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### **CHAPTER 5 – BUSINESS REGULATIONS**

#### **Article 1 – Occupation Taxes**

##### **SECTION 5-101: GENERAL; PURPOSE**

For the purpose of raising revenue there is hereby levied an occupation tax upon each and every occupation and business carried on within the City as hereinafter specified and enumerated. Every person, firm, association or corporation carrying on the occupations or businesses herein specified within the limits of said City shall pay to the city clerk annually on or before January 1 the sum hereinafter named as a tax upon the occupation or business, except in the event that said tax is levied daily, in which case the tax shall be due and payable in advance before the business begins, for the number of days for which the occupation or business begins, for the number of days for which the occupation or business is to be carried on within the taxing year; except that items enumerated below which have been added after January 1 and prior to July 1 of the taxable year shall be due and payable on July 1; and except that any tax on any occupation or business not heretofore levied or any tax increased during a taxable year, said increase shall go into effect and be payable on a basis of one-half of the stated tax and shall be due and payable as of July 1 of said year. All money so collected shall be paid over forthwith by the city clerk to the credit of the General Fund of said City. (Neb. Rev. Stat. §17-525) (Ord. No. 253, 4/05/83)

##### **SECTION 5-102: AMOUNTS**

There is hereby levied an occupation tax upon each and every occupation and business within the corporate limits of the City. Such occupation taxes shall be set by ordinance by the City Council and shall be on file in the office of the city clerk, where they shall be available for public inspection during office hours. Said taxes shall be levied upon the following occupations and lines of business:

## 1. *Alcohol and Spirits*

- A. Alcohol and spirits, or either, manufacturer.
- B. Alcoholic liquors, distributor, except beer.
- C. Alcoholic liquors, retailer, for consumption off the premises, sales in original package only.
- D. Alcoholic liquors, retailer, for consumption on the premises and off the premises.
- E. Alcoholic liquors, retailer, for consumption on the premises, except for farm winery or brew pub sales outlets.
- F. Alcoholic liquors, retailer, including beer, issued to a non-profit corporation, for consumption on the premises.
- G. Beer, distributor.
- H. Beer, manufacturer, with capacity of one to more than 500 barrels daily.
  
- I. Beer and wine only, retailer, except for brew pubs, for consumption on the premises of restaurants only.
- J. Beer only, retailer, for consumption off the premises, sales in original package only.
- K. Beer only, retailer, for consumption on the premises.
- L. Brew pub.
- M. Catering permits issued for the same period as retailer of alcoholic liquors, wines and/or beers.
- N. Liquors, non-beverage users, Class 1 through 5.
- O. Wine, manufacturer and/or operation of farm winery.
- P. Wine only, retailer, for consumption off the premises, sales in original packages only.

2. *Amusements*: Mechanical amusement devices located in the City and in public places.

3. *Auctioneers* offering for sale goods, merchandise and livestock of any kind.

4. *Billboard Advertising*. Bill posting on billboards located on private property by persons, firms or corporations for pay or hire.

5. *Billiards Hall or Pool Hall*. First and each additional table.

6. *Bottle Club*. Said occupation tax shall not apply to non-profit corporations as exempted from payment of federal income taxes as provided by Sections 501(c)(4), (7) or (8), Internal Revenue Code of 1954 as amended. *Bottle Club* or *Class "H" License* operated by non-profit corporation as exempted from payment of federal income taxes.

7. *Bowling Alley*. First and each additional alley.

8. *Buses, Bus Lines and Taxis*. Transporting passengers for hire from any place within the City to other places within or without the City.

9. *Circus, Circus Parade* where tent is outside of city limits; *Carnivals* and other rides or shows under canvas or in open air.

10. *Concessions, Concession Stands*, including those at carnivals. This section shall not apply to concessions operated by non-profit corporations as exempted from payment of federal income taxes.

11. *Fire Insurance Companies*.

12. *Fireworks Stand*. This section shall not apply to fireworks stands operated by non-profit corporations as exempted from payment of federal income taxes.

13. *Garbage Disposal Service*.

14. *Hawkers, Peddlers or Sellers of Goods* at retail by sample or by taking orders, from door to door, including itinerant magazine or book agents.

15. *Ice Cream Truck Vendors*.

16. *Motion Picture Houses*.

17. *Telephone Companies*.

18. *Tobacco Vendors*.

19. *Skating Rinks*, portable or otherwise.

(Neb. Rev. Stat. §17-525, 53-124, 53-160) (Ord. Nos. 253, 4/05/83; 405, 3/3/90; 913, 7/17/07; 945, 11/18/08)

### **SECTION 5-103: GAMES OF CHANCE AND/OR LOTTERIES; DEFINITIONS**

For the purposes of this article, the following definitions shall apply:

"Games of chance and/or lotteries" shall mean those forms of gambling authorized by the State pursuant to Article III, Section 24 of the Constitution of the State of Nebraska.

"Gambling device" shall mean any and all machines or devices used by a person engaged in the occupation of conducting games of chance and/or lotteries.

"Person engaged in the occupation of conducting games of chance and/or lotteries" shall mean any person who operates, owns or is the lessee of a place of business where any game of chance and/or lottery activity is conducted, whether or not any other type of business is conducted on the premises; or, any person who either directly controls or manages the games of chance and/or lotteries, or owns any machine or device used to engage in the occupation of games of chance and/or lotteries, but does not sell, lease or deliver possession or custody of such a device to other persons.

"Distributor" shall mean any person who engages in the business of selling, leasing, or delivering possession or custody of gambling devices for consideration to a person engaged in the occupation of conducting games of chance and/or lotteries.

## **SECTION 5-104: GAMES OF CHANCE AND/OR LOTTERIES; REQUIREMENTS**

A. An occupation tax is hereby imposed on each person engaged in the occupation of conducting games of chance and lottery activities within the city. Every person conducting games of chance and lottery activities within the city shall pay the tax in the amount and manner specified in subsection (C).

B. Amount of occupation tax for persons engaged in the occupation of conducting games of chance and lotteries. The occupation tax for each person engaging in the occupation of conducting games of chance and lottery activities within the city shall be 5% of the gross receipts received by said person in each quarter of a calendar year.

C. The occupation tax for engaging in the occupation of distributing gambling devices within the city shall be 5% of the gross receipts received by a distributor in each quarter of a calendar year.

D. It shall be unlawful for any person to engage in the occupation of conducting games of chance or lottery activities without first obtaining a license to do so.

E. Every person desiring a license required by the provisions of this article shall make application to the city clerk. Accompanying each application shall be:

1. A sworn statement by each designated supervising member that such member will be responsible for compliance with rules and regulations for each occasion of games of chance and/or lotteries which he/she supervises.
2. A sworn statement by the member designated as responsible for the proper utilization of gross receipts that no commission, fee, rent, seller profits, compensation, reward or recompense will be paid to any person or organization not sanctioned by the laws of the State of Nebraska and the City of Gretna; and that all profits will be spent for a lawful purpose.

F. Every license issued under the provisions of this division shall be conspicuously displayed at the place where the game of chance and/or lottery activity is conducted at all times during the conduct thereof.

G. The license fee for engaging in the occupation of conducting games of chance and lotteries within the City shall be set by ordinance by the City Council and shall be on file in the office of the city clerk, where it shall be available for public inspection during office hours.

H. Nonprofit organizations that desire to participate in games of chance and/or lotteries that are in compliance with the Small Lotteries and Raffles Act of the State of Nebraska are exempt from the provisions of this article.

(Ord. No. 415, 11/6/90)

## **Article 2 – Alcoholic Beverages**

### **SECTION 5-201: DEFINITIONS**

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

### **SECTION 5-202: LICENSE REQUIRED**

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

### **SECTION 5-203: LICENSES; CITY POWERS AND DUTIES**

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

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

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

1. To cancel or revoke for cause retail, bottle club, or craft brewery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;
2. To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation adopted by the City Council has been or is being violated and at such time examine the premises of such licensee in connection with such determination;
3. To receive a signed complaint from any citizen within its jurisdiction that any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the Act;



4. To receive retail license fees, bottle club license fees, and craft brewery license fees as provided in Neb. Rev. Stat. §53-124 and pay the same, after the license has been delivered to the applicant, to the city treasurer;
5. To examine or cause to be examined any applicant or any retail licensee, bottle club licensee, or craft brewery licensee upon whom notice of cancellation or revocation has been served as provided in the Act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the City Council may authorize its agent or attorney to act on its behalf;
6. To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in Section 5-231 (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 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. The Commission 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 the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the City Council in support of or in protest against the issuance of such license may do so at the time of the hearing.
8. 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 the proceedings a resolution recommending either issuance or refusal of such license. The city clerk shall mail to the Commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the Commission. If the Commission refuses to issue such a license, the cost of publication of notice shall be paid by the Commission from the security for costs (Neb. Rev. Stat. §53-134)

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

1. The license fee, if by the terms of Neb. Rev. Stat. §53-124(5) the fee is payable to the city treasurer;
2. Any fee for publication of notice of hearing before the City Council upon the application for the license;
3. The fee for publication of notice of renewal, if applicable, as provided in Neb. Rev. Stat. §53135.01; and
4. Occupation taxes, if any, imposed by the City.

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

(Neb. Rev. Stat. §53-132(4)) (Am. by Ord. Nos. 703, 7/6/00; 782, 4/16/02)

### **SECTION 5-204: LICENSEE REQUIREMENTS**

It shall be unlawful for any person to own an establishment that sells any alcoholic beverages at retail unless he/she: is a resident of the county in which the premises is located; is a person of good character and reputation; is a citizen of the United States; 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; has never had a liquor license revoked for cause; is a person whose premises for which a license is sought meets standards for fire safety as established by the state fire marshal; or has not acquired a beneficial interest in more than two alcoholic beverage retail establishments since March 4, 1963; provided, the beneficial interest requirement in this section shall not apply to a person applying for an additional license for use in connection with the operation of a hotel containing at least 25 sleeping rooms, or where the request is limited to on premises sale of beer only in a restaurant. (Neb. Rev. Stat. §53-124.03, 53-125) (Am. by Ord. No. 270, 10/18/83)

### **SECTION 5-205: 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 there from.

B. *Procedure.* 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 their 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(s).

C. The City Council may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent individuals. The city attorney may limit testimony where it appears incompetent, irrelevant, or unduly repetitious. If there is opposition to any application and such opposition desires the opportunity to present arguments and to cross-examine the applicant and any witnesses in favor

of such application, they shall choose a spokesperson to perform such function who shall notify the city attorney of his/her representation prior to the start of the hearing.

