

BUSINESS REGULATIONS

Article 1. Alcoholic Beverages

§10-101 ALCOHOLIC BEVERAGES; DEFINITIONS. All words and phrases herein used a to have the definitions applied thereto, as defined in the Liquor Control Act of the State of Nebraska. (Ref. 53-103 RS Neb.; 5-6-1 Code 1964)

§10-102 ALCOHOLIC BEVERAGES; LICENSE REQUIRED. It shall be unlawful for any person to manufacture for sale, sell, keep for sale, or to barter any alcoholic liquors within the Municipality unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (Ref. 53-102 RS Neb.; 5-6-2 Code 1964)

§10-103 ALCOHOLIC BEVERAGES; LOCATION.

1. Except as otherwise provided in subsection (2) of this section, it shall be unlawful for any person or persons to own, maintain, manage, or hold open to the public any establishment for the purpose of selling at retail any alcoholic liquor within one hundred and fifty (150') feet of any church, school, hospital, or home for aged or indigent persons or veterans, their wives or children; provided, this prohibition shall not apply to any location within such distance when the said establishment has been licensed by the Nebraska Liquor Control Commission at least two (2) years, and to hotels offering restaurant service, regularly organized clubs, or to restaurants where the selling of alcoholic liquor is not the principal business carried on, if the said hotel, club, or restaurant were licensed and in operation prior to May 24, 1935. No alcoholic liquor, other than beer, shall be sold for consumption on the premise within three hundred (300') feet from the campus of any college within the Municipality.

2. If the proposed location for sale at retail of any alcoholic liquor is within one hundred fifty feet of any church, the Governing Body may approve of said proposed location after it holds a hearing as prescribed by section 10-109.
(Ref. 53-177 RS Neb.; 5-6-2 Code 1964, Amended by ord 2014-11, 05-06-2014)

§10-104 ALCOHOLIC BEVERAGES; LOCATION; FIRE LIMITS; EXCEPTION.
(Repealed by Ord. No. 1089, 6/7/77)

§10-105 ALCOHOLIC BEVERAGES; RETAIL LICENSES; LIMITATION OF NUMBER. The number of licenses to sell alcoholic liquors at retail within the corporate limits may be limited from time to time by resolution as the public health, morals and welfare shall require. (Ref. 5-6-4 Code 1964)

§10-106 ALCOHOLIC BEVERAGES; DWELLINGS. Except in the case of hotels and

clubs no alcoholic liquor shall be sold at retail upon any premise which has any access which leads from such premise to any other portion of the same building used for dwelling or lodging purposes, and which is permitted to be used by the public. Nothing herein shall prevent any connection with such premise, and such other portion of the building which is used only by the licensee, his family, or personal guests. (Ref. 53-178 RS Neb.; 5-6-13 Code 1964)

§10-107 ALCOHOLIC BEVERAGES; LICENSE DISPLAYED. Every licensee under the Nebraska Liquor Control Act shall cause his license to be framed and hung in plain public view in a conspicuous place on the licensed premise. (Ref. 53-148 RS Neb.; 5-6-9 Code 1964)

§10-108 ALCOHOLIC BEVERAGES; LICENSEE REQUIREMENTS. It shall be unlawful for any person or persons to own an establishment that sells at retail any alcoholic beverages unless said person is a resident of the county in which the premise is located; a person of good character and reputation; a citizen of the United States; a person who has never been convicted of a felony or any Class I misdemeanor pursuant to Chapter 28, Article 3, 4, 7, 8, 10, 11, or 12 Reissue Revised Statutes of Nebraska, 1943, or any similar offense under a prior criminal statute or in another state; a person who has never had a liquor license revoked for cause; a person whose premises, for which a license is sought, meets standards for fire safety as established by the State Fire Marshal; or a person who has not acquired a beneficial interest in more than two (2) alcoholic beverage retail establishments since March 4, 1963; provided, the beneficial interest requirement in this section shall not apply to a person applying for an additional license for use in connection with the operation of a hotel containing at least twenty-five (25) sleeping rooms, or where the request is limited to on premises sale of beer only in a restaurant. (Ref. 53-124.03, 53-125 RS Neb.) (Amended by Ord. Nos. 38-80, 11/4/80; 37-83, 12/6/83)

§10-109 ALCOHOLIC BEVERAGES; LIQUOR APPLICATION; MUNICIPAL EXAMINATION. (1) Any person or persons desiring to obtain a license to sell alcoholic liquor at retail shall file an application with the Liquor Control Commission. Upon receipt from the Commission of the notice and copy of the application as provided in section 53-131 RS Neb., the Governing Body shall fix a time and place at which a hearing will be held, and at which time the Governing Body shall receive evidence, under oath, either orally, or in writing, from the applicant and any other person concerning the propriety of the issuance of such license. Such hearing shall be held not more than forty-five (45) days after the receipt of notice from the Commission. The Governing Body may examine, or cause to be examined, under oath, any applicant; examine, or cause to be examined, the books and records of any such applicant; to hear testimony, and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the Governing Body may authorize its agent, the Municipal Clerk or the Municipal Attorney, to act on its behalf.

(2) Notice of the time and place of such hearing shall be published in a legal newspaper in, or of general circulation in, the Municipality one (1) time not less than seven (7), nor more than fourteen (14), days before the time of the hearing. Such

notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing.

(3) The Governing Body shall, after the hearing provided in subsection (1), approve or deny the application within forty-five (45) days of receipt of such application from the Commission, and shall cause to be spread at large in the minute record of its proceedings a resolution approving or denying such application. The Municipal Clerk shall thereupon mail or deliver to the Commission a copy of the resolution within ten (10) days of the decision to approve or deny the application.

(4) Any resolution denying an application rendered by the Governing Body shall be in writing or stated in the record and shall be accompanied by findings. The findings shall consist of concise statements of the conclusions upon each contested issue. The applicant shall be notified of the decision in person or by mail. (Ref. 53-131, 53-132, 53-134, RS, Neb.) (Amended by Ord. Nos. 37-83, 12/6/83; 26-84, 9/14/84; 24-88, 11/1/88; 5-90, 1/16/90, 8-92, 3/3/92)

§10-109.01ALCOHOLIC BEVERAGES; CATERING LICENSES.

(A) The holder of a license to sell alcoholic liquor at retail issued under Neb. RS53-14(5) or a craft brewery license may obtain an annual catering license by filing an application and license fee with the Nebraska Liquor Control Commission.

(B) Upon receipt from the Commission of the notice and a copy of the application as provided in Neb. RS 53-124.12, the Governing Body shall process the application in the same manner as provided in Section 10-109 (Alcoholic Beverages; Licenses; Municipal Powers and Duties).

(C) The Governing Body, with respect to catering licensees within its corporate limits, may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the District Court.

(D) The Governing Body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the Governing body. The tax may not exceed double the license fee for a catering license. (Neb. RS 53-124.12) (Neb. RS 53-124.12(6))(Ord. 37-00, 10-3-2000, Amended by Ord 16-05, 3-15-2005)

§10-110 ALCOHOLIC BEVERAGES; LICENSE RENEWAL; MUNICIPAL POWERS AND DUTIES.

(A) A retail license issued by the Nebraska Liquor Control Commission and outstanding may be automatically renewed by the Commission in the absence of a written request by the Governing Body to require the licensee to submit an application for renewal. Any licensed retail premises located in an area which is annexed to the municipality shall file a formal application for a license, and while such application is pending, the licensee may continue all license privileges until the original license expires or is canceled or revoked. If such license expires within 60 days following the annexation date of such area, the license may be renewed by order of the commission

for not more than one year. (Neb. RS 53-135).

(B) The municipal Clerk shall cause to be published in a legal newspaper in or of general circulation in the municipality, one time between January 10 and January 30 of each year, individual notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the municipality, except that notice of the right of automatic renewal of Class C licenses shall be published between the dates of July 10 and July 30 of each year. If written protests to the issuance of automatic renewal of a license are filed in the office of the Municipal Clerk by three or more residents of the municipality on or before February 10, or August 10 for Class C licenses, the Governing Body shall hold a hearing to determine whether continuation of the license should be allowed. Upon the conclusion of any hearing required by this section, the Governing Body may request a licensee to submit an application as provided in Neb. RS 53-135. (Neb. RS 53-135.01)(Ref. 53-135, 53-135.01 RS Neb.) (Ord. No. 1192, 9/18/79) (Amended by Ord. No. 37-83, 12/6/83, Amended by Ord 16-05, 3-15-2005)

§10-111 ALCOHOLIC BEVERAGES; LICENSES; MUNICIPAL POWERS AND DUTIES.

- (A) The Governing Body is authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail or craft brewery licensees carried on within the corporate limits of the municipality. (Neb. RS 53-134.03).
- (B) During the period of 45 days after the date of receiving from the Nebraska Liquor Control Commission notice and a copy of an application for a new license to sell alcoholic liquor at retail or a craft brewery license, the Governing Body may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant. (Neb. RS 53-131).
- (C) The Governing Body, with respect to licenses within the corporate limits of the municipality, has the following powers, functions, and duties with respect to retail and craft brewery licenses:
 - (1) To cancel or revoke for cause retail or craft brewery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;
 - (2) To enter or to authorize any law

enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation adopted by the Governing Body 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 and craft brewery license fees as provided in Neb. RS 53-124 and pay the same, after the license has been delivered to the applicant, to the Municipal Treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee or craft brewery licensee upon whom notice of cancellation or revocation has been served as provided in the Act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the Governing body 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 10-128 (Citizen Complaints), it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the Commission within 30 days

after the date of the order by filing a notice of appeal with the Commission. The Commission shall handle the appeal in the manner provided for hearing on an application in Neb. RS 53-133;

(7) Upon receipt from the Commission of the notice and copy of application as provided in neb. RS 53-131, to fix a time and place for a hearing at which the Governing Body 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 municipality, one time not less than 7 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 Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing. The hearing shall be held not more than 45 days after the date of receipt of the notice from the Commission, and after such hearing the Governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The Municipal Clerk shall mail to the Commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the Commission. If the Commission refuses to issue such a license, the cost of publication of notice shall be paid by the Commission from the security for costs. (Neb. RS 53-134).

