

CHAPTER 10

BUSINESS REGULATIONS

ARTICLE 1. ALCOHOLIC BEVERAGES

10-101 ALCOHOLIC BEVERAGES; 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 ALCOHOLIC BEVERAGES; 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 Municipality unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (Ref. 53-102 RS Neb.)

10-103 ALCOHOLIC BEVERAGES; LIQUOR APPLICATION; NOTICE; PROCEDURE.

A. NOTICE. Notice of a hearing held pursuant to NE. RSS 53- 134 shall be given to the applicant by the Municipal Clerk and shall contain the date, time, and location of the hearing. Two (2) 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 Governing Body that prejudice would result there from.

B. PROCEDURE. 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 question and answer. The Governing Body may order the hearing to be recorded by the Clerk, at the expense of the applicant(s).

The Governing Body 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 the application and such opposition desires the opportunity to present arguments and to cross-examine the applicant and any witness in favor of such application, they shall choose a spokesperson to perform such function who shall notify the Municipal Attorney of his/her representation prior to the start of the hearing.

The order of the proceedings 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, Governing Body, or duly appointed agent;
5. 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 Municipality administration and agent
11. Summation by applicant and opposition spokesperson, if any.

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

Any member of the Governing Body and the Municipal Attorney may question any witness, call witnesses, or request information.

All witnesses shall be sworn.

The Governing Body may make further inquiry and investigation following the hearing.

The Governing Body or the applicant may order the hearing to be recorded by the Clerk, at the expense of the applicant(s).

(Ref. 53-134 RS NE.)

10-104 ALCOHOLIC BEVERAGES; LIQUOR APPLICATION; RETAIL LICENSING STANDARDS. Local Governing Bodies shall only have authority to approve applications and deny licenses pursuant to the Nebraska Liquor Control Act. 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 any law enforcement agency in the area.
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 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 section 53-101.1;
11. Whether the applicant can ensure that all alcoholic beverages, including beer and wine, will be handled in accordance with section 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 the provisions and requirements of 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 applicants' representatives suppressed any fact or provided any inaccurate information to the commission or local governing body or the employees of the commission or the local governing board in regard 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 other public institutions.
19. Whether activities proposed to be conducted on the licensed premises or in adjacent relate outdoor areas will create unreasonable noise or disturbance; and

20. Compliance with state law, 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.

It shall be the applicant's duty to produce evidence pertaining to the designated criteria prescribed in this subsection. The burden of proof and persuasion shall be on the party filing the application. When applicable for the purposes of this section, the term "applicants" as used herein is synonymous with "license."

(Ref. 53-134 RS NE.)

10-105 ALCOHOLIC BEVERAGES; LIQUOR APPLICATION; MUNICIPAL EXAMINATION. Any person or persons desiring to obtain a license to sell alcoholic liquors at retail shall file an application with the Liquor Control Commission. The Commission shall then notify the Municipal Clerk by registered or certified mail. The Governing Body shall then meet and determine the desirability of the application and report its recommendation for approval or denial of the application in writing to the Nebraska Liquor Control Commission within forty-five (45) days of receipt from the Nebraska Liquor Control Commission. The Governing Body may examine or cause to be examined under oath any applicant; examine or cause to be examined the books and records of any such applicant; to hear testimony and to take proof for its information in the performance of its duties. For the purpose of obtaining any of the information desired, the Governing Body may authorize its agent, Municipal Clerk or the Municipal Attorney to act on its behalf. The Governing Body may conduct the examination and hold the hearing upon the receipt from the Commission of the notice and copy of the application. The Governing Body shall fix a time and place at which a hearing will be held, and at which time the Governing Body shall receive evidence, under oath, either orally, or by affidavit, from the applicant and any other person concerning the propriety of the issuance of such license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in the Municipality one (1) time not less than seven (7) nor more than fourteen (14) days before the time of the hearing. Such notice shall include but not be limited to a statement that all persons desiring the given evidence before the local Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty- five (45) days after the receipt of notice from the Commission. After such hearing, the Governing Body shall cause to be spread at large in the minute record of its proceedings a resolution recommending either issuance or refusal of such license. The Municipal Clerk shall thereupon mail or deliver to the Commission a copy of the resolution. (Ref. 53-131, 53-132, 53-134, RS NE.)