D. The order of the proceeding is as follows:

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

E. In all cases, the burden of proof and persuasion shall be on the party filing the application. Any member of the City Council and the city attorney may question any witness, call witnesses, or request information.

F. All witnesses shall be sworn.

G. The City Council may make further inquiry and investigation following the hearing.

H. The City Council or the applicant may order the hearing to be recorded by the clerk, at the expense of the applicant(s).  
(Neb. Rev. Stat. §53-134) (Ord. No. 401, 11/21/89)

## **SECTION 5-206: LICENSE APPLICATIONS; PUBLICATION COSTS**

An applicant for a new, transfer or renewal of a liquor license within the City and any applicant for a resident manager's permit, shall pay to the City at the time of the issuance of any new license, transfer of a license, renewal of a license, or approval of a resident manager application, the actual cost of publication of notices as required by this article. (Ord. No. 405, 3/3/90)

## **SECTION 5-207: 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 for 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. (Neb. Rev. Stat. §53-177)

**SECTION 5-208: LICENSE DISPLAYED**

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

**SECTION 5-209: PREMISES ALSO USED AS DWELLING**

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

**SECTION 5-210: CHANGE OF PREMISES**

Any retailer licensee desiring to transfer his/her license from one premises to another shall file a written request for permission to do so with the city clerk and shall also file with said clerk a sworn statement showing that the premises to which removal is to be made complies in all respects with the requirements of the Nebraska Liquor Control Act as amended. The city clerk shall present said application and statement to the next meeting of the mayor and City Council, who shall, by resolution, approve or disapprove the transfer. If they approve the transfer, such approval shall be endorsed on the license by the mayor and attested by the city clerk.

**SECTION 5-211: HOURS OF SALE**

A. HOURS OF SALE:

<b>Alcoholic Liquors (except beer and wine)</b>	
Monday through Saturday	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 2:00 A.M.
Sunday	
Off Sale	12:00 Noon to 1:00 A.M.
On Sale	12:00 Noon to 2:00 A.M.
<b>Beer and Wine</b>	
Monday through Saturday	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 2:00 A.M.
Sunday	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 2:00 A.M.

B. Such limitations shall not apply after 12:00 noon on Sunday to a licensee which is a nonprofit corporation holding a license pursuant to Neb. Rev. Stat. §53-124(5) (C) & (H).

C. 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 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.

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

(Neb. Rev. Stat. §53-179) (Am. by Ord. Nos. 271, 10/18/83; 428, 10/1/91; 979, 7/6/10)

### **SECTION 5-212: OWNER LIABLE**

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 municipal code section or Nebraska statute. (Neb. Rev. Stat. §53-1,101)

### **SECTION 5-213: EMPLOYER LIABLE**

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/her personally. (Neb. Rev. Stat. §53-1,102)

### **SECTION 5-214: MINORS AND INCOMPETENTS**

It shall be unlawful for any person or persons to sell, give away, dispose of, exchange, permit the sale of or make a gift of, any alcoholic liquor, or to procure any such alcoholic liquor to or for any minor, or to any person who is mentally incompetent. (Neb. Rev. Stat. §53-180)

### **SECTION 5-215: HIRING MINORS**

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

### **SECTION 5-216: MINOR'S PRESENCE**

It shall be unlawful for any person or persons who own, manage, or lease an establish-

ment selling alcoholic beverages at retail to allow any minor under the age of 18 years to frequent or otherwise remain in the said establishment unless the said minor is accompanied by his/her parent or legal guardian, and unless said minor remains seated with, and under the immediate control of, the said parent or legal guardian. (Neb. Rev. Stat. §53-147)

#### **SECTION 5-217: NO DELIVERY AFTER CLOSING HOURS**

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

#### **SECTION 5-218: 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. (Neb. Rev. Stat. §53-174)

#### **SECTION 5-219: ADVERTISEMENTS AND SALES**

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

#### **SECTION 5-220: 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. (Neb. Rev. Stat. §53-184) (Am. by Ord. No. 431, 2/18/92)

#### **SECTION 5-221: SALE FOR RESALE**

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

#### **SECTION 5-222: 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 by-laws of any such club; and provided further, nothing herein shall be construed to prevent any hotel or restaurant holding a retail alcoholic beverage license from permitting checks or statements for liquor to be signed by regular guests residing in the said hotel, and charged to the accounts of such guests. (Neb. Rev. Stat. §53-183)

### **SECTION 5-223: 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 city law enforcement officers may make, or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for, or renewal of, a liquor license. (Neb. Rev. Stat. §53-118)

### **SECTION 5-224: CONDUCT PROHIBITED ON LICENSED PREMISES**

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

### **SECTION 5-225: GAMBLING**

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

### **SECTION 5-226: INSPECTIONS**

It shall be the duty of the City Council to cause frequent inspections to be made on the premises of all retail and bottle club licensees. If it is found that any such licensee is violating any provision of the Nebraska Liquor Control Act or regulations of the Nebraska Liquor Control Commission, or is failing to observe in good faith the purposes of said Act, the license may be suspended, cancelled, or revoked after the licensee has been given an opportunity to be heard by the City Council. (Neb. Rev. Stat. §53-146)

### **SECTION 5-227: KEG SALES; REGISTRATION; KEG IDENTIFICATION NUMBERS; PROHIBITED ACTS**

A. When any person licensed to sell alcoholic liquor at retail sells beer for consumption off the premises in a container with a liquid capacity of five or more gallons or eighteen and ninety-two hundredths or more liters, the seller shall record the date of sale, the keg identification number, the purchaser's name and address, and the number of the purchaser's motor vehicle operator's license, state identification card, or military

identification, if such military identification contains a picture of the purchaser, together with the purchaser's signature. Such record shall be on a form prescribed by the Liquor Control Commission and shall be kept by the licensee at the retail establishment where the purchase was made for not less than six months. Such records kept pursuant to this section shall be available for inspection by any law enforcement officer during normal business hours or at any other reasonable time. Any person violating this section shall be guilty of an offense.

B. Licensees shall place a label bearing a keg identification number on each keg at the time of retail sale. Any person who unlawfully tampers with, alters, or removes the keg identification number from a beer container after such container has been taken from the licensed premises pursuant to a retail sale and before its return to such licensed premises or other place where returned kegs are accepted shall be guilty of an offense.

(Neb. Rev. Stat. §53-167.02, 53-167.03) (Ord. No. 504, 5/17/94)

## **SECTION 5-228: CATERING LICENSES**

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

B. Upon receipt from the Commission of the notice and copy of the application as provided in Neb. Rev. Stat. §53-124.12, the City Council shall process the application in the same manner as provided in Section 5-203 (Licenses; City Powers and Duties). (Neb. Rev. Stat. §53-124.12(3))

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

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

E. For purposes of this section, the liquor license jurisdiction of the City Council is, with respect to the holders of Class D-1 licenses, the area outside the corporate limits of the City but within its extraterritorial zoning jurisdiction and, with respect to the holders of other licenses, the corporate limits of the City.

(Ord. No. 364, 9/6/88) (Am. by Ord. Nos. 432, 2/18/92; 527, 3/6/95; 600, 6/3/97; 701, 7/6/00; 783, 4/16/02)

## **SECTION 5-229: LIQUOR LICENSE RENEWAL**

A. Retail or bottle club licenses issued by the Liquor Control Commission and outstanding may be automatically renewed in the absence of a request by the City Council 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 City 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 60 days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one year.

B. The city clerk, upon notice from the Commission, between January 10 and January 30 of each year, shall cause to be published in a legal newspaper in, or of general circulation in the City, one time, a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the City; provided, Class C license renewal notices shall be published between the dates of July 10 and July 30 of each year. The city clerk shall then file with the Commission proof of publication of said notice on or before February 10 of each year or August 10 of each year for Class C licenses. Upon the conclusion of any hearing required by this section, the City Council may request a licensee to submit an application. (Neb. Rev. Stat. §53-135, 53-135.01) (Am. by Ord. No. 270, 10/18/83)

### **SECTION 5-230: PROTESTS AGAINST RENEWAL**

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

### **SECTION 5-231: CITIZEN COMPLAINTS**

Any five residents of the City shall have the right to file a complaint with the City Council stating that any retail or bottle club licensee, subject to the jurisdiction of the City Council, has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant thereto. Such complaint shall be in writing in the form prescribed by the City Council and shall be signed and sworn 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 fact alleged there is 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; provided, that the complaint must in all cases be disposed of by the City Council within 30 days from the date the complaint was filed, by resolution, which said resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided by law. (Neb. Rev. Stat. §53-1,114)

### **SECTION 5-232: REVOCATION OR SUSPENSION OF LICENSE**

A. A retail license to sell alcoholic liquors, which the City is legally empowered to

revoke, may be revoked by the City Council whenever it shall find, after notice and hearing as provided by law, that the holder of any such license has violated any of the provisions of the Nebraska Liquor Control Act, of this chapter, of any rule or regulation of the State Liquor Control Commission; or of any statutory provision or ordinance of the City now existing or hereafter passed, enacted in the interest of good morals and decency; or for any one or more of the following causes:

1. The licensee, manager or agent in charge of the premises licensed, has been convicted of or has plead guilty to a felony under the laws of this state or of any other state.
2. The licensee, manager or agent in charge of the premises licensed, has been convicted of or has plead guilty to being the proprietor, manager or agent in charge of a gambling house, or of pandering or other crime or misdemeanor opposed to decency and morality.
3. The licensee, manager or agent in charge of the premises licensed, has been convicted of or plead guilty to violation of any federal or state law concerning the manufacture, possession or sale of alcoholic liquors.
4. The licensee either swore falsely to any question in his application for said license or has failed to comply with the statements and representations made by the answer to any question or questions in said application; or has failed to perform in accordance with any other statement or representation or keep any promise, oral or written, made to the Council in connection with such licensee's request for said license.
5. The licensee, manager or agent in charge of the licensed premises shall have forfeited bond to appear in court to answer charges for any one of the violations of law or ordinances referred to in this section.
6. The licensee, manager or agent shall have allowed any live person to appear, or have reasonable cause to believe that any live person shall appear in any licensed premises in a state of nudity to provide entertainment, to provide service, to act as hostess, manager or owner, or to serve as an employee in any capacity.

B. For the purposes of this subsection, the term "nudity" shall mean the showing of the human male or female genitals, pubic area or buttocks or the human female breast including the nipple or any portion below the nipple with less than a full opaque covering.

(Ord. No. 475, 3/1/94)

### **SECTION 5-233: 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 such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of licensed physicians;
4. The possession and dispensation of alcoholic liquor by an authorized representative of any religion on the premises of a place of worship, for the purpose of conducting any bona fide religious rite, ritual, or ceremony;
5. Persons who are 16 years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor;
6. Persons who are 16 years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment;
7. Persons who are 16 years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; or
8. Persons who are 19 years old or older from serving or selling alcoholic liquor in the course of their employment.