(D)

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

(a) The license fee if by the terms of

- Neb. RS 53-124(5) the fee is payable to the Municipal Treasurer;
- (b) Any fee for publication of notice of hearing before the Governing Body upon the application for the license;
- (c) The fee for publication of notice of renewal, if applicable, as provided in Neb. RS 53-135.01; and
- (d) Occupation taxes, if any, imposed by

the municipality.

(2) Notwithstanding any ordinance or charter power to the contrary, the municipality 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 municipality 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. Rs 53-132, Neb. RS 53-132(4), Ref. 53-134 RS Neb.: 5-6-20 code 1964)(Amended by Ord # 37-80, 11-4-80; 37-83, 12-6-83, Amended by Ord 35-00, 10-3-2000, Amended by Ord 16-05, 3-15-2005)

§10-112 ALCOHOLIC BEVERAGES; OWNER OF PREMISES. The owner of any premise used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall knowingly permit the licensee to use the said licensed premise in violation of any Municipal Code section or Nebraska Statute. (Ref. 53-1, 101 RS Neb., 5-6-14 Code 1964)

§10-113 ALCOHOLIC BEVERAGES; EMPLOYER. The employer of any officer, director, manager, or employees working in a retail liquor establishment shall be held to be liable and guilty of any act of omission or violation of any law or ordinance, if such act is committed or omission made with the authorization, knowledge or approval of the employer or licensee, and each such act or omission shall be deemed and held to be the act of the employer, and will be punishable in the same manner as if the said act or omission had been committed by him personally. (Ref. 53-1, 102 RS Neb.)

§10-114 ALCOHOLIC BEVERAGES; CLEAR VIEW. It shall be unlawful to use any screen, blind, curtain, partition, article, or other device in the windows or upon the doors of any retail liquor establishment, other than restaurants, hotels, and clubs, which will have the effect of preventing a clear view into the interior of such licensed premise from the street, road, or sidewalk at all times. All licensed premises shall be continuously

lighted during business hours by natural or artificial white lights to insure the clear visibility into said establishment. Any licensee who willfully violates the provisions of this section shall be subject to a revocation of his license by the Municipality as provided herein. (Ref. 53-167 RS Neb.)

§10-115 ALCOHOLIC BEVERAGES; LICENSED PREMISES; PUBLIC FRONT ENTRANCES TO STREET. No person holding a license for the sale at retail of alcoholic liquors, including beer, shall sell within this City any such liquors, or conduct any of the business for which such license is required in any room or premises not provided with a public entrance at the front thereof, opening upon a public street. No person holding such license shall permit the use of any entrance other than such front entrance for any purposes other than the use thereof by the licensee, his family or employees, or for ingress or egress by other persons for the purpose of lawful labor or business other than the purchase at retail or the consumption of alcoholic liquors. (Ref. 5-6-5 Code 1964)

§10-116 ALCOHOLIC BEVERAGES; CREDIT SALES. No person shall sell or furnish alcoholic liquor at retail to any person or persons for credit of any kind, barter, or services rendered; provided, nothing herein contained shall be construed to prevent any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members, or guests of members, and charged to the accounts of the said members or guests in accordance with the bylaws of any such club; and provided further, nothing herein shall be construed to prevent any hotel or restaurant holding a retail alcoholic beverage license from permitting checks or statements for liquor to be signed by regular guests residing in the said hotel, and charged to the accounts of such guests. (Ref. 53-183 RS Neb.) (Amended by Ord. No. 1140, 9/19/78)

§10-117 ALCOHOLIC BEVERAGES; SPIKING BEER. It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to serve or offer for sale any beer to which there has been added any alcohol, or permit any person or persons to add alcohol to any beer on the licensed premise of such licensee. (Ref. 53-174 RS Neb.)

§10-118 ALCOHOLIC BEVERAGES; ORIGINAL PACKAGE. It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to have in their possession for sale at retail any alcoholic liquor contained in casks, or other containers except in the original package. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale. (Ref. 53-184 RS Neb.) (Amended by Ord. No. 7-92, 3/3/92)

§10-119 ALCOHOLIC BEVERAGES; HOURS OF SALE. It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the Municipality except during the hours provided herein:

HOURS OF SALE

Alcoholic Liquors (except beer and wine)

Secular Days

Off Sale.....6:00 A.M. to 1:00 A.M.

On Sale.....6:00 A.M. to 1:00 A.M.

Sundays

Off Sale..... 12:00 noon to 1:00

A.M.

On Sale.....12:00 noon to 1:00

A.M.

Beer and Wine

Secular Days

Off Sale.....6:00 A.M. to 1:00 A.M.

On Sale.....6:00 A.M. to 1:00 A.M.

Sundays

Off Sale.....6:00 A.M. to 1:00

A.M.

On Sale..... 6:00 A.M. to 1:00

A.M.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. For the purposes of this section, "on sale" shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment; "off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

Nothing in this section shall be construed to prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section. (Ref. 53-179 RS Neb.) (5-6-6 Code 1964) (Ord. No. 1044, 3/2/76) (Amended by Ord. Nos. 1157, 2/20/79; 1193, 9/18/79; 36-81, 10/6/81; 36-83, 12/6/83; 1-85, 1/15/85; 35-89, 10/3/89; 20-90, 7/3/90; 18[C-93, 6/1/93 Amended by Ord. No. 1-98, 1/6/98 , Amended by Ord. No. 17-00, 3-21-2000)

§10-120 ALCOHOLIC BEVERAGES; SANITARY CONDITIONS. It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons and said licensed premise shall be subject to any health inspections the Governing Body or the Municipal Police may make, or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for, or renewal of, a liquor license. (Ref. 5-6-2 Code 1964)

§10-121 ALCOHOLIC BEVERAGES: HIRING MINORS. It shall be unlawful for any person to hire a minor regardless of sex under the age of nineteen (19) years to serve or dispense alcoholic liquors, including beer, to said licensee's customers.

§10-122 ALCOHOLIC BEVERAGES; 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. RS 53-186(2), it is unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property.

(Neb. RS 53-186(1))

(B) It is unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, café, 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, café, 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 division does not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages. (Neb. RS 53-186.01) (Org. Repealed by Ord. No. 26-93, 8/3/93, Ord. 36-00, 10-3-2000)

§10-123 ALCOHOLIC BEVERAGES; ACQUISITION OF ALCOHOLIC BEVERAGES.

It shall be unlawful for any person to purchase, receive, acquire, accept or possess any alcoholic liquor acquired from any other person other than one duly licensed to handle alcoholic liquor under the Nebraska Liquor Control Act; provided, nothing in this section shall prevent (1) the possession of alcoholic liquor for the personal use of the possessor and his or her family and guests, as long as the quantity of alcoholic liquor transported, imported, brought, or shipped into the State does not exceed nine liters in any one calendar month; (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 hospitable or other institution, or any drug store employing a licensed pharmacist from possession or using alcoholic liquor in compounding of prescriptions of licensed physicians; (4) the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church; (5) persons who are sixteen 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 sixteen years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment; (7) persons who are sixteen 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 nineteen years old or older from serving or selling alcoholic liquor in the course of their employment. (Ref. 53-10A2, 53-164.01, 53-175 RS Neb.; 5-6-13 Code 1964m /Ref. 53-168.06, 53-175, 53-194.03 RS Neb) (Amended by Ord. No. 36-80, 11/4/80; 20-85,

10/15/85 15-96, 3/5/96)

§10-124 ALCOHOLIC BEVERAGES; ENTERTAINMENT. It shall be unlawful for any licensee under the Nebraska Liquor Control Act with a place of business within the City, to permit, on premises where alcoholic liquors are consumed thereon, entertainments other than music from musical instruments or entertainment from radios. (Ref. 5-6-12 Code 1964)

§10-125 ALCOHOLIC BEVERAGES; FLOOR SHOWS. It shall be unlawful for any licensee under the Nebraska Liquor Control Act or under this Article, whose licensed premises are located within the corporate limits of the City to permit any floor show or exhibition of any kind or description on or about said premises. The word premises, as used herein, shall include the entire property used by the licensee in connection with the conduct of any business operated by said licensee or other person in connection with said licensee and shall not be construed to apply only to a separate room in which said liquors are sold or dispensed. (Ref. 5-6-18 Code 1964)

§10-126 ALCOHOLIC BEVERAGES; REMOVAL OF INTOXICATED PERSONS FROM PUBLIC OR QUASI-PUBLIC PROPERTY. Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others, or who is otherwise incapacitated, from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take such intoxicated person to his or her home or to place such person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctor which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstances longer than twenty-four (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.

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.

For purposes of this section, public property shall mean any public right-of-way, street, highway, alley, park, or other state, county, or Municipally-owned property.

For the purposes of this section, quasi-public property shall mean and include private or publicly-owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress. (Ref. 53-1,121 RS Neb.) (Ord. No. 1194, 9/18/79) (Amended by Ord. No. 39-81, 10/20/81)

§10-127 ALCOHOLIC BEVERAGES; LICENSED PREMISES; INSPECTION.

The Governing Body shall cause frequent inspection to be made on the premises of all retail licensees. If it is found that any such licensee is violating any provision of this article, the Nebraska Liquor Control Act, or the rules and regulations of the Nebraska Liquor Control Commission or is failing to observe in good faith the purposes of this article or the act, the license may be suspended, canceled, or revoked after the licensee is given an opportunity to be heard in his or her defense. (Neb. RS 53-116.01).(Ref. 53-146 RS Neb.) (Ord. No. 34-80, 11/4/80, Amended by Ord 16-05, 3-15-2005)

§10-128 ALCOHOLIC BEVERAGES; CITIZEN COMPLAINTS.

Any five residents of the municipality shall have the right to file a complaint with the Governing Body stating that any retail licensee subject to the jurisdiction of the Governing Body has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant to the act. Such complaint shall be in writing in the form prescribed by the Governing Body and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule, or regulation believe to have been violated and the facts in detail upon which belief is based. If the Governing Body is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for such belief, it shall set the matter for hearing within 10 days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint. The complaint shall in all cases be disposed of by the Governing Body within 30 days from the date the complaint was filed by resolution thereof, which resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided in Neb. RS 53-1,115. (Neb. RS 53-116.01).(Ref. 53-146 RS Neb.) (Ord. No. 34-80, 11/4/80, Amended by Ord 16-05, 3-15-2005)

§10-129 LIQUOR APPLICATIONS; RETAIL LICENSING STANDARDS. The City Council adopts the following licensing standards and criteria for consideration by the Liquor Control Commission of any applicant for a retail alcoholic liquor license, for the upgrading of a license to sell alcoholic liquor, or for the expansion or change in location of the premises:

1. The adequacy of existing law enforcement resources and services in the area.
2. Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, potential traffic and parking problems, and the proximity and availability of on-street and off-street parking.
3. Zoning restrictions.
4. Sanitation or sanitary conditions on or about the proposed licensed premises.
5. The existing population, and projected growth, both City-wide and within the area to be served.

