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## CHAPTER 5 – BUSINESS REGULATIONS

### Article 1 – Alcoholic Beverages

#### SECTION 5-101: DEFINITIONS

All words and phrases herein used shall 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, 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;

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) (Am. Ord. Nos. 80-5, 10/7/80; 85-6, 11/5/85)

### **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 body 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 village.

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 village or (2) inside a motor vehicle while in a public parking area or on any highway in this village.

D. For purposes of this division:

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.

(Neb. Rev. Stat. §60-6,211.08)

#### **SECTION 5-104: 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 village 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 5-105: VILLAGE POWERS AND DUTIES**

A. The Village Board 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 village.

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 Village Board may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

C. The Village Board, with respect to licenses within the corporate limits of the village, 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 Village Board 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, craft brewery, and microdistillery license fees as provid-

ed in Neb. Rev. Stat. §§53-124 and 53-124.01 and pay the same to the village 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 Village Board 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 Village Board 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 village 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 Village Board 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, and after such hearing the Village Board shall cause to be recorded in the minute record of its proceedings a resolution recommending either issuance or refusal of such license. The village 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 village 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 village treasurer; (2) any fee for publication of notice of hearing before the Village Board upon the application for license; and (3) the fee for publication of notice of renewal, if applicable, as provided in Neb. Rev. Stat. §53-135.01.

(Neb. Rev. Stat. §§53-131, 53-132, 53-134) (Am. Ord. Nos. 80-3, 10/7/80; 83-12, 12/6/83)

#### **SECTION 5-106: LICENSEE REQUIREMENTS**

It shall be unlawful for any person to own an establishment that sells at retail any alcoholic beverages unless said person is a resident of the state in which the premises are 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 Neb. Rev. Stat. Chapter 28, Articles 3, 4, 7, 8, 10, 11, or 12 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. (Neb. Rev. Stat. §53-125) (Am. Ord. No. 83-12, 12/6/83)

#### **SECTION 5-107: LOCATION**

It shall be unlawful for any person to own, maintain, manage, or hold open to the public any establishment for the purpose of selling at retail any alcoholic liquor within 150 feet of any church, school, hospital, or home for aged or indigent persons or for veterans, their wives or children. This prohibition does not apply to any location within such distance when the said establishment has been licensed by the Nebraska Liquor Control Commission at least two years and to hotels offering restaurant service, to regularly organized clubs, restaurants, food shops, or other places where the selling of alcoholic liquors is not the principal business carried on, if the business was licensed and in operation prior to May 24, 1935. No alcoholic liquor other than beer shall be sold for consumption on the premises within 300 feet from the campus of any college within the village. (Neb. Rev. Stat. §53-177)

#### **SECTION 5-108: 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 5-109: 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 which the Village Board or the village 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 5-110: CATERING LICENSE**

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. (Neb. Rev. Stat. §53-124.12[1])

B. Upon receipt from the commission of the notice and copy of the application as provided in Neb. Rev. Stat. §53-124.12, the Village Board shall process the application in the same manner as provided in Section 5-105 (Village Powers and Duties). (Neb. Rev. Stat. §53-124.12) (Ord. Nos. 89-11, 5/4/89; 92-11, 8/4/92)

**SECTION 5-111: LICENSE DISPLAYED**

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 5-112: 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. It shall be unlawful for any licensed person or persons or their agents to sell at retail or dispense any alcoholic beverages within the village except during the hours provided herein:

<b>Alcoholic Liquors (Including Beer and Wine)</b>	
Monday through Saturday	
On and Off Sale	6:00 a.m. to 1:00 a.m.
Sunday	
On and Off Sale	11:00 a.m. to 10:00 p.m.

C. 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. 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 15 minutes after the closing hour applicable to the licensed premises and 6:00 a.m. on any day.

E. 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) (Am. Ord. Nos. 83-13, 12/6/83; 05102016, 5/10/16)

### **SECTION 5-113: INSPECTIONS**

The Village Board 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 Liquor Control 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) (Ord. No. 80-6, 10/7/80)

### **SECTION 5-114: 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 5-115: 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 5-116: 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 5-117: 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 5-118: 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) (Am. Ord. No. 80-4, 10/7/80)

### **SECTION 5-119: 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 any hotel or restaurant holding a retail alcoholic beverage license from permitting checks or statements for liquor to be signed by regular guests residing in the said hotel and charged to the accounts of such guests. (Neb. Rev. Stat. §53-183)

### **SECTION 5-120: 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) (Am. Ord. No. 92-10, 8/4/92)

### **SECTION 5-121: CONDUCT PROHIBITED ON LICENSED PREMISES**

No licensee in this village 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 5-122: AUTOMATIC LICENSE RENEWAL; PROTESTS**

A. Outstanding retail licenses issued by the commission may be automatically renewed in the absence of a request by the Village Board to require the said licensee to submit an application for renewal. Any licensed retail or bottle club establishment located in an area which is annexed to the village shall file a formal application for a

license and while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this article until the original license expires 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.

