

TITLE XI: BUSINESS REGULATIONS

Chapter

110.BUSINESS LICENSING

111.ALCOHOLIC BEVERAGES

112.PEDDLERS AND SOLICITORS

113.AMUSEMENTS

114.LOTTERY

115.RAILROAD COMPANIES

116.FOOD SERVICE

117.SPECIAL EVENTS

CHAPTER 110: BUSINESS LICENSING

Section

General Provisions

110.01 Sale of water or electricity

Building Contractors; Registration

110.20 Definition
110.21 Registration required
110.22 Notice
110.23 Compliance required
110.24 Revocation; procedure
110.25 Appeal
110.26 Violations

GENERAL PROVISIONS

§ 110.01 SALE OF WATER OR ELECTRICITY.

(A) Commencing November 1, 2003, there is hereby levied upon every person, firm, partnership, corporation, municipality, or association engaged in the business of offering or providing water or electricity to the public in the city an occupation tax of 4% on the gross receipts resulting from the sale of water or electricity.

(B) On or before the last day of each and every month, any company providing water or electricity shall pay to the city 4% of the gross receipts as provided in division (A) herein from the preceding month as an occupation tax. All deferred payments shall draw interest at the rate of 1% per month. After default for 6 months, a penalty of 5% shall be added in addition to the interest charges.

(C) All companies providing electricity or water on the last day of each month shall submit to the City Treasurer a full, complete, and detailed statement of the income and gross receipts for the sale of water and electricity. All businesses of this type shall at any reasonable times during business hours permit the city, through its officers, agents, or representatives, to inspect the books and records of any such business for the purpose of verifying the report or reports.

Kimball - Business Regulations

(D) The occupation taxes levied and provided for by this section shall be paid to the City Treasurer, who shall, upon payment thereof, give a receipt, properly dated, and specifying the person paying the same, and the amount thereof, and the time for which the same takes effect. The Treasurer shall keep a record of the receipts so issued.

(E) It is hereby made the duty of any person, firm, partnership, corporation, municipality, or association desiring to exercise, carry on, or engage in any occupation within the provisions of this section to pay to the City Treasurer the amounts specified for the occupation tax, as provided for in this chapter. The amount of the occupation tax shall be due and payable to the City Treasurer immediately after the person shall begin business in any occupation within the provisions of this section.

(F) The City Attorney may bring suit in the name of the city against any person, corporation, firm, partnership, municipality, or association in any court of competent jurisdiction for the amount of the tax levied by this section upon the failure of that person, corporation, firm, partnership, municipality, or association to pay the same as provided.
(Ord. 613, passed 10-21-2003) Penalty, see § 10.99

BUILDING CONTRACTORS; REGISTRATION**§ 110.20 DEFINITION.**

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

BUILDING CONTRACTOR. An individual or other legal entity engaged in the business of contracting with an owner or with another building contractor to provide labor for the construction, alteration, repair or improvement of buildings or other structures, including sidewalks and streets. An employee of a building contractor who does not directly contract with an owner or another building contractor is not a building contractor within this definition.
(Ord. 670, passed 3-2-2011)

§ 110.21 REGISTRATION REQUIRED.

(A) It shall be unlawful for anyone to engage in the business of a building contractor within the city or its zoning jurisdiction without having first registered with the city as follows:

(B) The City Administrator or the city employee designated by the City Administrator may register building contractors to do business in the city or its zoning jurisdiction. Before registering a contractor, the City Administrator or his or her designee will require the building contractor to complete an application to:

- (1) Furnish references;
- (2) Describe the general nature of the work the applicant proposes to do;
- (3) Describe the applicant's experience;
- (4) Identify the employees of the applicant;
- (5) Describe any liability insurance insuring the applicant (such insurance is not required);
- (6) Describe whether a license to conduct business as a building contractor has been revoked or suspended by any other jurisdiction, and if so, to fully describe the circumstances; and
- (7) State the applicant's business and residence addresses, and telephone numbers, including cell phones if any.

(C) Upon the applicant's furnishing the required information on an application and paying a fee in the amount of \$25 per year for the initial registration, and \$15 per year to renew such registration, the applicant shall be registered unless the City Administrator or the designee of the City Administrator articulates written reasons why, for reasons associated with the competence or integrity of the applicant, it is not in the best interest of the city that applicant be registered. The applicant shall either be registered or shall be sent a written explanation why the applicant will not be registered within 14 days after the date of application.

(D) Such registration will be valid for 1 calendar year after the date of issuance, after which time it will expire without further notice to the registrant. Upon application for renewal of such registration, the applicant will advise the City Administrator or the designee of the City Administrator in writing if any statement in the original application is no longer accurate.
(Ord. 670, passed 3-2-2011) Penalty, see § 10.99

§ 110.22 NOTICE.

In the event of a change of address, the City Administrator shall be notified in writing of any such change. Any notice required by this chapter to be sent to an applicant or building contractor shall be properly given if sent by regular U.S. mail to the address shown on the application or, in the event the City Administrator has been given written notice of a change of address, to such changed address. Notice may also be given in any other manner reasonably calculated to give the recipient of the notice actual knowledge of its contents.
(Ord. 670, passed 3-2-2011)

§ 110.23 COMPLIANCE REQUIRED.

All building contractors shall comply with all applicable provisions of this code and all building codes adopted by the city, and shall comply with all lawful orders given by employees of the city. All building contractors shall be responsible to insure that their employees comply with the provisions of this section.

(Ord. 670, passed 3-2-2011)

§ 110.24 REVOCATION; PROCEDURE.

Any registration issued or granted to a building contractor may be revoked by the City Administrator or the designee of the City Administrator in writing upon a showing of good cause after notice and a hearing. Good cause for revocation shall include but not be limited to:

(A) Falsification of information on the application for registration; and

(B) Any improper construction practice that endangers life or property.

(Ord. 670, passed 3-2-2011)

§ 110.25 APPEAL.

If registration is denied or revoked by a designee of the City Administrator, the applicant may appeal to the City Clerk by filing a notice of appeal with the City Clerk within 14 days of the revocation or denial. The City Clerk, after an appropriate hearing in which the Nebraska Rules of Evidence shall not apply, may affirm or reverse the decision denying or revoking the registration. The hearing shall be de novo. Evidence shall not be restricted to the evidence presented to the City Administrator or designee, and the City Clerk shall owe no deference to the decision of the City Administrator or designee. If registration was denied or revoked by the City Clerk, any appeal shall be to an appropriate court.

(Ord. 670, passed 3-2-2011)

§ 110.26 VIOLATIONS.

Any person who falsifies information on an application for a building contractor registration, or who violates any provision of §§ 110.20 through 110.25 shall be guilty of violating this code and shall be subject to the penalty as set forth in § 10.99.