6. The existence or absence of other retail licenses or craft brewery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources.
7. The nature and needs of the neighborhood or community where the proposed premises are located as well as its projected growth.
8. Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.
9. Whether the applicant can insure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with Neb. Rev. Stat. §53-102 of the Nebraska Liquor Control Act.
10. Whether the applicant has taken every precaution to protect against the possibility of shoplifting of alcoholic beverages, which must be displayed, kept, and sold from an area which is secured to the greatest extent possible.
11. Whether the applicant is fit, willing, and able to properly provide the service proposed in conformance with all provisions, requirements, needs and regulations provided for.
12. Whether the applicant has demonstrated that the type of management and control exercised over the license premises will be sufficient to ensure that the licensee can conform to all the provisions, requirements, rules and regulations provided for in the Nebraska Liquor Control Act.
13. The background information of the applicants established by information contained in the public records of the Nebraska Liquor Control Commission.
14. Past compliance with state laws and liquor regulations and municipal ordinances and regulations.
15. If the application is for an on-sale license, whether it is adjunct to a legitimate food service operation as evidenced by percent of gross income allocated to food and liquor, and the type and extent of kitchen facilities.
16. Whether the application will provide an improvement to the neighborhood, a betterment to the Municipality, or a true increase in service to the public at large.
17. Proximity of and impact on schools, hospitals, libraries and public institutions.
18. Whether the type of entertainment to be offered, if any, will be appropriate and nondisruptive to the neighborhood where the premises are located and to the community at large.
19. Whether the application is for a business, and the sole purpose for which is the sale of dispensing of liquor, or when the sale or dispensing of liquor is a substantial integral part of the business, and not just incidental thereto.
20. Applications for Class "B," "C," and "D" licenses (as defined by section 53-124, R.S.S.) must be for premises which are separate and distinct from any other business activity. Premises shall be deemed separate and distinct only when located in a building which is not adjacent to any other building, or when located within the same building, they shall be so separate by walls (floor to ceiling), that access cannot be had directly from the area of alcoholic liquor sales to any other business activity by means of doors or other openings; provided, nothing herein

shall prevent the construction or maintenance of doors that are used by employees; further, any nonconforming premises in existence on the effective date of this ordinance may be continued for the life of the license. Such nonconforming premises may not be enlarged, extended, or restored after damage during interim. For the purposes of this section, other business activity shall mean the sale or display of any food, produce, mercantile product, item or service other than keeping or selling of alcoholic liquors at retail for consumption off the premises and the sale or display of ice, drink mix, tobacco, cups, or carbonated beverages.

21. Whether or not applicant has ever forfeited bond to appear in court to answer charges of having committed a felony, or charges of having violated any law or ordinance enacted in the interest of good morals and decency, or has been convicted of violating for forfeiting bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquors.
22. Other information and data that may reasonably be considered pertinent to the issuance of the license.

The preceding standards are not necessarily of equal value that can be computed in a mathematical formula. Rather, they are standards which can be weighed and cumulated positively and negatively. The burden of proof and persuasion shall be on the party filing the application. When applicable, the term "applicants" as used herein is synonymous with "licensee."(Ref. 53-134 RS Neb.) (Ord. No. 6-86, 5/20/86, Amended by Ord 26-07, 8-21-2007)

§10-130 ALCOHOLIC BEVERAGES; APPROVAL OF SPECIAL DESIGNATED PERMITS. As authorized by section 53-124.11 of the Nebraska Revised Statutes, the City Clerk-Treasurer or Deputy Clerk-Treasurer are hereby authorized and designated as the agents of the City of Seward, Nebraska to approve or deny Special Designated Liquor Permits.

In determining whether an application shall be approved or denied for any City of Seward liquor license holders with all occupation taxes paid in full, or for any non-resident liquor license holder that has previously been given approval for one (1) special designated liquor permit by the Mayor and Council the following criteria are hereby established:

- a. That the applicant has not had two liquor license violations within the past two years from the Nebraska Liquor Control Commission.
- b. That the application is for a location that has previously been approved by the Mayor and Council;
- c. That no citizen's protest has been filed against said application;
- d. That the application is for an event held on any day of the week except Sunday; in which case the regulations regarding Sunday liquor

permits shall be followed. However, special designated permits may be approved for those days set forth in section 10-119 wherein the sale of alcoholic beverages on Sunday has been authorized.

e.

That if said application does not strictly comply with the criteria set forth above, such application may be referred to the Mayor and City Council for determination; further, that upon denial of any application by the City Clerk-Treasurer or Deputy Clerk-Treasurer, the applicant may further request that the application be submitted to the Mayor and Council.

.(Ord. No. 35-95, 9/5/95, Amended by Ord 35-04, 11-16-2004, Amended by Ord 11-11, 5-17-2011, Amended by Ord 2-12, 01-03-2012)

§10-201

Business Regulations

§10-204

Article 2. Itinerant Sales

§10-201 ITINERANT SALES; REGULATIONS. To prevent the sale of fraudulent, dangerous, and unhealthy goods and services, and to protect the public by maintaining records of the products sold and the persons and companies responsible for such sales, all itinerant sales personnel shall, before doing business within the Municipality, make application for, and be issued a permit. Application for said permit shall be made to the Police Department and shall contain the necessary information required thereby and identification and documents required for the protection of the residents of the Municipality. Upon approval by the Police Department, the Chief of Police shall then have authority to issue a sales permit to said approved applicant. Each person granted a permit shall pay a fee of ten (\$10.00) dollars to the City, and upon payment the Chief of Police may issue a sales permit to such approved applicant. Such permit shall be

valid for a period of seven (7) days from and after date of issuance. The date of its expiration shall be clearly marked on the permit. A sales permit shall be required for each person desiring to do business within the Municipality. Any person or persons granted such permit shall be subject to any occupation taxes and other rules and regulations which the Governing Body deems appropriate for the purposes stated herein. Any permit so granted shall be subject to revocation for good and sufficient cause by the Chief of Police. (Ref. 16-205, 16-246 RS Neb.; 9-11-1 Code 1964; 10-201 Code 1976) (Amended by Ord. Nos. 1095, 9/7/77, 39-95, 10/3/95)

§10-202 ITINERANT SALES; HOURS OF SOLICITATION. It shall be unlawful for any solicitor, salesman, or peddler to solicit any individual between the hours of six (6:00) o'clock P.M., and eight (8:00) o'clock A.M., unless they have a previous appointment with the resident, or residents, of the premise solicited. It shall be unlawful at any hour for a solicitor, salesman, or peddler to solicit without a proper permit on his person at all times. (Ref. 9-11-3 Code 1964)

§10-203 ITINERANT SALES; REGULATION, EXCEPTIONS. The provisions of this Article shall not extend to individuals calling on retail merchants in the corporate limits of the City for the purpose of taking orders or selling of merchandise for resale by such merchants. (Ref. 9-11-2 Code 1964)

§10-204 ITINERANT SALES; DEFINITION. A transient merchant, itinerant merchant, or itinerant vendor is defined as any person, firm, or corporation, whether as owner, agent, consignee, or employee, and whether a resident of the Municipality or not, who engages temporarily within the Municipality in the business of selling and delivering goods, wares, or merchandise, or taking orders for goods or merchandise to or at homes, apartments, or other residential premises in the Municipality.

§10-301

BUSINESS REGULATIONS

§10-304

Article 3. Bingo

§10-301 BINGO; REGULATION. Games of bingo shall be conducted within the Municipality in accordance with all laws of the Municipality 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 Governing Body before commencing operation of said game. Application shall be made to the Municipal Clerk for such permit. Said application form shall contain such information and documents or copies thereof as the Governing Body deems necessary to determine whether to grant or reject the application. Upon the determination that granting the application would be proper, the Governing Body shall immediately direct the Municipal Clerk to issue the said license to the applicant upon the payment of an annual permit fee of ten (\$10.00) dollars. 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 Governing Body may designate. All permits so issued will automatically expire on September thirtieth (30th), following its issuance or renewal. The fee for each renewal unless otherwise prescribed shall be in the sum of ten (\$10.00) dollars. 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. (Ref. 9-166 RS Neb.) (Amended by Ord. Nos. 1141, 9/19/78; 27-84, 9/4/84)

§10-302 BINGO; TAX. A tax of four (4%) per cent of the gross receipts of each licensed association deriving revenue from the game of bingo is hereby imposed and levied against each such association and payable on or before the thirtieth (30th) day of the immediately succeeding calendar quarter to the Municipal Treasurer. Such tax shall be credited to the Municipal General Fund, and shall be used to pay for the cost of regulation and enforcement of this Article. (Ref. 9-165, 9-168 RS Neb.; 5-9-1 Code 1964) (Amended by Ord. Nos. 1141, 9/19/78; 21-83, 9/20/83)

§10-303 BINGO; QUARTERLY REPORT. Each association conducting the game of bingo shall submit a written quarterly report to the Municipal Clerk covering the preceding calendar quarter on or before the thirtieth (30th) day of the immediately succeeding calendar quarter. (Ref. 9-165 RS Neb.; 5-9-6 Code 1964)

§10-304 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 Municipality as well as against the State. Violators thereof shall be separately prosecuted by the Municipality for each of such offenses, and if convicted, shall be deemed to be guilty of a misdemeanor. (Ref. 9-124 thru 9-176 RS Neb.; 5-9-4 Code 1964)

