

CHAPTER 116: ALCOHOLIC BEVERAGES

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§ 116.01 DEFINITIONS.

All words and phrases used in this chapter are to have the definitions applied as defined in the Liquor Control Act.

(2002 Code, § 6-1)

Statutory reference:

State Liquor Control Act definitions, see Neb. RS 53-103

§ 116.02 LICENSE REQUIRED.

It shall be unlawful for any person to manufacture for sale, sell, keep for sale or to barter any alcoholic liquors within the city unless he or she shall have in full force and effect a license as provided by the Liquor Control Act.

(2002 Code, § 6-2) Penalty, see § 116.99

§ 116.03 DWELLINGS.

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

(2002 Code, § 6-4) Penalty, see § 116.99

Statutory reference:

Related provisions, see Neb. RS 53-178

§ 116.04 LICENSE DISPLAYED.

Every licensee under the 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.

(2002 Code, § 6-5) Penalty, see § 116.99

Statutory reference:

Related provisions, see Neb. RS 53-148

§ 116.05 CLASSES OF PERSON TO WHOM NO LICENSE WILL BE ISSUED.

No license of any kind under the Liquor Control Act shall be issued to the persons listed in Neb. RS 53-125.

(2002 Code, § 6-6)

§ 116.06 MUNICIPAL EXAMINATION.

(A) Any person desiring to obtain a license to sell alcoholic liquors at retail shall file with the Liquor Control Commission. The Commission shall then notify the City Clerk by registered or certified mail.

(B) The Council may examine or cause to be examined under oath any applicant; examine or cause to be examined the books and records of any such applicant; and hear testimony and take proof for its information in the performance of its duties. For the purpose of attaining any of the information desired,

the Council may authorize its agent, the City Clerk or the City Attorney to act upon its behalf. The Council may conduct the examination and hold the hearing upon the receipt from the Commission of the notice and copy of the application. The Council shall fix a time and place at which a hearing will be held, at which time the Council shall receive evidence, under oath, either orally or by affidavit, from the applicant and any other person concerning the propriety of the issuance of such license.

(C) Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in the city one time not less than seven, nor more than 14, days before the time of the hearing. Such notice shall include, but is not limited to, a statement that all persons desiring to give evidence before the Council in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than 45 days after the receipt of notice from the Commission.

(2002 Code, § 6-7)

Statutory reference:

Related provisions, see Neb. RS 53-126

§ 116.07 LIQUOR LICENSE RENEWAL.

(A) (1) Retail liquor or bottle club licenses issued by the Liquor Control Commission and outstanding may be automatically renewed in the absence of a request by the Council to require the licensee to issue an application for renewal. Any licensed retail or bottle club establishment located in an area which is annexed to the city shall file a formal application for a license; and, while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this chapter until the original license expires, is canceled or is 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. The City Clerk, upon notice from the Commission, between January 10 and January 30 of each year, shall cause to be published in a legal newspaper in or of general circulation in the city one time, a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the city.

(2) Class C license renewal notices shall be published between the dates of July 10 and July 30 of each year.

(B) Upon the conclusion of any hearing required by this section, the Council may request a licensee to submit an application.

(2002 Code, § 6-8)

Statutory reference:

Related provisions, see Neb. RS 53-135, 53-135.01

§ 116.08 MUNICIPAL POWERS AND DUTIES.

The Council is authorized to regulate by ordinance, not inconsistent with the provisions of the Liquor Control Act, the business of all retail and bottle club licensees carried on within the corporate limits.

(2002 Code, § 6-9)

Statutory reference:

Related provisions, see Neb. RS 53-134

§ 116.09 OWNER OF PREMISES, EMPLOYER.

(A) The owner of any premises used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of this chapter to the same extent as the licensee if the owner shall permit the licensee to use the licensed premises in violation of any section of this code or state law.

(2002 Code, § 6-10)

(B) The employer of any officer, director, manager or employees working in a retail liquor establishment shall be held to be liable and guilty of any act of omission or violation of any law or ordinance; and each such act or omission shall be deemed and held to be the act of the employer and will be punishable in the same manner as if the act or omission had been committed by him or her personally.

(2002 Code, § 6-11)

Penalty, see § 116.99

Statutory reference:

Related provisions, see Neb. RS 53-1,101, 53-1,102

§ 116.10 UNDERAGE PERSONS OR INCOMPETENTS.

