dispose of, exchange, permit the sale of or make a gift of any alcoholic liquor or to procure any

such alcoholic liquor to or for any minor or to any person who is mentally incompetent. (Neb. Rev. Stat. §53-180) (Am. by Ord. No. 1081, 5/6/81)

SECTION 5-124: MISREPRESENTATION BY MINOR

It shall be unlawful for any minor to represent being of the age of 21 years for the purpose of asking for, purchasing, or receiving any alcoholic beverages. (Neb. Rev. Stat. §53-180.01) (Ord. Nos. 1225, 10/14/87; 1232, 7/6/88)

SECTION 5-125: MINOR IN POSSESSION

Except as provided in Neb. Rev. Stat. §53-102, it shall be unlawful for any person under 21 years of age to transport, knowingly possess, or have under his/her control in any motor vehicle, beer or other alcoholic liquor on any public street, alley, roadway, or property owned by the State of Nebraska or any subdivision thereof or any other place within the city limits. (Neb. Rev. Stat. §53-180.02) (Ord. Nos. 1225, 10/14/87; 1232, 7/6/88)

SECTION 5-126: SALES FOR CASH ONLY

No person shall sell or furnish alcoholic liquor at retail to any person or persons for credit of any kind, barter, or services rendered; provided, nothing herein contained shall be construed to prevent any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or guests of members and charged to the accounts of the said members or guests in accordance with the bylaws of any such club; and provided further, nothing herein shall be construed to prevent any hotel or restaurant holding a retail alcoholic beverage license from permitting checks or statements for liquor to be signed by regular guests residing in the said hotel and charged to the accounts of such guests. (Neb. Rev. Stat. §53-183)

SECTION 5-127: SPIKING BEER

It shall be unlawful for any person who owns, manages, or leases any premises in which the sale of alcoholic beverages is licensed to serve or offer for sale any beer to which there has been added any alcohol or permit any person to add alcohol to any beer on the licensed premises of such licensee. (Neb. Rev. Stat. §53-174)

SECTION 5-128: ORIGINAL PACKAGE

It shall be unlawful for any person who owns, manages, or leases any premises in which the sale of alcoholic beverages is licensed to have in his/her possession for sale at retail any alcoholic liquor contained in casks or other containers except in the original package. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale. (Neb. Rev. Stat. §53-184) (Am. by Ord. No. 1299, 2/12/92)

SECTION 5-129: GAMBLING

Unless sanctioned by Nebraska law, no licensee in this city holding a license covering any premises open to the public for the sale of intoxicating liquor or beer shall directly or indirectly permit gambling on or in the licensed premises nor shall he/she permit the operation or possession of any payoff gambling device, slot machine or punchboard, mechanical or otherwise, whether payoff is in cash or merchandise, in, on or about the licensed premises.

SECTION 5-130: SALE FOR RESALE

No retail licensee in this city shall engage, directly or indirectly, in any transaction including or conspiring as to the resale of any liquors owned as a licensee nor shall such licensee so permit the sale or delivery of any such liquors in such quantities as would place a reasonable-minded person on notice that such liquor might be intended for resale.

SECTION 5-131: TRANSPORTATION OF LIQUOR

No retail licensee in this city shall permit the transportation of alcoholic liquor from his/her licensed premises for storage purposes in any manner for any purpose or to any location other than has been expressly authorized in writing by the Commission.

SECTION 5-132: CONDUCT PROHIBITED ON LICENSED PREMISES

No licensee in this city shall engage in, allow, or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities or displays, brawls or unnecessary noise or allow, permit or suffer the licensed premises to be used in such a manner as to create public censure or become a nuisance, public or private.

SECTION 5-133: ADVERTISEMENTS AND SALES

Advertising by licensees in this city shall not contain misrepresentation or misleading statements and no sales shall be promoted or made by any licensee by unlawful means. Alcoholic liquors shall not be offered, delivered or disposed of by any licensee as a prize.