§10-401

Business Regulations

§10-403

Article 4. Motion Picture Shows

§10-401 MOTION PICTURE SHOWS; REGULATION. It shall be unlawful to give, present, or conduct any motion picture or theatrical performance, for admission to which a fee is charged, except performances given solely for the benefit of, and under the supervision of a religious, educational, or charitable organization without having first secured a license therefor as is herein provided. Application shall be made to the Municipal Clerk. Said application form shall contain such information and documents, or copies thereof, as the Governing Body deems necessary to determine whether to grant or reject the application. Upon the determination that the granting of the license would be proper and beneficial to the Municipality, the Governing Body shall immediately direct the Municipal Clerk to issue the said license to the applicant upon the payment of all occupation taxes and other fees required by ordinance of the

Governing Body. Said license shall be subject to revocation at any time for good and sufficient cause by the Governing Body 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 Governing Body for the benefit of the Municipality. (Ref. 16-226 RS Neb.; 5-3-1 thru 5-3-5 Code 1964)

§10-402 MOTION PICTURE SHOWS; LICENSE PERIOD; REVOCATION OF LICENSE. No license shall be issued for a longer period than one (1) year, which license shall permit the showing of motion pictures during each and every day, including Sundays, during the term of said license, except as hereinafter provided, and the same may be revoked by the Mayor and Council, whenever upon due proof made, the person licensed shall be shown to have violated any of the provisions of the Article. (Ref. 5-3-4 Code 1964)

§10-403 MOTION PICTURE SHOWS; SAFETY REGULATIONS; SUNDAY SHOWS. Any person who shall operate or manage a public motion picture show, shall afford ample, sufficient and suitable means of entrance and exit. He shall take due precaution against accident and casualty. He shall not exhibit, produce or show any immoral or lewd picture. Neither shall he show or permit to be shown motion pictures before one (1:00) o'clock P.M. on Sunday. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor. (Ref. 5-3-5 Code 1964)

§10-501

Business Regulations

§10-519

Article 5. Trailer Courts

§10-501 TRAILER COURTS; DEFINITIONS. For the purpose of this Article, the following words and phrases shall have the meaning ascribed to them in this Section:

HEALTH OFFICER. The term "Health Officer" shall mean the Board of Health of the City or its authorized representative.

PERMIT. The term "permit" shall mean a written permit issued by the Health Officer permitting the trailer court to operate under this Article and regulations promulgated thereunder.

TRAILER COURT. The term "trailer court" shall mean any lot of ground upon which two (2) or more trailer coaches, occupied for dwelling or sleeping purposes, are located.

TRAILER COACH. The term "trailer coach" shall mean any vehicle used, or so constructed as to permit its being used, as a conveyance upon the public streets or highways and duly licensable as such, and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one (1) or more persons.

DEPENDENT TRAILER COACH. The term "dependent trailer coach" shall mean a trailer coach which does not have a toilet and a bathtub or shower.

INDEPENDENT TRAILER COACH. The term "independent trailer coach" shall mean a trailer coach that has a toilet and a bathtub or shower.

TRAILER-COACH SPACE. The term "trailer-coach space" shall mean a plot of ground within a trailer court designated for the accommodation of one (1) trailer coach.

SERVICE BUILDING. The term "service building" shall mean a building, housing toilet facilities for men and women, with slop-water closet and laundry facilities, and with separate bath or shower accommodations. (Ref. 5-8-1 Code 1964)

§10-502 TRAILER COURTS; PERMITS. It shall be unlawful for any person to construct, maintain, operate, or alter any trailer court within the limits of the City unless he holds a valid permit issued annually by the Health Officer in the name of such person for the specific trailer court. The Health Officer is authorized to issue, suspend, or revoke permits in accordance with the provisions of this Article and regulations promulgated thereunder. (Ref. 5-8-2 Code 1964)

§10-503 TRAILER COURTS; INSPECTION. The Health Officer is hereby authorized and directed to make inspections to determine the condition of the trailer courts located within the City in order that he may perform his duty of safeguarding the health and safety of occupants of trailer courts and of the general public. The Health Officer shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this Article or of regulations promulgated thereunder. (Ref. 5-8-3 Code 1964)

§10-504 TRAILER COURTS; ADOPTION OF REGULATIONS. The Health Officer is hereby authorized to make and, after public hearing, to adopt such written regulations as may be necessary for the proper enforcement of the provisions of this Article; provided, such regulations shall not be in conflict with the provisions of this Article. Such regulations shall have the same force and effect as the provisions of this Article. (Ref. 5-8-4 Code 1964)

§10-505 TRAILER COURTS; LOCATION, SPACE, AND GENERAL LAYOUT. The trailer court shall be located on a well-drained site, shall be so located that its drainage will not endanger any water supply, and shall be in conformity with a plan approved by the Health Officer. The Health Officer shall promulgate regulations for trailer-court location and plan approval, which shall provide for adequate drainage, space, lighting, safety, service buildings and other sanitary facilities necessary to protect the public health and prevent nuisances.

The area of the trailer court shall be large enough to accommodate:

- A. The designated number of trailer-coach spaces;
- B. Necessary streets and roadways;
- C. Parking areas for motor vehicles; and

D. Service areas and playgrounds.

Each trailer-coach space shall contain a minimum of one thousand (1,000) square feet and shall be at least twenty-five (25') feet wide, and shall abut on a driveway or other clear area with unobstructed access to a public street. Such spaces shall be clearly defined, and trailer coaches shall be parked in such spaces so that there will be a minimum of twenty (20') feet between trailer coaches and so that no trailer coach will be less than ten (10') feet from the exterior boundary of the trailer court.

It shall be unlawful to park a trailer coach less than twenty-five (25) feet from any street or highway, or so that any part of such trailer coach will obstruct any roadway or walkway.

It shall be unlawful to allow any trailer coach to remain in a trailer court unless a trailer-coach space is available.

Access roads shall be provided to each trailer-coach space. Each access road shall be continuous, shall connect with a street or highway, and shall have a minimum width of twenty-five (25') feet.

Areas shall be provided for the parking of motor vehicles. Such areas shall accommodate at least the number of vehicles equal to the number of trailer-coach spaces provided.

Playground areas shall be provided, and shall be restricted to such use. These areas shall be protected from the main highway and from parking areas. A minimum of one hundred (100) square feet per coach space shall be made available in one (1) or more places for such playground areas. (Ref. 5-8-5 Code 1964)

§10-506 TRAILER COURTS; SERVICE BUILDINGS. Each trailer court shall be provided with one (1) or more service buildings adequately equipped with flush-type toilet fixtures. No service building shall contain less than two (2) toilets for women, one (1) toilet for males, one (1) lavatory and shower for each sex, one (1) urinal for males, one (1) laundry tray, and one (1) slop-water closet. Dependent trailer coaches shall be parked not more than two hundred (200') feet from the service building. Service buildings shall:

- A. Be located ten (10') feet or more from any trailer-coach, space;
- B. Be of permanent construction, and be adequately lighted;
- C. Be of moisture-resistant material, to permit frequent washing and cleaning;
- D. Have sufficient toilet and laundry facilities, according to requirements promulgated by the Health Officer, to serve adequately both males and females;
- E. Have adequate heating facilities to maintain a temperature of seventy (70) degrees F. during cold weather, and to supply a minimum of three (3) gallons of hot water per hour per coach space during time of peak demands;
- F. Have all rooms well ventilated, with all openings effectively screened;
- G. Have at least one (1) slop-water closet, supplied with hot and cold water, in separate room. (Ref. 5-8-6 Code 1964)

§10-507 TRAILER COURTS; WATER SUPPLY. An accessible, adequate, safe, and potable supply of water shall be provided in each trailer court, capable of furnishing a minimum of one hundred twenty-five (125) gallons per day per trailer-coach space.

Where a public supply of water of such quality is available, connection shall be made thereto and its supply shall be used exclusively. The development of an independent water supply to serve the trailer court shall be made only after express approval has been granted by the Health Officer. (Ref. 5-8-7 Code 1964)

§10-508 TRAILER COURTS; PLUMBING. All plumbing in the trailer court shall comply with State and local plumbing laws and regulations. (Ref. 5-8-8 Code 1964)

§10-509 TRAILER COURTS; SEWAGE DISPOSAL. Trailer courts shall be served by a public sewer system, or by private disposal system which has the approval of the Health Officer. Each trailer-coach space shall be provided with a satisfactory sewer connection. All sewage-disposal apparatus, including appurtenances thereto, shall be provided, maintained, and operated so as not to create a nuisance or health hazard. (Ref. 5-8-9 Code 1964)

§10-510 TRAILER COURTS; REFUSE DISPOSAL. The storage, collection, and disposal of refuse in the court shall be so managed as to create no health hazard, rodent harborage, insect-breeding areas, accident hazards, or air pollution. All refuse shall be stored in flytight, watertight, rodent-proof containers, which shall be provided in sufficient number and capacity to prevent any refuse from overflowing. Satisfactory container racks or holders shall be provided, and shall be located not more than one hundred fifty (150') feet from any trailer-coach space. (Ref. 5-8-10 Code 1964)

§10-511 TRAILER COURTS; INSECT AND RODENT CONTROL. Insect and rodent control measures to safeguard public health, as recommended by the health officer, shall be applied in the trailer court. (Ref. 5-8-11 Code 1964)

§10-512 TRAILER COURTS; ELECTRICITY. An electrical outlet supplying at least one hundred ten (110) volts shall be provided for each trailer-coach space. The installation shall comply with all state and local electrical codes. Such electrical outlets shall be weatherproof. No power line shall be permitted to lie on the ground, or to be suspended less than eighteen (18') feet above the ground. (Ref. 5-8-12 Code 1964)

§10-513 TRAILER COURTS; FUEL. Liquefied petroleum gas for cooking purposes shall not be used at individual trailer coach spaces unless the containers are properly connected by copper or other suitable metallic tubing. Liquefied petroleum gas cylinders shall be securely fastened in place, and adequately protected from the weather. No cylinder containing liquefied petroleum gas shall be located in a trailer coach, nor within five (5') feet of a door thereof. (Ref. 5-8-13 Code 1964)

§10-514 TRAILER COURTS; FIRE PROTECTION. The court area shall be subject to the rules and regulations of the City fire-prevention authority. (Ref. 5-8-14 Code 1964)

§10-515 TRAILER COURTS; ALTERATIONS AND ADDITIONS; ANIMALS AND PETS. No permanent additions of any kind shall be built onto, nor become a part of, any trailer coach. Skirting of coaches is permissible, but such skirting shall not

permanently attach the coach to the ground, provide a harborage for rodents, or create a fire hazard. Jacks or stabilizers may be placed under the frame of the coach to prevent movement on the springs while the coach is parked and occupied. No owner or person in charge of a dog, cat or other pet animal shall permit it to run at large, or to commit any nuisance within the limits of any trailer court. (Ref. 5-8-15 Code 1964)