(A) It shall be unlawful for any person 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 underage person, or to any person who is mentally incompetent.

(2002 Code, § 6-12)

(B) (1) It shall be unlawful for any patron under the age of 21 years to enter upon or remain upon, any licensed premises or place where alcoholic liquors are sold or consumed unless accompanied by a parent or guardian. It shall be unlawful for any licensee or employee of any licensed premises or place where alcoholic liquors are sold or consumed to allow or permit any patron under the age of 21 years to enter upon or remain upon any licensed premises or place where alcoholic liquors are sold and consumed unless accompanied by a parent or guardian. The provisions of this division (B)(1) shall not apply to restaurants, private clubs or bowling alleys.

(2) Exception: if the licensed establishment is hosting regularly scheduled league activities, no patron under the age of 21 shall be allowed to enter upon or remain upon any licensed premises after 10:30 p.m.

(3) In the case of a restaurant, private club or bowling alley which has separate dining and bar areas, it shall be unlawful for persons under the age of 21 years to enter the bar area unless accompanied by a parent or guardian.

(4) It shall be unlawful for any person under the age of 21 years to falsify any identification for the purpose of violating the provisions of this division (B).

(5) Every licensee of a place subject to this division (B) where alcoholic liquor is sold and consumed shall display at all times, at all entrances, a printed card in compliance with Neb. RS 53-180.04.

(6) In the case of a restaurant, private club or bowling alley having a separate dining and bar area, such notice shall be displayed at the entrance to the separate bar area.

(7) The term **RESTAURANT**, as used in this division (B), is defined as any public establishment kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals are actually and regularly served, such place being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed a sufficient number of employees to prepare, cook and serve food for its customers.
(2002 Code, § 6-16)

(C) It shall be unlawful for any person to hire a person regardless of sex under the age of 19 years to serve or dispense alcoholic liquors, including beer, to the licensee's customers.

(2002 Code, § 6-20)

(Ord. 2005-31, passed 11-29-2005) Penalty, see § 116.99

Statutory reference:

Similar provisions, see Neb. RS 53-168.06, 53-180, 53-180.04(5)

§ 116.11 CREDIT SALES.

No person shall sell or furnish alcoholic liquor at retail to any person for credit of any kind, barter or services rendered; however, nothing contained in this section shall be construed to prevent any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members, or guests of members, and charged to the accounts of the members or guests in accordance with the bylaws of any such club; and nothing in this section shall be construed to prevent any hotel or restaurant holding a retail alcoholic beverage license from permitting checks or statements for liquor to be signed by regular guests residing in the hotel, and charged to the accounts of such guests.

(2002 Code, § 6-13) Penalty, see § 116.99

Statutory reference:

Related provisions, see Neb. RS 53-183

§ 116.12 ORIGINAL PACKAGE.

It shall be unlawful for any person who owns, manages or leases any premises in which the sale of alcoholic beverages is licensed to have in his or her 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.

(2002 Code, § 6-15) Penalty, see § 116.99

Statutory reference:

Related provisions, see Neb. RS 53-184

§ 116.13 HOURS OF SALE.

(A) It shall be unlawful for any licensed person or his or her agents to sell any alcoholic beverages within the city, except during the following hours:

<i>Hours of Sale</i>	
Alcoholic Liquors (Except Beer and Wine):	
Secular days:	
Off sale	6:00 a.m. to 1:00 a.m.
On sale	6:00 a.m. to 2:00 a.m.
Sundays:	
Off sale	6:00 a.m. to 1:00 a.m.
On sale	6:00 a.m. to 2:00 a.m.
Beer and Wine:	
Secular days:	
Off sale	6:00 a.m. to 1:00 a.m.
On sale	6:00 a.m. to 2:00 a.m.
Sundays:	
Off sale	6:00 a.m. to 1:00 a.m.
On sale	6:00 a.m. to 2:00 a.m.

(B) No person shall consume any alcoholic beverages on licensed premises for a period of time longer than 15 minutes after the time fixed in this section for stopping the sale of alcoholic beverages on the premises. For the purposes of this section, the term **ON SALE** shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment. The term

OFF SALE shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

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

(2002 Code, § 6-18) (Ord. 2013-14, passed 3-5-2013; Ord. 2014-30, passed 11-4-2014) Penalty, see § 116.99

Statutory reference:

Related provisions, see Neb. RS 53-179

§ 116.14 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 the licensed premises shall be subject to any health inspections the Council or the 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.

