

## **CHAPTER 5 – BUSINESS REGULATIONS**

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## CHAPTER 5 – BUSINESS REGULATIONS

### Article 1 – Alcoholic Beverages

#### SECTION 5-101: DEFINITIONS

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

#### SECTION 5-102: ACQUISITION AND POSSESSION

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. Nothing in this section shall prevent:

A. The possession of alcoholic liquor for the personal use of the possessor and his or her family and guests, so 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;

B. The making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains or the products thereof by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests;

C. 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 sick and diseased persons from possessing and using alcoholic liquor for the treatment of *bona fide* patients of such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in compounding of prescriptions of licensed physicians;

D. 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;

E. Persons who are 16 years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor;

F. Persons who are 16 years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment;

G. Persons who are 16 years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; or

H. Persons who are 19 years old or older from serving or selling alcoholic liquor in the course of their employment.

(Neb. Rev. Stat. §§53-168.06, 53-175, 53-194.03)

### **SECTION 5-103: DRINKING ON PUBLIC PROPERTY; POSSESSION OF OPEN ALCOHOLIC BEVERAGE CONTAINER**

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

B. It is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this city.

C. Except as provided in Neb. Rev. Stat. §53-186, it is unlawful for any person to consume an alcoholic beverage (1) in a public parking area or on any highway in this city or (2) inside a motor vehicle while in a public parking area or on any highway in this city.

D. This section does not apply to persons who are passengers of, but not drivers of, a limousine or bus being used in a charter or special party service as defined by rules and regulations adopted and promulgated by the state Public Service Commission and subject to Neb. Rev. Stat. Chapter 75, Article 3. Such passengers may possess open alcoholic beverage containers and may consume alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this city if:

1. The driver of the limousine or bus is prohibited from consuming alcoholic liquor; and
2. Alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's seat, including any compartments in such area.

E. For purposes of this section:

1. "Alcoholic beverage" means (a) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor; (b) wine of not less than one-half of one percent of alcohol by volume; or (c) distilled spirits, which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. "Alcoholic beverage" does not include trace amounts not readily consumable as a beverage;

2. "Highway" means a road or street including the entire area within the right of way;
3. "Open alcoholic beverage container" means any bottle, can, or other receptacle that (a) contains any amount of alcoholic beverage; and (b) is open or has a broken seal; or (c) the contents of which are partially removed; and
4. "Passenger area" means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. "Passenger area" does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.
5. "Limousine" shall mean a luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least five and no more than fourteen persons behind the driver with a physical partition separating the driver's seat from the passenger compartment. "Limousine" does not include taxicabs, hotel or airport buses or shuttles, or buses.

(Neb. Rev. Stat. §60-6,211.08)

#### **SECTION 5-104: CONSUMPTION IN PUBLIC PLACES; LICENSE**

It is unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, café, 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, 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 or to limousines or buses operated under Neb. Rev. Stat. §60-6,211.08. (Neb. Rev. Stat. §53-186.01)

#### **SECTION 5-105: LICENSE REQUIRED**

It shall be unlawful for any person to manufacture for sale, sell, keep for sale, or to barter any alcoholic liquors within the city unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (Neb. Rev. Stat. §53-168.06)

#### **SECTION 5-106: CITY POWERS AND DUTIES**

- A. The City Council is authorized to regulate by ordinance, not inconsistent with

the Nebraska Liquor Control Act, the business of all retail, craft brewery, and microdistillery licensees carried on within the corporate limits of the city.

B. During the period of 45 days after the date of receiving from the Nebraska Liquor Control Commission an application for a new license to sell alcoholic liquor at retail or a craft brewery or microdistillery license, the City Council may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

C. The City Council, with respect to licenses within the corporate limits of the city, has the following powers, functions, and duties with respect to retail, craft brewery, and microdistillery licenses:

1. To cancel or revoke for cause retail, craft brewery, and microdistillery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission.
2. To enter or authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act (“the act”) to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the City Council has been or is being violated and at such time examine the premises of such licensee in connection with such determination. Any law enforcement officer who determines that any provision of the Nebraska Liquor Control Act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the City Council has been or is being violated shall report such violation in writing to the executive director of the commission:
  - a. Within 30 days after determining that such violation has occurred;
  - b. Within 30 days after the conclusion of an ongoing police investigation;  
or
  - c. Within 30 days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later.
3. To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act.

