

TITLE XI: BUSINESS REGULATIONS

Chapter

110.BUSINESS LICENSING

111.ALCOHOLIC BEVERAGES

Section

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OCCUPATION TAX

§ 110.01 AMOUNT.

(A) Alcoholic beverages.

(1) There is hereby levied an annual occupation tax upon each and every business respecting alcoholic liquors carried within the city.

(2) The occupation taxes shall be in the following amounts for retailer's licenses.

(a) Retailer of beer only for the consumption on the premises: \$200.

(b) Retailer of beer only for consumption off the premises (sale in the original package only): \$200.

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(c) 1. Retailer of alcoholic liquors for consumption on the premises and off the premises (sale in the original package only): \$600, provided, however that such \$600, required under this section shall be intended to apply for an entire year. Upon issuance of a new license, such amount shall be prorated at the rate of \$50 per month or for any part of any month of the year remaining during which the applicant shall engage in the sale of alcoholic liquors under this division (A)(2)(c).

2. Non-profit organizations which are retailers of alcoholic liquors for consumption on the premises but not permitted sale off the premises (Class C Non-profit): \$400; provided, however, that such \$400, required under this division (A)(2)(c) shall be intended to apply for an entire year. Upon issuance of a new license, \$33.33 per month or any part of any month of the year remaining during which the applicant shall engage in the sale of alcoholic liquors under this division (A)(2)(c).

(d) 1. Retailer of alcoholic liquor, including beer for consumption off the premises (sale in the original package only): \$400, provided, however that such \$400, required under this division (A)(2)(d) shall be intended to apply for an entire year.

2. Upon issuance of a new license, \$33.33 per month or any part of any month of the year remaining during which the applicant shall engage in the sale of alcoholic liquors under this division (A)(2)(d).

(3) Such occupation tax shall be due at the time of issuance or renewal of the license and shall be payable to the Clerk-Treasurer, who shall collect the tax before surrendering the license to licensee.

(Neb. RS 17-525) (1977 Code, § 10-401)

(B) *Fire insurance corporations, companies, and associations.* For the use, support, and maintenance of the Municipal Fire Department all revenue realized from the occupation tax on fire insurance companies shall be appropriated to the Fire Department Fund.

(1977 Code, § 10-402)

(Ord. 610, passed 8-26-1976; Ord. 86-923M, passed 4-21-1986; Ord. 87-934M, passed 12-21-1987; Ord. 2006-2049M, passed 4-17-2006)

§ 110.02 COLLECTION DATE.

(A) Unless provided otherwise or levied daily, any occupation taxes imposed by the City Council shall be due and payable on May 1 of each year, except that any occupation taxes collected from Class C liquor licensees shall be due and payable on November 1 of each year.

(B) Upon payment of an occupation tax by any person to the City Clerk-Treasurer, the Clerk-Treasurer shall give a receipt, properly dated, specifying the person paying the tax and the amount paid. Any revenue collected shall be deposited into the General Fund by the City Clerk-Treasurer except as otherwise specifically provided.

(C) The Clerk-Treasurer shall keep an accurate account of all revenue turned over to him or her. All forms and receipts herein mentioned shall be issued in duplicate.

(D) One copy shall then be kept by each party in the transaction.
(1977 Code, § 10-403)

§ 110.03 CERTIFICATES.

The receipt issued after the payment of any occupation tax shall be the occupation tax certificate. The certificate shall specify the amount of the tax and the name of the person and business that paid the 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.
(1977 Code, § 10-404)

§ 110.04 FAILURE TO PAY.

(A) If any person, company, or corporation fails or neglects to pay the occupation taxes as provided in this chapter on the day they become due and payable, the city shall then proceed by civil suit to collect the amount due.

(B) All delinquent taxes shall bear interest at the rate of 1% per month until paid.
(1977 Code, § 10-405)

SOLICITORS, PEDDLERS AND HAWKERS

§ 110.20 PERMIT.

(A) 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, salesmen, peddlers and hawkers shall, before doing business within the municipality, register with the Municipal Police Department.

(B) The solicitor, salesperson, peddler or hawker shall supply all the necessary information, and documents required for the protection of the residents of the municipality. If, upon the information presented, the Chief of Police determines that the solicitor, salesperson, peddler or hawker is not selling fraudulent, dangerous, unhealthful goods or services, then he or she shall so certify his or her determination to the City Clerk-Treasurer and the City Clerk-Treasurer shall issue a one day permit to do business within the municipality during regular working hours. Such permit to do business within the municipality may be refused or revoked if the Chief of Police determines at any time that for the protection of the residents of the municipality the applicant should not be permitted to do business within the municipality.