(2002 Code, § 6-19) Penalty, see § 116.99

§ 116.15 CONSUMPTION IN PUBLIC PLACES.

It shall be unlawful for any person to consume alcoholic beverages within the corporate limits upon the public ways and property, including inside vehicles while upon the public ways and property, unless authorized by the governing body having jurisdiction over such property. It shall further be unlawful for any person to consume alcoholic beverages within any other public business that is not a licensed liquor establishment. This section is not intended to prohibit consumption of alcohol in a business which is closed to the public at the time of consumption and which consumption is otherwise lawful.

(2002 Code, § 6-21) Penalty, see § 116.99

§ 116.16 ACQUISITION OF ALCOHOLIC BEVERAGES.

It shall be unlawful for any person to have possession of any alcoholic liquors which shall have been acquired otherwise than from a licensee duly licensed to sell such beverages to such person under the provisions of the State Liquor Control Act; however:

(A) Nothing in this section shall prevent the possession of alcoholic liquor for the personal use of the possessor, his or her family and guests, as long as the quantity of alcoholic liquor transported, imported, brought, shipped or caused to be transported, imported, brought or shipped into the state for personal use does not exceed one gallon at any one time or in excess of two gallons in any one calendar month, nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits,

vegetables or grains, or their products, by simple fermentation and without distillation, if it is made solely for the use of the maker, his or her family and his or her guests;

(B) Nothing in this section shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, or any hospital or institution caring for the sick and diseased persons from possessing any alcoholic liquor for the treatment of bona fide patients of such hospital or other institution;

(C) Any drugstore employing a licensed pharmacist may possess and use alcoholic liquors in the compounding of prescriptions of duly 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 shall not be prohibited by this section;

(E) Persons who are 16 years old or older may carry beer from grocery stores when they are accompanied by a person not a minor; handle beer containers and beer in the course of their employment in grocery stores; and remove and dispose of alcoholic liquor containers for the convenience of their employer and customers in the course of their employment as waiters, waitresses or busboys by any restaurant, club, hotel or similar organization; and

(F) Persons who are 19 years old or older may serve or sell alcoholic liquor in the course of their employment.

(2002 Code, § 6-22) Penalty, see § 116.99

Statutory reference:

Related provisions, see Neb. RS 53-168.06, 53-175

§ 116.17 INSPECTIONS.

It shall be the duty of the Council to cause frequent inspections to be made on the premises of all retail licensees. If it is found that any such licensee is violating any provision of the Liquor Control Act or regulations of the Liquor Control Commission, or is failing to observe in good faith the purposes of the Act, the license may be suspended, canceled or revoked after the licensee has been given an opportunity to be heard by the Council.

(2002 Code, § 6-23)

Statutory reference:

Related provisions, see Neb. RS 53-116.01

§ 116.18 CITIZEN COMPLAINTS.

Any five residents of the city shall have the right to file a complaint with the Council stating that any retail club licensee subject to the jurisdiction of the Council has been or is violating any provision of the Liquor Control Act or the rules or regulations issued pursuant to the Act. Such complaint shall

be in writing in the form prescribed by the Council and shall be signed and sworn by the parties complaining. The complaint shall state the particular provision, rule or regulation believed to have been violated and the facts in detail upon which belief is based. If the Council is satisfied that the complaint substantially charges a violation and that from the fact alleged there is reasonable cause for such belief, it shall set the matter for hearing within ten days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint. The complaint must in all cases be disposed of by the Council within 30 days from the date the complaint was filed by resolution of the Council. The resolution shall be deemed the final order for purposes of appeal to the Liquor Control Commission as provided by law.

(2002 Code, § 6-24)

Statutory reference:

Related provisions, see Neb. RS 53-134.04

§ 116.19 LICENSING STANDARDS.

(A) When an application for a retail liquor license for the upgrading of a license to sell alcoholic liquor or for the expansion or change in location of the premises is received pursuant to Neb. RS 53-134, the Council shall hold a hearing upon such application in accordance with the provisions of that statute.