SECTION 5-134: CATERING LICENSES

A. The holder of a Class C, Class D, Class D-1, or Class I license issued under Neb. Rev. Stat. §53-124(5) or a craft brewery license may obtain an annual catering license by filing an application and license fee with the Nebraska Liquor Control Commission. (Neb. Rev. Stat. §53-124.12(1))

B. Upon receipt from the Commission of the notice and copy of the application as provided in Neb. Rev. Stat. §53-124.12, the City Council shall process the applica-

tion in the same manner as provided in Section 5-104 (Licenses; City Powers and Duties). (Neb. Rev. Stat. §53-124.12(3))

C. The City Council, with respect to catering licensees within its liquor license jurisdiction, may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the District Court. (Neb. Rev. Stat. §53-124.12(4))

D. The City Council may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the City Council. The tax may not exceed double the license fee for a catering license. (Neb. Rev. Stat. §53-124.12(6))

E. For purposes of this section, the liquor license jurisdiction of the City Council, with respect to the holders of Class D-1 licenses, is the area outside the corporate limits of the City but within its extraterritorial zoning jurisdiction and, with respect to the holders of other licenses, is the corporate limits of the City.
(Ord. Nos. 1241, 9/7/88; 1299, 2/12/92; 1406, 11/12/97; 1468, 10/8/03)

SECTION 5-135: MANUFACTURE, SALE, DELIVERY, AND POSSESSION; GENERAL PROHIBITIONS; EXCEPTIONS

A. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes except as specifically provided in this chapter and the Nebraska Liquor Control Act.

B. Nothing in this chapter shall prevent:

1. The possession of alcoholic liquor legally obtained as provided in this chapter or the Act for the personal use of the possessor and family or guests;
2. The making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof by simple fermentation and without distillation if made solely for the use of the maker and family and guests;
3. Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of licensed physicians;
4. The possession and dispensation of alcoholic liquor by an authorized

representative of any religion on the premises of a place of worship, for the purpose of conducting any bona fide religious rite, ritual, or ceremony;

5. Persons who are 16 years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor;
6. Persons who are 16 years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment;
7. Persons who are 16 years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; or
8. Persons who are 19 years old or older from serving or selling alcoholic liquor in the course of their employment.

(Neb. Rev. Stat. §53-168.06) (Am. by Ord. Nos. 1189, 11/6/85; 1378, 5/8/96; 1468, 10/8/03)

SECTION 5-136: REMOVAL OF INTOXICATED PERSONS FROM PUBLIC OR QUASI-PUBLIC PROPERTY

A. Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others or who is otherwise incapacitated from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take such intoxicated person to his or her home or to place such person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctor, which have previously represented a willingness to accept and treat, such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury and under no circumstances longer than 24 hours. The placement of such person in civil protective custody shall be recorded at the facility or jail at which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

B. The law enforcement officer who acts in compliance with this section shall be deemed to be acting in the course of official duty and shall not be criminally or civilly liable for such actions. The taking of an individual into civil protective custody under this section shall not be considered an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

C. For purposes of this section, "public property" shall mean any public right-

of-way, street, highway, alley, park, or other state-, county-, or city-owned property.

D. For the purposes of this section, “quasi-public property” shall mean and include private or publicly owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress.
(Neb. Rev. Stat. §53-1,121) (Ord. No. 1102, 3/24/82)

Article 2 – Sales and Use Tax

SECTION 5-201: ONE PERCENT TAX IMPOSED

By reason of the approval of the voters of the City at the general election held in the City on November 3, 1992, and pursuant to the Nebraska Local Option Revenue Act, the City does hereby impose a sales and use tax of one percent (1%) upon the same transactions within the City on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967. The administration of such sales and use tax shall be by the state tax commissioner pursuant to Neb. Rev. Stat. §77-27,143. (Ord. No. 1312, 11/11/92)

SECTION 5-202: COMMENCEMENT DATE

The sales and use tax imposed by Section 5-201 became effective on the first day of April, 1993. (Ord. No. 1312, 11/11/92)

SECTION 5-203: USE OF PROCEEDS

The proceeds of the sales and use tax imposed by Section 5-201 shall be placed in the General Fund to be used as follows:

- A. 60% for debt reduction;
- B. 20% for property tax relief; and

C. 20% as needed for public parks, pool maintenance and improvements, fire protection and equipment, cemeteries, and all other needs that may arise, including enhancement of medical facilities and services, encouraging immigration, new industries and investment in the community.