(Ord. 670, passed 3-2-2011)

CHAPTER 111: ALCOHOLIC BEVERAGES

Section

General Provisions

- 111.01 Definitions
- 111.02 Sale or gift to minor or mentally incompetent person prohibited
- 111.03 Consumption in public places or places open to the public; restrictions
- 111.04 Removal of intoxicated persons from public or quasi-public property

Licenses Required

- 111.20 Manufacture, sale, delivery, and possession; general prohibitions; exceptions
- 111.21 Acquisition and possession; restrictions
- 111.22 Licensee requirements
- 111.23 Licenses; city powers and duties
- 111.24 Licensed premises; inspections
- 111.25 License renewal; city powers and duties
- 111.26 Catering licenses
- 111.27 Display of license
- 111.28 Owner of premises or agent; liability
- 111.29 Licensee; liability for acts of officer, agent, or employee
- 111.30 Citizen complaints

Retail Establishments

- 111.45 Location
- 111.46 Access to dwellings
- 111.47 Sanitary conditions
- 111.48 Hours of sale
- 111.49 Credit sales prohibited
- 111.50 Original package required
- 111.51 Minor's presence restricted
- 111.52 Keg sales; requirements; prohibited acts

GENERAL PROVISIONS**§ 111.01 DEFINITIONS.**

For purposes of this chapter, the definitions found in Neb. RS 53-103.01 through 53-103.42 shall be used.

§ 111.02 SALE OR GIFT TO MINOR OR MENTALLY INCOMPETENT PERSON PROHIBITED.

No person shall sell, furnish, give away, dispose of, exchange, or deliver, or permit the sale, gift, or procuring of any alcoholic liquors, to or for any minor or to any person who is mentally incompetent.

(Neb. RS 53-180) Penalty, see § 10.99

Statutory reference:

Authority, see Neb. RS 17-135

§ 111.03 CONSUMPTION IN PUBLIC PLACES OR PLACES OPEN TO THE PUBLIC; RESTRICTIONS.

(A) Except when the Nebraska Liquor Control Commission has issued a license as provided in Neb. RS 53-186(2) or as provided in Neb. RS 60-6,211.08, 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. RS 53-186)

(B) It is unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, café, or club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for such premises pursuant to the Nebraska Liquor Control Act. It is unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, café, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the Act. This division does not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages or to limousines or buses operated under Neb. RS 60-6,211.08.
(Neb. RS 53-186.01)

§ 111.04 REMOVAL OF INTOXICATED PERSONS FROM PUBLIC OR QUASI-PUBLIC PROPERTY.

(A) Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others, or who

is otherwise incapacitated, from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take the intoxicated person to his or her home or to place the person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury. The effort at placement shall be deemed reasonable if the officer contacts such facilities or doctor which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If these efforts are unsuccessful or are not feasible, the officer may then place the intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstances longer than 24 hours.

(B) The placement of the person in civil protective custody shall be recorded at the facility or jail at which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to the 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 these 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 the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PUBLIC PROPERTY. Any public right-of-way, street, highway, alley, park, or other state, county, or city-owned property.

QUASI-PUBLIC PROPERTY. 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. RS 53-1,121) Penalty, see § 10.99

LICENSES REQUIRED

§ 111.20 MANUFACTURE, SALE, DELIVERY, AND POSSESSION; GENERAL PROHIBITIONS; EXCEPTIONS.

(A) No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes except as specifically provided in this chapter and the Nebraska Liquor Control Act.

(B) Nothing in this chapter shall prevent:

- (1) The possession of alcoholic liquor legally obtained as provided in this chapter or the Act for the personal use of the possessor and his or her family or guests;
- (2) The making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests;
- (3) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of that hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of licensed physicians;
- (4) The possession and dispensation of alcoholic liquor by an authorized representative of any religion on the premises of a place of worship, for the purpose of conducting any bona fide religious rite, ritual, or ceremony;
- (5) Persons who are 16 years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor;
- (6) Persons who are 16 years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment;
- (7) Persons who are 16 years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; or
- (8) Persons who are 19 years old or older from serving or selling alcoholic liquor in the course of their employment.
(Neb. RS 53-168.06)
Penalty, see § 10.99

§ 111.21 ACQUISITION AND POSSESSION; RESTRICTIONS.

- (A) 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 this chapter and the Nebraska Liquor Control Act unless within specific exemptions or exceptions provided in this chapter or the Act.
(Neb. RS 53-175)
- (B) It shall be unlawful for any person to transport, import, bring, ship, or cause to be transported, imported, brought, or shipped into this state for the personal use of the possessor, his or her family, or guests a quantity of alcoholic liquor in excess of 9 liters in any 1 calendar month.
(Neb. RS 53-194.03)
Penalty, see § 10.99

§ 111.22 LICENSEE REQUIREMENTS.

(A) No license shall be issued to:

(1) A person who is not a resident of this state, except in case of railroad, airline, or boat licenses;

(2) A person who is not of good character and reputation in the community in which he or she resides;

(3) A person who is not a citizen of the United States;

(4) A person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States;

(5) A person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant Neb. RS Chapter 28, art. 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this division on May 18, 1983, shall not prevent any person holding a license on that date from retaining or renewing that license if the conviction or plea occurred prior to May 18, 1983;

(6) A person whose license issued under the Nebraska Liquor Control Act has been revoked for cause;

(7) A person who at the time of application for renewal of any license issued under the Act would not be eligible for that license upon initial application;

(8) A partnership, unless 1 of the partners is a resident of this state and unless all the members of that partnership are otherwise qualified to obtain a license;

(9) A limited liability company, unless 1 of the members is a resident of this state and unless all the members of that company are otherwise qualified to obtain a license;

(10) A corporation, if any officer or director of the corporation or any stockholder owning in the aggregate more than 25% of the stock of that corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in divisions (A)(1) and (A)(3) of this section, or if a manager of a corporate licensee would be ineligible to receive a license under this section for any reason. This division shall not apply to railroad licenses;

(11) A person whose place of business is conducted by a manager or agent, unless that manager or agent possesses the same qualifications required of the licensee;

(12) A person who does not own the premises for which a license is sought or does not have a lease or combination of leases on the premises for the full period for which the license is to be issued;

(13) Except as provided in this division, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such an applicant shall become eligible for a liquor license only if the Nebraska Liquor Control Commission finds from the evidence that the public interest will not be infringed upon if the license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license, the applicant is also ineligible to receive a liquor license. This prima facie evidence shall be overcome if it is shown to the satisfaction of the Commission:

(a) The licensed business will be the sole property of the applicant; and

(b) The licensed premises will be properly operated.

(14) A person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal;

(15) A law enforcement officer, except that this division shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization; or

(16) A person less than 21 years of age.

(B) When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or person who is mentally incompetent.
(Neb. RS 53-125)

§ 111.23 LICENSES; CITY POWERS AND DUTIES.