(B) At the hearing on such application, the Council shall only consider the requirements of the Liquor Control Act and the following criteria:

- (1) The adequacy of existing law enforcement resources and services in the area;
- (2) The recommendation of the Police Department or any other law enforcement agency;
- (3) Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, potential traffic and parking problems and the proximity and availability of on-street and off-street parking;
- (4) Zoning restrictions and the Council's zoning and land use policies;
- (5) Sanitation or sanitary conditions on or about the proposed licensed premises;
- (6) The existence of a citizen's protest and similar evidence in support of or in opposition to the application;
- (7) The existing population and projected growth within the jurisdiction of the Council and within the area to be served;
- (8) The existing liquor licenses, the class of each such license and the distance and times of travel between establishments issued such licenses;

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(9) Whether the proposed license would be compatible with the neighborhood or community where the proposed premises are located;

(10) Whether the type of business or activity proposed to be operated or presently operated in conjunction with the proposed license is and will be consistent with the public interest as declared in Neb. RS 53-101.01;

(11) Whether the applicant can ensure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with Neb. RS 53-168.06;

(12) Whether the applicant has taken every precaution to protect against the possibility of shoplifting of alcoholic liquor, which alcoholic liquor shall be displayed and kept in and sold from an area which is reasonably secured;

(13) Whether the applicant is fit, willing and able to properly provide the service proposed in conformance with all provisions and requirements of and rules and regulations adopted and promulgated pursuant to the Liquor Control Act;

(14) Whether the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensee can conform to all the provisions and requirements of and rules and regulations adopted and promulgated pursuant to the Liquor Control Act;

(15) The background information of the applicant established by information contained in the public records of the Liquor Control Commission and investigations conducted by law enforcement agency, including, but not limited to, the Police Department;

(16) Past evidence of discrimination involving the applicant as evidenced by findings of fact before any administrative board or agency of the city, any other governmental board or agency of the city, any other governmental unit or any court of law;

(17) Whether the applicant or the applicant's representatives suppressed any fact or provided any inaccurate information to the Liquor Control Commission or the city or the employees of the Liquor Control Commission or the city in regard to the license application or liquor investigations; the applicant shall be required to cooperate in providing a full disclosure to the investigating agents of the city;

(18) Proximity of and impact on schools, hospitals, libraries, parks and other public institutions;

(19) Whether activities proposed to be conducted on the licensed premises or in adjacent related outdoor areas will create unreasonable noise or disturbance; and

(20) Compliance with state laws, liquor rules and regulations, and municipal ordinances and regulations and whether or not the applicant has ever forfeited bond to appear in court to answer charges of having committed a felony or charges of having violated any law or ordinance enacted in the interest

of good morals and decency or has been convicted of violating or has forfeited bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquor.

(2002 Code, § 6-25)

Statutory reference:

Related provisions, see Neb. RS 53-134

§ 116.20 NOTICE AND HEARING.

(A) *Burden of proof.* It shall be the applicant's duty to produce evidence pertaining to the designated criteria prescribed in § 116.19 of this chapter. The burden of proof and persuasion shall be on the party filing the application. When applicable for purposes of this section, the term **APPLICANT** shall be synonymous with **LICENSEE**.

(B) *Consideration of application.* The Council shall, after the hearing provided in this section, approve the application or deny the license within 45 days after receiving a copy of the application from the Liquor Control Commission. If the Council denies the retail or bottle club license within such period, such denial shall be final and shall be subject to review as provided by state statutes. The Council shall issue the final order of denial of the license to the licensee in writing, and deliver or mail a copy to the Liquor Control Commission within ten days from the date the application was denied. If the Council approves an application within such period, the Council shall, within ten days of the date the application was approved, notify the Liquor Control Commission by mail or delivery.

(C) *Notice.* Notice of a hearing held pursuant to § 116.06 of this chapter shall be given to the applicant by the City Clerk and shall contain the date, time and location of the hearing. Two or more proceedings which are legally or factually related may be heard and considered together unless any party to the proceedings makes a showing sufficient to satisfy the Council that prejudice would result.