(Neb. Rev. Stat. §53-168.06) (Am. by Ord. Nos. 311, 9/1/85; 564, 1/16/96; 781, 4/16/02)

**SECTION 5-234: CONSUMPTION IN PUBLIC PLACES OR PLACES OPEN TO THE PUBLIC; RESTRICTIONS**

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

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

a license issued for such premises pursuant to the Nebraska Liquor Control Act. It is unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, cafe, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the Act. This subsection does not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages. (Neb. Rev. Stat. §53-186.01) (Am. by Ord. No. 702, 7/6/00)

### **SECTION 5-235: REMOVAL OF INTOXICATED PERSONS FROM 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 doctors 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 city-owned property.

D. For the purposes of this section, "quasi-public property" shall mean and include private or publicly-owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress.  
(Neb. Rev. Stat. §53-1.121)

## **Article 3 – Bingo and Lottery Regulations**

### **SECTION 5-301: BINGO; REGULATION**

A. Games of bingo shall be conducted within the City in accordance with all laws of the City and the State of Nebraska if the said game of bingo is played for or involves profit or gain. Any association duly licensed by the State of Nebraska to conduct the game of bingo shall obtain a written permit from the City Council before commencing

operation of said game. Application shall be made to the city clerk for such permit. Said application form shall contain such information and documents or copies thereof as the City Council deems necessary to determine whether to grant or reject the application.

B. Upon the determination that granting the application would be proper, the City Council shall immediately direct the city clerk to issue the said license to the applicant upon the payment of an annual permit fee. Said license shall be subject to revocation at any time for good cause. Any person or persons so licensed shall be subject to any other fees, rules, and regulations which the City Council may designate. Every permit so issued will automatically expire on September 30 following its issuance or renewal. The fee for each new license or renewal shall be set by ordinance by the City Council and shall be on file in the office of the city clerk, where it shall be available for public inspection during office hours. Said fee shall be credited to the General Fund. The permit shall be on display at any place where a game of bingo is conducted. (Neb. Rev. Stat. §9-236) (Am. by Ord. No. 292, 9/18/84)

### **SECTION 5-302: BINGO; INCORPORATED REGULATION**

All applicable state statutes as they now exist or may hereafter be amended shall be, and will constitute, a part of this article as if repeated verbatim herein, and violation of any state statute will be a distinct and separate offense against the City as well as against the state. Violators thereof shall be separately prosecuted by the City for each of such offenses, and if convicted, shall be deemed to be guilty of a misdemeanor. (Neb. Rev. Stat. §9-201 through 9-266)

### **SECTION 5-303: LOTTERY; SALES OUTLET LOCATIONS; APPROVAL REQUIRED; QUALIFICATION STANDARDS**

A. The lottery operator whom the City Council contracts to conduct its lottery shall not operate the lottery at a sales outlet location other than the location of the lottery operator without prior approval of the sales outlet location by the City Council. The City Council shall approve or disapprove each sales outlet location and individual, sole proprietorship, partnership, or corporation which desires to conduct the lottery at its sales outlet location solely on the basis of the qualification standards prescribed in subsection (B).

B. Any individual, sole proprietorship, partnership, or corporation which seeks to have its location approved as an authorized sales outlet location shall:

1. First obtain a retail liquor license for consumption on the premises pursuant to Neb. Rev. Stat. Chapter 53, Article 1;
2. Not have been convicted of, forfeited bond upon a charge of, or pleaded guilty to forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, filing false reports with any such agency, or any similar offense or offenses or any crime, whether felony or misdemeanor, involving gambling activity or moral turpitude;
3. Not have had a gaming license revoked or canceled under the Nebraska

Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act;

4. Be fit, willing, and able to properly provide the service proposed in conformance with all provisions and requirements of the Nebraska County and City Lottery Act and the rules and regulations adopted and promulgated pursuant to the act.

C. If the person seeking to have its location approved as an authorized sales outlet location is a partnership or corporation, the qualification standards shall apply to every partner of such partnership, every officer of such corporation, and stockholder owning more than 10% of the stock of such corporation.

D. The City Council shall notify the Department of Revenue of all approved lottery locations within 30 days of approval.

(Neb. Rev. Stat. §9-642.01) (Ord. No. 449, 2/16/93)

#### **SECTION 5-304: LOTTERY; PARTICIPATION, RESTRICTIONS**

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

B. 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.

C. Nothing shall prohibit any member of the City Council, a city official, or the immediate family of such member or official or 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.

D. No person, or 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.

E. For purposes of this section, "immediate family of a member of the City Council or a city official" shall mean:

1. A person who is related to the member or official by blood, marriage, or adoption and resides in the same household or
2. 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.

(Neb. Rev. Stat. §9-646) (Ord. No. 450, 2/16/93) (Am. by Ord. Nos. 505, 5/17/94; 671, 2/16/99)

## **Article 4 – Pool, Billiards and Mechanical Amusement Devices**

### **SECTION 5-401: REGULATION**

It shall be unlawful for any person or persons, to own, maintain, or operate any game of pool or billiards or a mechanical amusement device for profit or gain without having first obtained a license from the City. Any person desiring a license to operate, maintain, or own a pool game, billiard game, mechanical amusement device, or hall shall file a written application with the city clerk. Said application form shall contain such information and documents, or copies thereof, as the City Council deems necessary to determine whether to grant or reject the application. Upon the determination that the granting of the license would be beneficial to the City, the City Council shall immediately direct the city clerk to issue the license to the applicant upon the payment of a fee set by resolution of the Council. Said license shall be subject to revocation at any time for good and sufficient cause by the City Council upon the issuance of proper notice, and a hearing if the licensee should make such a request. Any person or persons so licensed shall be subject to any bond, fees, or other rules and regulations as may be set by resolution of the Council for the benefit of the City. (Neb. Rev. Stat. §17-120, 17-524) (Am. by Ord. No. 253, 4/5/83)

### **SECTION 5-402: MECHANICAL AMUSEMENT DEVICE; DEFINITION**

For the purposes of this article, the following words and phrases shall have the meanings respectively described to them:

“Mechanical amusement device” shall mean a machine which, upon the insertion of a coin, or a substitute object operates or may be operated or used for a game, contest, or amusement of any description, such as (by way of example but not by way of limitation) pinball, video games, bowling, radio-ray rifle, baseball, football, racing and boxing games, excluding, however, automatic musical devices and any machine which is so constructed mechanically that its operation violates state laws and/or the provisions of this code or city ordinances.

(Neb. Rev. Stat. §17-120, 17-524) (Ord. No. 253, 4/5/83)

## **Article 5 – Solicitors, Peddlers and Transient Merchants**

### **SECTION 5-501: DEFINITIONS**

“Peddler” is a person engaged in the selling of personal property by going about from place to place or house to house to sell such property and who carries with him/her such property for delivery at the time of sale in the City.

“Solicitor” is a person engaged in going about from place to place or house to house, or by newspaper, radio, or telephone, soliciting orders for or offering to sell personal property for future delivery in the City.

(The above definitions of “peddler” and “solicitor” do not apply to any person, firm, corporation, partnership, association or any of their agents who maintain a regular stock of merchandise in the City for at least six months during the year in which he/she/they are soliciting or selling.)

“Transient merchant” is any person, firm, corporation, partnership, association or any of their agents transacting a temporary business where goods are exposed for wholesale or retail sale at any place in the City.

“Temporary business” means a business established for temporary operation only. A “permanent business” is a business operated for more than six months in one place by the same person.

### **SECTION 5-502: TRANSIENT MERCHANTS; EXCEPTIONS**

The provisions of this article with reference to the bonding and licensing fees of transient merchants shall not apply to:

- A. Buying and selling of goods by cooperation association;
- B. Sales where the proceeds are to be used exclusively for religious, charitable or benevolent purposes;
- C. Sales to wholesale or retail merchants by sample for future delivery made by representatives of established wholesalers or manufacturers;
- D. Sales by licensed peddlers;
- E. The sale of fruits and vegetables, farm or garden products grown or raised within this state by persons selling or offering the same for sale; nor
- F. Articles manufactured within this state by the persons selling or offering the same for sale.
- G. Non-profit organizations canvassing residents within the City for religious, political or other noncommercial purposes.

### **SECTION 5-503: SOLICITORS AND PEDDLERS; ENTERING PREMISES WITHOUT INVITATION PROHIBITED; NUISANCE**

The practice of going in and upon private residential property by solicitors or peddlers who have not previously been requested or invited to do so by the owner or occupant thereof for the purpose of (A) soliciting orders for the sale of personal property, (B) offering to sell personal property for future delivery, or (C) for the purpose of selling or disposing of personal property thereon is declared to be a nuisance and is prohibited. No person licensed as a solicitor or peddler hereunder shall thereby be deemed authorized to go upon any private residence property except with the prior request, invitation or consent of the owner or occupant thereof.



## **SECTION 5-504: SOLICITORS AND PEDDLERS; EXCEPTIONS**

A. The above section shall not apply to:

1. The distribution or sale of religious, political, economic or educational pamphlets, papers or periodicals; or
2. The peddling or soliciting of orders for any agricultural product or article raised or manufactured by such peddler or solicitor in the state; or
3. Any articles sold in interstate commerce.

B. No person shall go upon any private residence property for any of such purposes where the owner or occupant thereof has:

1. Requested such person not to come thereon for any of such purposes, or
2. Placed on said premises in a conspicuous place near the entrance thereof a sign stating that the occupants of said premises do not desire to be molested or have their rights of privacy disturbed by distributors, solicitors or peddlers of any of such personal property, articles or publications or have any person come onto said premises for any such purpose.

## **SECTION 5-505: SOLICITORS AND PEDDLERS; LICENSE REQUIRED; FEES AND APPLICATION**

No person shall deal as a solicitor or peddler as defined by this article without having procured a license as herein required, and no two or more persons shall deal under the same license as partners, agents or otherwise. The license fee for a solicitor or peddler shall be set by ordinance by the City Council and shall be on file in the office of the city clerk, where it shall be available for public inspection during office hours. The application for license shall be submitted to the city clerk's office at least five days prior to the date of any solicitation or sale, and shall state the following:

- A. The name of the applicant and his/her permanent address;
- B. The name and address of the person, firm or corporation he/she represents;
- C. The nature and character of the property to be sold;
- D. Whether he/she sells and delivers the property directly to the purchasers or solicits or takes orders for it by carrying samples or catalogs;
- E. The manner in which he/she intends to make contact with the customers; and
- F. How he/she intends to operate within the City.