(Ord. No. 1312, 11/11/92)

SECTION 5-204: ADDITIONAL TAX IMPOSED

A. By reason of the approval of the voters of the City at the general election held on November 26, 2007, and pursuant to the Nebraska Local Option Revenue Act, the City does hereby impose a sales and use tax of one-half of one percent (.5%) upon the same transactions within the City on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967. The administration of such sales and use tax shall be by the state tax commissioner pursuant to Neb. Rev. Stat. §77-27,143.

B. The administration of the sales and use tax imposed herein, the making of returns for the ascertainment and assessment, the provisions for tax claims and remedies, the laws governing consummation of sales, penalties and collection, and for the disposition and distribution of the taxes so imposed and collected shall be as pro-

vided by Neb. Rev. Stat. §77-27,142 to §77-27,148 and Neb. Rev. Stat. §77-2701 to §77-27,135.

(Ord. No. 1494, 11/26/07)

SECTION 5-205: ADDITIONAL TAX; COMMENCEMENT DATE

The additional sales and use tax imposed by Section 5-204 became effective on the first day of April, 2008. (Ord. No. 1494, 11/26/07)

SECTION 5-206: ADDITIONAL TAX; USE OF PROCEEDS

The proceeds of the sales and use tax imposed by Section 5-204 shall be placed in the General Fund to be used for funding of the City's economic development program. (Ord. No. 1494, 11/26/07)

SECTION 5-207: ADDITIONAL TAX; DURATION

Such tax imposed by Section 5-204 shall remain in effect for a 15-year period, ending on March 31, 2023. (Ord. No. 1494, 11/26/07)

Article 3 – Occupation Taxes

SECTION 5-301: AMOUNTS

A. For the purpose of providing revenue for the City, there is hereby levied and assessed an occupation tax upon every person, firm, association or corporation within the City which is engaged in any of the occupations or businesses hereinafter designated:

1. Operation of a carnival or street fair containing more than three separate rides, booth, stands, games, concessions or displays, per week
2. Operation of a circus, per day
3. Operation of a merry-go-round or other similar device, striking machine, stand or concession of any kind in which food or any merchandise is sold or lawful game of skill is conducted, when same is not a part of a licensed carnival or street fair and which contains three or fewer such activities, per day or per year
4. Fire insurance companies, per year
5. Manufacture of alcoholic beverages, per year
 - a. Alcohol and spirits
 - b. Wine
 - c. Beer
6. Sale and distribution of alcoholic beverages
 - a. Distributor, other than beer, per year
 - b. Beer distributor, per year
 - c. Retailer, on-sale beer (Class A), per year
 - d. Retailer, off-sale beer (Class B), per year
 - e. Retailer, alcohol and off-premises (Class C), per year
 - f. Retailer, alcohol and beer off-sale, original package (Class D), per year
 - g. Retailer, alcohol sales on premises (Class I), per year
 - h. Special designated liquor license, per event

B. Such occupation taxes shall be set by the City Council and filed in the office of the city clerk for public inspection during office hours. The City shall not impose an occupation tax on the business of any person, firm, or corporation licensed under the Liquor Control Act and doing business within the corporate limits in any sum which exceeds two times the amount of the license fee required to be paid under the Act to obtain such license.

(Neb. Rev. Stat. §17-525, 53-132) (Am. by Ord. Nos. 1016, 7/5/78; 1357, 10/12/94; 1487, 10/12/05)

SECTION 5-302: OCCUPATIONS EXCEPTED

The occupation taxes levied under the provisions of this article shall not apply to interstate commerce, to any interstate business or transaction, nor to any business or occupation conducted by any department of the U. S. government, the State of Ne-

braska, the City or any other governmental subdivision of this state or by their officers or employees while engaged in the performance of their official duties.