(D) *Procedure.* Hearings will be informal and conducted by the Mayor, City Attorney or a Council-authorized appointed agent. The intent is an inquiry into the facts, not an adversarial action. Each witness may present testimony in narrative fashion or by question and answer. The Council or the applicant may order a transcript at the expense of the applicant. The Council and its representatives shall not be bound by the strict rules of evidence and shall have full authority to control the procedures of the hearing, including the admission or exclusion of testimony or other evidence. The Council may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent individuals in the conduct of their affairs. The Hearing Officer may limit testimony where it appears incompetent, irrelevant or unduly repetitious. If there is opposition to any application and such opposition desires the opportunity to present arguments and to cross-examine the applicant and any witnesses in favor of such application, each group shall choose a spokesperson to perform such function, who shall notify the Hearing Officer of such representation prior to the start of the hearing. The Hearing Officer may, at his or her discretion, allow more than one such spokesperson to appear. All witnesses may present testimony in narrative fashion or by question and answer.

(E) *Order of proceedings.* The order of proceedings shall be as follows:

- (1) Exhibits will be marked in advance by the City Clerk and presented to the City Attorney during the presentation;
- (2) Presentation of evidence and witnesses by applicant;
- (3) Testimony of any other person in favor of such proposed license;
- (4) Examination of applicant, witnesses or citizens by the City Attorney, City Administrator, any member of the Council, Mayor or any duly appointed agent;
- (5) Cross examination of the applicant, witnesses or citizens by the spokesperson for the opposition, if any;
- (6) Presentation of evidence and witnesses by the opposition;
- (7) Testimony of any other persons in opposition to such proposed license;
- (8) Presentation of evidence by the city and law enforcement personnel;
- (9) Cross examination by the applicant;
- (10) Rebuttal evidence by both parties, and by the City Administrator, any member of the Council or a duly appointed agent;
- (11) Summation by the applicant and opposition spokesperson, if any; and
- (12) Any member of the Council, the City Administrator and the City Attorney may question all witnesses, call additional witnesses or request additional information.

(F) *Action.* After such hearing, the Council shall cause to be spread at large in the minute record of its proceedings a resolution approving or denying the issuance or the renewal of such license. Any resolution denying or failing to renew an application for license rendered by the Council shall be in writing or stated in the record, and shall be accompanied by findings. The findings shall consist of concise statements of the conclusions upon each contested issue. The applicant or licensee shall be notified of the decision in person or by mail. A copy of the decision and order and accompanying findings shall be delivered or mailed upon request to the applicant or licensee. The City Clerk shall thereupon mail or deliver to the Liquor Control Commission a copy of the resolution.

(2002 Code, § 6-26)

Statutory reference:

Related provisions, see Neb. RS 53-134

§ 116.21 CATERING PERMIT.

(A) The holder of a license issued under Neb. RS 53-124(5)(C), (5)(D) or (5)(E) may obtain an annual catering permit as prescribed in this section. The catering permit shall be issued for the same period as the license held by the permittee and may be renewed in the same manner as the license held by the permittee.

(B) Any person desiring to obtain a catering permit shall file with the Liquor Control Commission. The application for catering permit shall be mailed by the Commission to the City Clerk. During the period of 45 days from the date of receiving such application from the Commission, the Council shall comply with § 116.06 of this chapter and shall make and submit to the Commission recommendations relative to the granting or refusal to grant such permit to the applicant. The recommendation of the Council shall be binding upon the Commission.

(C) Any decision of the Council and Commission to deny the issuance of a permit may be appealed to the District Court of the county by the applicant for permit. When applicable, Neb. RS 53-1,116 shall govern all appeals.

(D) The Council, with respect to permittees, may cancel a permit for cause for the remainder of the period for which the permit is issued. Any person whose permit is canceled may appeal to the District Court of the county.

(2002 Code, § 6-27)

Statutory reference:

Related provisions, see Neb. RS 53-124.12

§ 116.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code.

(B) No person under 21 years of age may transport, knowingly possess or have under his or her control beer or other alcoholic liquor in or transported by any motor vehicle. Any person found in violation of any provision of this chapter shall be punished in accordance with § 10.99 of this code. In lieu of the foregoing penalties, the court may sentence a person to work on public streets, parks or other public property for a period of not exceeding ten working days under the supervision of the Chief of Police. Upon written certification by the Chief of Police of the performance of such work, the sentence shall be deemed to be satisfied.

(2002 Code, § 6-17)