(A) The City Council is authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, craft brewery, and microdistillery licensees carried on within the corporate limits of the city.
(Neb. RS 53-134.03)

(B) During the period of 45 days after the date of receipt by mail or electronic delivery from the Nebraska Liquor Control Commission notice and a copy of an application for a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license, the City Council may make and submit to the Commission recommendations relative to the granting or refusal to grant the license to the applicant.
(Neb. RS 53-131)

(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, or microdistillery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation adopted by the City Council has been or is being violated, and at that time examine the premises of the licensee in connection with such determination. Any law enforcement officer who determines that 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 local governing body 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 these complaints in the manner provided in the Act;

(4) To receive retail, craft brewery, and microdistillery license fees as provided in Neb. RS 53-124 and 53-124.01 and pay the same, after the license has been delivered to the applicant, to the City Treasurer;

(5) To examine or cause to be examined any applicant or any retail, 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 § 111.30, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. The order of cancellation or revocation may be appealed to the Commission within 30 days after the date of the order by filing a notice of appeal with the Commission. The Commission shall handle the appeal in the manner provided for hearing on an application in Neb. RS 53-133; and

Kimball - Business Regulations

(7) Upon receipt from the Commission of the notice and copy of application as provided in Neb. RS 53-131, to fix a time and place for a hearing at which the 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 the hearing shall be published in a legal newspaper in or of general circulation in the city, 1 time not less than 7 and not more than 14 days before the time of the hearing. The 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 the license may do so at the time of the hearing. The hearing shall be held not more than 45 days after the date of receipt of the notice from the Commission, and after the hearing the City Council shall cause to be recorded in the minute record of its proceedings a resolution recommending either issuance or refusal of the license. The City Clerk shall mail to the Commission by first class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the Commission. If the Commission refuses to issue such a license, the cost of publication of notice shall be paid by the Commission from the security for costs.
(Neb. RS 53-134)

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

(a) The license fee if by the terms of Neb. RS 53-124 the fee is payable to the City Treasurer;

(b) Any fee for publication of notice of hearing before the City Council upon the application for the license;

(c) The fee for publication of notice of renewal, if applicable, as provided in Neb. RS 53-135.01; and

(d) Occupation taxes, if any, imposed by the city.

(2) 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 2 times the amount of the license fee required to be paid under the Act to obtain that license.
(Neb. RS 53-132)

§ 111.24 LICENSED PREMISES; INSPECTIONS.

The City Council shall cause frequent inspection to be made on the premises of all retail licensees. If it is found that any such licensee is violating any provision of this chapter, the Nebraska Liquor Control Act, or the rules and regulations of the Nebraska Liquor Control Commission, or is failing to

observe in good faith the purposes of this chapter or the Act, the license may be suspended, canceled, or revoked after the licensee is given an opportunity to be heard in his or her defense.
(Neb. RS 53-116.01)

§ 111.25 LICENSE RENEWAL; CITY POWERS AND DUTIES.

(A) A retail license issued by the Nebraska Liquor Control Commission and outstanding may be automatically renewed by the Commission in the absence of a written request by the City Council to require the licensee to submit an application for renewal. Any licensed retail premises located in an area which is annexed to the city shall file a formal application for a license, and while the application is pending, the licensee may continue all license privileges until the original license expires or is canceled or revoked. If that license expires within 60 days following the annexation date of the area, the license may be renewed by order of the Commission for not more than 1 year.
(Neb. RS 53-135)

(B) The City Clerk shall cause to be published in a legal newspaper in or of general circulation in the city, 1 time between January 10 and January 30 of each year, individual notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the city, except that notice of the right of automatic renewal of Class C licenses shall be published between the dates of July 10 and July 30 of each year. If written protests to the issuance of automatic renewal of a license are filed in the office of the City Clerk by 3 or more residents of the city on or before February 10, or August 10 for Class C licenses, the City Council shall hold a hearing to determine whether continuation of the license should be allowed. Upon the conclusion of any hearing required by this section, the City Council may request a licensee to submit an application as provided in Neb. RS 53-135.
(Neb. RS 53-135.01)

§ 111.26 CATERING LICENSES.

(A) The holder of a license to sell alcoholic liquor at retail issued under Neb. RS 53-124, a craft brewery license, a microdistillery license, or a farm winery license may obtain an annual catering license by filing an application and license fee with the Nebraska Liquor Control Commission.

(B) Upon receipt from the Commission of the notice and a copy of the application as provided in Neb. RS 53-124.12, the City Council shall process the application in the same manner as provided in § 111.23.

(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. RS 53-124.12)

§ 111.27 DISPLAY OF LICENSE.

Every licensee under the Nebraska Liquor Control Act shall cause his or her license to be framed and hung in plain view in a conspicuous place on the licensed premises.
(Neb. RS 53-148) Penalty, see § 10.99

§ 111.28 OWNER OF PREMISES OR AGENT; LIABILITY.

If the owner of the licensed premises or any person from whom the licensee derives the right to possession of the premises, or the agent of that owner or person, knowingly permits the licensee to use the licensed premises in violation of the terms of the Nebraska Liquor Control Act or any city ordinance, that owner, agent, or other person shall be deemed guilty of a violation of the Act or ordinance to the same extent as the licensee and be subject to the same punishment.
(Neb. RS 53-1,101) Penalty, see § 10.99

§ 111.29 LICENSEE; LIABILITY FOR ACTS OF OFFICER, AGENT, OR EMPLOYEE.

Every act or omission of whatsoever nature constituting a violation of any of the provisions of the Nebraska Liquor Control Act or any city ordinance by any officer, director, manager, or other agent or employee of any licensee, if the act is committed or omission is made with the authorization, knowledge, or approval of the licensee, shall be deemed and held to be the act of the employer or licensee, and the employer or licensee shall be punishable in the same manner as if the act or omission had been done or omitted by the licensee personally.
(Neb. RS 53-1,102) Penalty, see § 10.99

§ 111.30 CITIZEN COMPLAINTS.

Any 5 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 City Council has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant to the Act. The complaint shall be in writing in the form prescribed by the City Council and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the City Council is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for that belief, it shall set the matter for hearing within 10 days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of the hearing and

of the particular charge in the complaint. The complaint shall in all cases be disposed of by the City Council within 30 days from the date the complaint was filed by resolution thereof, which resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided in Neb. RS 53-1,115.
(Neb. RS 53-134.04)

RETAIL ESTABLISHMENTS

§ 111.45 LOCATION.

(A) Except as otherwise provided in division (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 aged or indigent persons or for veterans, their wives or children. This prohibition does not apply to any location within such distance of 150 feet:

(1) For which a license to sell alcoholic liquor at retail has been granted by the Nebraska Liquor Control Commission for two years continuously prior to making of application for license;

(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; or

(3) To a college or university in the state which is subject to Neb. RS 53-177.01.

