

Municipal Code of the City of Battle Creek, Nebraska

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CHAPTER 10 – BUSINESS REGULATIONS

Article 1 – Alcoholic Beverages

§10-101 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. (Ref. 53-103 RS Neb.)

§10-102 LICENSE REQUIRED; 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, unless said person shall have in full force and effect a license as provided by 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 his or her 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 his or her 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. (Ref. 53-168.06 RS Neb.) (Am. by Ord. No. 2002-026, 10/16/02)

§10-103 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 were 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. (Ref. 53-177 RS Neb.)

§10-104 DWELLINGS.

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, his family, or personal guests. (Ref. 53-178 RS Neb.)

§10-105 LICENSE DISPLAYED.

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

§10-106 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 is a resident of the county in which the premises is located; a person of good character and reputation; a citizen of the United States; a person who 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; a person who has never had a liquor license revoked for cause; a person whose premises for which a license is sought meets standards for fire safety as established by the State Fire Marshal; or a person who 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. (Ref. 53-124.03, 53-125 RS Neb.) (Am. by Ord. No. 118, 11/14/83)

§10-107 (Repealed)

§10-108 LICENSE RENEWAL; MUNICIPAL POWERS AND DUTIES.

(A) A retail license issued by the Nebraska Liquor Control Commission and outstanding may be automatically renewed by the Commission in the absence of a written request by the City Council to require the licensee to submit an application for renewal. Any licensed retail premises located in an area which is annexed to the City shall file a formal application for a license. While such application is pending, the licensee may continue all license privileges until the original license expires or is canceled or revoked. If such license expires within 60 days following the annexation of such area, the license may be renewed by order of the Commission for not more than one year. (Neb. RS 53-135)

(B) The City Clerk shall cause to be published in a legal newspaper in or of general circulation in the City one time between January 10 and January 30 of each year

individual notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the City, 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. If written protests to the issuance of automatic renewal of a license are filed in the office of the City Clerk by three or more residents of the City on or before February 10, or August 10 for Class C licenses, the City Council shall hold a hearing to determine whether continuation of the license should be allowed. Upon the conclusion of any hearing required by this section, the Council may request a license to submit an application as provided in Neb. Rev. Stat. §53-135. (Neb. RS 53-135.01)
(Ord. Nos. 118, 11/14/83; 2005-003, 5/9/05)

§10-109 LICENSES; MUNICIPAL 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 or craft brewery licensees carried on within the corporate limits of the City. (Neb. RS 53-134.03)

(B) During the period of 45 days after the date of receiving from the Nebraska Liquor Control Commission notice and a copy of an application for a new license to sell alcoholic liquor at retail 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. RS 53-131)

(C) The City Council, with respect to licenses within the corporate limits of the City, has the following powers, functions, and duties with respect to retail and craft brewery licenses;

(1) To cancel or revoke for cause retail 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 examination 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 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 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 hearings provided in section 10-124 (Citizen Complaints), it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance, resolution, rule, 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. 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 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. 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 its 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. RS 53-134)

(D) (1) When the Nebraska Liquor Control Commission mails or delivers to the City Clerk a retail or craft brewery license issued or renewed by the Commission, the Clerk shall deliver the license to the licensee upon receipt from the licensee of proof of payment of:

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

(2) 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.

(Ref. 53-132(4) RS Neb.) (Am. by Ord. Nos. 118, 11/14/83; 2002-027, 10/16/02; 2005-003, 5/9/05)

§10-110 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. (Ref. 53-1,101 RS Neb.)

§10-111 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, if such act is committed or omission made with the authorization, knowledge or approval of the employer or licensee, 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 by him personally. (Ref. 53-1,102 RS Neb.)

§10-112 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. (Ref. 53-180 RS Neb.)

§10-113 CREDIT SALES.

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. (Ref. 53-183 RS Neb.)

§10-114 SPIKING BEER.

It shall be unlawful for any person or persons who own, manage, or lease 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 or persons to add alcohol to any beer on the licensed premises of such licensee. (Ref. 53-174 RS Neb.)