4. To receive retail, craft brewery and microdistillery license fees as provided in Neb. Rev. Stat. §§53-124 and 53-124.01 and pay the same to the city treasurer after the license has been delivered to the applicant.
5. To examine or cause to be examined any applicant or any retail, craft brewery, or microdistillery licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the City Council may authorize its agent or attorney to act on its behalf.
6. To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in Neb. Rev. Stat. §53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within 30 days after the date of the order by filing a notice of appeal with the commission, which shall handle the appeal in the manner provided for hearing on an application in Neb. Rev. Stat. §53-133.
7. Upon receipt from the commission of the notice and copy of application as provided in Neb. Rev. Stat. §53-131, to fix a time and place for a hearing at which the City Council shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in the city one time not less than seven and not more than 14 days before the time of the hearing. Such notice shall include but not be limited to a statement that all persons desiring to give evidence before the City Council in support of or in protest against the issuance of such license may do so at the time of the hearing. Said hearing shall be held not more than 45 days after the date of receipt of the notice from the commission. After such hearing the City Council shall cause to be recorded in the minute record of its proceedings a resolution recommending either issuance or refusal of such license. The city clerk shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution, which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

D. When the Nebraska Liquor Control Commission mails or delivers to the city clerk a license issued or renewed by it, the clerk shall deliver the license to the licensee upon proof of payment of (1) the license fee if, by the terms of Neb. Rev. Stat. §53-

124(5), the fee is payable to the city treasurer; (2) any fee for publication of notice of hearing before the City Council upon the application for license; (3) the fee for publication of notice of renewal, if applicable, as provided in Neb. Rev. Stat. §53-135.01; and (4) occupation taxes, if any, imposed by the city.

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

(Neb. Rev. Stat. §§53-131, 53-132, 53-134)

### **SECTION 5-107: LICENSEE REQUIREMENTS**

No liquor license shall be issued to any person unless he or she: is a resident of Nebraska; is a person of good character and reputation in the community; is a U.S. citizen; has never been convicted of or pled guilty to a felony under the laws of this state, any other state, or the United States; has never been convicted of or pled guilty to any Class I misdemeanor pursuant to Neb. Rev. Stat. §53-125; has never had a liquor license revoked for cause; and meets other requirements as provided in Neb. Rev. Stat. §53-125. (Neb. Rev. Stat. §53-125)

### **SECTION 5-108: LOCATION**

A. Except as otherwise provided in subsection (B) of this section, no license shall be issued for the sale at retail of any alcoholic liquor within 150 feet of any church, school, hospital, or home for indigent persons or for veterans and their wives or children. This prohibition does not apply (1) to any location within such distance of 150 feet for which a license to sell alcoholic liquor at retail has been granted by the commission for two years continuously prior to making of application for license, or (2) to hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on, if such place of business so exempted was established for such purposes prior to May 24, 1935.

B. If a proposed location for the sale at retail of any alcoholic liquor is within 150 feet of any church, a license may be issued if the Liquor Control Commission gives notice to the affected church and holds a hearing as prescribed in Neb. Rev. Stat. §53-133 if the affected church submits a written request for a hearing.

(Neb. Rev. Stat. §53-177)

### **SECTION 5-109: ACCESS TO DWELLINGS**

Except in the case of hotels and clubs, no alcoholic liquor shall be sold at retail upon any premises having any access which leads from such premises to any other portion of the same building used for dwelling or lodging purposes and which is permitted to be used or kept accessible for use by the public. Nothing herein shall prevent any



connection with such premises and such other portion of the building that is used only by the licensee, his or her family, or personal guests. (Neb. Rev. Stat. §53-178)

### **SECTION 5-110: SANITARY CONDITIONS**

It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons and said licensed premises shall be subject to any health inspections the City Council or the city police may make or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for or renewal of a liquor license. (Neb. Rev. Stat. §53-118)

### **SECTION 5-111: CATERING LICENSES**

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

B. Upon receipt from the commission of the notice and copy of the application as provided in Neb. Rev. Stat. §53-124.12, the City Council shall process the application in the same manner as provided in Section 5-106 (City Powers and Duties).

C. The City Council, with respect to catering licensees within its corporate limits, may cancel a catering license for cause for the remainder of the period for which that catering license is issued. Any person whose catering license is canceled may appeal to the district court.

D. The City Council may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the City Council. The tax may not exceed double the license fee for a catering license.  
(Neb. Rev. Stat. §§53-124.12, 53-124.12[1])

### **SECTION 5-112: DISPLAY OF LICENSE**

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

### **SECTION 5-113: HOURS OF SALE**

A. For the purposes of this section:

1. "On sale" shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment.

2. "Off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

B. No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 2:00 a.m. and 6:00 a.m., except that the City Council, with respect to the area inside the corporate limits, may by ordinance:

1. Require closing prior to 2:00 a.m. on any day;
2. If adopted by a vote of at least two-thirds of the members of the City Council, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, later than 1:00 a.m. and prior to 2:00 a.m. on any day;
3. If adopted by a vote of at least two-thirds of the members of City Council, permit retail sale of alcoholic liquor for consumption off the premises later than 1:00 a.m. and prior to 2:00 a.m. on any day; or
4. If adopted by a vote of at least two-thirds of the members of City Council, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, and permit retail sale of alcoholic liquor for consumption off the premises later than 1:00 a.m. and prior to 2:00 a.m. on any day.