## **SECTION 5-506: SOLICITORS AND PEDDLERS; BOND**

Before receiving a license, every solicitor or peddler shall file with the city clerk a bond for the faithful performance of the obligations of such solicitor or peddler arising in connection with his/her business as such and for the payment of all claims for damages for which he/she may become liable through fraud, deceit or otherwise in the course of business as such solicitor or peddler. Said bond shall be set by resolution by the City Council and shall be on file in the office of the city clerk, where it shall be available for public inspection during office hours.

## **SECTION 5-507: TRANSIENT MERCHANTS; LICENSE REQUIRED**

No person shall engage in business as a transient merchant as defined in Section 5-501 without a transient merchant's license for each structure, stand, tent, car, vehicle, booth or place used by such merchant.

## **SECTION 5-508: TRANSIENT MERCHANTS; APPLICATION, FEES, BOND**

A. A transient merchant shall file in the office of the city clerk a verified application stating the following:

1. His/her name and residence;
2. Description and identification of the place where he/she proposes to do business;
3. Description of goods he/she intends to handle;
4. The date he/she acquired said goods;
5. The name and address of the persons from whom he/she acquired said goods and the place from whence they were last moved.

B. A transient merchant's license fee shall be payable by the month and no such license shall be issued for a period of less than one month. Along with the application described above, the applicant must file a bond as set forth in Section 5-506 conditioned for the payment of any license fee to become due to the City should said merchant continue to operate beyond any time for which he/she has paid. On filing such application and bond and payment of fee in advance, the city clerk shall issue a license to the applicant to do business at the place described in the application and for the time for which a license fee has been paid in advance.

## **SECTION 5-509: TRANSIENT MERCHANTS; SALE FROM VEHICLES, STREETS, ALLEYS AND SIDEWALKS PROHIBITED; EXCEPTIONS**

No person shall sell or offer for sale any goods or merchandise from a pickup, automobile, truck or other vehicle in the streets, alleys and sidewalks of the City, except for the delivery of farm or garden products where the order for the same has been placed in advance, or for the delivery of goods sold in the regular course of an established business.

## **SECTION 5-510: PROHIBITED SALES**

No person shall distribute, sell, or attempt to distribute or offer to sell any publication, pamphlet, paper, periodical, written, typed or printed matter, article or thing which (A) may reasonably tend to incite riot or other public disorder; (B) advocates disloyalty to or overthrow of the United States government or state government by means of any artifice, scheme or violence; (C) urges any unlawful conduct or encourages or attempts to encourage, or which is done under circumstances or in a manner so as to cause a breach of the public peace or good order of the community; (D) is offensive to public morals or decency; or (E) contains obscene, pornographic, libelous or scurrilous language.

## **Article 6 – Tobacco and Smoking**

### **SECTION 5-601: TOBACCO PRODUCTS; FINDINGS AND INTENT**

The City Council hereby declares that it is the policy of the City to affirm the scientific evidence that the use of tobacco products is causally connected to many diseases and is dangerous to human health. Placing tobacco products out of the reach of children will reduce the likelihood of children to use tobacco products. (Ord. No. 894, 9/5/06)

### **SECTION 5-602: TOBACCO PRODUCTS; DEFINITIONS**

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings given:

“Administrator” shall mean the person who is authorized to perform the duties and responsibilities described herein, and that person shall be either the planning director or the director's designee, who shall be an employee of the Planning Department.

“Place of business” shall mean a place where tobacco products are sold at retail, including vending machines.

“Responsible person” shall mean any person, firm, association, company, partnership, or corporation or agent or employee of same who operates a store, stand, booth, concession or other place at which tobacco sales are made to purchasers.

“Tobacco or nicotine products” shall mean cigarettes, cigars, cheroots, stogies, perigues, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour, Cavendish, plug and twist tobacco, fine cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and, sweepings of tobacco or nicotine; and anything containing tobacco or any other kinds and forms of tobacco, prepared in such manner as to be suitable for either chewing, smoking in a pipe, chewing and smoking, or inhaling and snorting through the nose.

“Vendor-assisted access” shall mean access to tobacco, tobacco products, or other nicotine delivery devices only with the direct assistance of the vendor or a vendor employee or agent, so that customers do not have direct access to take possession of tobacco, tobacco products or other nicotine delivery devices without direct assistance from the vendor or a vendor employee or agent.

“Nicotine delivery device” shall mean a device providing for the ingestion and/or absorption of nicotine into the body such as patches, inhalers, chewing gum, beverages containing nicotine, nasal spray, and lozenges.  
(Ord. No. 894, 9/5/06)

### **SECTION 5-603: TOBACCO PRODUCTS; PROHIBITIONS**

The following forms of distribution are prohibited:

A. It shall be a violation of this code to sell tobacco or nicotine products or nicotine delivery devices in any form except original factory-wrapped packages. The sale of

single cigarettes is specifically prohibited.

B. It shall be a violation of this code for any person or place of business to give away, hand out, or otherwise distribute free samples of cigarettes or other tobacco products, or coupons that can be redeemed for free samples of cigarettes or other tobacco products.

C. It shall be unlawful for any person to:

1. Sell, permit to be sold, or offer for sale tobacco, tobacco products, or nicotine delivery devices by means other than vendor assisted access; or
2. Display tobacco, tobacco products, or nicotine delivery devices in a manner allowing customers access to tobacco, tobacco products, or nicotine delivery devices without vendor assistance;
3. Provide or maintain tobacco vending machines.

(Ord. No. 894, 9/5/06)

#### **SECTION 5-604: TOBACCO PRODUCTS; PENALTY AND CULPABILITY**

The violation of any provision in this article shall be punished by a fine of up to \$200.00 for the first offense under such article. The violation of any provision in this article shall be punished by a fine of up to \$500.00 for each offense after the first offense. Each day any such violation shall continue, and each unlawful transaction or occurrence, shall constitute a separate offense. There shall be no requirement of a culpable mental state for a violation of this article. (Ord. No. 894, 9/5/06)

#### **SECTION 5-605: TOBACCO PRODUCTS; LICENSE, 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 a form 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 in the amount of \$10.00. If the applicant is an individual, the application shall include the applicant's social security number. (Neb. Rev. Stat. §28-1422, 28-1423) (Ord. No. 672, 2/16/99)

#### **SECTION 5-606: SMOKING IN WORKPLACE OR PUBLIC PLACE; DEFINITIONS**

“Smoke” or “smoking” means the lighting of any cigarette, cigar, pipe, or other smoking material or the possession of any lighted cigarette, cigar, pipe, or other smoking material, regardless of its composition. (Neb. Rev. Stat. §71-5727)

#### **SECTION 5-607: SMOKING IN WORKPLACE OR PUBLIC PLACE; PROHIBITED**

After June 1, 2009, except as provided in Section 5-608 hereafter, it shall be unlawful for any person to smoke in a place of employment or any public place within the Village. (Neb. Rev. Stat. §71-5729)

## **SECTION 5-608: SMOKING IN WORKPLACE OR PUBLIC PLACE; EXEMPTIONS**

The following are exempt from the provisions of this article:

A. Guestrooms and suites that are rented to guests and are designated as smoking rooms, except that not more than 20 percent of rooms rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;

B. Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education; and

C. Tobacco retail outlets.  
(Neb. Rev. Stat. §71-5730)

## **SECTION 5-609: SMOKING IN WORKPLACE OR PUBLIC PLACE; VIOLATION; PENALTY**

A. A person who smokes in a place of employment or a public place in violation of the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses. A person charged with such offense may voluntarily participate, at his/her own expense, in a smoking cessation program approved by the Department of Health and Human Services, and such charge shall be dismissed upon successful completion of the program.

B. A proprietor who fails, neglects, or refuses to perform a duty under the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses.

C. Each day that a violation continues to exist shall constitute a separate and distinct violation.

D. Every act or omission constituting a violation of the Nebraska Clean Indoor Air Act by an employee or agent of a proprietor is deemed to be the act or omission of such proprietor, and such proprietor shall be subject to the same penalty as if the act or omission had been committed by such proprietor.  
(Neb. Rev. Stat. §71-5733)

## **Article 7 – Alarm Systems**

### **SECTION 5-701: DEFINITIONS**

As used in this article, unless the context otherwise requires:

“Alarm business” shall mean any person who:

- A. Installs alarm systems, other than a principal, or
- B. Pursuant to an agreement with a principal, communicates the presence of an emergency which is sounded or signaled by an alarm system, to the city Public Safety Department communications center ("PSDCC") in any manner or by any means.

"Alarm system" shall mean any device (other than a device installed upon premises occupied by the City) to detect, deter, sound, prevent, or signal an intrusion or other criminal activity, fire, rescue, or other emergency situation (collectively "emergency") which, when activated, employs the use of:

- A. An audible annunciator, or
- B. A visual signal or other means to alert the PSDCC of an emergency, whether directly or indirectly.

"Audible annunciator" shall mean that part of an alarm system which, when activated, sounds or signals an emergency by means of a bell, siren, buzzer or similar sound-producing device audible at a distance of 50 feet from the protected premises.

"Coordinator" shall mean the Gretna building inspector or the individual designated by the Mayor to perform such duties as are imposed by this article.

"False alarm" shall mean any sound or signal from an alarm system resulting in a response by city law enforcement, Fire and/or Rescue Departments when an emergency does not exist.

"Principal" shall mean the person, firm, partnership, association, corporation, company, or organization whose premises are or will be protected by an alarm system. If the premises are leased, the principal shall be the person in possession or control of the protected premises, unless more than one tenant is served by a single alarm system, in which event "principal" shall mean the owner of the protected premises.

"Protected premises" shall mean the area which is or will be covered by an alarm system.

(Ord. No. 804, 11/19/02)

## **SECTION 5-702: COMPLIANCE WITH ARTICLE**

It shall be unlawful for any person to install, use, or maintain an alarm system in violation of any of the requirements of the article. (Ord. No. 804, 11/19/02)

## **SECTION 5-703: REGISTRATION REQUIRED**

Any alarm system installed on protected premises shall be registered with city law enforcement as set forth below.

- A. Existing alarm systems. Any alarm system which has been installed as of the effective date of this article shall be registered by the principal within 60 days of such effective date.