§10-115 ORIGINAL PACKAGE.

It shall be unlawful for any person or persons who own, manage, or lease any premises in which the sale of alcoholic beverages is licensed to have in their 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. (Ref. 53-184 RS Neb.) (Am. by Ord No. 231, 3/9/92)

§10-116 HOURS OF SALE.

(1) 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:

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

(2) No person or persons 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 the said premises. For the purposes of this section, "on sale" shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment; "off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

(3) 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. (Ref. 53-179 RS Neb.) (Am. by Ord Nos. 194, 12/11/89; 202, 5/14/90; 226, 10/21/91)

§10-117 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 20 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. (Ref. 53-147 RS Neb.)

§10-118 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 inspections 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 conditions shall be made at all hearings concerning the application for or renewal of a liquor license. (Ref. 53-118 RS Neb.)

§10-119 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. (Ref. 53-102 RS Neb.)

§10-120 CONSUMPTION IN PUBLIC PLACES.

It shall be unlawful for any person to consume alcoholic beverages within the corporate limits upon the public ways and property, including inside vehicles while upon the public ways and property. It shall further be unlawful for any person to consume alcoholic beverages within any other public business that is not a licensed liquor establishment. (Ref. 53-186, 53-186.01 RS Neb.)

§10-121 (Repealed)

§10-122 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 his or her 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 municipally-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. (Ref. 53-1,121 RS Neb.)

§10-123 LICENSED PREMISES; INSPECTION.

The City Council shall cause frequent inspection to be made on the premises of all retail licensees. If it is found that any such licensee is violating any provision of this article, the Nebraska Liquor Control Act or the rules and regulations of the Nebraska Liquor Control Commission or is failing to observe in good faith the purposes of this article or the Act, the license may be suspended, canceled, or revoked after the licensee is given an opportunity to be heard in his or her defense. (Neb. RS 53-116.01) (Ord. No. 2005-003, 5/9/05)

§10-124 CITIZEN COMPLAINTS.

Any five residents of the City shall have the right to file a complaint with the City Council stating that any retail licensee of the jurisdiction of the Council has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant to the Act. Such complaint shall be in writing in the form prescribed by the Council and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the City Council is satisfied that the complaint substantially charges a violation and that from the facts alleged there is a reasonable cause for such belief, it shall set the matter for hearing within ten days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint. The said complaint shall in all cases be disposed of by the City Council within 30 days from the date it was filed by resolution thereof, which resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided in Neb. Rev. Stat. §53-1115. (Neb. RS 53-134.04) (Ord. No. 2005-003, 5/9/05)

§10-125 SIDEWALK CAFES.

The City Council may permit the public streets and sidewalks within the city limits to be occupied and used under a lease, license, or other permission by a person, business, or others for the sale of services or goods and to permit the placement of nonpermanent sidewalk cafes, tables, chairs, benches, and other temporary improvements, from which such sales can be transacted on the public streets and sidewalks. (Ref. 19-4301 RS Neb.)

§10-126 LICENSE APPLICATION; NOTICE; PROCEDURE.

(A) *Notice.* 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) *Procedure.*

(1) Hearings will be informal and conducted by the City Attorney. The intent is an inquiry into the facts, not an adversarial action. Each witness may present his or her testimony in narrative fashion or by question and answer. The City Council or the applicant may order the hearing to be recorded by the Clerk at the expense of the applicant.

(2) 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 persons desire 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 his/her representation prior to the start of the hearing.

(3) The order of the proceeding is as follows:

- (a) Exhibits will be marked in advance by the Clerk and presented to the City Attorney during the presentation;
- (b) Presentation of evidence, witnesses, and arguments by applicant;
- (c) Testimony of any other citizens in favor of such proposed license;
- (d) Examination of applicant, witnesses or citizens by City Attorney, City Council, or duly appointed agent;
- (e) Cross-examination of applicant, witnesses or citizens by spokesperson for opposition, if any;
- (f) Presentation of evidence and witnesses by opposition;
- (g) Testimony of any other citizens in opposition to such proposed license.
- (h) Presentation of evidence by City and law enforcement personnel;
- (i) Cross-examination by applicant;
- (j) Rebuttal evidence by both parties, and by city administration and agent;
- (k) Summation by applicant and opposition spokesperson, if any.