C. Except as provided for and allowed by ordinance of the City Council, no alcoholic liquor, including beer, shall be sold at retail or dispensed inside the corporate limits of the city between the hours of 6:00 a.m. Sunday and 1:00 a.m. Monday. Such limitations shall not apply after 12:00 noon on Sunday to a licensee which is a nonprofit corporation and the holder of a Class C or Class I license.

D. Hours of sale:

| <b><i>Alcoholic Liquors including Beer and Wine</i></b> |                        |
|---|------------------------|
| Monday through Saturday                                 |                        |
| On and Off Sale   | 6:00 a.m. to 2:00 a.m. |
| Sunday  |                        |
| On and Off Sale   | Prohibited             |

E. It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between fifteen minutes after the closing hour applicable to the licensed premises and 6:00 a.m. on any day.

F. Nothing in this section shall be construed to prohibit licensed premises from being open for other business on days and hours during which this section prohibits

the sale or dispensing of alcoholic beverages.  
(Neb. Rev. Stat. §53-179)

#### **SECTION 5-114: KEG SALES; REGISTRATION; KEG IDENTIFICATION NUMBERS; PROHIBITED ACTS**

A. When any person licensed to sell alcoholic liquor at retail sells beer for consumption off the premises in a container with a liquid capacity of five or more gallons or 18.92 or more liters, the seller shall record the date of sale, the keg identification number, the purchaser's name and address, and the number of the purchaser's motor vehicle operator's license, state identification card, or military identification, if such military identification contains a picture of the purchaser, together with the purchaser's signature. Such record shall be on a form prescribed by the Liquor Control Commission and shall be kept by the licensee at the retail establishment where the purchase was made for not less than six months. Such records kept pursuant to this section shall be available for inspection by any law enforcement officer during normal business hours or at any other reasonable time.

B. Licensees shall place a label bearing a keg identification number on each keg at the time of retail sale. No person shall unlawfully tamper with, alter, or remove the keg ID number from a beer container after such container has been taken from the licensed premises pursuant to a retail sale and before its return to such licensed premises or other place where returned kegs are accepted.  
(Neb. Rev. Stat. §§53-167.02, 53-167.03)

#### **SECTION 5-114: INSPECTIONS**

The Liquor Control Commission and City Council shall cause frequent inspections to be made on the premises of all retail licensees and if it is found that any such licensee is violating any provision of the Nebraska Liquor Control Act or the rules and regulations of the commission adopted and promulgated under the act or is failing to observe in good faith the purposes of 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. Rev. Stat. §53-116.01)

#### **SECTION 5-115: OWNER OF PREMISES**

The owner of any premises used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall knowingly permit the licensee to use the said licensed premises in violation of any municipal code section or Nebraska statute. (Neb. Rev. Stat. §53-1,101)

#### **SECTION 5-116: EMPLOYER**

The employer of any officer, director, manager, or employee working in a retail liquor establishment shall be held to be liable and guilty of any act or omission or violation of any law or ordinance. 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 or her personally. (Neb. Rev. Stat. §53-1,102)

#### **SECTION 5-117: HIRING MINORS**

It shall be unlawful for any person to hire minors under the age of 19 years to serve or dispense alcoholic liquors, including beer, in the course of their employment. (Neb. Rev. Stat. §53-168.06)

#### **SECTION 5-118: MINOR'S PRESENCE**

It shall be unlawful for any person or persons who own, manage, or lease an establishment selling alcoholic beverages at retail to allow any minor under the age of 18 years to frequent or otherwise remain in the said establishment unless the said minor is accompanied by a parent or legal guardian and unless said minor remains seated with and under the immediate control of the said parent or legal guardian. (Neb. Rev. Stat. §53-134.03)

#### **SECTION 5-119: MINORS AND INCOMPETENTS**

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

#### **SECTION 5-120: CREDIT SALES**

No person shall sell or furnish alcoholic liquor at retail to any person on credit, on a passbook, on an order on a store, in exchange for any goods, wares, or merchandise, or in payment for any services rendered. If any person extends credit for any such purpose, the debt thereby attempted to be created shall not be recoverable at law. Nothing in this section shall 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 nothing in this section shall prevent (A) 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, or (B) any licensed retailer engaged in the sale of wine or distilled spirits from issuing tasting cards to customers. (Neb. Rev. Stat. §53-183)

#### **SECTION 5-121: ORIGINAL PACKAGE**

It shall be unlawful for any person or persons who own, manage, or lease any premises in which the sale of alcoholic beverages is licensed to have in their possession for sale at retail any alcoholic liquors contained in bottles, casks, or other containers except in the original package. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale. (Neb. Rev. Stat. §53-

184)

### **SECTION 5-122: CONDUCT PROHIBITED ON LICENSED PREMISES**

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

### **SECTION 5-123: AUTOMATIC LICENSE RENEWAL; PROTESTS**

A. An outstanding retail license issued by the commission may be automatically renewed by the commission without formal application upon payment of the renewal fee and license fee if payable to the commission prior to or within 30 days after the expiration of the license. The payment shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application, and the commission shall at any time require a licensee to submit an application if requested in writing to do so by the City Council. If a licensee files an application form in triplicate original upon seeking renewal of his or her license, the application shall be processed as set forth in Neb. Rev. Stat. §53-131.