B. The village clerk, upon notice from the commission, shall cause to be published in a legal newspaper in or of general circulation in the village one time between January 10 and January 30 each year a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the village; 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 Village Board may request a licensee to submit an application.

C. In the event written protests are filed by three or more residents of the village against said license and a hearing is held, the Village Board may request a licensee to submit an application as provided in Neb. Rev. Stat. §53-135.

(Neb. Rev. Stat. §§53-135, 53-135.01) (Am. Ord. No. 83-12, 12/6/83)

### **SECTION 5-123: CITIZEN COMPLAINTS**

A. Any five residents of the village shall have the right to file a complaint with the Village Board stating that any retail licensee subject to the jurisdiction of the board 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 Village Board 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 Village Board 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 Village Board 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.

(Neb. Rev. Stat. §53-134.04) (Ord. No. 80-7, 10/7/80)

### **SECTION 5-124: FORM FOR CITIZEN COMPLAINT**

The following form is hereby prescribed for the use of residents of this village desiring to complain to the chairman and the Village Board 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 Chairman and Village Board of the Village of Callaway, Nebraska:

The undersigned respectfully state:

1. That each one is a resident of the Village of Callaway, Nebraska.

2. That they believe that \_\_\_\_\_, the holder of a Class \_\_\_ license in the aforesaid village, 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 Village of Callaway, Nebraska.

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

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

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

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

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

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

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

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF CUSTER    )

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

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

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

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

The Village Board 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 5-123, 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 Village Board 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 village 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 village clerk shall present said application and statement to the Village Board 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 chairman and attested by the village clerk.

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

A. Village police, county sheriffs, officers of the Nebraska State Patrol, and any other such law enforcement officer 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, or alcoholism center or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctors which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury and under no circumstances 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 village-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: REGISTRATION; ISSUANCE OF PERMIT**

To prevent the sale of fraudulent, dangerous and unhealthful goods and services and to protect the public by maintaining records of the products sold and the persons and companies responsible for such sales, all peddlers and solicitors shall register with the village clerk before doing business within the village. Said registration shall contain all the necessary information and documents required by the Village Board. Any person or persons granted a peddlers' and solicitors' permit shall be subject to any rules and regulations which the board deems appropriate for the purposes stated herein, as well as any fees set by the board by resolution. It shall be unlawful at any hour for a solicitor, salesperson, or peddler to solicit without a proper permit on his or her person at all times. Any permit so granted shall be subject to revocation for good and sufficient cause. (Neb. Rev. Stat. §17-525)

### **SECTION 5-202: EXCEPTIONS**

Nothing herein shall be construed to apply to any person or persons selling produce raised within the county, to wholesale companies or their agents soliciting merchants directly, or to representatives of a non-profit or charity organization soliciting on behalf of that organization.

### **SECTION 5-203: HOURS**

It shall be unlawful to make calls as a solicitor or peddler to prospective customers before 9:00 a.m. or after 4:00 p.m. any day unless requested to do so by the prospective customer. (Neb. Rev. Stat. §17-134)

## Article 3 – Sexually Oriented Business

(Ord. No. 13-6-1, 6/11/13)

### SECTION 5-301: LICENSE REQUIRED

It shall be unlawful for any person or other entity to operate a sexually oriented business without a valid sexually oriented business operator's license ("operator's license") issued by the Village Board pursuant to this ordinance.

### SECTION 5-302: LOCATION RESTRICTIONS

A. Sexually oriented businesses shall not be permitted in any area zoned by the village as residential or within 1,500 feet from a private home or apartment.