(4) In all cases, the burden of proof and persuasion shall be on the party filing the application.

(5) Any member of the City Council and the City Attorney may question any witness, call witnesses, or request information.

(6) All witnesses shall be sworn.

(7) The City Council may make further inquiry and investigation following the hearing.

(8) The City Council or the applicant may order the hearing to be recorded by the Clerk at the expense of the applicant(s).

(Ref. 53-134 RS Neb.) (Ord. No. 154, 6/9/86) (Am. by Ord. No. 197, 2/12/90)

§10-126.01 LICENSE APPLICATION; ATTENDANCE BY THE APPLICANT AT PUBLIC HEARING.

An applicant for a liquor license shall attend the public hearing required by the Nebraska Liquor Control Act before the City Council. The applicant shall either attend personally or by his, her, their or its legal representative to present the application and to answer questions the City Council may have regarding the same. If the applicant shall fail to attend the public hearing as set forth above, the Mayor and the City Council shall notify the Nebraska Liquor Control Commission of that fact and make no recommendation on the application. (Ord. No. 98-350, 11/9/98)

§10-127 (Repealed)

§10-128 CATERING LICENSES.

(A) The holder of a license to sell alcoholic liquor at retail 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.

(B) Upon receipt from the Commission of the notice and a copy of the application as provided in Neb. Rev. Stat. §53-124.12, the City Council shall process the application in the same manner as provided in section 10-109 (Alcoholic Beverages; Licenses; Municipal Powers and Duties).

(C) The City Council, with respect to catering licensees within its corporate limits, 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.

(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 Council. The tax may not exceed double the license fee for a catering license.

(Neb. RS 53-124.12) (Am. by Ord. Nos. 232, 3/9/92; 292, 3/13/95; 97-341, 7/14/97; 2002-028, 10/16/02; 2002-028, 10/16/02; 2005-003, 5/9/05)

§10-129 OPEN CONTAINERS; PROHIBITION.

(A) It shall be unlawful for any person to transport any alcoholic liquor in an opened container in a motor vehicle upon any street, highway, alley, road, or municipal parking area or upon property owned by any governmental subdivision unless the package or container is locked in the rear trunk or rear compartment of the vehicle while the vehicle is in motion. "An opened container" shall include any package or container where the original seal of the package or container has been broken.

(B) It shall be unlawful for any person to have in his/her possession on any public street, highway, alley, road, municipal parking area, upon any property owned by any governmental subdivision, or upon privately owned parking lots and other semipublic places where the owners or operators have made written request to the City for the regulation of traffic, public use and conduct of invitees upon such privately owned property, alcoholic liquor in an opened container. "An opened container" shall include any package or container where the original seal of the package or container has been broken.

(Ord. No. 186, 2/13/89)

Article 2 – Peddlers, Hawkers and Lotteries

§10-201 PEDDLERS AND HAWKERS; REGULATION.

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 peddlers, and hawkers shall make application for and be issued a permit before doing business within the City. Application for said permit shall be made to the City Clerk and shall contain all the necessary information and documents required for the protection of the residents of the City. Any person

granted a peddlers' and hawkers' permit shall be subject to any fees, occupation taxes, and other rules and regulations which the City Council deems appropriate for the purposes stated herein. Any permit so granted shall be subject to revocation for good and sufficient cause by the City Police. (Ref. 17-134, 17-52517-562 RS Neb.)

§10-202 LOTTERIES; CREATION; REGULATIONS.