(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 commission gives notice to the affected church and holds a hearing as prescribed in Neb. RS 53-133.
(Neb. RS 53-177)

(C) No alcoholic liquor, other than beer, shall be sold for consumption on the premises within 300 feet from the campus of any college or university within the city, except that this section:

(1) Does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events; and

(2) Does not prohibit sales of alcoholic liquor by a community college culinary education program pursuant to Neb. RS 53-124.15.

(Neb. RS 53-177.01) Penalty, see § 10.99

Statutory reference:

State commission may waive 300-foot requirement, see Neb. RS 53-177.01

§ 111.46 ACCESS TO DWELLINGS.

Except in the case of hotels and clubs, no alcoholic liquor shall be sold at retail upon any premises which have any access which leads from the premises to any other portion of the same building or structure used for dwelling or lodging purposes, and which is permitted to be used or kept accessible for use by the public. This provision shall not prevent any connection between the premises and such other portion of the building or structure which is used only by the licensee, his or her family, or personal guests.

(Neb. RS 53-178) Penalty, see § 10.99

§ 111.47 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. The 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 sanitary conditions shall be made at all hearings concerning the application for or renewal of a liquor license.

Penalty, see § 10.99

Statutory reference:

Authority to regulate licensed premises, see Neb. RS 53-134.03

State sanitary rules and regulations authorized, see Neb. RS 53-118

§ 111.48 HOURS OF SALE.

(A) No alcoholic liquor, including beer, shall be sold at retail or dispensed within the city on any day between the hours of 1:00 a.m. and 6:00 a.m.

(B) No alcoholic liquor, except for beer and wine, shall be sold at retail or dispensed between the hours of 6:00 a.m. and 12:00 noon on Sunday.

(C) Beer and wine may be sold at retail or dispensed within the city between the hours of 6:00 a.m. on Sunday and 1:00 a.m. on the following Monday.

(D) Alcoholic liquor may be sold at retail and dispensed from 12:00 noon on Sunday to 1:00 a.m. on the following Monday.

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

(F) Nothing in this section shall prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic liquor is prohibited by this section. (Neb. RS 53-179) (Am. Ord. 723, passed 5-19-2015)

§ 111.49 CREDIT SALES PROHIBITED.

(A) 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, and if any person extends credit for any such purpose, the debt thereby attempted to be created shall not be recoverable at law.

(B) Nothing in this section shall prevent the following:

(1) Any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or bona fide guests of members and charged to the account of such members or guests in accordance with the bylaws of such club;

(2) Any hotel or restaurant holding a retail license from permitting checks or statements for liquor to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests; or

(3) Any licensed retailer engaged in the sale of wine from issuing wine-tasting cards to customers. (Neb. RS 53-183) Penalty, see § 10.99

§ 111.50 ORIGINAL PACKAGE REQUIRED.

No person, except a manufacturer or wholesaler, shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor. It shall be unlawful for any person to have in his or her possession for sale at retail any bottles, casks, or other containers containing alcoholic liquor except in original packages. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale. (Neb. RS 53-184) Penalty, see § 10.99

§ 111.51 MINOR'S PRESENCE RESTRICTED.

It shall be unlawful for any person who owns, manages, or leases an establishment selling alcoholic beverages at retail to allow any minor under the age of 18 years of age to frequent or otherwise remain in the establishment unless the minor is accompanied by his or her parent or legal guardian, and unless the minor remains seated with and under the immediate control of the parent or legal guardian.

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see Neb. RS 53-134.03

§ 111.52 KEG SALES; REQUIREMENTS; 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 5 or more gallons or 18.92 or more liters, the seller shall record the date of the 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 the military identification contains a picture of the purchaser, together with the purchaser's signature. This record shall be on a form prescribed by the Nebraska Liquor Control Commission and shall be kept by the licensee at the retail establishment where the purchase was made for not less than 6 months. The records kept pursuant to this section shall be available for inspection by any law enforcement officer during normal business hours or at any other reasonable time. Any person violating this section shall be guilty of an offense.

(Neb. RS 53-167.02)

(B) Any person who unlawfully tampers with, alters, or removes the keg identification number from a beer container or is in possession of a beer container described in division (A) with an altered or removed keg identification number after the container has been taken from the licensed premises pursuant to a retail sale and before its return to the licensed premises or other place where returned kegs are accepted shall be guilty of an offense.

(Neb. RS 53-167.03) Penalty, see § 10.99

CHAPTER 112: PEDDLERS AND SOLICITORS

Section

- 112.01 Definitions
- 112.02 Exemptions
- 112.03 Permit
- 112.04 Permit application
- 112.05 Permit fee
- 112.06 Refusal to leave premises unlawful
- 112.07 Sale of goods on public ways unlawful
- 112.08 Permit revocation; notice and hearing
- 112.09 Permit revocation; appeal

§ 112.01 DEFINITIONS.

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

PEDDLER or HAWKER. Any person, firm, or corporation, whether as owner, agent, consignee, or employee, and whether a resident of the city or not, who engages temporarily within the city in the business of selling and delivering goods, wares, and merchandise or taking orders for goods or merchandise.

SOLICITOR. Any person who requests orders as described above for charitable, civic, religious, or patriotic purposes or who engages in requesting financial assistance for such purposes. (Neb. RS 17-134 and 75-323) (1992 Code, § 10-301) (Am. Ord. 462, passed 12-7-1993)

§ 112.02 EXEMPTIONS.

(A) This chapter shall not apply to any established organization organized and operated exclusively for charitable, civic, religious, or patriotic purposes, and not operated for the pecuniary profit of any person, if the solicitations by that established person or organization are conducted among the members thereof by other members or officers thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies or services of any such established organization.

(B) This chapter shall not apply to any person who has been invited to a house by an occupant thereof. The invitation must be extended prior to the person entering upon the premises.

(C) This chapter shall not apply to persons exercising First Amendment rights under the U.S. Constitution, such as those who represent religious organizations, and incidentally sell religious tracts or take orders for religious periodicals, or those who are circulating petitions.
(1992 Code, § 10-302)

§ 112.03 PERMIT.

(A) 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 those sales, all peddlers and hawkers shall, before doing business within the city, make application for, and be issued a permit.

(B) Application for this permit shall be made to the City Police Department, and shall contain all the necessary information and documents required for the protection of the residents of the city. Any person or persons granted a permit shall be subject to any fees, occupation taxes, and other rules and regulations which the City Council deems appropriate for the purposes stated herein. Any permit so granted shall be subject to revocation for good and sufficient cause by the City Police Department.
(Neb. RS 17-134 and 17-525) (1992 Code, § 10-303) Penalty, see § 10.99

§ 112.04 PERMIT APPLICATION.

(A) Any person required to obtain a permit under the above provisions shall first fill out an application for the same upon a form to be prescribed by the City Police Department.