§10-516 TRAILER COURTS; REGISTRATION OF OCCUPANTS; REPORTING OF COMMUNICABLE DISEASES. Every trailer court owner or operator shall maintain a register containing a record of all trailer coaches and occupants using the trailer court. Such register shall be available to any authorized person inspecting the court, and shall be preserved for the period required by the Health Officer. Such register shall contain (1) the names and addresses of all trailer coach occupants stopping in the court, (2) the make, model and license number of each motor vehicle and trailer coach, (3) the State, territory, or county issuing the trailer license, and (4) the dates of arrival and departure of each trailer coach. Every owner, operator, attendant, or other person operating a trailer court shall notify the local Health Officer immediately of any suspected communicable or contagious disease within the trailer court. In the case of diseases diagnosed by a physician as quarantinable, such owner, operator, attendant or other person operating a trailer court shall not permit the departure of a trailer coach or its occupants, or the removal therefrom of clothing or other articles which have been exposed to infection, without approval of the Health Officer. (Ref. 5-8-16 Code 1964)

§10-517 TRAILER COURTS; PROHIBITED LOCATION OF TRAILERS. It shall be unlawful for any person to park any trailer coach on any street, alley, highway or other public place or upon any private lot or tract of land within the corporate limits of the City, or within the two (2) mile zone beyond the said corporate limits, outside any approved trailer court except on a trailer sales lot of a regularly licensed dealer on which unoccupied trailer coaches are parked for purposes of inspection and sale, except on premises for which a special limited permit has been granted as hereinafter provided, and except camping trailers of less than twenty-eight (28') feet in length which shall not be occupied or used as a dwelling or for sleeping purposes in the prohibited area. (Ref. 5-8-17 Code 1964)

§10-518 TRAILER COURTS; EMERGENCY OR TEMPORARY PARKING. Emergency or temporary stopping or parking of trailer coaches may be permitted for no longer than twenty-four (24) hours subject to any other and further prohibitions, regulations or limitations imposed by traffic and parking regulations elsewhere in this Code. (Ref. 5-8-18 Code 1964)

§10-519 TRAILER COURTS; EMERGENCY OR TEMPORARY PARKING PERMITS. A permit may be granted by the Chief of Police for emergency or temporary parking of trailer coaches subject to the provisions of this Article and subject to regulations of a temporary nature prescribed by the Mayor and City Council. (Ref. 5-8-19 Code 1964)

Article 6. Junk and Junk Dealers

§10-601 JUNK AND JUNK DEALERS; TERMS DEFINED. Any person engaged in the business or occupation of exchanging, handling or storing scrap paper, bottles, rags, iron or junk, the dismantling or taking apart of automobiles, other than for repair, or the wrecking of automobiles; the storage of automobiles unfit for operation, or automobiles or parts thereof kept for storage, or the storage and accumulation of scrap from automobiles, or other sources, shall be construed and considered the storing of iron or junk, or the operation of a junk business, or junk yard within the meaning of this Article, and shall be subject to the provisions thereof. (Ref. 5-2-1 Code 1964)

§10-602 JUNK AND JUNK DEALERS; LICENSE REQUIRED. It shall be unlawful for any person, to keep, conduct or operate within this City a junk business, or junk yard or to store iron and junk as defined in this Article, without first obtaining from the Mayor and Council a license therefor in the manner hereinafter provided. (Ref. 5-2-2 Code 1964)

§10-603 JUNK AND JUNK DEALERS; APPLICATION FOR LICENSE. Any person, desiring to obtain a license for the keeping, conducting and operating, within the City a junk business or junk yard, or the storage of iron or junk shall make application in writing to the Mayor and Council for such license. The application shall particularly describe the location of the proposed business and shall set out the names of the owners thereof; said application shall be filed with the Clerk and action shall be taken thereon either at a special meeting or at the next regular meeting of the Council; and the Mayor and Council may grant or reject said application as the majority thereof shall decide.

The application shall be accompanied by a license fee of one (\$1.00) dollar and shall be payable to the City. If the license is granted, the Clerk shall issue the same under the seal of the City; and the license shall recite the name of the applicant, the date issued, the character of business sought to be engaged in, the location thereof, the owners thereof; and the same shall terminate at the end of the fiscal year, during which it is granted or issued and shall not be assignable. As a condition precedent to the granting of said license, the applicant shall execute and file with the City a bond in the penal sum of two hundred (\$200.00) dollars, with one (1) or more sufficient sureties, to be approved by the Clerk conditioned for the faithful performance and observance of this Article and regulations of this City respecting such business; and provided further, that if the holder of the license shall violate the provisions of this Article or the regulations made by the City respecting such business, said bond shall be forfeited and the City shall be entitled to recover the amount of the bond, and the license shall be revoked. Any license issued under this Article may be revoked by the Mayor and Council whenever the licensee shall violate the provisions of this Article. All licenses shall be taken out at the beginning of each fiscal year and shall be good only until the end of the fiscal year. (Ref. 5-2-3 Code 1964)

§10-604 JUNK AND JUNK DEALERS; RECORD OF PURCHASES. Every person, engaged in the business of operating a junk yard, operating a junk business, or the

storing of iron or junk shall at all times keep a record of purchases, and shall enter in a book the name of the person from whom said junk was purchased, the date of the purchase thereof, the amount paid, the address of the seller, and a description of the article purchased. This record shall be in writing in the English language and shall at all times be open to inspection to any policeman or other peace officer. (Ref. 69-204 RS Neb.; 5-2-4 Code 1964)

§10-605 JUNK AND JUNK DEALERS; REGULATIONS. It shall be unlawful in the operation of a junk business or junk yard or the storing of iron or junk to use any lot or parcel of land for the purpose of storing, piling or accumulating junk within the City, unless the following conditions are fully complied with by said licensee; (a) No combustible or inflammable material shall be accumulated or assembled in piles or otherwise unless completely enclosed by fireproof sheds or buildings; (b) No accumulations, piles or heaps of iron, wood or other junk, as herein defined, shall be permitted upon said lot or parcel of land unless the same is within a building; (c) No junk emitting any offensive smells or odors shall be allowed or permitted on said premises; (d) The lot and premises upon which said junk yard or junk shop is located must at all times be kept in a neat, clean, sightly and sanitary condition and all unsightly views kept from the public; (e) No automobile bodies, frames or chassis shall be kept on said premises unless the same are stored in a building. (Ref. 5-2-5 Code 1964)

§10-701

Business Regulations

§10-706

Article 7. Railroads

§10-701 RAILROAD COMPANIES; SAFE CROSSING. It shall be the duty of every railroad company doing business in, or traveling through, the Municipality to keep in a suitable, and safe condition the crossings and right-of-way in the Municipality. If any such crossing shall at any time fall into disrepair and become unsafe, or inconvenient for public travel, the Governing Body 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 thirty (30) days, neglect for each day thereafter shall be deemed, and is hereby made a separate, and distinct offense against the provisions herein. (Ref. 16-211, 16-212 RS Neb.; 2-7-4, 2-7-5 Code 1964)

§10-702 RAILROAD COMPANIES; LIGHTING. It shall be the duty of all railroad companies owning, operating, and maintaining a railroad through the Municipality to sufficiently light all crossings and to install as many signal systems as the Governing Body shall deem necessary at the expense of the said company. Said lighting shall be of not less than six hundred (600) candlepower which said electric light shall be kept lighted at all times between one (1) hour after sunset in the evening until one (1) hour before sunrise in the morning following. (Ref. 16-212 RS Neb.; 2-7-6 Code 1964)

§10-703 RAILROAD COMPANIES; OBSTRUCTING TRAFFIC. It shall be unlawful for any railroad company, its employees, agents, or servants operating a railroad through the Municipality to obstruct traffic on any public street, except in the event of an emergency, for a longer period at one time than ten (10) minutes. (Ref. 16-212 RS Neb.; 2-7-3 Code 1964)

§10-704 RAILROADS; DRAINAGE. It shall be the duty of any railroad company owning, maintaining, or operating a railroad within or through the corporate limits of the City to construct and keep in repair ditches, drains, and culverts, along and under their railroad tracks at all places within the limits of the City, where the same may be necessary for the escape of water and the proper draining of the territory on either side of said railroads.

When any such drains, ditches, or culverts may be necessary for the escape of water and the proper drainage of the territory on either side of any such railroad track, the Mayor and Council may, by resolution, call upon the proper railroad company to construct or repair the said drain, ditch, or culvert and to place the same in a proper condition for the escape of water for the proper drainage of the territory on either side of said railroads. A copy of every such resolution shall be served upon the local agent of the railroad company, whose duty it is to construct or keep in repair any such drain, ditch, or culvert; and for a failure or refusal to comply with any such resolution within fourteen (14) days after the service thereof as aforesaid, such railroad company shall be deemed guilty of a misdemeanor. (Ref. 2-7-1, 2-7-2 Code 1964)

§10-705 RAILROADS; FLYING SWITCHES. No running or flying switches shall be made across any street opened and in public use. (Ref. 2-7-8 Code 1964)

§10-706 RAILROAD COMPANIES; OBSTRUCTING VIEW AT CROSSINGS PROHIBITED. It shall be unlawful for any railroad company to obstruct or obscure the public's view by storing or parking any railroad car on a railroad track within fifty (50') feet of the crossing of any such railroad track and a public road within the corporate limits of the Municipality; 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 or her business. (Ref. 74-1323 RS Neb.) (Ord. No. 19-85, 10/15/85)

§10-801

Business Regulations

§10-805

Article 8. Tobacco Sales

§10-801 TOBACCO; LICENSE FOR SALE; CONTENTS; FEE. It shall be unlawful for any person, partnership, limited liability company, or corporation to sell, keep for sale, or give away any cigars, tobacco, cigarettes, or cigarette material to anyone without first obtaining a license as hereinafter provided.