B. New alarm systems. Any new alarm system installed after the effective date of this article shall be registered by the alarm business within ten days following installation. Annual registration of the alarm system is the responsibility of the principal.  
(Ord. No. 804, 11/19/02)

#### **SECTION 5-704: REGISTRATION; APPLICATION FEE; TERMINATION AND RENEWAL**

A. City law enforcement, or designee, shall register each alarm system installed on protected premises upon receipt of the following information on forms provided for that purpose:

1. The name, address and telephone number of the principal.
2. The type of premises (e.g. home, office, variety store, etc.) and the name of any business operating in the protected premises by which the protected premises are known.
3. The address of the protected premises. If in a residential, commercial or industrial complex (e.g., office building, apartment house, shopping center, etc.), the address shall include the name, if any, by which the complex is commonly known.
4. The names, addresses and telephone numbers, including home phone numbers, of at least three natural persons and, if applicable, an alarm business, who have access to the protected premises and who may be notified in the event the alarm is activated.
5. Certification by the principal that the principal's immediate family, tenants or employees (as appropriate under the circumstances) who have access to the protected premises have been given training which includes procedures and practices to avoid false alarms and steps to follow in the event the alarm system is accidentally activated.

B. Along with a registration application, the alarm business or principal shall remit a registration fee payable to the City. If applicable, a late charge shall also be assessed. Such registration fee and late charge shall be set by ordinance by the City Council and shall be on file in the office of the city clerk, where they shall be available for public inspection during office hours.

C. City law enforcement shall register the alarm system by issuing to the principal a registration form bearing the name of the principal, the address of the protected premises, and an identification number, and setting forth the expiration date of the registration. The registration of any alarm system shall not obligate the City or PSDCC to respond or accord any priority to any emergency.

D. The term of any registration shall expire after 12 calendar months from the date of issuance or whenever there is a change of the principal, whichever is earlier.

E. Registration shall be renewed by the principal at least ten days prior to the

expiration of each term by registering with city law enforcement, or designee, in the same manner as provided in subsection (A) above.  
(Ord. No. 804, 11/19/02)

### **SECTION 5-705: CURRENT INFORMATION; REGISTER CHANGES WITHIN TEN DAYS**

Within ten days following any change of circumstances, the principal shall supplant or amend all information which was provided to city law enforcement at the time of registration. No additional fee shall be due unless the change has terminated the registration as provided in Section 5-704. (Ord. No. 804, 11/19/02)

### **SECTION 5-706: MAINTENANCE AND TESTING**

A. The principal shall at all times be responsible for the proper maintenance and repair of the alarm system, including the repair or replacement of any component or design feature.

B. Each alarm system shall be maintained so that each audible annunciator will automatically silence within 15 minutes after being activated, and will not be reactivated unless a new emergency occurs.

C. An alarm system incorporating an audible annunciator shall not be tested between the hours of 8:00 P.M. of any day and 7:00 A.M. of the following day.  
(Ord. No. 804, 11/19/02)

### **SECTION 5-707: REQUIRED INFORMATION FOR PSDCC NOTIFICATION**

Any alarm business communicating the presence of an emergency to the PSDCC shall provide the following information:

A. The name of the principal, the address of the protected premises, the type of premises (home, office, etc.) and the business name, if any, by which the premises are known. Such information shall be repeated a second time at the end of the message.

B. The name and telephone number of the principal, business, or its agent having ready access to the protected premises.

C. The apparent nature or type of an emergency indicated, e.g., burglary in progress, robbery, fire, rescue or other emergency.  
(Ord. No. 804, 11/19/02)

### **SECTION 5-708: FALSE ALARM FEES**

A. The principal shall pay a fee to the city for each false alarm within 30 days of invoice. Failure to make full payment within 30 days of the invoice shall result in a late charge. The fee schedule for false alarms and fee for late payments shall be set by ordinance of the City Council, on file at the office of the city clerk and available for public inspection during office hours.



B. For purposes of this section, a year is defined as the start of a principal's annual registration. For purposes of the said fee schedule, a false alarm shall not be included if, as determined by the coordinator, an activation of the alarm system was caused by extraordinary circumstances not reasonably subject to control by the principal or the principal's immediate family, tenants, or employees (as may be appropriate under the circumstances). There shall be a presumption that a false alarm was reasonably subject to control by the principal.

B. In addition to the false alarm fees provided in subsection (A) of this section, the coordinator may revoke the registration of any alarm system having over 15 false alarms within one year or whenever a false alarm fee becomes delinquent. Written notice of the revocation or registration shall be mailed to the principal, who shall cause the alarm system to be removed from the protected premises within 15 days thereafter, unless the principal has appealed such revocation in accordance with subsection (D) of this section.

C. Any principal who has been assessed a false alarm fee may, within ten days of mailing of the invoice assessing such charge, request in writing that the coordinator review the assessment. Such request shall mean that the false alarm fee shall not be due until ten days following a response by the coordinator. The principal may communicate factual information to support the assertion that the false alarm should not be assessed. The burden of proving that an alarm was not a false alarm shall be on the principal. The coordinator shall make a determination in writing within ten days of such request.

D. Any principal may appeal the coordinator's decision to withhold required certification, revoke registration, or uphold a false alarm fee by filing a written notice of appeal with city law enforcement within 15 days after the notice of the coordinator's decision is mailed.

(Ord. No. 804, 11/19/02)

## **SECTION 5-709: NOTICES**

A. Notice or billing from the city to any alarm system registration holder shall be deemed to have been given or rendered on the date such notice or billing is deposited in the U.S. mail, first class postage, prepaid, addressed to the registration holder at the address shown in the city's registration records. A certificate signed by the person who mailed the notice or billing shall be prima facie evidence of the facts stated thereon with respect to such notice or billing.

B. Notice to the city or payment under this article shall be effective when received at the appropriate city office or designee.

(Ord. No. 804, 11/19/02)

## **Article 8 – Railroads**

### **SECTION 5-801: SAFE CROSSING**

It shall be the duty of every railroad company doing business in, or traveling through,

the City to keep in a suitable, and safe condition the crossings and right-of-way in the City. If any such crossing shall at any time fall into disrepair and become unsafe, or inconvenient for public travel, the City Council may, by resolution, call upon the said company to make whatever repairs that it may deem necessary to correct the dangerous condition. Notice of the said resolution shall be served upon the local agent of the said company. In the event that the railroad shall fail, or neglect to repair, and correct the said condition as aforesaid within 48 hours, neglect for each 24 hours thereafter shall be deemed, and is hereby made a separate and distinct offense against the provisions herein. (Neb. Rev. Stat. §17-143, 17-144)

#### **SECTION 5-802: LIGHTING AND SIGNALS**

It shall be the duty of all railroad companies owning, operating, and maintaining a railroad through the City to sufficiently light all crossings and to install as many signal systems as the City Council shall deem necessary at the expense of the said company. (Neb. Rev. Stat. §17-561)

#### **SECTION 5-803: OBSTRUCTING TRAFFIC**

It shall be unlawful for any railroad company, its employees, agents, or servants operating a railroad through the City to obstruct traffic on any public street, except in the event of an emergency, for a longer period at one time than five minutes. (Neb. Rev. Stat. §17-552)

#### **SECTION 5-804: OBSTRUCTING VIEW AT CROSSINGS**

It shall be unlawful for any railroad company to obstruct or obscure the traveling public's view by storing or parking any railroad car on a railroad track within 50 feet of the crossing of any such railroad track and a public road within the corporate limits of the City; provided, however, in no instance shall any person who is authorized to control the movement of such railroad car or cars within such distance be prevented from reasonably conducting his/her business. (Neb. Rev. Stat. §74-1323) (Ord. No. 314, 10/1/85)

### **Article 9 – Construction Companies**

#### **SECTION 5-901: PERMITS REQUIRED**

A. No person, firm, or corporation shall erect, construct, enlarge, alter, repair, improve, convert, or demolish any building or structure in the City or cause the same to be done, without first obtaining a separate building permit for each such building or structure from the Permits and Inspections Office. Except as hereinafter provided, when the operation called for by such permit shall not have been started within six months, or completed within 12 months after the date of issuance thereof, then such permit shall be void and no operation hereunder shall be started or completed until a new permit shall be obtained by the owner or his/her agent unless, however, the owner or his/her agent shall have, prior to the expiration of nine months from date of such building permit, made application to the zoning administrator for an extension of time hereunder. The said administrator is hereby authorized to grant an extension of time for commencement of building operations controlled by building permits upon clear and convincing proof of

a practical hardship, inadvertent delay in financial arrangements, defects in legal titles, inability to obtain competent workmen, material shortages, or other cogent reasons not due to the fault, negligence, or failure to act on the part of the owner or his/her agent.

B. Whenever any building or structure shall be designated as a dangerous building, a nuisance, or a building which is unsafe for occupancy, the operations called for by such permit shall be started within six months after the date of issuance thereof, or such permit shall be void and no operation hereunder shall be started or completed unless additional time has been granted to the owner or his/her agent by the zoning administrator.

C. It shall be unlawful to erect any wood frame building or structure within the Fire Limits except those structures specified in the city building code.

D. The building inspector is empowered to grant a permit for the erection of such other temporary structures as in his/her discretion may be necessary for use in connection with religious services, carnivals, street fairs, or other purposes where the use and occupancy is limited to short periods of time, which in no case shall exceed 60 days. Any building or structure erected under such permit shall be taken down and removed from the premises at the expiration of the period for which the permit was issued. Failure on the part of the recipient of such permit to take down and remove such building or structure shall make him/her liable under the penalties provided in this code and the building inspector shall proceed with the removal of such building or structure.

## **SECTION 5-902: APPLICATION FOR PERMITS**

To obtain a permit, the applicant shall first file an application therefore on a form furnished for that purpose. Every such application shall:

- A. Identify and describe the work to be covered by the permit;
- B. Describe the land on which the proposed work is to be done, by lot, block, tract, and house and street address, or similar description that will readily identify and definitely locate the proposed building or work;
- C. Be accompanied by plans and specifications;
- D. State the valuation of the proposed work;
- E. Be signed by the permittee, or his/her authorized agent, who may be required to submit evidence to indicate such authority; and shall
- F. Give such other information as reasonably may be required by the building inspector.

## **SECTION 5-903: PLANS AND SPECIFICATIONS**

A. With each application for a building permit, and when required by the Permits and Inspections Office for enforcement of any provision of the code, two sets of plans and specifications shall be submitted. The building inspector may require plans and

specifications to be prepared and designated by an engineer or architect licensed by the state to practice as such.

B. When authorized by the building inspector, plans and specifications need not be submitted for the following: (1) one-story frame construction with an area not exceeding 300 square feet or (2) small and unimportant work.

C. Plans and specifications shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that it will conform to the provisions of the code and all relevant laws, ordinances, rules, and regulations. The first sheet of each set of plans shall give the house and street address of the work and the name and address of the owner and person who prepared them. Plans shall include a plot plan showing the location of the proposed building and of every existing building on the property. In lieu of detailed specifications, the building inspector may approve references on the plans to a specific section or part of the code or other ordinances or laws.