(B) Applicants for a permit shall file a written, sworn application signed by the applicant if an individual, by all partners if a partnership, and by the president if a corporation, with the Police Department, showing:

(1) The name or names of the person or persons having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the city; the local address or addresses of the person or persons while engaged in that business; the permanent address or addresses of the person or persons; the capacity in which the person or persons will act (that is, whether as proprietor, agent, or otherwise); the name and address of the person, firm, or corporation for whose account the business will be carried on, if any; and if a corporation, under the law of what state the same is incorporated;

(2) The place or places in the city where it is proposed to carry on the applicant's business, and the length of time during which it is proposed that the business shall be conducted;

(3) A statement of the nature of merchandise to be sold or offered for sale by the applicant;

(4) A brief statement of the nature of the advertising done or proposed to be done in order to attract customers;

(5) Credentials from the person for whom the applicant proposes to do business, authorizing the applicant to act as a representative; and

(6) Such other reasonable information as to the identity or character of the person or persons having the management or supervision of the applicant's business or the method or plan of doing that business as the Police Department may deem proper.

(Neb. RS 17-134) (1992 Code, § 10-304) Penalty, see § 10.99

§ 112.05 PERMIT FEE.

The applicant shall pay a permit fee set by resolution of the City Council to cover the cost of processing the application and issuing the permit. These fees may be waived by the Police Department for any charity, public, or nonprofit group or organization as provided in § 112.02.

(Neb. RS 17-134 and 17-525) (1992 Code, § 10-305) Penalty, see § 10.99

§ 112.06 REFUSAL TO LEAVE PREMISES UNLAWFUL.

Any solicitor, peddler, or hawker of goods or merchandise who enters upon premises owned or leased by another and willfully refuses to leave the premises after having been notified by the owner or possessor of the premises or his or her agent to leave the same, shall be deemed guilty of a misdemeanor.

(1992 Code, § 10-307) Penalty, see § 10.99

§ 112.07 SALE OF GOODS ON PUBLIC WAYS UNLAWFUL.

It shall be unlawful for any person to sell or offer for sale or peddle goods, wares, or merchandise upon the public streets, alleys, or sidewalks in the city without first having obtained a permit as provided in this chapter.

(1992 Code, § 10-308) Penalty, see § 10.99

§ 112.08 PERMIT REVOCATION; NOTICE AND HEARING.

(A) The permits issued may be revoked by the City Council after notice and a hearing, for any of the following causes:

(1) Any fraud, misrepresentation, or false statement contained in the application for a permit;

(2) Any fraud, misrepresentation, or false statement made in connection with the selling of goods, wares, or merchandise;

(3) Any violation of this chapter;

(4) Conviction of the permit holder of any felony or of a misdemeanor involving moral turpitude; or

(5) Conducting the business permitted under this chapter in an unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety, or general welfare of the public.

(B) Notice of a hearing for the revocation of a permit shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. The notice shall be sent by registered mail, postage prepaid, to the permit holder, at his or her last known address, at least 5 days prior to the date set for the hearing.
(Neb. RS 17-134) (1992 Code, § 10-309)

§ 112.09 PERMIT REVOCATION; APPEAL.

Any person aggrieved by the decision of the City Police Department in regard to the denial of an application for a permit, or in connection with the revocation of a permit, shall have the right to appeal to the City Council. The appeal shall be taken by filing with the City Council, within 14 days after notice of the decision has been mailed to the person's last known address, a written statement setting forth the grounds for appeal. The City Council shall set the time and place for a hearing on the appeal, and notice shall be given to the person by registered mail, postage prepaid, at his or her last known address. The order of the City Council on the appeal shall be final.
(Neb. RS 17-134) (1992 Code, § 10-310)

CHAPTER 113: AMUSEMENTS

Section

Pool Halls, Bowling Alleys, and Skating Rinks

- 113.01 Definitions
- 113.02 Hours of operation
- 113.03 Gambling prohibited

POOL HALLS, BOWLING ALLEYS, AND SKATING RINKS

§ 113.01 DEFINITIONS.

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

BOWLING ALLEY. Any room, building, or structure in which a game consisting of rolling a heavy ball down a wooden lane in an attempt to knock over wooden pins set upright at the opposite end of the lane is played, whether or not it is in connection with any other business.

POOL AND BILLIARDS. A game played on a table in which the object is to drive balls into the pockets, and which is conducted for profit or gain. All ordinances relating to ***POOL AND BILLIARDS*** shall apply to any such game whether or not it is conducted in connection with any other business.

POOL HALL. Any building or place in which any pool, snooker, or billiard table shall be offered for use for hire, profit, or gain.

SKATING RINK. Any building or place in which facilities for roller skating or ice skating are offered for use for hire, profit, or gain.
(1992 Code, § 10-201)

§ 113.02 HOURS OF OPERATION.

It shall be unlawful for the owner or operator of a pool hall, bowling alley, or skating rink to open or make available for public use that pool hall, bowling alley, or skating rink between the hours of 1:00 a.m. and 6:00 a.m.

(1992 Code, § 10-203) Penalty, see § 10.99

§ 113.03 GAMBLING PROHIBITED.

It shall be unlawful for any person to allow any patron of his or her business, in which pool or bowling, or other mechanical devices used for amusement purposes are present, to use those machines for gambling purposes.

(Neb. RS 17-134 and 17-207) (1992 Code, § 10-204) Penalty, see § 10.99

CHAPTER 114: LOTTERY

Section

- 114.01 Participation; restrictions
- 114.02 Allotment of net proceeds

§ 114.01 PARTICIPATION; RESTRICTIONS.

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

(B) No owner or officer of a lottery operator with whom the city contracts to conduct its lottery shall play any lottery conducted by the city. No employee or agent of the city, lottery operator, or authorized sales outlet location shall play the lottery of the city for which he or she performs work during such time as he or she is actually working at the lottery or while on duty.

(C) Nothing shall prohibit any member of the City Council, a city official, or the immediate family of such a member or official, or an owner or officer of an authorized sales outlet location for the city, from playing any lottery conducted by the city; provided that the person is 19 years of age or older.

(D) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

IMMEDIATE FAMILY. Includes:

(a) A person who is related to the member or official by blood, marriage, or adoption and resides in the same household; or

(b) A person who is claimed by the member or official, or spouse of the member or official, as a dependent for federal income tax purposes.

(Neb. RS 9-646) (Ord. 495, passed

) Penalty, see § 10.99

§ 114.02 ALLOTMENT OF NET PROCEEDS.

(A) The city currently conducts a lottery pursuant to the provisions of the Nebraska County and City Lottery Act, Neb. RS 9-601 through 9-612. Pursuant to Neb. RS 9-609, the gross proceeds can be used

Kimball - Business Regulations

only for community betterment purposes, awarding prizes, taxes, and expenses. The city hereby establishes the community betterment purposes, pursuant to Neb. RS 9-604, for which the proceeds, after awarding prizes, taxes, and expenses, will be used.