B. Any licensed retail premises located in an area which is annexed by the city shall file a formal application for a license. While such application is pending, the licensee may continue all license privileges until the original license expires or is canceled or revoked. If such license expires within 60 days following the annexation date of such area, the license may be renewed by order of the commission for not more than one year.

C. The city clerk shall cause to be published in a legal newspaper in or of general circulation in the city one time between January 10 and January 30 each year individual notice of the right of automatic renewal of each retail liquor and beer license within the city in the form prescribed by law; provided, Class C license renewal notices shall be published between July 10 and July 30 each year. Upon the conclusion of any hearing required by this section, the City Council may request a licensee to submit an application as provided in Neb. Rev. Stat. §53-135.

D. Written protests to the issuance of automatic renewal of a license may be filed by any resident of the city on or before February 10, 20..., or August 10, 20..., in the office of the city clerk and that in the event protests are filed by three or more such persons, hearing will be had to determine whether continuation of the license should be allowed.

(Neb. Rev. Stat. §§53-135, 53-135.01)

**SECTION 5-124: CITIZEN COMPLAINT**

A. Any five residents of the city shall have the right to file a complaint with the City Council stating that any retail licensee subject to the jurisdiction of the council has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant to the act. Such complaint shall be in writing in the form prescribed by the council and shall be signed and sworn by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based.

B. If the City Council 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 ten days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint. The complaint must in all cases be disposed of by the council within 30 days from the date the complaint was filed by resolution thereof and said resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided in Neb. Rev. Stat. §53-1,115.

C. The following form is hereby prescribed for the use of residents of this city desiring to complain to the mayor and the City Council that any licensee is violating any provision of the Nebraska Liquor Control Act, regulations prescribed by the Nebraska Liquor Control Commission, or any provision of this ordinance:

To the Mayor and City Council of the City of Wisner, Nebraska:

The undersigned respectfully state:

1. That each one is a resident of the City of Wisner, Nebraska.

2. That they believe that \_\_\_\_\_, the holder of a Class \_\_\_ license in the aforesaid city, has violated Section \_\_\_\_\_ of (check one or more):

\_\_\_\_\_ the Nebraska Liquor Control Act.

\_\_\_\_\_ the regulations prescribed by the Nebraska Liquor Control Commission.

\_\_\_\_\_ the municipal code of the City of Wisner, Nebraska.

3. That the aforesaid belief is based on the following facts, to-wit:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name)

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(Name)

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(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF CUMING    )

Subscribed in my presence and sworn to before me by \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and  
\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(Neb. Rev. Stat. §53-134.04)

**SECTION 5-125: COMPLAINT INITIATED BY COUNCIL**

The City Council may on its own motion by resolution fix the time and place for a hearing on whether a licensee has violated any section of the Nebraska Liquor Control Act, the regulations of the Nebraska Liquor Control Commission, or this code, which resolution shall state the section or sections in question. Said resolution shall be served in the same manner and within the same time as the initial resolution mentioned in Section 5-124 (Citizen Complaint), and insofar as possible the procedure shall be the same as is provided in that section. (Neb. Rev. Stat. §53-134)

**SECTION 5-126: REVOCATION OF LICENSE**

Whenever any licensee has been convicted by any court of a violation of the Nebraska Liquor Control Act, the licensee may, in addition to the penalties for such offense, incur a forfeiture of the license and all money that had been paid for the license. The City Council may conditionally revoke the license subject to a final order of the Liquor Control Commission or the commission may revoke the license in an original proceeding brought before it for that purpose. (Neb. Rev. Stat. §53-116.02)

**SECTION 5-127: CHANGE OF PREMISES**

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

**SECTION 5-128: REMOVAL OF INTOXICATED PERSONS FROM PUBLIC OR QUASI-PUBLIC PROPERTY**

A. City police, county sheriffs, officers of the Nebraska State Patrol, and any other such law enforcement officers with power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others or who is otherwise incapacitated from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take such intoxicated person to his or her home or to place such person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctors which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, except that civil protective custody shall be used only so long as is necessary to preserve life or to prevent injury and under no circumstances for longer than 24 hours.

B. The placement of such person in civil protective custody shall be recorded at the facility or jail to 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.

C. 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.

D. 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.

E. For purposes of this section, "public property" shall mean any public right of way, street, highway, alley, park, or other state-, county-, or city-owned property. "Quasi-public property" shall mean and include private or publicly owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress.