(1) Pursuant to authority and approval given by special election in accordance with the Nebraska County And City Lottery Act, the City shall establish and conduct a municipal lottery and lottery system, the proceeds from which are to be used for community betterment purposes and the awarding of prizes to participants pursuant to the provisions of the Nebraska County And City Lottery Act and the regulations of the Nebraska Department of Revenue, as now existing or hereinafter amended or supplemented.

(2) The City Council shall hereafter adopt by resolution such rules and regulations as it may deem necessary or proper to establish, implement, regulate, and conduct such lottery or lottery system and shall have authority by resolution to amend, modify, or supplement such rules and regulations from time to time as the circumstances may require.

(3) If any section, subsection, sentence, clause, phrase or portion of this ordinance for any reason be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision of such holding shall not affect the validity of the remaining portions hereof. (Ord. No. 193, 12/11/89)

§ 10-203 LOTTERIES; PARTICIPATION; RESTRICTIONS.

(1) No person under 19 years of age shall play or participate in any way in the lottery established and conducted by the City.

(2) No person, employee or agent of any person, or the City shall knowingly permit an individual less than 19 years of age to play or participate in any way in the lottery conducted by the City.

(3) No owner or officer of a lottery operator with whom the City contracts to conduct its lottery shall play the lottery conducted by the City. No employee or agent of the City, lottery operator, or authorized sales outlet location shall play the lottery of the City for which he or she performs work during such time as he or she is actually working at such lottery or while on duty.

(4) Nothing shall prohibit (a) any member of the City Council, a municipal official, or the immediate family of such member or official or (b) an owner or officer of an authorized sales outlet location for the City from playing the lottery conducted by the City, as long as such person is 19 years of age or older.

(5) For purposes of this section, "immediate family of a member of the City Council or a municipal official" shall mean (a) a person who is related to the member or official by blood, marriage, or adoption and resides in the same household or (b) a person who is claimed by the member or official, or the spouse of the member or official, as

a dependent for federal income tax purposes.
(Ref. 9-646 RS Neb.) (Ord. No. 98-364, 1/11/99)

Article 3 – Trailers and Trailer Camps

§10-301 DEFINITIONS.

Whenever used in this Article, unless a different meaning appears from the context, the following terms shall have the meaning herein prescribed:

“Automobile trailer,” “trailer coach,” or “trailer” shall mean any vehicle or structure so designed and constructed in such manner as will permit (1) occupancy thereof as sleeping quarters for one or more persons, (2) the conduct of any business or profession, occupation or trade, or (3) use as a selling or advertising device, and so designed that it is or may be mounted on wheels and used as a conveyance on highways or streets, propelled or drawn by its own or other motive power, excepting a device used exclusively upon stationery rails or tracks.

“Trailer camp” shall mean any tract of land designated, maintained or intended for the purpose of supplying a location or accommodation for any trailer coach and upon which any trailer coach is parked and shall include all buildings used or intended for use as part of the equipment thereof, whether or not a charge is made for the use of the trailer camp and its facilities. "Trailer camp" shall not include automobile or trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale.

“Unit” shall mean a section of ground in a trailer camp of not less than 800 square feet of unoccupied space in an area designated as the location of only one automobile and one trailer.

“Person” shall be deemed to include any person, firm, association, or corporation or any organization of any kind.

§10-302 BOARD OF INVESTIGATORS.

A Board of Investigators consisting of the City Physician, the Chief of Police and the Chief of the Fire Department is hereby created. It shall be the duty of the Board to enforce all provisions of this Article as prescribed herein or such provisions as may hereafter be enacted. For the purpose of securing such enforcement, any of the members of the Board or their duly authorized representative shall have the right and are hereby empowered to enter upon any premises on which any automobile trailers are located or are about to be located and inspect the same and all accommodations connected therewith at any reasonable time. The Board is further empowered to recommend to the City Council the issuance of orders granting, renewing, and revoking such permits and licenses as are provided in accordance with the provisions of this Article.

§10-303 LOCATION OUTSIDE CAMP.

(A) It shall be unlawful within the limits of the City or within one mile of the City limits for any person to park any trailer on any street or other public place or on any tract of land owned by any person, occupied or unoccupied, except as provided in this Article.