(B) All net proceeds from the city lottery, otherwise known as KENO, after payment of prizes, taxes, and expenses as allowed by law, shall be used for community betterment purposes as follows:

(1) Twenty-five percent shall be used in initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures;

(2) Twenty-five percent shall be used for the purpose of enabling or furthering the erection or maintenance of public structures; and

(3) Fifty percent shall be kept in a trust fund and may be donated or paid over to other entities in the community (including but not limited to charitable organizations or foundations) for purposes allowed pursuant to Neb. RS 9-604, including but not limited to initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures and voluntarily supporting, augmenting, or supplementing services which government would normally render to the people; however, such gifts shall be conditioned on the requirement that the funds remain as an endowment and that only the interest or other income from the funds be used and not the principal.

(C) Funds described in division (B)(2) above may be spent either on projects initiated by the city or by making grants to organizations or individuals pursuant to requests made to the City Council. These requests shall be made on forms specified by the City Administrator and the funds shall be disbursed on such donations as the City Council deems appropriate.
(1992 Code, § 10-1001) (Ord. 442, passed 4-21-1992; Am. Ord. 463, passed 10-19-1993)

CHAPTER 115: RAILROAD COMPANIES

Section

- 115.01 Safe street crossing conditions
- 115.02 Obstruction of streets prohibited

§ 115.01 SAFE STREET CROSSING CONDITIONS.

It shall be the duty of every railroad company doing business in, or traveling through, the city to keep in a suitable and safe condition the crossings and right-of-way in the city. If any such crossing shall at any time fall into disrepair and become unsafe or inconvenient for public travel, the City Council may, by resolution, call upon the company to make whatever repairs that it may deem necessary to correct the dangerous condition. Notice of this resolution shall be served upon the local agent of the company. In the event that the railroad shall fail or neglect to repair and correct the condition as mentioned above within 48 hours, neglect for each 24 hours thereafter shall be deemed and is hereby made a separate and distinct offense against the provisions herein. (Neb. RS 17-143, 17-144, 17-551, 17-552, and 75-414) (1992 Code, § 10-801) Penalty, see § 10.99

§ 115.02 OBSTRUCTION OF STREETS PROHIBITED.

It shall be unlawful for any railroad company, or its employees, agents, or servants, operating a railroad through the city to obstruct any of the public streets within the city by leaving trains or cars standing thereon so as to prevent the public from crossing the railroad tracks, for a longer period at 1 time than 5 minutes, except in cases of inevitable accident or emergency. (Neb. RS 17-552) (1992 Code, § 10-802) Penalty, see § 10.99

CHAPTER 116: FOOD SERVICE

Section

Sidewalk Cafes

- 116.01 Definition
- 116.02 Purpose
- 116.03 Permits
- 116.04 Applications
- 116.05 Indemnity; insurance
- 116.06 Exterior lighting
- 116.07 Permits; conditions for issuance authorized
- 116.08 Permits; transfer prohibited
- 116.09 Fees
- 116.10 Term; revocation
- 116.11 Location
- 116.12 Clear passageway required
- 116.13 Immediate consumption
- 116.14 Use not exclusive
- 116.15 Alcoholic beverages; fence required
- 116.16 No alcohol; designation of area
- 116.17 Advertising
- 116.18 Excessive noise
- 116.19 Standards; maintenance
- 116.20 Litter
- 116.21 Adverse impact
- 116.22 Density
- 116.23 Alcoholic beverages; consumption
- 116.24 Waiver authorized

- 116.99 Penalty

Cross-reference:

Alcoholic beverages, see Ch. 111

*SIDEWALK CAFES***§ 116.01 DEFINITION.**

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

SIDEWALK CAFÉ. The portion of the public right of way-kept, used, maintained and held out to the public as a place where food and/or drinks are served on a public right of way, which is public through dedication or easement, or public right-of-way that provides waiter or waitress service and contains tables and chairs and may contain railings and planters. It is otherwise unenclosed by fixed walls and open to the air, except that it shall be designated and marked as hereinafter described. (Ord. 652, passed 8-19-2009)

§ 116.02 PURPOSE.

(A) It is found and declared that a sidewalk café promotes the public interests by:

- (1) Making the downtown area an active and attractive pedestrian environment.
- (2) Providing the opportunity for creative, colorful pedestrian focused commercial activities on a day, night and seasonal basis.
- (3) Encouraging commercial activities which add excitement, charm, vitality, diversity and good design to the downtown area.
- (4) Encouraging the upgrading of store fronts and the development of complete and well designed elements within the downtown area.
- (5) Promoting land conservation, redevelopment, energy savings and indirect tax revenue.

(B) It is the purpose of this subchapter to regulate the conditions under which a merchant in the downtown area may request and receive a permit to vend food and/or alcoholic and nonalcoholic beverages for consumption at tables placed in a designated area on a public sidewalk. The City Council is aware that the public sidewalk is intended for the orderly passage of pedestrians in the downtown area and that any conflict between users of the sidewalk and sidewalk eating areas is undesirable.

(C) The sidewalk café regulations as established in this ordinance are designed to allow sidewalk cafes on public property in locations where they are determined to be appropriate by the City Council and to promote and protect the public health, safety, general welfare and amenity. These general goals include the following specific purposes:

(1) To provide adequate space for pedestrians on the sidewalk adjacent to sidewalk cafes and to ensure access to adjacent commercial and retail uses.

(2) To promote sidewalk cafes as useful and properly planned visual amenities which better relate to the streetscape.

(3) To promote the most desirable use of land and buildings and thereby protect the city's tax revenues.

(Ord. 652, passed 8-19-2009)

§ 116.03 PERMITS.

(A) Sidewalk cafes may be located on public sidewalks subject to a permit or license issued by the City Council. Any establishment which is licensed by the state to sell food on its premises may apply to the city for a special permit, to conduct a portion of such licensed business on a sidewalk.

(B) No person shall operate a sidewalk café upon the streets, sidewalks, neutral grounds or other public lands in the city without a permit being granted by the City Council. The business must have a licensed kitchen and offer a wide selection of food and drinks during the hours and days of operation. Sidewalk cafes may only be an incidental use to an existing restaurant.

(C) The permit for a sidewalk café is temporary and the permit holder acquires no right, title or interest in the space permitted to be used.

(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.04 APPLICATION.

(A) Application for a sidewalk café permit shall be made to the City Clerk upon a form to be furnished by the City which application shall set forth the following:

(1) Owner and manager of applicant business.

(2) Hours and days of operation.

(3) How the extended premises will be supervised and maintained.

(4) Maximum number of patrons to be accommodated and description of the seating to accommodate the maximum number of patrons.