(Neb. Rev. Stat. §53-1,121)



## Article 2 – Peddlers and Solicitors

### SECTION 5-201: DEFINITIONS

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

“Business” shall mean the business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

“Goods” shall mean merchandise of any description whatsoever and includes, but is not restricted to, wares and foodstuffs.

“Itinerant merchant” shall mean any person, whether owner, agent, or consignee, who engages in a temporary business of selling goods within the city and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the city.

“Peddler” shall mean any person, not an itinerant merchant, who:

- A. Travels from place to place by any means carrying goods for sale, making sales, or making deliveries; or
- B. Without traveling from place to place, sells or offers goods for sale from any public place within the city.

“Solicitor” shall mean any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

### SECTION 5-202: LICENSE REQUIRED

A. Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the city.

B. The fee for the license required by this section shall be as set from time to time by the city.

C. No license issued under this section shall be transferable.

D. All licenses issued under this section shall expire 90 days after the date of issuance thereof.

### SECTION 5-203: LICENSE; APPLICATION

A. Every applicant for a license required by this article shall file an application

with the city clerk. The application shall be signed by the applicant if an individual, by all partners in a partnership, or by the president if a corporation. The applicant shall provide information concerning the following items:

1. The name and address of the applicant;
2. The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the city; the local address of such individual; the permanent address of such individual; and the capacity in which such individual will act;
3. The name and address of the person, if any, for whose purpose the business will be carried on and, if a corporation, the state in which incorporated;
4. The time period(s) during which it is proposed to carry on the applicant's business;
5. The nature, character, and quality of the goods or services to be offered for sale or delivery and, in the case of goods, (a) their invoice value and whether they are to be sold by sample as well as from stock; and (b) where and by whom such goods are manufactured or grown and where such goods are located at the time of application;
6. The nature of the advertising proposed to be done for the business;
7. Whether or not the applicant, or the individual identified in subsection (A)(2) herein, or the person identified in subsection (A)(3) herein has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense;
8. A complete description of the nature of the business proposed to be conducted;
9. A description of the make, model, identification number, and license and registration numbers of any vehicle proposed to be used in the business;
10. To the extent the proposed business is subject to any licensing, permit, or inspection authority of any state regulatory agency or other jurisdiction, a true and correct copy of a current and valid license, permit, or inspection certificate or other evidence deemed sufficient by the city clerk to conduct the proposed business; and
11. A certificate of insurance or other evidence deemed sufficient by the city clerk that the proposed business has a policy of commercial general liability insurance at all times business is intended to be conducted within

the city.

B. Every applicant for a license required by this article shall, if required by the city clerk, attach to his or her application credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(Am. Ord. No. 2020-1154, 7/6/20)

#### **SECTION 5-204: LICENSE; ISSUANCE STANDARDS**

A. Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

B. The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence, which shall constitute a valid reason for the disapproval of an application, shall be that the applicant has:

1. Been convicted of a crime of moral turpitude;
2. Made willful misstatements in the application;
3. Committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like;
4. Committed prior fraudulent acts; or
5. A record of continual breaches of solicited contracts.

C. The city clerk shall issue a license to each peddler or solicitor licensed under this article. The license shall contain the words "licensed peddler" or "licensed solicitor," the expiration date of the license, and the number of the license.

D. In the event more than one place within the city shall be used to conduct the business licensed, separate licenses shall be issued for each place.

#### **SECTION 5-205: LICENSE; REVOCATION**

Any license or permit granted under this article may be revoked by the city clerk after notice and hearing, pursuant to the standards in Section 5-206 (Revocation Standards). Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his or her last known address at least ten days prior to the date set for the hearing.

#### **SECTION 5-206: LICENSE; REVOCATION STANDARDS**

A license granted under this article may be revoked for any of the following reasons:

- A. Any fraud or misrepresentation contained in the license application;
- B. Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license;
- C. Any violation of this article;
- D. Conviction of the licensee of any felony or of any misdemeanor involving moral turpitude; or
- E. Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

**SECTION 5-207: LICENSE; APPEAL PROCEDURE**

Any person aggrieved by a decision under Sections 5-204 (Issuance Standards) or 5-206 (Revocation Standards) shall have the right to appeal to the City Council. The appeal shall be taken by filing with the council, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The council shall set the time and place for a hearing and notice for such hearing shall be given to such person in the same manner as provided in Section 5-205 (Revocation). The order of the council after the hearing shall be final.

**SECTION 5-208: LICENSE; LICENSEE'S DUTIES**

The license shall be kept with the licensee during such time as he or she is engaged in the business licensed.

**SECTION 5-209: HOURS**

It shall be unlawful to make calls as a solicitor or peddler to prospective customers before 9:00 a.m. or after 6:00 p.m. any day unless requested to do so by the prospective customer. (Neb. Rev. Stat. §17-134)

**SECTION 5-210: POLICY; REFUSAL**

It is hereby declared to be the policy of the city that the occupants of the residences in the city shall make the determination of whether solicitors shall be, or shall not be, invited into their respective residences.