SECTION 5-303: FIRE INSURANCE COMPANIES

For the use, support, and maintenance of the City Fire Department, all revenue realized from the occupation tax on fire insurance companies shall be appropriated to the Fire Department Fund. (Neb. Rev. Stat. §35-106)

SECTION 5-304: COLLECTION DATE

All occupation taxes shall be due and payable on the first day of each fiscal year except in the event that the said tax is levied daily or weekly. Upon the payment thereof by any person or persons to the city clerk, he/she shall give a receipt, properly dated and specifying the person paying the said tax and the amount paid; provided, occupation taxes collected from Class C liquor licenses shall be due and payable on November 1. The revenue collected shall then be immediately deposited into the General Fund by the city treasurer, who shall keep an accurate account of the same. All forms and receipts herein mentioned shall be issued in duplicate and each party in the transaction shall then keep one copy. (Neb. Rev. Stat. §17-525)

SECTION 5-305: TAX FOR FRACTIONAL PERIODS

No person engaging in any of the occupations enumerated in Section 5-301 shall be required to pay for the then current city year an amount larger than one-twelfth of the annual tax for each month or fraction thereof remaining to the end of the city year.

SECTION 5-306: CERTIFICATES

The receipt issued after the payment of any occupation tax shall be the Occupation Tax Certificate. The said certificate shall specify the amount of the tax and the name of the person and business that paid the said tax. The Occupation Tax Certificate shall then be displayed in a prominent place or carried in such a way as to be easily accessible while business is being conducted. (Neb. Rev. Stat. §17-525)

SECTION 5-307: FAILURE TO PAY

If any person, company, or corporation fails or neglects to pay the occupation taxes as provided herein on the day they become due and payable, the City shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of 1% per month until paid. (Neb. Rev. Stat. §17-525)

Article 4 – Lotteries

SECTION 5-401: VIDEO LOTTERIES PROHIBITED

It shall be unlawful for any person, firm, corporation, organization, or association within the corporate limits of the City to engage in, conduct, or allow to be conducted upon the premises owned by him/her/them any gambling scheme which uses any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has a capacity of awarding monetary prizes, free games redeemable for monetary prizes, or tickets or stubs redeemable for monetary prizes.
(Ord. No. 1153, 3/7/84)

Article 5 – Junk and Salvage Dealers

SECTION 5-501: DEFINITION

A “junk and salvage dealer” shall be defined as any person or firm which is engaged in the business of buying, selling, receiving, storing, collecting or dealing in scrap metal, secondhand parts of motor vehicles or machinery which are being kept for the purpose of being dismantled or discarded, bottles, scrap rubber, rags, paper, bones or junk in general. This article shall not apply to bona fide secondhand automobile dealers but the mere fact that the owner or operator of said establishment reconditions or sells some secondhand cars shall not eliminate the establishment from the effects of the provisions of this article.

SECTION 5-502: LICENSE REQUIRED

Every person, firm or corporation now or hereafter engaged in the business of dealing in junk and salvage within the corporate limits of the City shall obtain a license to engage in said business.

SECTION 5-503: APPLICATION FOR LICENSE; RENEWAL

A. Each applicant for an original license under this article shall file a written application for such license with the clerk and with said application pay to the City a fee set by the City Council and filed in the office of the city clerk for public inspection during office hours. Said application shall state the name of the owner and operator of said business and the location of the proposed business. The clerk shall submit said application to the mayor and Council, who shall make such investigation as they deem necessary of the proposed location set forth in said application and shall grant such license only if they deem that the operation of the business in said location will not be injurious to the public health, safety and welfare and that they are reasonably satisfied that the premises meets the requirements of this article. If the application is granted, the clerk shall forthwith issue a license authorizing the applicant to engage in business as a junk and salvage dealer to April 30 of the following year.

B. All licenses so issued shall continue in force, unless sooner revoked or suspended, to April 30 after the date of issuance thereof. Licenses may be renewed by the mayor and Council upon application being made for renewal with the clerk for a period beginning May 1 of the year of such application for renewal and ending April 30 of the following year. A license fee as provided in subsection (A) shall be paid to the City for said annual renewal, which shall be paid at the time of making application.