D. Computations, stress diagrams, and other data sufficient to show the correctness of the plans, shall be submitted when required by the building inspector.

#### **SECTION 5-904: ISSUANCE OF PERMIT**

A. The application plans, and specifications filed by an applicant for a permit shall be checked by the building inspector. Such plans may be reviewed by other departments of the City to check compliance with the laws and ordinances under their jurisdiction. If the building inspector is satisfied that the work described in an application for a permit and the plans filed therewith conform to the requirements of the code and other laws and ordinances, and the fee has been paid, he/she shall issue a permit therefore to the applicant.

B. When the building inspector issues the permit, he/she shall endorse in writing or stamp on both sets of plans and specifications, "APPROVED." Such approved plans and specifications shall not be changed, modified, or altered without authorization from the building inspector, and all work shall be done in accordance with the approved plans.

C. The building inspector may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved; provided, adequate information and detailed statements have been filed complying with all pertinent requirements of the code. The holder of such permit shall proceed at his/her own risk without assurance that the permit for the entire building or structure will be granted.

#### **SECTION 5-905: RETENTION OF PLANS**

One set of approved plans, specifications, and computations shall be retained by the Permits and Inspections Office for a period of not less than six months from date of completion of the work covered therein, and one set of approved plans and specifications shall be returned to the applicant, which set shall be kept at such building or work at all times during which the work authorized thereby is in progress. Plans, submitted for

checking, for which no permit is issued, and on which no action is taken by the applicant for 90 days, shall be returned to the last known address of the applicant. To renew action on said plans, a payment of a new plan-check shall be required.

#### **SECTION 5-906: VALIDITY**

A. The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the building code. No permit presuming to give authority to violate or cancel the provisions of the code shall be valid, except insofar as the work or use which it authorizes is lawful.

B. The issuance of a permit based upon plans and specifications shall not prevent the building inspector from thereafter requiring the correction of error in said plans and specifications or from preventing building operations being carried on hereunder when in violation of the code or of any other law of the City.

#### **SECTION 5-907: PERMIT EXPIRATION**

Every permit issued by the Permits and Inspections Office under the provisions of this code shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced in six months from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 120 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefore shall be one half the amount required for a new permit for such work; provided, no changes have been made or will be made in the original plans and specifications for such work; and provided further, that such suspension or abandonment has not exceeded one year.

#### **SECTION 5-908: PERMIT SUSPENSION OR REVOCATION**

The building inspector may, in writing, suspend or revoke a permit issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of the building code.

#### **SECTION 5-909: BUILDING PERMIT FEES**

A. A fee for each building permit shall be paid to the city treasurer. No permit shall be issued until the fee prescribed in this section shall have been paid; nor shall an amendment to a permit be approved until the additional fee, if any, due to an increase in the estimated cost of the building or structure shall have been paid. The term "estimated cost" as used in this section shall mean the reasonable value of all services, labor, materials, and use of scaffolding and other appliances or devices entered into or necessary to perform the work or to complete the building or structure so as to make ready for occupancy, landscaping, painting, decorating, and other work that is merely for embellishment or not necessary for the safe and lawful use of the building or structure and is not deemed a part of such estimated cost.

B. In case of disputes as to the estimated cost of the proposed building or struc-

ture, the applicant shall file with the Permits and Inspections Office complete specifications and copies of contracts required to complete all the work for the proposed building or structure certified, under oath, by the architect or owner and the contractors.

C. For (1) any building or structure, or (2) the enlargement, alteration, or repair to any building or structure, or (3) the installation, enlargement, alteration, or repair of any apparatus, appurtenance, or machinery, when no structural changes are made and the estimated cost is less than \$100.00, no fee shall be charged therefor.

D. Buildings or structures moved into or within the City's jurisdictional area shall comply with the provisions of the building code.

E. Except for fees specifically exempted, the fees required shall be set by ordinance of the City Council, on file at the office of the city clerk and available for public inspection during office hours.

## **Article 10 – Sexually Oriented Businesses**

(Adopted by Ord. No. 912, 8/7/07)

### **SECTION 5-1001: PURPOSE AND INTENT**

It is the purpose of this article to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material or sexual activities.

### **SECTION 5-1002: FINDINGS**

Based on convincing documented evidence, studies, findings and reports concerning the negative secondary effects of sexually oriented businesses regarding both commercial and residential areas and the nexus between sexually oriented businesses, obscene materials and sexual exhibits and alcohol consumption, and illegal drug distribution and use, the City Council finds:

A. Sexually oriented businesses have negative secondary effects on the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of property values, the downgrading of adjacent neighborhoods making adjacent neighborhoods significantly less attractive and less safe for raising children and denigrating both residential life and commercial activity for other types of businesses and sexually oriented businesses downgrade the quality of life and fitness of property for other uses in areas both immediate and adjacent to such

businesses.

B. The negative secondary effects of sexually oriented businesses are increased when they are located in close proximity to each other and when the service or consumption of alcohol is permitted at or near such locations.

C. Improper conduct involving sexual acts occurs at sexually oriented businesses which provide private or semi-private booths or viewing rooms for the viewing of films, videos or live performances.

D. The findings noted above raise substantial governmental concerns for the health, safety and welfare of the citizens of the city and it is appropriate for the purpose of promoting and protecting the health, safety and welfare of the citizens of the City, particularly the children of the community and those conducting general business that reasonable regulations be enacted so as to address the substantial governmental concerns to minimize and control the negative secondary effects of sexually oriented businesses and thereby promote and protect the health, safety and welfare of the citizens of the City, protect the citizens from increased crime, preserve the value of property, and preserve the quality of life and the quality and character of surrounding neighborhoods for residential and commercial purposes.

E. The enactment of reasonable regulations of sexually oriented businesses which involve locational criteria, licensing criteria, operational criteria, and the prohibition of alcohol and illegal substance use are appropriate to address the substantial governmental concerns and protect the health, safety and welfare of the citizens of the City.

F. A reasonable licensing procedure and zoning requirements are appropriate mechanisms to place the burden of reasonable regulations on the owners of sexually oriented businesses and such a licensing procedure will place an incentive on the owners to see that the sexually oriented business is operated in a manner which is consistent with the health, safety and welfare of patrons, employees and citizens of the City.

### **SECTION 5-1003: DEFINITIONS**

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Adult arcade”: Any place to which the public is permitted or invited wherein coin operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” and/or “specified anatomical areas”.

“Adult bookstore,” “adult video store” or “adult novelty store”: A commercial establishment which has a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for sale or rental, for any form of consideration, any one or more

of the following:

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, laser or compact discs, or other visual representations which are characterized by their emphasis upon the exhibition or display of “specified sexual activities” or “specified anatomical areas;” or
- B. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.
- C. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental or material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe “specified sexual activities” or “specified anatomical areas” or if the business advertises the sale or rental of any such material in a way that can be seen or heard from the outside of the location.

“Adult cabaret”: A nightclub, bar, restaurant, or similar commercial establishment which regularly features any of the following:

- A. Persons who appear in a state of nudity.
- B. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”
- C. Films, motion pictures, video cassettes or video reproductions, slides, laser or compact discs, or other visual representations which are characterized by their emphasis upon the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

“Adult motel”: A hotel, motel or similar commercial establishment which does any of the following:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, compact discs or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions.
- B. Offers a sleeping room for rent for a period of time that is less than ten hours.
- C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

“Adult motion picture theater”: A commercial establishment where, for any form of con-



sideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the or where the principal subject of depiction or description is “specified sexual activities” and/or “specified anatomical areas.”

“Adult theater”: A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

“Employee,” “employ” and “employment”: Shall pertain to or describe any person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

“Escort”: A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

“Escort agency”: A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

“Establishment”: Any of the following:

- A. The opening or commencement of any sexually oriented business as a new business.
- B. The conversion of an existing business to a sexually oriented business or from one type of sexually oriented business to another type or types of sexually oriented business.
- C. The addition of any sexually oriented business to any other existing sexually oriented business.
- D. The relocation of any sexually oriented business.

“Inspector” or “zoning administrator”: The zoning administrator for the City of Gretna.

“Licensee”: A person in whose name a license to operate a sexually oriented business has been issued, but also includes the individual listed as an applicant on the application for a license.

“Nude model studio”: A commercial establishment which regularly features a person who appears in a state of nudity and is provided to be observed, sketched, drawn, painted, sculpted, or photographed by other persons who pay money or any form of consideration. “Nude model studio” shall not include a proprietary school licensed by the State; or a college, junior college or university supported entirely or in part by public taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

“Nude,” “nudity” or “state of nudity”: The showing or depiction of the human, post-pubertal male or female genitals, pubic area or buttocks with less than a full opaque covering, the showing or depiction of covered male genitals in a discernibly turgid state, or the showing or depiction of the female breast with less than a full opaque covering of any portion thereof below the top of the areolae of the nipple. This definition shall include the entire portion of the human female breast below the top of the areolae of the nipple, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other clothing.

“Operate” or “cause to be operated”: To cause to function or to put or keep in a state of doing business. Operator means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation, the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether or not that person is an owner, part owner, or licensee of the business.

“Person”: An individual, proprietorship, partnership, limited liability company or partnership, corporation, association or other legal entity.

“Residential”: A single-family, two-family, or multiple-family use as defined in the ordinances of the City of Gretna.

“Semi-nude”: A state of dress in which clothing covers no more than the genitals, pubic region, and the female breast below the top of the areolae of the nipple, with other portions of the body covered by supporting straps, material or devices. This definition shall include the entire portion of the human female breast below the top of the areolae of the nipple, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other clothing.

“Sexual encounter center”: A business or commercial enterprise that offers for any form of consideration:

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex.
- B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

“Sexually oriented business”: An adult arcade, adult bookstore or adult novelty store or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, semi-nude model studio or sexual encounter center.

“Specified anatomical areas”: The human, post-pubertal male or female genitals, pubic area, or buttocks with less than a full opaque covering, the male genitals in a discernibly turgid state even if completely and opaquely covered, or the female breast with less than a full opaque covering of any portion thereof below the top of the areolae of the nipple.

“Specified sexual activities”:

- A. The fondling or other erotic touching of human genitals, pubic area, buttocks or female breasts whether clothed or unclothed; or
- B. Acts whether actual or simulated, of human sexual intercourse, oral copulation, masturbation, or sodomy; or
- C. Excretory functions as part of or in connection with any of the activities set forth in (A) and (B) above.