Every person, partnership, limited liability company, or corporation desiring a

license to sell tobacco at retail shall file with the Municipal Clerk a written application, on forms provided by the municipality, stating the name of the person, partnership, limited liability company, or corporation for whom such 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 \$15. If the applicant is an individual, the application shall include the applicant's social security number. The term for which said license shall run shall be for one year; provided, however, if application for license is made after July 1st of any calendar year, the fee shall be one-half of the fee provided in this section.

All monies collected as license fees under the provisions of this Article shall be paid over by the Clerk to the Treasurer of the School District lying wholly or partially within the corporate limits. (Ref. 28-1022 thru 28-1025 RS Neb.; 5-11-1, 5-11-2 Code 1964, Ref. 28-1418 through 28-1429.02 RS Neb., Amended by Ord No 44-98, 11-17-98)

§10-802 TOBACCO SALES; TERM OF LICENSE. The license herein provided, shall authorize the sale of cigars, tobacco, cigarettes, and cigarette material by the licensee and employees to persons over the age of eighteen (18) at that place of business described in said license from the date of filing such application and paying such license fee to and including December thirty-first (31st) of the calendar year in which application for such license is made unless the same be forfeited as hereinafter provided. (Ref. 28-1025, 28-1026 RS Neb.; 5 -11-3 Code 1964)

§10-803 TOBACCO SALES; FORFEITURE OF LICENSE. Any licensee who shall sell, give, or furnish in any way, to any person under the age of eighteen (18) years, or who shall willingly allow to be taken from his place of business by anyone under the age of eighteen (18) years, any cigars, tobacco, cigarettes, or cigarette material, shall be deemed guilty of a misdemeanor, and in addition thereto his license shall be forfeited and revoked, and all rights under said license shall at once cease and terminate. (Ref. 28-1027 RS Neb.; 5-11-4 Code 1964)

§10-804 TOBACCO SALES; TRANSFER OF LICENSE. In case of the sale of the business where the owner has a license hereunder, the Clerk may authorize such license to be transferred to the purchaser. In case of the change of the location by a licensee hereunder, the Clerk may transfer such license to the new location. (Ref. 28-1030 RS Neb.; 5-11-6 Code 1964)

§10-805 TOBACCO SALES; NEW LICENSE UPON REVOCATION. In the event that the license of any licensee shall be revoked and forfeited, as herein provided for, no new license shall be issued to the licensee until the expiration of one (1) year from the date of such revocation and forfeiture. (Ref. 28-1031 RS Neb.; 5-11-7 Code 1964)

§10-901

Business Regulations

§10-908

Article 9. Occupation Taxes

§10-901 OCCUPATION TAX, AMOUNTS.

Sale of Alcoholic Beverages:

Alcoholic Beverages as authorized by Section 53-132(4) of the Nebraska Liquor Control Act, the occupation taxes for Liquor License Holders of the City of Seward Nebraska will be two-times the amount of the license fees established by the Nebraska Liquor Control Commission. For new licenses that are applied for and received on dates other than the renewal dates, the fees will be prorated on a quarterly basis as outlined by the Nebraska Liquor Control Commission.

Sale of fireworks as authorized by Sections 6-335 and 6-336 of the City Code:

Local (within City limits) Non Profit Organizations.....\$ 100.00
Retail vendors.....\$ 500.00
(\$400.00 of Retail fee to be donated to Seward Fourth of July Celebration)

Telephone Companies:

Four percent (4%) of annual gross revenues derived from Intrastate business to, from, and within City limits.

Mobile Telecommunications Services:

Four percent (4%) of annual gross revenues derived from mobile telecommunications services which shall mean a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

Both one-way and two-way wireless communications services;

A mobile service which provides regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over

designated areas of operation; and
Any personal communications service.

Natural Gas Companies:

Four percent (4%) of annual gross revenues derived by the grantee from sales of natural gas delivered within the City limits.

Cable TV Companies:

Five percent (5%) of the annual Gross Revenues, due and payable on March 1 of each year for the previous calendar year.

Electric Utilities:

Five percent (5%) of annual gross revenues from the use of its plant and properties within the City of Seward. (Previously City Code)

Water Utilities:

Five percent (5%) of annual gross revenues from the use of its plant and properties within the City of Seward.

Sewer Utilities

Five percent (5%) of annual gross revenues from use of its plant and properties within the City of Seward.)(Previously City Code 3-139, Ref. 5-12, 5-33,5-9-22, 5-10-1 Code 1964, Amended by Ord No 1127, 3-21-1978, 29-83, 12-6-1983; 7-89, 3-29-89; 38-95, 9-19-95, Amended by Ord 16-05,3-15-2005, Amended by Ord 25-05, 4-19-2005, Amended by Ord 27-06, 11-21-2006)

§10-902 OCCUPATION TAX; NONPROFIT ORGANIZATION; DEFINITION. For the purpose of levy of an occupation tax as provided by Chapter 10, Article 9, section 901 of the City Code (10-901) a nonprofit corporation shall mean and be a non-profit corporation as defined by Chapter 53 of the Revised Statutes of the State of Nebraska 1943 as amended. (Amended by Ord. No. 1128, 3/21/78)

§10-903 OCCUPATION TAX; FIRE INSURANCE COMPANIES. For the use, support, and maintenance of the Municipal Fire Department all revenue realized from the occupation tax on Fire Insurance Companies shall be appropriated to the Fire Department Fund. (Ref. 35-106 RS Neb.; 5-10-1, 5-10-3 Code 1964)

§10-904 OCCUPATION TAX; COLLECTION DATE. All occupation taxes shall be due, and payable on the first (1st) day of May of each year, except in the event that the said tax is levied daily, and upon the payment thereof by any person or persons to the Municipal Clerk, the said Clerk shall give a receipt, properly dated, and specifying the person paying the said tax, and the amount paid; provided, occupation taxes collected from Class C liquor licensees shall be due and payable on the first (1st) day of November. Further provided that occupation taxes collected from telephone companies shall be due and payable semiannually, on or before May 31 of each year for the

preceding six (6) month period ending April 30 and on or before November 30 of each year for the preceding six (6) month period ending October 31. The revenue collected shall then be immediately deposited into the General Fund by the Municipal Treasurer. The Municipal Treasurer shall keep an accurate account of all revenue turned over to him. All forms, and receipts herein mentioned shall be issued in duplicate. One (1) copy shall then be kept by each party in the transaction. (Ref. 17-525 RS Neb.; 5-1-5, 5-1-6, 5-6-23, 5-10-2 Code 1964) (Amended by Ord. No. 29-83, 12/6/83)

§10-905 OCCUPATION TAX; CERTIFICATES. The receipt issued after the payment of any occupation tax shall be the Occupation Tax Certificate. The said certificate shall specify the amount of the tax and the name of the person, and business that paid the said tax. The Occupation Tax Certificate shall then be displayed in a prominent place, or carried in such a way as to be easily accessible, while business is being conducted. (Ref. 17-525 RS Neb.; 5-6-24 Code 1964)

§10-906 OCCUPATION TAX; FAILURE TO PAY. If any person, company, or corporation fails, or neglects to pay the occupation taxes as provided herein on the day it becomes due, and payable, the Municipality shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of one (1%) percent per month until paid. (Ref. 17-525 RS Neb.) (Amended by Ord. No. 29-83, 12/6/83)

§10-907 OCCUPATION TAX; VERIFICATION STATEMENT. Where the occupation tax imposed is based upon gross receipts, the company subject to the tax imposed shall file with the City Clerk- Treasurer on or before the date said tax is payable a verified statement covering each tax period. Said statement shall show the gross receipts derived from the business for which said tax is levied as set forth in section 10-901 of the City Code. (Ord. No. 29-83, 12/6/83)

§10-908 OCCUPATION TAX; INSPECTIONS. Duly authorized representatives of the City may upon request and during business hours inspect the books and records of any company whose occupation tax is based upon gross receipts for the purpose of verifying such statement or statements filed with the City Clerk-Treasurer. (Ord. No. 29-83, 12/6/83)

§10-1001

Business Regulations

§10-1006

Article 10. Amusement Devices

[Editor's Note: This Article was adopted in its entirety by Ordinance No. 30-83, passed 12/6/83]

§10-1001 AMUSEMENT DEVICES; DEFINITIONS. The term "coin operated amusement device" as used herein means any amusement machine or device operated by means of the insertion of a coin, token, or similar object, for the purpose of amusement or skill and for the playing of which a fee is charged. The term does not

include vending machines in which are not incorporated gaming or amusement features, nor does the term include any coin-operated mechanical musical devices.

Operator: The term "operator" as used herein is hereby defined to be any person, firm, corporation, partnership or association who sets up for operation by another, any device as herein defined, whether such setting up for operation, leasing or distributing be for a fixed charge or rental, or on the basis of a division of the income derived from such device, or otherwise.

Proprietor: A "proprietor" is hereby defined to be any person, firm, corporation, partnership, association or club who, as the owner, lessee, or proprietor has under his or its control any establishment, place or premises in or at which such device is placed or kept for use or play, or on exhibition for the purpose of use or play.

§10-1002 AMUSEMENT DEVICES; LICENSE REQUIRED. No person, firm or corporation shall engage in the business of an operator or proprietor of coin-operated amusement devices as the terms are herein defined, without first having obtained the proper license therefore.

§10-1003 AMUSEMENT DEVICES; LICENSE FEE. The license fee of each operator and proprietor as hereto defined shall be twenty-five (\$25.00) dollars per year for each coin-operated amusement device set up for operation, used, played or exhibited for use or play. All license fees shall be payable annually in advance. In no case shall any portion of said license fee be refunded to the licensee.

§10-1004 AMUSEMENT DEVICES; APPLICATION FOR LICENSE-NONTRANSFERABLE. Application for license hereunder shall be filed in writing with the City Clerk, on a form to be provided by the City, and shall specify:

1. The name and address of the applicant, and if a firm, corporation, partnership or association, the principal officers thereof and their addresses;
2. The address of the premises where the licensed device or devices are to be operated, together with the character of the business as carried on at such place;
3. The trade name and general description of the device or devices to be licensed, the name of the manufacturer and the serial number and if the applicant is a proprietor, the number of devices to be licensed;
4. The name and address of the operator of the device or devices, if other than the proprietor.