10-106 ALCOHOLIC BEVERAGES; CATERING LICENSE.

(1) The holder of a Class C, Class D, or Class I license issued under subdivision (5) of section 53-124, RS NE., may obtain an annual catering license as prescribed in this section. Any such licensee desiring to obtain a catering license shall file an application with the Liquor Control Commission.

(2) Upon receipt from the Commission of the notice and copy of the application as provided in section 53-124.12, RS NE., the Governing Body shall fix a time and place at which a hearing will be held, and at which time the Governing Body shall receive evidence, under oath, either orally, or in writing, from the applicant and any other person concerning the propriety of the issuance of such license. Such hearing shall be held not more than forty-five (45) days after the receipt of notice from the Commission. The Governing Body may examine or cause to be examined under oath any applicant; examine or cause to be examined the books and records of any such applicant; to hear testimony and to take proof for its information in the performance of its duties. For the purpose of obtaining any of the information desired, the Governing Body may authorize its agent, Municipal Clerk or the Municipal Attorney to act on its behalf.

(3) Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in the Municipality one (1) time not less than seven (7) nor more than fourteen (14) days before the time of the hearing. Such notice shall include but not be limited to a statement that all persons desiring the given evidence before the local Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing.

(4) The Governing Body shall, after the hearing, approve or deny the application within forty-five (45) days of receipt of such application from the Commission, and shall cause to be spread at large in the minute record of its proceedings a resolution approving or denying such application. The Municipal Clerk shall thereupon mail or deliver to the Commission a copy of the resolution within ten (10) days of the decision to approve or deny the application.

(5) Any resolution denying an application rendered by the Governing Body shall be in writing or stated in the record and shall be accompanied by findings. The findings shall consist of concise statements of the conclusions upon each contested issue. The applicant shall be notified of the decision in person or by mail.

(6) The Governing Body with respect to catering licenses within its corporate limits may cancel a catering license for cause for the remainder of the period for which such license is issued. Any person whose catering license is cancelled may appeal to the District Court. (Ref. 53-124.12, 53-132, 53-134, RS NE.)

10-107 ALCOHOLIC BEVERAGES; LIQUOR LICENSE RENEWAL. Retail or bottle club licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the Governing Body to require the said licensee to issue an application for renewal. Any licensed retail or bottle club establishment located in an area which is annexed to the Municipality shall file a formal application for a license and, while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this Article until the original license expires, is canceled or revoked. If such license expires within sixty (60) days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one (1) year. The Municipal Clerk, upon notice from the Commission, between January tenth (10th) and January thirtieth (30th) of each year, shall cause to be published in a legal newspaper in or of general circulation in the Municipality one (1) time a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the

Municipality; provided, Class C license renewal notices shall be published between the dates of July tenth (10th) and July thirtieth (30th) of each year. The Municipal Clerk shall then file with the Commission proof of publication of said notice on or before February tenth (10th) of each year or August tenth (10th) of each year for Class C licenses. Upon the conclusion of any hearing required by this Section, the Governing Body may request a licensee to submit an application. (Ref. 53-135, 53-135.01 RS Neb.)