(C) In the event the permit is refused or revoked, the Chief of Police shall state his or her reasons for refusing or revoking the permit in writing and file a copy with the City Manager and the City Clerk-Treasurer.

(1977 Code, § 10-201) (Ord. 79-642, passed 4-9-1979; Ord. 81-869M, passed 3-9-1981; Ord. 86-926M, passed 11-17-1986)

§ 110.21 NOTICE REGULATING SOLICITING.

(A) Notice of the refusal of invitation to solicitors, to any residence, shall be given on a weatherproof card, approximately three inches by four inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

“NO SOLICITORS INVITED”

(B) The letters shall be at least one-third-inch in height.

(C) The card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.

§ 110.22 DUTY OF SOLICITORS TO ASCERTAIN NOTICE.

(A) (1) It shall be the duty of every solicitor upon going onto any premises in the city upon which a residence is located to first examine the notice provided for in § 110.21 if any is attached, and be governed by the statement contained on the notice.

(2) If the notice states “NO SOLICITORS INVITED,” then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant. Penalty, see § 10.99

§ 110.23 PROHIBITED SOLICITATION.

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of § 110.21.

Penalty, see § 10.99

§ 110.24 HOURS OF SOLICITATION.

(A) It shall be unlawful for any solicitor, salesperson, peddler or hawker to solicit any individual between the hours of 9:00 p.m., and 8:00 a.m., unless they have a previous appointment with the resident, or residents, of the premises solicited.

(B) It shall be unlawful at any hour for a solicitor, salesperson, peddler or hawker to solicit without a proper permit on his or her person at all times.

(Neb. RS 17-134) (1977 Code, § 10-202) (Ord. 86-926M, passed 11-17-1986)

§ 110.25 EXCEPTIONS.

Nothing herein shall be construed to apply to any resident of the municipality representing any organization, profit or nonprofit, which is otherwise qualified to do business in the state.

(1977 Code, § 10-203) (Ord. 86-926M, passed 11-17-1986)

Section

- 111.01 Definitions
- 111.02 Manufacture, sale, delivery and possession; exceptions
- 111.03 City powers and duties
- 111.04 Retail licensing standards
- 111.05 Hours of sale

§ 111.01 DEFINITIONS.

All words and phrases used in this chapter are to have the definitions applied thereto, as defined in the Liquor Control Act of the state.
(1977 Code, § 10-101)

Statutory reference:

Definitions for Nebraska Liquor Control Act, see Neb. RS 53-103

§ 111.02 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 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

that 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. RS 53-168.06) (1977 Code, § 10-102) Penalty, see § 10.99

Statutory reference:

General prohibitions and exemptions, see Neb. RS 53-168.06

§ 111.03 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, craft brewery and microdistillery 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 receipt by mail or electronic delivery from the Nebraska Liquor Control Commission notice and a copy of an application for a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license, the City Council may make and submit to the Commission recommendations relative to the granting or refusal to grant the 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, craft brewery and microdistillery licenses:

(1) To cancel or revoke for cause retail, craft brewery or microdistillery 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 that time examine the premises of the licensee in connection with such determination. Any law enforcement officer who determines that 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 local governing body has been or is being violated shall report such violation in writing to the Executive Director of the Commission:

(a) Within 30 days after determining that such violation has occurred;

(b) Within 30 days after the conclusion of an ongoing police investigation; or

(c) Within 30 days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later.

(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 these complaints in the manner provided in the Act;

(4) To receive retail, craft brewery and microdistillery license fees as provided in Neb. RS 53-124 and 53-124.01 and pay the same, after the license has been delivered to the applicant, to the City Clerk-Treasurer;

(5) To examine or cause to be examined any applicant or any retail, craft brewery or microdistillery 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 notice and hearing, 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. The 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. The Commission shall handle the appeal in the manner provided for hearing on an application in Neb. RS 53-133; and

(7) Upon receipt from the Commission of the notice and copy of application as provided in Neb. RS 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 the 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. The 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 the 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 the hearing the City Council shall cause to be recorded in the minute record of its proceedings a resolution recommending either issuance or refusal of the license. The City Clerk-Treasurer 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)

(8) Procedure.

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

(b) The City Council may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent individuals. The Municipal 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 notify the Municipal Attorney of his or her representation prior to the start of the hearing.