A. Notice of the refusal of invitation to solicitors to any residence shall be given on a weatherproof card approximately 3 by 4 inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant and containing the applicable words, as follows:

"NO SOLICITORS INVITED"

B. The letters shall be at least 1/3 inch in height.

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

D. It shall be the duty of every solicitor, upon going onto any premises in the city upon which a residence is located, to first examine the notice provided for in subsection (A), if any is attached, and be governed by the statement contained on the notice. If a notice stating "NO SOLICITORS INVITED" is posted on or near the front door, the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

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

#### **SECTION 5-211: PROHIBITED SOLICITATION**

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



## Article 3 – Occupation Taxes

### SECTION 5-301: PURPOSE

For the purpose of raising revenue, there is hereby levied an occupation tax upon such occupations and businesses carried on within the corporate limits of this city and in such amounts as set by ordinance and placed on file with the city clerk; and every person, firm, association or corporation carrying on the occupation or business specified within the limits of said city shall pay to the city treasury the sum named as a tax upon such occupation or business. All money so collected shall be credited to the general fund, except as provided in Section 5-302(B) as to fire insurance companies.

### SECTION 5-302: LEVY AUTHORIZED

A. The city shall have power to raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city and regulate the same by ordinance. Any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under Neb. Rev. Stat. §§53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under Neb. Rev. Stat. §77-2704.24. The occupation tax shall be imposed in the manner provided in Neb. Rev. Stat. §18-1208, except that Neb. Rev. Stat. §18-1208 does not apply to an occupation tax subject to Neb. Rev. Stat. §86-704. All such taxes shall be uniform in respect to the classes upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and other musical entertainments given exclusively by the citizens of the city.

B. The City Council shall have authority, by ordinance, to impose an occupation tax of not more than \$5.00 per annum on each fire insurance corporation, company or association doing business in the city for the use, support and benefit of the volunteer Fire Department. The city clerk shall collect with diligence the occupation tax so imposed. Upon the receipt of the tax, the clerk shall pay over the proceeds thereof to the city treasurer, who shall credit the same to a fund to be known as "special occupation tax fund" for the benefit of the Fire Department. Upon proper claim filed by the fire chief and allowed by the City Council, the treasurer shall pay over the proceeds of the tax in the fund from time to time for the use of the Fire Department as hereinbefore provided.

C. Notwithstanding any ordinance or charter power to the contrary, the city shall not impose an occupation tax on the business of any person, firm, or corporation licensed under the Nebraska Liquor Control Act and doing business within the corporate limits of the city in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.  
(Neb. Rev. Stat. §§17-525, 35-106, 53-132) (Ord. No. 2005-994, 9/6/05)

**SECTION 5-303: COLLECTION DATE; RECEIPT**

Unless provided otherwise or levied daily, any occupation taxes imposed by the City Council shall be due and payable on May 1 each year, except that any occupation taxes collected from Class C liquor licensees shall be due and payable on November 1. Upon payment of an occupation tax by any person to the city clerk, he or she shall give a receipt specifying the date, person paying the tax, and the amount paid.

**SECTION 5-304: FAILURE TO PAY**

If any person, company, or corporation fails or neglects to pay the occupation taxes as provided in this article on the day they become due and payable, the city shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of 1% per month until paid.



## Article 4 – Tobacco and Cigarettes

### SECTION 5-401: LICENSE; APPLICATION; FEE

A. Licenses for the sale of cigars, tobacco, cigarettes, cigarette materials, vapor products, or alternative nicotine products to persons over the age of 18 years shall be issued to individuals, partnerships, limited liability companies, and corporations by the city clerk upon application duly made as provided in Neb. Rev. Stat. §28-1422.

B. Every person, partnership, limited liability company, or corporation desiring a license to sell tobacco at retail shall:

1. File with the city clerk a written application on a form provided by the city stating the name of the person, partnership, limited liability company, or corporation for whom the license is desired and the exact location of the place of business; and
2. Deposit with the application a license fee as set by resolution of the City Council and filed at the office of the city clerk.
3. Provide a social security number if the applicant is an individual.

C. The term for which a license shall run shall be from the date of filing the application and paying the license fee to and including December 31 of the calendar year in which application for the license is made.

D. Any person, partnership, limited liability company, or corporation selling annually in the aggregate shall pay varying license fees, as set by resolution of the City Council and filed in the city office, as follows:

1. More than 150,000 cigars, packages of cigarettes, and packages of tobacco in any form at wholesale.
2. Combined annual sales amounting to less than 150,000 cigars, packages of cigarettes, and packages of tobacco.