(B) Emergency or temporary stopping or parking is permitted on any street for not longer than 2½ hours, subject to any other and further prohibitions, regulations or limitations imposed by the traffic and parking regulations for that street.

(C) No person shall park or occupy any trailer on the premises of any occupied dwelling or on any lot which is not a part of the premises of any occupied dwelling, either of which is situated outside an approved trailer park, except that the parking of only one unoccupied trailer in an accessory private garage building and the parking of one recreational vehicle, camper, or motor home in the rear yard of any lot upon which a dwelling is located are permitted, providing no living quarters shall be maintained or any business practiced in said trailer while such trailer is so parked or stored.

(Am. by Ord. No. 127, 6/ 11/84)

§10-304 TRAILER CAMP LICENSE.

(A) It shall be unlawful for any person to establish, operate or maintain a trailer camp upon any property owned or controlled by him within the limits of the City without having first secured a license therefor from the City, granted and existing in compliance with the terms of this Article. Such license shall expire one year from the date of issuance but may be renewed under the provisions of this Article for additional periods of one year.

(B) The application for such license or the renewal thereof shall be filed with the Clerk and shall be accompanied by a fee for each camp. Such fee shall be set by the City Council and filed in the office of the City Clerk for public inspection during office hours. The application for a license or a renewal thereof shall be made on printed forms furnished by the Board of Investigators and shall include the name and address of the owner in fee of the tract (if the fee is vested in some person other than the applicant, a duly verified statement by that person, that the applicant is authorized by him to construct or maintain the trailer camp and make the application), and such a legal description of the premises upon which the trailer camp is or will be located as will readily identify and definitely locate the premises. The application shall be accompanied by four copies of the camp plan showing the following, either existing or as proposed:

- (1) Legal description of the camp;
- (2) Roadways and driveways;
- (3) Location of sites or units for trailer coaches;
- (4) Location and number of sanitary conveniences, including toilets, wash-rooms and utility rooms to be used by occupants of units;
- (5) That there has been proper conformance with city Building, Zoning and Plumbing Regulations;
- (6) Method and plan of sewage disposal;
- (7) Method and plan of garbage removal;
- (8) Plan for water supply;

(9) Plan for electrical lighting of units.

(C) Before such license may be issued, there must be a favorable recommendation by a majority of the Board of Investigators and the premises must be inspected and approved by each of the members of the Board or its duly authorized representative as complying with all the provisions of this Article and all other applicable provisions of this Code, whereupon it will be up to the City Council's direction as to issuance.

(D) Licenses issued under the terms of this Article convey no right to erect any building, to do any plumbing work, or to do any electrical work.

§10-305 ZONING OF TRAILER CAMPS.

(A) No trailer camp shall be located in any Residential Zone or any other zone than a business district, save and except where the Zoning Regulations are complied with.

(B) The Board of Investigators may, in conformance with the Zoning Regulations, recommend issuance of a license and the City Council may issue the same for the location of a trailer camp in any district in which licenses are herein prohibited, after a public hearing if, upon such hearing, the City Council finds that denial of such license will cause unnecessary hardship on the applicant and finds in addition that the owners of all property within 300 feet of the proposed camp will not suffer unnecessary hardship by reason of the operation of the camp at the proposed location.

(C) No trailer camp shall be located within the limits of the City unless city water and sewer connections and fire protection facilities are available.

(D) No occupied trailer shall be located within the recognized setback line for the zoning district in which such trailer is located nor less than 10 feet from any other building or vehicle.

§10-306 CAMP PLAN.

(A) Every trailer camp shall be located on a well-drained area and the premises shall be properly graded so as to prevent the accumulation of storm or other waters.

(B) Units shall be clearly designated and the camp so arranged that all units shall face or abut on a driveway of not less than 16 feet in width, giving easy access from all units to a public street. Such driveway shall be at least graveled or cindered and maintained in good condition, having proper drainage into the City's drainage system, be well lighted at night, and shall not be obstructed.