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

1. Exhibits will be marked in advance by the Clerk and presented to the Municipal 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 Municipal 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 municipality and law enforcement personnel;
9. Cross-examination by applicant;
10. Rebuttal evidence by both parties, and by city administration and agent; and
11. Summation by applicant and opposition spokesperson, if any.

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

(e) All witnesses shall be sworn.

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

(D) (1) When the Nebraska Liquor Control Commission mails or delivers to the City Clerk-Treasurer a retail, craft brewery, or microdistillery license issued or renewed by the Commission, the Clerk-Treasurer 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. RS 53-124 the fee is payable to the City Clerk-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. RS 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 that license. (Neb. RS 53-132)
(1977 Code, § 10-103) (Ord. 2000-1067, passed 8-21-2000)

§ 111.04 RETAIL LICENSING STANDARDS.

(A) Local governing bodies shall only have authority to approve applications and deny licenses pursuant to the Nebraska Liquor Control Act.

(B) The governing body shall only consider the following licensing standards and criteria at the hearing and an evaluation of 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, and for the purpose of formulating a recommendation from the governing body to the Nebraska Liquor Control Commission in accordance with the Nebraska Liquor Control Act:

- (1) The adequacy of existing law enforcement resources and services in the area;
- (2) The recommendation of the Police Department or any other law enforcement agency;
- (3) 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;
- (4) Zoning restrictions and the local governing body's zoning and land-use policies;
- (5) Sanitation or sanitary conditions on or about the proposed licensed premises;
- (6) The existence of a citizen's protest and similar evidence in support of or in opposition to the application;
- (7) The existing population and projected growth within the jurisdiction of the local governing body and within the area to be served;
- (8) The existing liquor licenses, the class of each such license, and the distance and times of travel between establishments that issued such licenses;
- (9) Whether the proposed license would be compatible with the neighborhood or community where the proposed premises are located;
- (10) 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. RS 53-101.01;
- (11) Whether the applicant can ensure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with Neb. RS 53-102;
- (12) Whether the applicant has taken every precaution to protect against the possibility of shoplifting of alcoholic liquor, which alcoholic liquor shall be displayed and kept in and sold from an area which is reasonably secured;

(13) 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;

(14) 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;

(15) The background information of the applicant established by information contained in the public records of the Commission and investigations conducted by law enforcement agencies;

(16) Past evidence of discrimination involving the applicant as evidenced by findings of fact before any administrative board or agency of the local governing body, any other governmental board or agency of the local governing body, any other governmental unit, or any court of law;

(17) Whether the applicant or the applicant's representatives suppressed any fact or provided any inaccurate information to the commission or local governing body 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 governing body;

(18) Proximity of and impact on schools, hospitals, libraries, parks and public institutions;

(19) Whether activities proposed to be conducted on the licensed premises or in adjacent related outdoor areas will create unreasonable noise or disturbance; and

(20) Compliance with state laws, liquor rules and regulations, and municipal 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.

(C) 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 license.

(Neb. RS 53-134) (1977 Code, § 10-105) (Ord. 90-964M, passed 2-18-1991)

§ 111.05 HOURS OF SALE.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

OFF SALE. Alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

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ON SALE. Alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment.

(B) It shall be unlawful for any licensed person or persons or him, her or their agents to sell any alcoholic beverages within the municipality except during the hours provided herein, provided that such limitations shall not apply after 12:00 p.m. noon on Sunday to a licensee which is a nonprofit corporation holding a license pursuant to Neb. RS 53-124(5)(C):

<i>Hours of Sale</i>	
Alcoholic Liquors (except beer and wine)	
Monday through Thursday:	
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
Friday through Saturday:	
Off sale	6:00 a.m. to 1:00 a.m. the following day
On sale	6:00 a.m. to 2:00 a.m. the following day
Sunday:	
Off sale	12:00 p.m. noon to 1:00 a.m. the following day
On sale	12:00 p.m. noon to 1:00 a.m. the following day
Beer and Wine	
Monday through Thursday:	
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
Friday through Saturday:	
Off sale	6:00 a.m. to 1:00 a.m. the following day
On sale	6:00 a.m. to 2:00 a.m. the following day
Sundays:	
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

(C) No person or persons shall consume any alcoholic beverages on licensed premises for a period longer than 15 minutes after the time fixed herein for stopping the sale of alcoholic beverages on the 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. RS 53-179) (1977 Code, § 10-106) (Ord. 643, passed 12-10-1979; Ord. 2010-2107M, passed 8-12-2010) Penalty, see § 10.99