E. No wholesaler's license shall be issued in any year for less than the fee as provided in subsection (D)(1) is paid unless the applicant shall file with the application a statement duly sworn to by (1) himself or herself, or (2) if the applicant is a partnership, by a member of the firm, or (3) if a limited liability company, by a member or manager of the company, or (4) if a corporation, by an officer or manager thereof, that in the past, such wholesaler's combined sales of cigars, packages of cigarettes, and packages of tobacco in every form have not exceeded in the aggregate 150,000 annually and that such sales will not exceed such aggregate amount for the current year for which the license is to issue. Any person swearing falsely in such affidavit shall be

guilty of an offense and such wholesaler's license shall be revoked until the full license fee as provided in subsection (D)(1) is paid.

E. If application for a license is made after July 1 of any calendar year, the fee shall be one-half of the fee provided in this section.  
(Neb. Rev. Stat. §§28-1421 through 28-1423)

#### **SECTION 5-402: LICENSEE; RIGHTS**

A. The license provided for herein shall authorize the sale of cigars, tobacco, cigarettes, cigarette materials, vapor products, or alternative nicotine products by the licensee and employees to persons over the age of 18 years at the place of business described in the license for the term therein authorized, unless the license is forfeited as a result of court action as provided in Neb. Rev. Stat. §28-1425.

B. If the license is revoked and forfeited pursuant to Neb. Rev. Stat. §28-1425, all rights under the license shall at once cease and terminate.  
(Neb. Rev. Stat. §§28-1424, 28-1425)

#### **SECTION 5-403: DISPOSITION OF FEES**

All money collected as license fees under the provisions of this article shall be paid over by the city clerk to the treasurer of the school fund for the city. (Neb. Rev. Stat. §28-1426)

#### **SECTION 5-404: LICENSE; TRANSFER**

In case of the sale of a business where the owner has a license hereunder, the city clerk may authorize such license to be transferred to the purchaser. In case of a change of location by any licensee hereunder, the city clerk may transfer such license to the new location. (Neb. Rev. Stat. §28-1428)

#### **SECTION 5-405: LICENSE; REVOCATION; REISSUANCE**

In the event that the license of a licensee hereunder shall be revoked and forfeited as provided in Neb. Rev. Stat. §28-1425, no new license shall be issued to such licensee until the expiration of one year from the date of such revocation and forfeiture. (Neb. Rev. Stat. §28-1429)

## Article 5 – Nursing Home

### SECTION 5-501: REGULATIONS

It shall be unlawful for any person to own or operate a nursing home within the city without first obtaining a license from the City Council. The application shall be presented to the clerk and shall request such information and documents as may be required by the council to ascertain the propriety of granting the said application. No license shall be granted to any person who has not been duly licensed by the Nebraska Department of Health and Human Services in the manner prescribed by law. Upon the satisfaction of the council that the granting of a license will be beneficial to the city, the clerk shall convey to the said applicant a license which will permit him or her to own or operate a nursing home. The said licensee shall be subject to any bond, fee, and other rules and regulations which the council in its discretion may designate. Any license so issued shall be subject to revocation by the council after proper notice and a hearing, if one is requested by the licensee. (Neb. Rev. Stat. §§17-964, 17-965, 71-2042)



## Article 6 – Signs and Canopies

### SECTION 5-601: ADVERTISING SIGNS ADJACENT TO FEDERAL-AID ROADS

A. Pursuant to Neb. Rev. Stat. §17-114, as amended, all areas adjacent to all federal-aid primary roads in the State of Nebraska that are located within one-half mile of the corporate limits of the city shall be included within the jurisdiction of the city for the purposes of exercising control over the erection of advertising signs located within such areas.

B. All signs located within such jurisdictional area shall be in compliance with Neb. Rev. Stat. §39-1320 et seq., as amended, and with all applicable rules and regulations of the Nebraska Department of Roads as promulgated in the publication “Rules and Regulations Relating to the Control of Advertising in Areas Adjacent to the Interstate and Federal-Aid Primary Highways,” as amended from time to time.

(Ord. No. 97-810, 11/3/97)

### SECTION 5-602: SIGNS, POSTERS, CANOPIES; REGULATIONS

A. No person shall erect or maintain any sign, signboard, poster, or rigid canopy over any street, sidewalk, or alley or on other public property without having first obtained a permit therefor. Permits for signs, signboards, posters, and canopies shall be issued by the city clerk, subject to the approval of the utilities superintendent, upon the payment of the fee, if any, set by resolution of the City Council and kept in the office of the city clerk.

B. All signs, signboards, posters, and canopies extending over any public sidewalk, street, alley, or other public place must be securely fastened and constructed so that there will be no danger of the same being dislodged by ordinary winds or falling from other causes.

C. No sign, signboard, poster, or canopy shall be erected or maintained which extends over any public sidewalk, street, alley, or other public place in such a location as to obstruct the view of any traffic light, sign, or signal.

D. Upon a determination that a sign, signboard, poster, or canopy is in violation of this section, the city may proceed against the owner or occupant of the premises where such the sign, signboard, poster, or canopy is located as provided in Section 3-504 (Notice Procedure; Abatement).