(C) Where toilet facilities are required or provided, the walkways to such buildings shall be at least graveled or cindered and well lighted at night.

(D) Every trailer unit shall be furnished with an electric service outlet. Such outlet shall be equipped with an externally operated fused switch of not less than 30 Amperes capacity and a heavy-duty outlet receptacle.

§10-307 WATER SUPPLY.

(A) Trailer camps located within the city limits shall have an adequate supply of pure water furnished through a pipe distribution system connected directly with the city water main, with supply faucets located not more than 200 feet from any trailer to be furnished for drinking and domestic purposes. Trailer camps located outside of and within one mile of the City limits shall have an adequate supply of pure water furnished through a pipe distribution system, with supply faucets located not more than 200 feet from any trailer to be furnished for drinking and domestic purposes.

(B) No common drinking vessels shall be permitted, nor shall any drinking water faucets be placed in any toilet room or water closet compartment.

(C) An abundant supply of hot water shall be provided at all times for bathing facilities when modern trailers without hot water facilities are accommodated.

§10-308 SERVICE BUILDING, ACCOMMODATIONS.

(A) Every trailer camp which accommodates trailers which are not modern shall have erected thereon, at a distance not greater than 200 feet from any unit it is designed to serve, a suitable building for housing toilets and shower facilities as required by this Article, such building to be known as the service building.

(B) Where trailers which are not modern are accommodated, the following provisions shall apply: There shall be provided separate toilet rooms for each sex; flush toilets provided with an adequate water supply shall be enclosed in separate compartments and shall be provided for each sex in the ratio of one toilet for each 16 units or fraction thereof; every male toilet room shall have one urinal for each 16 units but in no case shall any male toilet be without one urinal; toilet rooms shall contain lavatories with hot and cold water in the ratio of one lavatory to every two or fewer water closets.

(C) Where trailers which are not modern are accommodated, the following provisions shall apply: Separate bathing facilities for each sex shall be provided, with one shower enclosed in a compartment for each 16 units or fraction thereof. Each shower compartment shall be supplemented by an individual dressing compartment.

(D) The foregoing accommodations shall be based on the total camp capacity according to accepted plans.

(E) Floors of toilets and showers shall be of concrete, tile, or similar material impervious to water and easily cleaned, pitched to a floor drain.

§10-309 WASTE AND GARBAGE DISPOSAL.

(A) All waste from showers, toilets, faucets and lavatories shall be piped into a sewer system extended from and connected with the city sewer system.

(B) All sanitary facilities in any trailer which are not connected with the city sewer system by means of rigid pipe connections shall be sealed, and their use is hereby declared unlawful.

(C) Each faucet site shall be equipped with facilities for drainage of waste and

excess water into the sewer. In no case shall any waste water be thrown or discharged upon the surface of the ground or disposed of by means other than as herein provided.

(D) Where a modern approved incinerator is not provided, every unit shall be provided with a substantial fly-tight metal garbage depository from which the contents shall be removed by the garbage collection service.

§10-310 LIMITATION ON NUMBER OF OCCUPANTS.

No trailer may be inhabited by a greater number of occupants than that the same will reasonably accommodate.

§10-311 MANAGEMENT.

(A) In every trailer camp there shall be an office building in which shall be located the office of the person in charge of said camp. A copy of the camp license and of this Article shall be posted therein and the camp register shall at all times be kept in said office.

(B) It is hereby made the duty of the attendant or person in charge, together with the licensee, to:

(1) Keep at all times a register of all guests, which shall be open at all times to inspection by state and federal officers and officers of the City, showing for all guests:

- (a) Names and addresses.
- (b) Dates of entrance and departure.
- (c) License numbers of all towing vehicles and other automobiles.
- (d) States issuing such licenses.

(2) Maintain the camp in a clean, orderly and sanitary condition at all times.

(3) See that the provisions of this Article are complied with and enforced, reporting promptly to the proper authorities any violation of this Article or any other violations of law which may come to their attention.