10-108 ALCOHOLIC BEVERAGES; MUNICIPAL POWER AND DUTIES. The Governing Body shall have the following powers, functions and duties with respect to retail licenses:

1. To cancel, revoke, or suspend for cause retail licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to review as provided in section 53-1,116.
2. To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed hereunder to determine whether any rules or regulations are being violated and at such time to examine the premises of such licensee;
3. To receive a signed complaint from any citizen within its jurisdiction that any rules and regulations adopted by the governing body have been or are being violated and to act upon such complaints in the manner hereinafter provided;
4. To receive retail license fees and pay the same forthwith after applicant has been delivered his or her retail license to the Village;
5. To examine or cause to be examined any applicant or any retail licensee upon notice of cancellation or if notification has been served in the manner hereinafter provided. And to examine or cause to be examined, the books and records of any such applicant or licensee, to hear testimony and take proof for its information in the of its duties. For the purpose of obtaining any of the information desired, the local Governing Body may authorize its agent or village attorney to act on its behalf; and
6. To cancel or revoke on its own motion a license if it determines that the licensee has violated any of the provisions of this article or any valid and subsisting ordinance regulations duly acted relating to alcoholic liquors. Such order of cancellation or revocation shall be subject to appeal to the Nebraska Liquor Control Commission as other orders or actions of the governing body. (Ref. 53-134 Res Neb.)

10-109 ALCOHOLIC BEVERAGES; HOURS OF SALE. It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the Municipality except during the hours provided herein:

HOURS OF SALE
ALCOHOLIC LIQUORS (including beer and wine)

Monday through Saturday	
Off Sale	7:00 a.m. to 1:00 a.m.
On Sale	7:00 a.m. to 1:00 a.m.
Sunday	
Off Sale	7:00 a.m. to Midnight
On Sale	7:00 a.m. to Midnight

Minors; No minor shall be allowed upon the premises of any such licensed establishment, unless accompanied by a parent or guardian, except during the hours hereinafter specified:

Monday through Thursday	7:00 a.m. to 10:00 p.m.
Friday and Saturday	7:00 a.m. to 11:00 p.m.
Sunday	7:00 a.m. to 8:00 p.m.

Provided, that such limitations shall not apply after twelve (12:00) o'clock noon on Sunday to a licensee which is a non-profit corporation; but such licensee shall not sell or dispense beverages on more than six (6) days a week.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (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.

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.)

A retail licensee may apply for a special permit to allow such licensee to sell or dispense alcoholic liquor, including beer, on the licensed premises until the hour of 2:00 o'clock A.M. on a specific date designated on the application for the special permit.

- a. Approval of special permit shall require a two-thirds majority vote of the members of the Village Board.
- b. Each special permit shall be valid for one day only unless the request specifically asks for a longer period which may not exceed a maximum of two consecutive days.
- c. Applicants for such special permit shall pay a fee set by resolution of the Village Board prior to the issuance of the permit.

10-110 ALCOHOLIC BEVERAGES; 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 one hundred and fifty (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 (2) 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 premise within three hundred (300) feet from the campus of any college within the Municipality. (Ref. 53-177 RS Neb.)

10-111 ALCOHOLIC BEVERAGES; DWELLINGS. Except in the case of hotels and clubs, no alcoholic liquor shall be sold at retail upon any premise which has any access which leads from such premise 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 premise and such other portion of the building which is used only by the licensee, his family or personal guests. (Ref. 53-178 RS Neb.)

10-112 ALCOHOLIC BEVERAGES; 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 premise. (Ref. 53-148 RS Neb.)

10-113 ALCOHOLIC BEVERAGES; 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 premise 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 Chapter 28, Article 3, 4, 7, 8, 11 or 12 Reissue Revised Statutes of Nebraska, 1943, 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 (2) alcoholic beverage retail establishments since March 4, 1963; provided, the beneficial interest requirement in this Section shall not apply to the person applying for an additional license for use in connection with the operation of a hotel containing at least twenty-five (25) sleeping rooms or when the request is limited to on premises sale of beer only in a restaurant. (Ref. 53-124.03, 53-125 RS Neb.)

10-114 ALCOHOLIC BEVERAGES; OWNER OF PREMISE. The owner of any premise 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 premise in violation of any Municipal Code Section or Nebraska Statute. (Ref. 53-1,101 RS Neb.)