(5) Description of the food and drink (alcoholic and/or nonalcoholic) to be offered for sale. If alcoholic drinks are to be offered for sale, documentation must be included with the application demonstrating to the satisfaction of the city that the business will and can obtain the proper license to sell alcoholic beverages on the sidewalk café area.

Kimball - Business Regulations

(6) Such application shall also contain a statement by applicant that the applicant will, in consideration of being issued a permit for the use of surface space, agree to hold harmless the city and officers and employees of the city for any loss or damage arising out of the use, or the discontinuance of any use; that the applicant understands that the use of the surface space is to be temporary and that the applicant shall not acquire any right, title or interest in such space; that the applicant may be required by the city at any time to vacate all or any part of the surface space that the applicant has been given permission to use; that upon demand to vacate the area permitted, or demand to reimburse the city for the cost of removing any personal property and restoring the surface space to its prior condition the permit holder shall do so within 15 days and that the applicant shall have no recourse against either the city nor its officers or agents, either for any loss or damage occasioned by being requested to vacate all or any part of the surface space which said applicant has been granted permission to use.

(7) Provide a plan, drawn to scale which illustrates the exact location of the proposed sidewalk café together with the distances and dimensions of adjoining buildings, the sidewalk, the clear area of the sidewalk, the distance to the curb and the distance to all obstructions in the vicinity.

(B) The application for the permit to establish a sidewalk café must be submitted to the City Clerk who shall set the application for review by the City Council.
(Ord. 652, passed 8-19-2009)

§ 116.05 INDEMNITY; INSURANCE.

Prior to the issuance of the permit, the applicant shall file with the City Clerk an agreement to indemnify and save harmless the city, its officers and employees against any loss or liability for damage, including expenses and costs for bodily injury, and for property damage, sustained by any person as a result of the applicants operation of a sidewalk café on public property. The applicant shall also file with the City Clerk a certificate of insurance demonstrating that the applicant has a satisfactory amount of public liability and property damage insurance and naming the city as coinsured for such insurance covering the operation of a sidewalk café in a sum not less than \$1,000,000 and if alcoholic beverages are served, dram shop insurance in a sum not less than \$300,000.
(Ord. 652, passed 8-19-2009)

§ 116.06 EXTERIOR LIGHTING.

All exterior lighting shall be shown on the plan submitted with the application and shall provide such shading as will prevent the source of the light from being seen from any adjacent residential property, nor shall it cause illumination beyond the boundaries of the property on which it is located in excess of 0.5 foot candle, nor shall it have an adverse impact on the flow of traffic nor shall its design and color be such as may be easily be confused with a traffic signal.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.07 PERMITS; CONDITIONS FOR ISSUANCE AUTHORIZED.

(A) The City Council may impose conditions upon the permit which, in the judgment of the City Council, protect and promote the health, safety and welfare of the public or prevent a nuisance from occurring.

(B) The conditions may include, but are not limited to:

- (1) Restrictions on hours, days and months of operation.
- (2) Special sanitation and clean up procedures.
- (3) Types of furnishings or fixtures to be used.
- (4) Restrictions upon audio, video or communication equipment.
- (5) Lighting, plantings or ornaments
- (6) Signage.

(Ord. 652, passed 8-19-2009)

§ 116.08 PERMITS; TRANSFER PROHIBITED.

The permit issued under this subchapter shall be personal and cannot be assigned. In the event of the transfer of the supporting business, the new owner shall make application for a permit hereunder. (Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.09 FEES.

(A) The fee for the first permit granted for the use of the public sidewalk shall be \$100 and the fee for the renewal of a permit shall be \$50. If the ownership of the business is changed or the manner of use of the sidewalk is changed, application for a new permit shall be made, the fee for which shall be \$100. In the event any permit is revoked or suspended, no portion of the fee shall be refunded.

(B) A \$1 per square foot license and administration fee shall be paid annually in addition to the fee for application for a permit. The fee shall be based on the area of the public sidewalk permitted for sidewalk café purposes. The square footage shall be based on the designated area in the application filed herein.

(Ord. 652, passed 8-19-2009)

§ 116.10 TERM; REVOCATION.

(A) All permits granted hereunder shall expire on December 31 of the year for which it is granted. It may be renewed each year as long as all requirements of this subchapter and the rules and regulations established continue to be met. The City Council may revoke any permit issued hereunder at any time if it finds the use of the sidewalk area covered by the permit has been in violation of the provisions of the ordinances of the city, the rules and regulations established or the specific conditions of the permit. Prior to revoking a permit, the City Council shall hold a hearing and shall give notice of the hearing in writing to the permit holder as hereinafter provided. Any permit issued hereunder may also be revoked at any time the City Council finds it is in the public interest to amend or repeal this ordinance so as to not permit the use of public sidewalks or any portion thereof or determines to otherwise limit the use thereof.

(B) The permit may be revoked with or without cause by written notice to the address of the applicant contained on the application or latest written address change provided by the applicant. The city will provide 30 days written notice of revocation without cause and 10 days notice of revocation with cause. The following shall constitute grounds for immediate revocation with cause:

- (1) Failure to use the area for 90 consecutive days.
- (2) Violation of any the terms and conditions of the permit or violation of any local state or federal laws, ordinances or regulations applicable to the licensed area.
- (3) Failure to maintain the primary business use and required licenses.
- (4) Violation of alcoholic beverage laws and regulations.
- (5) Conviction of the applicant for a felony or for violation of a state, federal or local law involving moral turpitude.

(C) Any permit issued pursuant to this section may be revoked at any time by the City Council when, in the judgment of the City Council such action is required to protect and promote the public health, safety and welfare. Any permit may be suspended for such period of time during which the City Council determines adequate grounds exist.

(D) A permit holder does not acquire any right of any nature or kind to receive a permit or renew an existing permit in a subsequent or successive year. Every application to renew a permit shall be reviewed annually based on the criteria set forth in this subchapter. The past performance of the permit holder and current circumstances may be taken into consideration when determining whether to approve, deny, suspend or revoke a permit for an applicant who has previously been granted such a permit.

(Ord. 652, passed 8-19-2009)

§ 116.11 LOCATION.

The area occupied by the sidewalk café shall abut and shall be operated as part of the food establishment and drink establishment operated by the applicant. No part of the sidewalk café shall extend from any premises other than the applicants' food and drink establishment.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.12 CLEAR PASSAGEWAY REQUIRED.

A clear, unobstructed passage way of not less than 5 feet in width at all points, entirely across the frontage of the property to be occupied under the permit, parallel to the line of the street and generally in the line of pedestrian traffic shall be maintained at all times, except if the City Council shall find special circumstances involving site characteristics or the flow of pedestrian traffic at such location, the conditions of approval may require a passage way greater than 5 feet or may prohibit operation of the sidewalk café for certain specified periods. The 5 feet of clear distance shall be free of all obstructions (such as trees, parking meters, utility poles, and the like) in order to allow adequate pedestrian movement. The placement of tables, chairs or other items within the 5-foot clear passage, area is prohibited.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.13 IMMEDIATE CONSUMPTION.