“Substantial enlargement”: The increase in floor area occupied by the business by more than 25 percent, as the floor area exists on the date this ordinance takes effect or on the date of the issuance of a sexually oriented business license.

“Transfer of ownership or control”:

- A. The sale, lease or sublease of the business; or
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

#### **SECTION 5-1004: CLASSIFICATION OF BUSINESSES**

Sexually oriented businesses are classified as follows:

- A. Adult arcade;
- B. Adult bookstore, adult video store or adult novelty store;
- C. Adult cabaret;
- D. Adult motel;
- E. Adult motion picture theater;
- F. Adult theater;
- G. Escort agency;
- H. Nude model studio;
- I. Sexual encounter center.

#### **SECTION 5-1005: LICENSE REQUIRED; APPLICATION FOR LICENSE**

A. It is unlawful to establish, operate, or cause to operate, a sexually oriented business without a valid license issued by the City for the particular type of classification of business.

B. An application for a license must be made to the zoning administrator on a form provided by the said administrator.

C. The applicant must meet all qualifications stated in this article before a license is issued and continuously thereafter during the license term. The application shall require and the applicant shall provide such information and documentation as is specified in this article.

D. If a person who wishes to operate a sexually oriented business is an individu-

al, he must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each officer, director, general partner, managing partner or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as applicant. Each applicant must meet the qualifications as stated in this article and each applicant shall be considered as a licensee if a license is granted.

E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is:
  - a. An individual, the individual shall state his or her legal name and any aliases and submit proof that he or she is 21 or more years of age;
  - b. A partnership or limited liability company, the partnership or limited liability company shall state its complete name, and the names of all partners or members, residence address and whether the partnership or company is general or limited, a copy of the partnership, LLC/LLP organizational agreement, if any, and verification of current state registration, if any;
  - c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the name, capacity and address of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business's name and submit any registration documents.
3. Whether the applicant has been convicted of a crime as specified in Subsection (A)(7)(a) of Section 5-1007, and, if so, the crime, date, place and jurisdiction.
4. Whether the applicant has had a previous license or holds a present license under this article or other similar sexually oriented business ordinances from another city or county and whether any license has been denied, suspended or revoked in this or any other jurisdiction, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner or member in a partnership or limited liability company or an officer, director, or principal stockholder of a corporation that is licensed under this article or in another jurisdiction or whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.

5. Whether the applicant holds any other licenses under this article or operates other similar sexually oriented businesses in another city or county and, if so, the names and locations of such other businesses.
6. The classification of license for which the applicant is filing.
7. The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number(s), if any.
8. The applicant's mailing address and residential address.
9. The applicant's driver's license number, social security number, and state or federal issued tax identification number.
10. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.

F. A person commits a misdemeanor if he or she operates a sexually oriented business without a valid license issued by the City for that particular classification of business.

G. The applicant must be qualified according to the provisions of this article and the premises must be inspected and found to be in compliance with the law and this article by the city zoning administrator and city law enforcement.

H. The fact that a person possesses other types of state or county licenses does not exempt him or her from the requirement of obtaining a sexually oriented business license.

#### **SECTION 5-1006: INVESTIGATION OF APPLICATION**

A. Upon receipt of an application for a sexually oriented business license, city law enforcement shall conduct an investigation of the applicant and application including a location inspection and shall issue an investigation report.

B. The zoning administrator or designee shall forward a copy of the application and investigation report to the chief law enforcement officer, and the zoning administrator shall inspect the location.

#### **SECTION 5-1007: LICENSE ISSUANCE AND DISPLAY**

A. The city zoning administrator shall approve the issuance of a license to an applicant within 30 days after receipt of an application unless he or she finds one or more of the following to be true:

1. An applicant is not then 21 or more years of age.
2. An applicant is currently required to register pursuant to the Nebraska Sex Offender Registration Act.
3. An applicant or an applicant's spouse is overdue in his or her payment to the city or county of fees, fines, or penalties assessed against him or her or imposed upon him or her in relation to a sexually oriented business.
4. An applicant has failed to provide information reasonably necessary for issuance of the license including all information requested on the application form or has falsely answered a question or request for information on the application form.
5. The premises to be used for the sexually oriented business is not in compliance with state or local building and zoning codes, rules and regulations.
6. The investigation, inspection and license fees required by this article have not been paid.
7. An applicant has been convicted of a crime
  - a. Involving:
    - i. Any of the following offenses as described in Nebraska State Statutes:
      - aa. Prostitution;
      - bb. Pandering;
      - cc. Keeping a place of prostitution;
      - dd. Debauching a minor;
      - ee. Obscenity;
      - ff. Contributing to the delinquency of a child;
      - gg. Child pornography;
      - hh. Possession, distribution or sale of child pornography;
    - ii. Any of the following offenses as described in Nebraska State Statutes:
      - aa. Incest;
      - bb. Public indecency;
      - cc. Allowing a child to participate in child pornography;
    - iii. Sexual assault or sexual assault of a child as described in Nebraska statutes;
    - iv. Solicitation of a child, or harboring a runaway child as described in Nebraska statutes; or
    - v. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;
  - b. For which:
    - i. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, or the date of release from probation or parole, whichever is the later date, if the conviction is a misdemeanor offense;
    - ii. Less than ten years have elapsed since the date of conviction or the date of release from confinement for the conviction, or the date of release from probation or parole, whichever is the later date, if the conviction is a felony offense; or
    - iii. Less than ten years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, or the date of release from probation or parole, whichever is the later date, if the convictions are of two or more misdemeanors of the offenses

listed Subsection (A)(7)(a) of Section 5-1007.

B. The fact that a conviction is being appealed has no effect on the disqualification of the applicant under Subsection (A) of this section.

C. An applicant who has been convicted of an offense listed in subsection (A)(7)(a) above may qualify for a sexually oriented business license only when the time period required by subsection (A)(7)(b) has elapsed and all fines reference the criminal offenses have been fully paid.

D. The zoning administrator, upon approving the issuance of a sexually oriented business license, shall cause to be sent to the applicant, by certified mail, return receipt requested, written notice of that action and that the applicant must pay the investigation/inspection and license fees at the office of the zoning administrator at the city administration building. The zoning administrator's approval of the issuance of a license does not authorize the applicant to operate a sexually oriented business until the applicant has paid all fees required by this article and has obtained possession of the license. The zoning administrator, upon denial of the issuance of sexually oriented business license, shall cause to be sent to the applicant, by certified mail, return receipt requested, written notice of that action and the applicant can appeal such decision to the City Council, in writing filed with the city clerk, within 30 days of the date of denial. City Council will hear the appeal within 30 days from the date the written appeal is received. After hearing, Council will affirm or reverse the decision of the zoning administrator within 30 days after conclusion of the hearing. The hearing will be informal and rules of evidence do not apply. The applicant has the right to be represented. In case of reversal, the license shall issue.

E. The license, if granted, must state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the classification for which the license is issued. The license must be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

F. A sexually oriented business license shall issue for only one classification and the applicant can operate a business for only one licensed location in the City.

G. City law enforcement, Fire Department, and the zoning administrator shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the zoning administrator. The certifications of city law enforcement and Fire Department shall be promptly presented to the zoning administrator.

#### **SECTION 5-1008: LICENSE FEE**

A. The annual license fee for a sexually oriented business shall be set by ordinance of the City Council, on file at the office of the city clerk and available for public inspection during office hours.

B. In addition to the annual license fee to be paid to the zoning administrator at license issue required by subsection (A) of this section, an applicant for an initial sexual-

ly oriented business license shall, at the time of making application, pay a nonrefundable investigation fee for the City to conduct an investigation of the application and for the City also to conduct inspections of the location to insure that the proposed sexually oriented business is in compliance with the locational and other restrictions set forth in Section 5-1014. Such investigation fee shall be set by ordinance of the City Council, on file at the office of the city clerk and available for public inspection during office hours.

### **SECTION 5-1009: INSPECTIONS**

A. An applicant, licensee, operator or employee shall permit representatives of city law enforcement, Fire Department, zoning administrator, and any other state, county or city agency in the performance of any function connected with the enforcement of this ordinance or other applicable laws, to inspect the premises of a sexually oriented business, for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

B. An applicant, licensee or operator of a sexually oriented business or his or her agent or employee commits a misdemeanor offense if he refuses to permit an inspection of the premises by a representative of an agency designated in Subsection (A) of this section at any time it is occupied or open for business.

### **SECTION 5-1010: LICENSE TERM AND RENEWAL**

A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in this article. Application for renewal should be made at least 45 days before the expiration date, and when made less than 45 days before the expiration date, the expiration of the license will not be affected.

B. A sexually oriented business license may be renewed only by making application as provided in Section 5-1005. Application for renewal should be made at least 45 days before the expiration date, and when made less than 45 days before the expiration date, the expiration of the license will not be affected by the pendency of the application.

### **SECTION 5-1011: LICENSE SUSPENSION**

A. The zoning administrator shall suspend a license for a period not to exceed 30 days if he or she determines that a licensee or an employee of a licensee:

1. Violated or is not in compliance with any section of these regulations.
2. Is required to register under the Nebraska Sex Offender Registration Act.
3. Engaged in or permitted or did not control excessive use of alcoholic beverages on the sexually oriented business premises.
4. Refused to allow an inspection of the sexually oriented business premises as authorized by this article.
5. Knowingly permitted gambling by any person on the sexually oriented business premises.

B. Appeal of the decision of the zoning administrator as to the existence of or non-compliance with the above matters shall be made to the City Council. Hearing will be informal and the rules of evidence shall not apply. The hearing will occur within 15



days from the filing of the appeal upon written notice mailed at least ten days prior to the hearing to the business address and applicant residence address as it appears on the application which the licensee is to amend if the residence address changes.

## **SECTION 5-1012: LICENSE REVOCATION**

A. The City Council shall revoke a license if a cause of suspension in Section 5-1011 occurs and the license has been suspended within the preceding 12 months.

B. The City Council shall revoke a license if the Council determines that:

1. A licensee gave false or misleading information in the material submitted during the application process;
2. A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
3. A licensee or an employee has knowingly allowed prostitution on the premises;
4. A licensee or an employee knowingly operates the sexually oriented business during a period of time when the licensee's license was suspended;
5. A licensee has been convicted of an offense listed in subsection (A)(7)(a) of Section 5-1007 for which the time period required in subsection (A)(7)(b) of Section 5-1007 has not elapsed.
6. On two or more occasions within a twenty-four month period, a person or persons committed an offense in or on the licensed premises of a crime listed in subsection (A)(7)(a) of Section 5-1007 for which a conviction has been obtained and the person or persons convicted were licensees or employees of the sexually oriented business at the time the offenses were committed; or
7. A licensee or an employee of the sexually oriented business has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the licensed premises. This subsection shall not apply to an adult motel unless the licensee or employee knowingly allowed such sexual acts to occur either in exchange for money or in a public place or within public view.