SECTION 5-504: REGULATIONS

A. Every junk and salvage dealer shall keep and confine the goods and materials received or held within the limits of the premises for which the license is granted

and none of the same shall be placed or be allowed to remain upon any adjoining property, sidewalk, street or alley only except as may be necessary in the loading or unloading of the same and, in any event, the same shall be promptly removed therefrom.

B. All areas of junk and salvage yards wherein junk and salvage is piled, kept or stored adjacent to or abutting a public street, sidewalk or alley shall have erected thereon upon or near the boundary line nearest such public street, sidewalk or alley a suitable fence or wall of board, metal, mesh wire or masonry construction of sufficient height, in all cases at least 8 feet high, and of sufficient strength to keep and confine in said area all junk which may be placed thereon so that said junk will not encroach or be upon such public street, sidewalk or alley or endanger persons or property thereon or passing along the same. Every entrance to such area from the public street or alley shall be equipped with a suitable door or gate.

C. All junk and salvage shall be kept or stored in such a manner as to make possible control and eradication of rats and vermin and to minimize the danger of fire. Owners and operators of junkyards and salvage yards shall use reasonable measures to the end that the junk and salvage yards shall not become or be infested with rats and vermin to the extent that public health, safety and welfare are endangered.

SECTION 5-505: LOCATION OF BUSINESS

No person or firm shall establish or engage in the business of a junk and salvage dealer within any residential district of the City; provided, any junk and salvage dealer actually engaged in such business in a residential district of the City as of the time of passage of this article may continue said business in such location upon compliance with all other provisions of this article.

SECTION 5-506: OPEN FIRES

All open fires started in a junk or salvage yard for the purpose of burning junk or waste materials shall be tended at all times and shall be confined so as not to endanger property or persons or create a nuisance and shall be allowed to burn only during daylight hours.

SECTION 5-507: REVOCATION OR SUSPENSION OF LICENSE

Every junk and salvage dealer, employee or operator of such junk yard and salvage yard who shall violate or neglect or refuse to comply with any of the provisions of this article shall be deemed guilty of a misdemeanor. Each day of said violation shall be deemed to be a separate and distinct offense. In addition to the penalty imposed, the mayor and Council, after giving three days' notice to said licensee either in person or by registered mail addressed to the last known address of such licensee, may revoke and cancel or suspend said license to operate a junk and salvage yard upon the con-

viction of any such junk and salvage dealer of violation of this article or in the event that such junk and salvage dealer habitually or persistently fails, refuses or neglects to comply with this article. Any such revocation or suspension of license shall remain in effect until said junk and salvage dealer brings the junkyard and salvage yard and operation thereof into compliance with this article.

Article 6 – Solicitors and Peddlers

SECTION 5-601: REGULATION; PERMIT REQUIRED; FEE

To prevent the sale of fraudulent, dangerous, and unhealthful goods and services and to protect the public by maintaining records of the products sold and the persons and companies responsible for such sales, all solicitors and peddlers shall register with the city clerk and obtain a permit before doing business within the City. The registrant shall supply all the necessary information and documents required for the protection of the residents of the City. Every registrant shall be required to pay to the city clerk an annual registration fee set by the City Council and filed in the office of the city clerk for public inspection during office hours. Said registrant shall be subject to other rules and regulations which the City Council deems appropriate for the purposes stated herein. (Neb. Rev. Stat. §17-134, 17-525) (Am. by Ord. No. 1357, 10/12/94)

SECTION 5-602: HOURS OF SOLICITATION; PERMIT ON PERSON

It shall be unlawful for any solicitor or peddler to solicit any individual between the hours of 6:00 P.M. and 8:00 A.M. unless he/she has a previous appointment with the resident or residents of the premises solicited. It shall be unlawful at any hour for a solicitor or peddler to solicit without a proper permit on his/her person at all times. (Neb. Rev. Stat. §17-134)

SECTION 5-603: EXCEPTIONS

Nothing herein shall be construed to apply to any person selling produce raised within the county, to wholesale salespeople soliciting merchants directly nor to residential route salespersons nor shall this article pertain to nor apply to persons canvassing residents within the City for religious, political or other noncommercial purposes.

Article 7 – Penal Provision

SECTION 5-701: VIOLATION; PENALTY

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this chapter, set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500.00 for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.