Only food or beverages for immediate consumption on the premises may be offered for sale. Intoxicating liquors, beer or wine shall not be consumed outside of the permitted area on the public right-of-way.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.14 NOT AN EXCLUSIVE USE.

The permit for the use of a designated area of a public sidewalk as a sidewalk café shall not be an exclusive use. All public improvements including but not limited to trees, light poles, planters, traffic signals, refuse containers, benches or any other public initiated maintenance procedure shall take precedence on the sidewalk café area used at all times.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.15 FENCE FOR AREAS WHICH SERVE ALCOHOLIC BEVERAGES.

(A) If alcoholic beverages are served, the perimeter of the sidewalk café area shall be separated from the pedestrian passage way of the sidewalk by a fence or barrier not less than 48 inches in height and not more than 60 inches in height. The barrier shall be approved by the City Council and the applicant shall be fully responsible for the proper maintenance and removal of any such barrier.

(B) Sidewalk cafes approved for the sale of alcohol shall have no more than one open entrance not exceeding 6 feet in width, which shall be within the view of the manager, owner or employees of the eating and/or drinking establishment at all times.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.16 NO ALCOHOL; DESIGNATION OF AREA.

If no alcoholic beverages are served in the permitted area, the permitted area shall be designated in a proper manner by markings, plants, or other means approved by City Council.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.17 ADVERTISING.

No advertising signs, banners or other advertising items shall be permitted in the sidewalk café area.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.18 EXCESSIVE NOISE.

No bell, chime, siren, whistle or device for non-emergency purpose shall be emitted. No loud speaker, public address, radio, sound amplifier or similar device may be heard beyond 50 feet from its source.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.19 STANDARDS; MAINTENANCE.

(A) All tables, chairs, trash receptacles, umbrellas and bases shall be of a high quality and maintained in a neat, clean and orderly manner and located in accordance with the application filed by the permit holder. Colors shall be harmonious and bright or brilliant colors shall be used only for accent.

(B) Sidewalk cafes and the public property on which they are located shall be kept neat and clean at all times and free from any substance that may damage the sidewalk or cause pedestrian injury.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.20 LITTER.

The permittee shall promptly remove any litter deposited on or in the vicinity of the sidewalk café space used by the permittee resulting from the activity or activities conducted by the permittee on or adjoining such sidewalk café space.
(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.21 ADVERSE IMPACT.

Operation of a sidewalk café shall not adversely impact on adjacent or nearby residential, religious, educational or commercial properties and shall be in accordance with all applicable codes and regulations.

(Ord. 652, passed 8-19-2009)

§ 116.22 DENSITY.

To assure accessibility to commercial, retail and residential premises, sidewalk cafes located on the same side of the street shall be separated by 2 store fronts or uses or 40 feet along the frontage, whichever is the lesser, unless the operator of the sidewalk café obtains a written consent of the owners and tenants of the premises which are located between the restaurants proposing the sidewalk cafes. Where the above situation is created, the applicant who must obtain this permission shall be the applicant who last filed the application or the applicant seeking to locate near an existing sidewalk café. Restaurants located next to each other, without intervening uses or entrance ways to buildings may have sidewalk cafes that abut each other.

(Ord. 652, passed 8-19-2009)

§ 116.23 CONSUMPTION OF ALCOHOLIC BEVERAGES.

All alcoholic beverages to be served at sidewalk cafes shall be prepared within the existing restaurant and alcoholic drinks shall only be served to patrons seated at tables. The drinking of alcoholic beverages by a member of the public while a patron at a sidewalk café, within the confines of the sidewalk café area, shall not be construed as violation of any ordinance controlling open containers in a public area. The operator of the sidewalk café shall take whatever steps are necessary to procure the appropriate license from the State Liquor Control Commission if it intends to serve alcoholic beverages in the sidewalk café area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in this state.

(Ord. 652, passed 8-19-2009) Penalty, see § 116.99

§ 116.24 WAIVER.

Any of the conditions and requirements of this subchapter may be waived by the City Council for good cause shown, provided, the health, safety and welfare of the community must always be held paramount, and the waiver shall not restrict the safe passage on the sidewalk by the public after taking into consideration the circumstances surrounding the application.

(Ord. 652, passed 8-19-2009)

§ 116.99 PENALTY.

Any person who shall violate the provisions of §§ 116.01 through 116.24 shall be liable to prosecution and upon conviction thereof shall be liable to a fine that shall not exceed \$500. Each day of violation shall be a separate violation.
(Ord. 652, passed 8-19-2009)

CHAPTER 117: SPECIAL EVENTS

Section

- 117.01 Use of city property
- 117.02 Permit required
- 117.03 Permit application
- 117.04 Permit conditions
- 117.05 Compliance required
- 117.06 Revocation of permit

§ 117.01 USE OF CITY PROPERTY.

(A) The City Council hereby authorizes the City Administrator to administer at his or her discretion, this chapter, unless otherwise directed by the City Council.

(B) *Community or business.* Public streets, sidewalks, parks, parking lots and other public property and facilities may be used temporarily for the purpose of conducting an organized community or business event.
(Ord. 696, passed 7-2-2013)

§ 117.02 PERMIT REQUIRED.

No community or business special event shall be conducted on city property and facilities unless a permit is obtained from the office of the City Clerk and approved by the City Administrator.
(Ord. 696, passed 7-2-2013)

§ 117.03 PERMIT APPLICATION.

An organization or individual seeking a permit to request use of city property or facilities for a special event shall file an application with the City Clerk on forms provided for a permit. The application shall be filed not less than 15 days before the date of the proposed special event. The City Administrator may, if good cause is shown by the organization or individual, consider an application which has been filed less than 15 days before the date of the proposed special event.
(Ord. 696, passed 7-2-2013)

§ 117.04 PERMIT CONDITIONS.

(A) The City Administrator (or in his absence, the City Clerk or Police Chief) may approve the permit as submitted or may set additional conditions upon the request for use of city property or facilities.

(B) The City Administrator may approve the permit as submitted or may set additional conditions upon the request for use of the public street or sidewalk.
(Ord. 696, passed 7-2-2013)

§ 117.05 COMPLIANCE REQUIRED.

An organization or individual to which a permit has been issued for a special event shall comply with all permit conditions and with all applicable laws and ordinances, unless otherwise directed by the City Administrator in his or her discretion.
(Ord. 696, passed 7-2-2013)

§ 117.06 REVOCATION OF PERMIT.

Any permit issued to an organization or individual for use of city property or facility for a special event may be revoked by the municipal police or City Administrator in the event that the permittee is or has engaged in deceitful, shady or unlawful practices.
(Ord. 696, passed 7-2-2013)