The proper license fee shall accompany such application. Application for license hereunder shall be first referred by the City Clerk to the Mayor and Council who shall make or cause to be made such investigation as they deem necessary. If the application is approved by the Mayor and Council, the license shall be issued by the Clerk, and the Clerk shall remit the fee to the City Treasurer. If the license is denied, the fee shall be returned to the applicant. All licenses under this Article shall expire on

July 1 following their issuance. The license shall be posted in a conspicuous place in the establishment of the licensee. Such license shall be nonassignable and nontransferable, and in the case of a proprietor shall apply only to the premises for which such license is if issued.

§10-1005 AMUSEMENT DEVICES; INCREASING NUMBER OF DEVICES. In case a proprietor licensed under the provisions of this Article desires, after the expiration of any portion of any license year, to increase the number of devices to be used or played, or exhibited for use or play in his establishment, he shall surrender his license to the City Clerk who shall issue a new license showing the number of devices licensed thereunder, upon payment of the proper license fee therefor.

§10-1006 AMUSEMENT DEVICES; EVIDENCE OF OWNERSHIP TO BE FILED WITH CLERK. Any proprietor who owns such device or devices at the time this Article becomes effective shall file with the City Clerk evidence of such ownership prior to the issuance of a license; and any proprietor purchasing a device or devices after the effective date of this Article shall file with the City Clerk evidence of ownership thereof before exhibiting or placing said device or devices for use or play.

§10-1101

Business Regulations

§10-1108

Article 11. Natural Gas Franchise

§10-1101 ADOPTION OF NATURAL GAS REGULATION ACT. The provisions of Article 46, Chapter 19 of the Municipal Natural Gas Regulation Act as set forth in the Revised Statutes of Nebraska 1943, 1987 Supplement thereto and any amendments made thereto, except as otherwise provided for in this ordinance are hereby adopted by this reference thereto and made a part of this ordinance as fully as if set forth at length herein, except as otherwise provided in this ordinance. (Ord. No. 33-87, 12/15/87)(Original Section 10-1101 was repealed by Ord. No. 33-87, 12/15/87)

§10-1102 RATE SCHEDULES. (Repealed by Ord. No. 33-87, 12/15/87)

§10-1103 REFUND. (Repealed by Ord. No. 33-87, 12/15/87)

§10-1104 OTHER RATE CHANGES. In the event the FRANCHISEE desires to change its rates for natural gas service within the City other than to reflect an adjustment for the cost of purchased gas, the FRANCHISEE will present to the City copies of present and proposed rate schedules and information supporting the proposed rates to be charged for natural gas service within the City. The rate schedule and information submitted with the rate schedules shall be referred to as the Rate Filing. Any such Rate Filing shall be deemed filed upon receipt of the same and the filing fee by the City Clerk. A filing fee in the amount of one thousand (\$1,000.00) dollars shall be paid to the CITY with the Rate Filing. Such fee shall be considered as an operating cost of the FRANCHISEE and shall not be separately itemized on any

customer bill.

The Governing Body of the City shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers and other experts as deemed necessary or desirable to advise and represent the Governing Body in evaluating any proposed rate change. FRANCHISEE shall reimburse the City within ninety (90) days of the presentation of a bill by the city for the reasonable costs of those services only to the extent that said costs exceed the filing fee for the Rate Filing.

If the proposed rates sought by the FRANCHISEE in its Rate Filing have not been passed on final reading by the City Council within ninety (90) days after it was filed, or as such time may be extended by agreement between FRANCHISEE and CITY in order to supply additional information if requested by the CITY, the proposed rates shall be put into effect as interim rates and shall be collected subject to refund pursuant to Section 18-415 of the Nebraska Revised Statutes, 1943, as the same may be amended from time to time. Such interim rates shall remain in effect pending final determination by the CITY, which determination shall be made within one (1) year, or in the event of litigation, final rate determination by the courts.

The rates proposed to be charged for non-contract firm natural gas service within the CITY shall be based upon the utility's cost of providing service to the CITY or the representative costs in that part of utility's service area which includes the CITY. The period for which the cost of service is to be recognized is to be projected twelve (12) month period commencing not later than the proposed effective date of the increase. The cost of service shall be determined in a manner consistent with regulated public utility practices and shall include (1) appropriate costs as defined and set forth in the Federal Energy Regulatory Commission Uniform System of Accounts Prescribed for Natural Gas Companies FERC Accounts, and (2) a reasonable return on the utility's rate base.

In determining a reasonable return, a rate (percentage) shall be employed that is representative of the cost of debt, preferred stock, and common equity capital. The rate base shall consist of the applicable net investment in utility plant (as defined in the FERC Accounts), allowance for working capital, and such other items as may reasonably be included; less such investment as may, unless otherwise prevented by law, be attributed to other than investor capital.

The FRANCHISEE'S appropriate costs and items of rate base shall include allocated or apportioned expenses and rate base items, when such allocations or apportionments are reasonably representative of assigned common costs and arise from the manner in which the FRANCHISEE's operations are conducted or from an avoidance of excessive and costly financial record keeping.

Rate Filings, not including changes reflecting the cost of gas, shall be limited to a maximum of one (1) in any twelve (12) calendar month period. (Amended by Ord. No. 26-87, 10/20/87)

§10-1105 INFORMATION TO BE PROVIDED. (Repealed by Ord. No. 33-87, 12/15/87)

§10-1106 NOTICE OF APPLICATION. (Repealed by Ord. No. 3-87, 12/15/87)

§10-1107 PROVIDING OF GENERAL INFORMATION. (Repealed by Ord. No. 33-87, 12/15/87)

§10-1108 VALIDITY OF FRANCHISE. (Repealed by Ord. No. 33-87, 12/15/87)

§10-1201

BUSINESS REGULATIONS

§10-1201

§10-1201 SEXUALLY ORIENTED BUSINESSES: WHEREAS, sexually oriented businesses require special supervision from the Seward Police Department, acting in its capacity as the law enforcement agency of the City, in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the City; and

WHEREAS, the City Council finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a harmful effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the City Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this City; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state and county law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEWARD, NEBRASKA:

Section 1. New Ordinance. Section §10-1201 of the Municipal Code is added to read as follows:

SEXUALLY ORIENTED BUSINESSES.

SECTION I. PURPOSE AND FINDINGS.

(A) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order 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 inappropriate location and concentration of sexually oriented businesses within the City. The provisions of this ordinance 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 ordinance 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 ordinance to condone or legitimize the distribution of obscene material.

(B) Findings. Based on evidence concerning the advance secondary effects of adult use on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 426 U.S. 50 (1976); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, TDA "Kandyland", 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 121 S. Ct. 1223 (2001); *California v. LaRue*, 409 U.S. 109 (1972); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996); *Jake's Ltd., Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *Bzaps, Inc., v. City of Mankato*, 268 F. 3d 603 (8th Cir. 2001); *DLH, Inc. v. Nebraska Liquor Control Commission*, 266 Neb. 361, 665 N.W. 2d 629 (2003); *Village of Winslow v. Sheets*, 261Neb. 203; 622 N.W. 2d 595 (2001); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628, 198 N.W. 2d 483 91972); and on studies on other communities including, but not limited to, Phoenix, Arizona; Tucson, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Adams County, Colorado; Denver, Colorado; Manatee County, Florida; Indianapolis, Indiana; Kansas City, Kansas; Minneapolis, Minnesota; St. Paul, Minnesota; Las Vegas, Nevada; Ellicottville, New York; Islip, New York; New York City, New York; Syracuse, New York; Times Square, New York; New Hanover, North Carolina; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Cleburne, Texas; Dallas, Texas; El Paso, Texas; Ft. Worth, Texas; Houston, Texas; Newport, Virginia; Bellevue, Washington; Des Moines, Washington; Seattle, Washington; St. Croix County, Wisconsin; and also on findings from the Environmental Research Group to the American Center for Law and Justice (March 31, 1996), the Council finds:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of sexually oriented businesses defined in this ordinance as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(4) Offering and providing such space encourages such activities, which creates

unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(6) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(7) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(8) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

(9) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidents of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(10) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(11) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

(12) The barring of such individuals from the management of adult uses for a period of

years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(13) The general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this ordinance.

SECTION II: DEFINITIONS.

(1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, 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" or "specified anatomical areas."

(2) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal purposes, offers 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 or video reproductions, compact discs, digital video discs, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- (b) instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do

no involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments 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 are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

- (3) ADULT CABARET means a nightclub, bar, restaurant, or other commercial establishment which features:
- (a) persons who appear in a state of nudity or semi-nude; or
 - (b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.
- (4) ADULT MOTEL means a hotel, motel or similar commercial establishment which:
- (a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, 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; or
 - (b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
 - (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 (10) hours.

- (5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or specified anatomical areas.” This shall not include hotels or motels which offer adult movies for viewing as part of a selection of available movies that includes non-adult movies, on a pay-per-view basis.
- (6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”
- (7) EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- (8) ESCORT means 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.
- (9) ESCORT AGENCY means 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.

- (10) ESTABLISHMENT means and includes any of the following:
- (a) The opening or commencement of any sexually oriented business as a new businesses;
 - (b) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (c) the addition of any sexually oriented business to any other existing sexually oriented business; or
 - (d) the relocation of any sexually oriented business.
- (11) LICENSEE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.
- (12) NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Nebraska or a college or junior college.
- (13) NUDITY or a STATE OF NUDITY means the showing of the human male or female genitals,

pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

- (14) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (15) SEMI-NUDE or in a SEMI-NUDE CONDITION means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.
- (16) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - (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.
- (17) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- (18) SPECIFIED ANATOMICAL AREAS means;

- (a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (b) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(19)

SPECIFIED CRIMINAL ACTIVITY means any of the following:

- (a) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness or public indecency; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;
- (b) for which less than ten years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date.
- (c) the fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(20)

SPECIFIED SEXUAL ACTIVITIES means any of the following:

- (a) the actual or simulated fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female

breasts;

- (b) sex acts, normal or perverted, actual or simulated, including 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) through (b) above.

(21) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty five percent (25%), as the floor areas exist on the date this ordinance takes effect.

(22) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

- (a) the sale, lease, or sublease of the business;
- (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 III. CLASSIFICATION.

Sexually oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores, adult novelty stores, or adult video stores;
- (3) adult cabarets;

- (4) adult motels;
- (5) adult motion picture theaters;
- (6) adult theaters;
- (7) escort agencies;
- (8) nude model studios; and
- (9) sexual encounter centers.