B. Sexually oriented businesses shall be permitted in any commercial district, provided that the sexually oriented business may not be operated within:

1. 1,500 feet of a church or building which is used primarily for religious worship and related religious activities.
2. 1,500 feet of a public or private educational facility, including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, and special education schools. "School" includes the school ground but does not include the facilities used primarily for another purpose and only incidentally as a school.
3. 1,500 feet of a public park or recreational area which has been designated for a park or recreational activities, including but not limited to parks, playgrounds, nature trails, swimming pool, athletic fields, basketball or tennis courts, skating rink, pedestrian/bicycle paths, wilderness areas, or other similar public lands within the village which is under the control, operation, or management of the village park and recreation authorities.
4. 500 feet of the property line of a lot zoned for residential use and devoted to a residential use as defined in the zoning code.

### SECTION 5-303: APPLICATION REQUIREMENTS FOR PERMIT

A. An application for a sexually oriented business operator's license must be made on a form provided by the village clerk. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn

with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.

B. If a person who wishes to own or operate a sexually oriented business is an individual, he or she must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 10% or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.

C. Applications for an operator's license, whether original or renewal, must be made to the Village Board by the intended operator of the enterprise. Applications must be submitted to the office of the village clerk during regular working hours. The following information shall be provided:

1. The name, street address (and mailing address if different) of the applicant(s).
2. The applicant's social security number and/or state or federally issued tax identification number.
3. The name under which the establishment is to be operated and a general description of the services to be provided. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must (a) state the sexually oriented business's fictitious name and (b) submit the required registration documents.
4. Whether the applicant has been convicted or is awaiting trial on pending charges of a specified criminal activity as defined in Section 5-306(B) and if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
5. Whether the applicant has had a previous license under this ordinance or other similar 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 business license was denied, suspended, or revoked as well as the date of the denial, suspension, or revocation and whether the applicant is or has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended, or revoked, as well as the date of denial, suspension, or revocation.

6. Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.
7. The telephone number of the current establishment, if known.
8. The address and legal description of the tract of land on which the establishment is to be located.
9. The expected startup date, which shall be expressed in number of days from the date of issuance of the business license. If the expected startup date is to be more than ten days following the date of issuance of the business license, then a detailed explanation of the construction, repair, or remodeling work or other cause of the expected delay and a statement or the owner's time schedule and plan for accomplishing the same.

D. Each application for an operator's license shall be accompanied by the following:

1. Payment of the application fee in full.
2. If the establishment is a Nebraska corporation, a certified copy of the articles of incorporation, together with all amendments thereto.
3. If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto.
4. If the establishment is a limited partnership formed under Nebraska laws, a certified copy of the certificate of limited partnership, together with all amendments thereto.
5. If the establishment is a foreign limited partnership, a certified copy of the certificate or limited partnership and the qualification documents, together with all amendments thereto.
6. Proof of the current fee ownership of the tract of land on which the establishment is to be situated, in the form of a copy of the recorded deed.
7. If the person(s) identified as the fee owner(s) of the tract of land in item (6) is/are not also the owner(s) of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease options contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to

have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business.

8. A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the property to be certified; and the property lines of any established religious institution, school, public park or recreation area within 1,000 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.

Any of items (2) through (8) above shall not be required for a renewal application if the applicant states that the documents previously furnished to the village with the original application or previous renewals thereof remain correct and current.

#### **SECTION 5-304: APPROVAL OF PERMIT**

After the application for a permit is complete, the Village Board shall consider the application at its next regular meeting. At such meeting, the board shall approve the permit if all requirements are met. The operator's permit for a sexually oriented business shall be valid for one year. The operator shall renew the permit each year by confirming to the Village Board that the information on the original application is still true and correct.

#### **SECTION 5-305: FEES**

The annual fee for a sexually oriented business operator's license or for a sexually oriented business employee license, whether such licenses are new or renewals, shall be set from time to time by resolution of the Village Board and kept on file at the office of the village clerk. Said fees are to be used to pay the costs of the administration and enforcement of this article.

#### **SECTION 5-306: DEFINITIONS**

A. A "sexually oriented business" is any business where sexual activities, books, videos, magazines, photographs, or other media depicting explicit sexual activities or other sexually explicit paraphernalia or nude or semi-nude persons are being sold. A sexually oriented business also includes live entertainment or non-live entertainment wherein persons appear in a state of nudity or semi-nudity.

B. "Specified criminal activity" means any of the following offenses: 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; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to

those described above under the criminal or penal code of the state, other states, or other countries, for which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is for a misdemeanor offense;
2. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is for a felony offense;
3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

C. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

## **Article 4 – Penal Provision**

### **SECTION 5-401: 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.