## Article 7 – Adult Businesses

### SECTION 5-701: INTENT

The intent of this article is not to prohibit such uses as described below in the definitions but to regulate the secondary effects of these uses within the community.

### SECTION 5-702: DEFINITION OF TERMS

For the purposes of these regulations, certain terms and words are hereby defined. Certain sections contain definitions that are additional to those listed here. Where terms are not specifically defined, their ordinarily accepted meaning or meanings implied by their context shall apply.

A. “Adult cabaret” shall mean a nightclub, bar, restaurant, or similar establishment that regularly features live performances characterized by the exposure of specified anatomical areas or by specified sexual activities or films, motion pictures, video-cassettes, slides, or other photographic reproductions in which more than 10 percent of the total presentation time is devoted to the showing of material characterized by any emphasis upon the depiction of specified sexual activities or specified anatomical areas.

B. “Adult companionship establishment” shall mean an establishment which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

C. “Adult establishment” shall mean any business which offers its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas, including but without limitation adult bookstores, adult motion picture theaters, saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel, and adult body painting studios.

D. “Adult hotel or motel” shall mean a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

E. “Adult massage parlor or health club” shall mean a massage parlor or health club which restricts minors by reason of age and which provides massage services, if such services are distinguished or characterized by emphasis on specified sexual activities or specified anatomical areas.

F. "Adult mini-motion picture theater" shall mean a business premises within an enclosed building with a capacity for less than 50 persons, used for presenting visual-media material if such business as a prevailing practice excludes minors by virtue of age or if said material is distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons therein.

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

H. "Adult motion picture theater" shall mean a business premises within an enclosed building with a capacity of 50 or more persons used for presenting visual media material if said business as a prevailing practice excludes minors by virtue of age or if said material is distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons therein.

I. "Adult novelty business" shall mean a business which has as a principal activity the sale of devices which simulate human genitals or devices which are designed for sexual stimulation.

J. "Adult sauna" shall mean a sauna which excludes minors by reason of age or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

### **SECTION 5-703: REGULATION**

A. Applications for adult businesses under the terms of this section shall be accompanied by evidence concerning the feasibility of the proposed request and its effect on surrounding property and shall include a site plan defining the areas to be developed for buildings and structure, the areas to be developed for parking, driveways and points of ingress and egress, the location and height of walls, the location and type of landscaping, the location, size and number of signs and the manner of providing water supply and sewage treatment facilities. Applications shall be submitted to Cumming County.

B. No adult business shall be closer than 1,000 feet to any similar use and no closer than 1,000 feet to residential district uses, religious uses, educational uses and recreational uses. Measurements shall be made in a straight line, without regard to



intervening structures or objects, from the main entrance of such adult business to the point on the property line of such other adult business, residential district use, religious use, educational use and recreational use.

C. Said businesses shall be screened along adjoining property lines so as to prevent any direct visual contact of the adult business at the perimeter.

D. Doors, curtains, and any other means of obstruction to the opening of all booths and other preview areas, including but not limited to adult novelty businesses, adult motion picture arcades, adult mini-motion picture theaters, and adult motion picture theaters shall be removed and kept off at all times during the execution of any permit. Failure to comply with this condition shall result in revocation of the permit.

E. No adult business shall be open for business between the hours of 12:00 midnight and 6:00 a.m.

F. The proposed location, design, construction and operation of the particular use shall adequately safeguard the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.

G. Such use shall not impair an adequate supply of light and air to surrounding property,

H. Such use shall not unduly increase congestion in the streets or public danger of fire and safety,

I. Such use shall not diminish or impair established property values in adjoining or surrounding property,

J. Such use shall be in accord with the intent, purpose and spirit of this article and the Comprehensive Plan of Cuming County.

K. An adult business shall post a sign at the entrance of the premises which shall state the nature of the business and shall state that no one under the age of 18 of age is allowed on the premises. This subsection shall not be construed to prohibit the owner from establishing an older age limitation for coming on the premises.

#### **SECTION 5-704: PROHIBITED ACTIVITIES**

A. No adult business shall employ any person under 18 years of age

B. No adult business shall furnish any merchandise or services to any person who is under 18 years of age.

C. No adult business shall be conducted in any manner that permits the observation of any model or any material depicting, describing or relating to specified sexual

activities or specified anatomical areas by display, decoration, sign, show window or other opening from any public way or from any property not licensed as an adult use. No operator of an adult business or any officer, associate, member, representative, agent, owner, or employee of such business shall engage in any activity or conduct in or about the premises which is prohibited by this article or state laws.

D. No part of the interior of the adult business shall be visible from the pedestrian sidewalk, walkway, street, or other public or semi-public area.

## **Article 8 – Penal Provision**

### **SECTION 5-801: VIOLATION; PENALTY**

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this chapter, set forth at full length herein or incorporated by reference, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500.00 for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.