SECTION IV. LICENSE REQUIRED.

(A) It is unlawful:

(1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this ordinance.

(2) For any person who operates a sexually oriented business to employ, contract with, arrange or allow or permit a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City pursuant to this ordinance.

(3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.

(B) An application for a license must be made on a form provided by the City.

(C) All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City to determine whether the applicant meets the qualifications established in this ordinance.

(D) A person, who wishes to operate a sexually oriented business, must sign the application for a license as an applicant. If a person other than an individual wishes to operate a sexually oriented business, all persons legally responsible for the operations of the sexually oriented business or who have power to control or direct its operations must sign the application for a license as applicant. Such persons include, but are not limited to, general partners, corporate officers, corporate directors, and controlling shareholder(s). Each application must be qualified under the following section and each applicant shall be considered 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/her legal name and any aliases and submit proof that he/she is 19 years of age;

(b) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, 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 names and capacity of all officers, directors and controlling 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 1) the sexually oriented business's fictitious name and 2) submit the required registration documents.

(3) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(4) Whether the applicant, or a person residing with the applicant has had a previous license under this ordinance or other sexually oriented business ordinance from another city or county denied, suspended or revoked, 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 or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this ordinance whose license has previously been denied, suspended or revoked, 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 denial, suspension or revocation.

(5) Whether the applicant or a person residing with the applicant holds any other licenses under this ordinance or other sexually oriented business ordinance from another city or county and, if so, the names and

locations of such other licensed businesses.

(6) A description of each classification of sexually oriented business for which the applicant submits an application for a license.

(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) A recent photograph of the applicant(s).

(10) The date, issuing state and number of driver's permit or other identification card information for the applicant.

(11) 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 it 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 six (6) inches.

(12) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 400 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within 400 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted,

(13) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, compact discs, digital video discs or other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section XIV,

(F) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the City the following information:

(1) The applicant's name or any other name (including "stage" names)

or

aliases used by the individual;

- (2) Age, date, and place of birth;
- (3) Height, weight, hair and eye color;
- (4) Present residence address and telephone number;
- (5) Present business address and telephone number;
- (6) Date, issuing state and number of driver's permit or other identification card information; and
- (7) Proof that the individual is at least nineteen (19) years of age.

(G) Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

(1) A color photograph of the applicant clearly showing the applicants face, and the applicants fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(2) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

SECTION V. ISSUANCE OF LICENSE.

(A) Upon the filing of said application for a sexually oriented business employee license, the city shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the City shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) The applicant has failed to provide information reasonable necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(2) The applicant is under the age of nineteen (19) years;

(3) The applicant has been convicted of a "specified criminal activity" as defined in this ordinance;

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance; or

(5) The applicant has had a sexually oriented business employee license revoked in this City or in any other jurisdiction within five (5) years of the date of the current application, If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section X.

(B) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the City that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application, The renewal of the license shall be subject to the payment of the fee as set forth in Section VI.

(C) Within 30 days after receipt of a completed sexually oriented business application, the City shall approve or deny the issuance of a license to an applicant. The City shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) An applicant is under nineteen (19) years of age.

(2) An applicant or a person with whom applicant is residing is overdue in

payment to the City of taxes, fees, fines, utility services, or penalties assessed against or imposed upon him/her in relation to any business.

(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

(4) The applicant, or a person residing with the applicant, has had a previous License under this ordinance or other sexually oriented business ordinance from another city or county denied, suspended or revoked, 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 or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this ordinance whose license has previously been denied, suspended or revoked, 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 denial, suspension or revocation.

(5) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.

(6) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.

(7) The license fee required by this ordinance has not been paid.

(8) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

(D) The license, if granted shall 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 pursuant to Section III. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

(E) The health department, fire department, and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the City.

(F) A single sexually oriented business license shall issue for the premises although there may be more than one classification of sexually oriented business for such premises as described pursuant to Section IV(E)(6) of this Ordinance, In the event that the applicant wishes to add an additional category of sexually oriented business that is not described in the application for the premises, then a new application describing such additional classification of sexually oriented business must be submitted and a new license obtained

for the premises before the additional sexually oriented business so described may be operated on the premises.

SECTION VI. FEES.

(A) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$500.00 non-refundable application and investigation fee.

(B) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the City an annual non-refundable license fee of \$2,500.00 within thirty (30) days of license issuance or renewal.

(C) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$50.00 application, investigation, and license fee.

(D) All license applications and fees shall be submitted to the Clerk of the City prior to the issuance of the license.

SECTION VII. INSPECTION.

(A) An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department, or other City departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(B) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such awful inspection of the premises at any time it is open for business.

SECTION VIII. EXPIRATION OF LICENSE.

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section IV. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

(B) When the City denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

SECTION IX. SUSPENSION.

(A) The City shall suspend a license for a period not to exceed ninety (90) days if it determines that a licensee or an employee of a licensee has:

(1) violated or is not in compliance with any section of this ordinance.

(2) refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

SECTION X. REVOCATION.

(A) The City shall revoke a license if a cause of suspension in Section IX occurs and the license has been suspended within the preceding twelve (12) months.

(B) The City shall revoke a license if it determines that:

(1) a licensee gave false or misleading information in the material submitted during the application process;

(2) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) a licensee has knowingly allowed prostitution on the premises;

(4) a licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or

(6) a licensee is delinquent in payment to the City, County, or State for any taxes or fees past due, or payment for utility services.

(C) When the City revokes a license, the revocation shall continue for one (1) year. and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. if, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant maybe granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

(D) After denial of an application, or denial of a renewal of an application. or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in the District Court of York County.

SECTION XI. TRANSFER OF LICENSE.

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

SECTION XII. LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(A) A sexually oriented business may only be located in the **I-1** District as defined and described in the City zoning ordinance. A person violates this ordinance and is subject to the penalty as provided herein if that person locates or operates or causes to be located or operated a sexually oriented business in any zoning district other than the **I-1** District.

(B) A person commits an offense if the person operates or causes to be operated a sexually oriented business within 400 feet of:

- (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
- (2) A public or private educational facility including but not limited to child daycare facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, colleges and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
- (3) A boundary of a residential district as defined in the City zoning ordinance;
- (4) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the city which is under the control, operation, or management of the city park and recreation authorities;
- (5) The property line of a lot devoted to a residential use as defined in the City zoning ordinance;
- (6) An entertainment business which is oriented primarily towards children or family entertainment; or
- (7) A facility primarily used for activities for senior citizens, or for the housing and/or care of senior citizens.

(8) A youth or adult correctional facility.

(9) A library.

(10) A mortuary/funeral home.

(11) A medical clinic, hospital, nursing home, mental health facility, mental health agency, developmental disability facility or developmental disability home.

(12) A licensed premises, licensed to serve and/or sell alcoholic beverages by the Nebraska Liquor Control Commission.

(13) US Highway 34 or State Highway 15.

(C) A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 400 feet of another sexually oriented business.

(D) A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business without first obtaining a license for such additional business or floor area.

(E) For the purpose of subsection B of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection B. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

(F) 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 the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

(G) Any sexually oriented business lawfully operating on June 5, 2007, that is in violation of subsection A through F of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (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. If two or more sexually oriented businesses are within 400 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established

business(es) is/are nonconforming.

(H) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grantor renewal of the sexually oriented business license, of a use listed in subsection B of this Section within 400 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 or been revoked.

SECTION XIII. ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(A) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

(B) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or subjects a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subjects the same sleeping room again.

(C) For purposes of subsection (B) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

SECTION XIV. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel or a motel or hotel which features pay per view adult movies, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, compact disc, digital video disc, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should

be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches, The City may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.

(4) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) 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 purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the managers station.

(6) It shall be the duty of the licensee to ensure that the view area specified in subsection (5) remains unobstructed by any doors, curtains, partitions walls, merchandise, display racks or other materials and, at all times, 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 subsection (1) of this Section.

(7) No viewing room may be occupied by more than one person at any time.

(8) 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 or not less than five (5.0) foot-candles as measured at the floor level.

(9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The licensee shall cause all floor coverings in viewing booths to be nonporous easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

(B) A person having a duty under Subsection (1) through (14) of Subsection (A) above commits a misdemeanor if he knowingly fails to fulfill that duty.

SECTION XV. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

(A) An escort agency shall not employ any person under the age of 19 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 19 years.

SECTION XVI. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

(A) A nude model studio shall not employ any person under the age of 19 years.

(B) A person under the age of 19 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio, It is a defense to prosecution under this subsection if the person under 19 years was in a restroom not open to public view or visible to any other person.

(C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

(D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises. except that a sofa may be placed in a reception room open to the public.

SECTION XVII. ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.

(A) It shall be a misdemeanor for a person to knowingly and intentionally, in a sexually oriented business, appear in a state of nudity or depict specified sexual activities.

(B) It shall be a misdemeanor for a person to knowingly or intentionally in a sexually oriented business appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet above the floor.

(C) It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

(D) It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer, and it shall be a misdemeanor for a customer to touch an employee or the clothing of the employee, while the employee is semi-nude.

(E) No person may appear in a state of nudity or semi-nudity in any premises licensed to sell alcoholic beverages by the Nebraska Liquor Control Commission. It shall be a misdemeanor for any person to appear in a state of nudity or semi-nudity in a licensed premises, and it shall be a misdemeanor for any license holder, manager or employer of a licensed premises to cause, encourage, permit, or allow any person to appear in such licensed premises in a state of nudity or semi-nudity.

SECTION XVII. PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS.

A person commits a misdemeanor if the person knowingly allows a person under the age of 19 years on the premises of a sexually oriented business.

SECTION XIX. HOURS OF OPERATION.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of eleven o'clock (11:00) P.M. and nine o'clock (9:00) A.M. on weekdays and Saturdays, and eleven o'clock (11:00) P.M. and noon (12:00) P.M. on Sundays.

SECTION XXI. PENALTY.

Violations of this ordinance shall be subject to an action for injunction and shall also be punishable by a fine of not to exceed \$1,000.00 and/or thirty (30) days imprisonment. Each day a violation occurs is a separate offense. Violations of this ordinance shall further be subject to any remedies available by law.

SECTION XXII: SEVERABILITY.

If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections hereof shall not be affected. (ORD 10-07, 6-5-2007)