10-115 ALCOHOLIC BEVERAGES; 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 has been committed by him personally. (Ref. 53-1,102 RS Neb.)

10-116 ALCOHOLIC BEVERAGES; MINORS. It shall be unlawful for any person or persons to sell or make a gift of any alcoholic liquors or to procure any such alcoholic liquors for any minor or other person who is mentally, physically or otherwise incompetent whether due to natural disabilities or the prior consumption of alcoholic beverages. (Ref. 53-180 RS Neb.)

10-117 ALCOHOLIC BEVERAGES; 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 bona fide club 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 by-laws of any such club; and provided further, nothing herein shall be construed to prevent any hotel from permitting checks or statement for liquor to be signed by bona fide guests residing in the said hotel and charged to the accounts of such guests. (Ref. 53- 183 RS Neb.)

10-118 ALCOHOLIC BEVERAGES; SPIKING BEER. It shall be unlawful for any person or persons who own, manage or lease any premise 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 premise of such licensee. (Ref. 53-174 RS Neb.)

10-119 ALCOHOLIC BEVERAGES; ORIGINAL PACKAGE. It shall be unlawful for any person or persons who own, manage or lease any premise in which the sale of alcoholic beverages is licensed to have in their possession for sale at retail any alcoholic liquors contained in bottles, casks or other containers except in the original package. (Ref. 53-184 RS Neb.)

10-120 ALCOHOLIC BEVERAGES; 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 premise shall be subject to any health inspections the Governing Body of the Municipal 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.

10-121 ALCOHOLIC BEVERAGES; UNLAWFUL CONSUMPTION. It shall be unlawful for any person to consume alcoholic beverages upon the public ways and property or within businesses or buildings open to the public which are not licensed for the sale and consumption of alcoholic beverages.

10-122 ALCOHOLIC BEVERAGES; ACQUISITION OF ALCOHOLIC BEVERAGES. It shall be unlawful for any person to have possession of any alcoholic liquors which shall have been acquired otherwise than from a licensee duly licensed to sell same to such person under the provisions of the Nebraska Liquor Control Act; providing, nothing herein shall prevent the possession of alcoholic liquor for the personal use of the possessor, his family and guests nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetables or grains or the produce thereof by simple fermentation and without distillation if it is made solely for the use of the maker, his family and his guests; provided further, that nothing herein shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession or any hospital or institution caring for the sick and diseased persons from possessing any alcoholic liquor for the treatment of bona fide patients of such hospital or other institution; provided further, that any drug store employing a licensed pharmacist may possess and use alcoholic liquors in the compounding of prescriptions of duly licensed physicians; and provided further, that the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this Section.

10-123 ALCOHOLIC BEVERAGES; 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.

10-124 ALCOHOLIC BEVERAGES; REMOVAL OF INTOXICATED PERSONS FROM PUBLIC PROPERTY. 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 or others or who is otherwise incapacitated from any public property. An officer removing an intoxicated person from public property shall make a reasonable effort to take such intoxicated person to his home or to any hospital, clinic, alcoholism center or medical doctor as may be necessary to preserve life or to prevent injury. If these measures 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 it necessary to preserve life or to prevent injury and under no circumstances longer than twelve (12) hours. The placement of such person in civil protective custody shall be recorded at the facility or jail at which he is delivered and communicated to his family or next of kin if they can be located or to such person designated by the person taken into civil protective custody. The law enforcement officer who acts in compliance with this Section shall be deemed to be acting in the course of his 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. 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. (Ref. 53- 1, 121 RS Neb.)

10-125 ALCOHOLIC BEVERAGES; HIRING MINORS. It shall be unlawful for any person to hire a minor regardless of sex under the age of nineteen (19) years to serve or dispense alcoholic liquors, including beer, to said licensee's customers. (Ref. 53-102 RS Neb.)