(4) Maintain in a convenient place, approved by the Fire Department, a hand fire extinguisher.

(5) Prohibit the lighting of open fires on the premises.

§10-312 APPLICABILITY OF BUILDING REGULATIONS.

All plumbing, electrical, building and other work on or at any camp licensed under this Article shall be in accordance with the provisions of this Code regulating such work unless said provisions are specifically made inapplicable under the terms of this Article.

§10-313 PENALTIES.

(A) The City Council is hereby authorized to revoke any license issued pursuant to the terms of this Article if, after due investigation, it determines that the holder thereof has violated any of the provisions of this Article or that any trailer or trailer camp is being

maintained in an unsanitary or unsafe manner or is a nuisance.

(B) In addition to such provision for revocation and suspension, any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed \$500.00. (Am. by Ord. No. 2009-007, 6/8/09)

Article 4 – Franchises

§10-401 NATURAL GAS.

The City Council has granted to the Minnesota Gas Company, Inc. the authority to construct, maintain, and operate a gas transmission and distribution system within the City. Actual details of the agreement and the present gas rates, charges and fees are available at the City Clerk's office. (Ref. 17-528.02 RS Neb.)

§10-402 TELEPHONE.

The City Council has granted to the Northwestern Bell Telephone Company, Inc. the authority to maintain and operate a telephone system within the City. Actual details of the agreement and the present telephone rates, charges and fees are available at the City Clerk's office. (Ref. 17-525 RS Neb.)

§10-403 CABLE TELEVISION SYSTEM.

The City Council has granted to Cable One, Inc., a 15-year non-exclusive franchise to own, operate and maintain a cable television system within the City. Actual details of the agreement and the charges, rates, and fees are available at the City Clerk's office. (Ref. 18-2201 thru 18-2206 RS Neb.) (Ord. No. 2001-001, 3/12/01)

Article 5 – Occupation Taxes

§10-501 AMOUNTS.

For the purpose of raising revenue, an occupation tax may be levied on certain businesses in the City. The businesses so taxed and the amount of the tax shall be set by resolution of the City Council and on file in the office of the City Clerk. (Ref. 17-525 RS Neb.)

§10-502 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. (Ref. 35-106 RS Neb.)

§10-503 COLLECTION DATE.

All occupation taxes shall be due and payable on the first day of May of each year, except in the event that the said tax is levied daily, and upon the payment thereof by any person to the City Clerk, he or 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 licensees shall be due and payable on the first day of November. The revenue collected shall then be immediately deposited into the General Fund by the City Treasurer, who shall keep an accurate account of all revenue turned over to him. All forms and receipts herein mentioned shall be issued in duplicate. One copy shall then be kept by each party in the transaction. (Ref. 17-525 RS Neb.)

§10-504 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. (Ref. 17-525 RS Neb.)

§10-505 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. (Ref. 17-525 RS Neb.)

Article 6 – Natural Gas Regulations

(Repealed by Ord. No. 2004-001, 1/12/04)

Article 7 – Tobacco

§10-701 LICENSE; APPLICATION; CONTENTS; FEE.

Every person, partnership, limited liability company, or corporation desiring a license to sell tobacco at retail shall file with the City Clerk a written application on forms provided by the City, stating the name of the person, partnership, limited liability company, or corporation for whom the license is desired and the exact location of the place of business and shall deposit with the application a license fee set by the City Council and on file in the office of the City Clerk. If the applicant is an individual, the application shall include the applicant's social security number. (Ref. 28-1422, 28-1423 RS Neb.) (Ord. No. 98-365, 1/11/99)

Article 8 – Penal Provisions

[Editor's Note: For penalties for violation of Trailers and Trailer Camps, see section 10-313 of this Code.]

§10-801 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. (Am. by Ord. No. 2009-007, 6/8/09)

§10-802 ABATEMENT OF NUISANCE.

Whenever a nuisance exists as defined in this Chapter, the City may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. (Ref. 18-1720, 18-1722 RS Neb.)