C. After revocation, the licensee shall not be issued a sexually oriented business license for two years from the date revocation became effective. If, subsequent to revocation, the City Council finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date revocation became effective and a corrective plan which addresses the violation and assures that the violation will not occur again is provided to Council. If the license was revoked under Subsection (B)(5) above, an applicant may not be granted another license until the appropriate number of years required under Subsection (A)(7)(b) of Section 5-1007 has elapsed.

D. The determination by the City Council as to the existence of or non-compliance with the above matters shall be made in an open City Council session after mailing notice of hearing time, place and date to the license holder or its representatives 15 days in advance of said hearing, stating that Council will consider revoking the license and the grounds therefore. At said hearing, the license holder or its representatives may present oral or written evidence in support of the continuance of its license and may confront and question any witnesses or evidence in opposition to the continuation of its license. Although rules of evidence do not apply, any decision will be based on credible evidence of violation of the requirements as stated herein.

### **SECTION 5-1013: TRANSFER OF LICENSE**

A licensee shall not transfer his license to another, nor shall a licensee operate sexually oriented business under the authority of a license at any place other than the location designated in the license.

### **SECTION 5-1014: LOCATION OF SEXUALLY ORIENTED BUSINESS**

A. No sexually oriented business shall be established, operated or caused to be operated, in any zoning district other than a GC-General Commercial zoning district as defined in the City of Gretna zoning ordinances.

B. No sexually oriented business shall be established, operated or caused to be operated, within 1,000 feet of:

1. A church or other building primarily used for religious services or associated church structure such as a parish or fellowship hall;
2. A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, home schools, elementary schools, middle schools, high schools, special education schools and community colleges. School includes the school grounds and playgrounds;
3. A property line of a lot devoted to a residential use, either single or multiple family;
4. A park;
5. A hospital;
6. A community recreation center;
7. A public library;
8. A facility for youth service such as youth center, boys or girls club, scout, 4-H or other youth program meeting building.

C. No sexually oriented business shall be established, operated, caused to be operated or substantially enlarged, within 1,000 feet of another sexually oriented business.

D. For the purposes of Section 5-1014(B), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Section 5-1014(B). The presence of any political subdivision boundary shall be irrelevant

for purposes of calculating and applying the distance requirements of this Section.

E. For purposes of Subsection (C) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to any intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

### **SECTION 5-1015: NONCONFORMING USES**

A. Any sexually oriented business lawfully operating on May 15, 2007, that is in violation of this article shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed three years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use upon application and issuance of a license.

B. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the establishment of a Section 5-1014(B) use, subsequent to the grant of the sexually oriented business license, within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired, has not been continuously in effect, or has been revoked.

### **SECTION 5-1016: FILMS OR VIDEOS**

A. A person who operates or causes to be operated a sexually oriented business, classified as an adult arcade, which exhibits on the premises in a viewing room of 150 square feet or less of floor space a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. It is the duty of the owner and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
2. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any reason from at least one of the manager's stations and all must be staffed when viewing access is made available so that all areas other than restrooms are supervised at all times viewing access is permitted. The supervision required in this subsection must be by direct line of sight from the manager's station.
3. It shall be the duty of the owners and operator, and it shall also be the duty

of any agents and employees present in the premises, to ensure that the view area specified in Subsection (A)(2) remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to this article.

4. No viewing room may be occupied by more than one person at any time.
5. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle as measured at the floor level.
6. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

B. A person having a duty under subsection (A) above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

#### **SECTION 5-1017: ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY OR SEMI-NUDITY**

A. No person shall appear in a sexually oriented business in a state of nudity or engage in or simulate specified sexual activities.

B. No person shall appear in a sexually oriented business in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six feet from any patron or customer and on a stage at least two feet from the door.

C. No employee shall, while semi-nude in a sexually oriented business, solicit any pay or gratuity from any patron or customer, and no patron or customer shall pay or give any gratuity to any employee while said employee is semi-nude in a sexually oriented business.

D. No employee shall, while semi-nude in a sexually oriented business, touch a patron or customer or the clothing of a patron or customer.

#### **SECTION 5-1018: ADDITIONAL REGULATIONS CONCERNING ALCOHOL**

No sexually oriented business shall sell or serve alcohol and no sexually oriented business shall permit the consumption of alcohol on the premises of the sexually oriented business.

#### **SECTION 5-1019: CHILDREN PROHIBITED IN A SEXUALLY ORIENTED BUSINESS**

No person under the age of 19 years shall be allowed on the premises of a sexually ori-

ented business and it is the licensee's affirmative duty to enforce this minor age restriction through supervision and verification by identification.

### **SECTION 5-1020: HOURS OF OPERATION**

No sexually oriented business may remain open at any time between the hours of 1:00 a.m. and 8:00 a.m. on weekdays and Saturdays and 1:00 a.m. and noon on Sundays.

### **SECTION 5-1021: DISPLAY OF SEXUALLY ORIENTED MATERIALS TO MINORS**

A. No licensee or employee of a licensee shall permit a person under the age of 19 years of age to be present on its business premises, which age limitation will be enforced by age verification by said business.

B. No sexually oriented business shall display posters, signs, depictions or other visual representations outside walls or on any inside or outside window which depict any of the following:

1. Human sexual intercourse, masturbation or sodomy;
2. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts;
3. Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areolae of the nipple;  
or
4. Human male genitals in a discernibly turgid state, whether covered or uncovered.

C. The windows and doors of a sexually oriented business will be tinted to the extent that there is no view of the interior from the exterior of the business.

D. "Display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

1. It is available to the general public for handling and inspection; or
2. The cover or outside packaging on the item is visible to members of the general public.

### **SECTION 5-1022: ENFORCEMENT AND PENALTIES**

Any person who violates any of the prohibitions or provisions of any article or section of this article shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular article or section for which the person stands convicted of violating, the penalty for such violation shall be a fine in any sum not exceeding \$500.00 or imprisonment for a term not to exceed three months or both said fine and imprisonment at the discretion of the sentencing court. A separate violation shall be deemed to have been committed each 24-hour period that a violation continues after conviction.

## **Article 11 – Miscellaneous Businesses**

### **SECTION 5-1101: SIDEWALK CAFES PERMISSIBLE**

The City Council may permit (A) 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 (B) 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. (Neb. Rev. Stat. §19-4301)

### **SECTION 5-1102: PAWNBROKERS; DEFINITION, PROHIBITION**

Any person engaged in the business of lending money upon chattel property for security and requiring possession of the property so mortgaged on condition of returning the same upon payment of a stipulated amount of money, or purchasing property on condition of selling it back at a stipulated price, is declared to be a pawnbroker. The business of pawnbrokering is prohibited within the City. (Ord. No. 471, 1/4/94)

### **SECTION 5-1103: GARBAGE SERVICES; LICENSE, REGULATION**

A. It shall be unlawful for any person to own, operate, or participate in the removal of garbage for a fee until and unless the person has contracted with or has received a license from the City Council. Prior to consideration by the council, the applicant shall be required to submit all required information, documents, and fees, including but not limited to an annual vehicle inspection report or a record of annual vehicle inspection in accordance with 49 Code of Federal Regulations Part 396 for each commercial motor vehicle to be operated in the City in conjunction with the applicant's garbage services, each such annual vehicle inspection to be performed by a qualified inspector in accordance with 49 Code of Federal Regulations §396.19, and that the applicant owns or has access to a legal dump site for the deposit of the waste materials collected.

B. Application for a license may be made at the office of the city clerk upon a form supplied by the City. The application shall require all information and documents which the City deems necessary, including the proposed rates to be charged, to determine whether or not to grant a license. The applicant shall pay to the city clerk the occupation tax for garbage hauling at the time of filing the application. Should no permit be issued on such application, the tax shall be refunded to the applicant.

C. If the City Council decides to grant the license, the city clerk will issue to the applicant the license, which will entitle him/her to collect, remove, and transport any garbage for a fee in, over, or upon any street or public way in the City until the following December 31, when a new application shall be made and a new permit issued. Any license so issued shall be subject to revocation by the City Council after proper notice and hearing requested by the licensee. The said licensee shall be liable for all bonds, fees, and other rules and regulations set by resolution or ordinance of the council.

D. In order to safeguard and protect the public health, welfare and safety, lessen commercial motor vehicle congestion on city streets, and minimize the adverse effects on the streets from garbage haulers as set forth in the City Garbage Truck Report dated

January 16, 2014, the number of garbage service licenses issued each year by the City shall be limited to six. In the event the number of applicants for such licenses in any given year exceeds six, the license holders who had been issued such licenses in the prior calendar year shall be given priority. Such licenses shall not be assignable or transferable in any manner.

E. All vehicles used for licensed garbage collection within the City shall be equipped with watertight bodies and pneumatic tires, shall be as slightly as possible and will be maintained in a well-repaired condition, shall be operated in a sanitary condition, and shall be cleaned and disinfected as often as necessary to prevent any offensive odors and to avoid any menace to the public health, welfare and safety. Such vehicles shall not be so overloaded that garbage spills therefrom. Any garbage spilled upon private properties, streets or alleys during the process of garbage collection shall be immediately cleaned up. Such vehicles shall be subject to inspection by city officials without notice. No such vehicles containing collected garbage shall be stored, kept or parked on any property within the City for a period longer than 24 hours. In the event of any mechanical failure which requires that such a vehicle containing collected garbage be stored, kept or parked on any property within the City longer than 24 hours, the license holder shall immediately notify the City and such vehicle shall be required to be repaired and removed from the City within 24 hours of such mechanical failure.

(Neb. Rev. Stat. §19-2105) (Am. by Ord. Nos. 1077, 12/1/15; 1079, 3/15/16)

#### **SECTION 5-1104: BUSINESS OR COMMERCIAL ESTABLISHMENTS; PUBLIC NUDITY**

It is hereby declared a nuisance for any business or commercial establishment to allow any live person to appear, or have reasonable cause to believe that any live person shall appear in any business or commercial establishment in a state of nudity, to provide entertainment, to provide service, to act as host or hostess, manager or owner, or to serve as an employee in any capacity. For purposes of this section, the term "nudity" shall mean the showing of human male or female genitals, pubic area or buttocks or human female breasts, including the nipples or any portion below the nipples, with less than a full opaque covering. (Ord. No. 618, 10/7/97)

### **Article 12 – Penal Provision**

#### **SECTION 5-1201: 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.