

## CHAPTER 8

### ALCOHOLIC BEVERAGES.

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#### **8-101. Definitions.**

Unless the context otherwise requires, the words and phrases defined in Neb. Rev. Stat. Section 53-103, shall be adopted for the purpose of construing this chapter. Such words and phrases are hereby incorporated by reference the same as though copied at full length herein.  
(Code 1973, 3-1; Ord. No. 2027)

#### **8-102. Licenses required; sanitary conditions of licensed premises.**

It shall be unlawful for any person to manufacture for sale, sell, keep for sale or to barter, or exchange, transport for sale under any pretext any alcoholic liquor within the city unless such person shall have in full force and effect a license therefor as provided by the Nebraska Liquor Control Act. The applicant shall satisfy the health inspector that the toilet facilities and other sanitary conditions on the licensed premises are adequate and convenient for customers and patrons thereon; and the licensed premises shall be subject to all health ordinances and inspections from time to time by the health inspector.  
(Code 1973, 3-2; Ord. No. 2027)

Reference: Neb. Rev. Stat. Section 53-120; Hastings City Code, Section 5-103.

#### **8-103. Display of license.**

Every licensee under the Nebraska Liquor Control Act within the city shall cause his license to be framed and hung in plain view in a conspicuous place on the licensed property.  
(Code 1973, 3-3; Ord. No. 2027)

Reference: Neb. Rev. Stat. Section 53-148.

#### **8-104. Sales to minors and incompetents; sale or possession by minors; misrepresentation of age; confiscation of vehicles.**

(1) No person shall, within the city, sell or give any alcoholic liquors to, or procure any such liquor for or permit the sale or gift of any such liquor to, or the procuring of any such liquor for, any minor or any person who is mentally incompetent or any person who is physically or mentally incapacitated due to the consumption of such liquor.

(2) No minor shall, within the city, represent that he is of age for the purpose of asking for, purchasing or receiving any alcoholic liquors from any person.

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(3) No minor may sell or dispense or have in his possession or physical control any alcoholic liquor in any tavern or in any other place including public streets, alleys, roads, highways, within the corporate limits of the city, upon property owned by the city or inside any vehicle while in or on any other place including but not limited to the public streets, alleys, roads, highways or upon property owned by the city; except, that a minor may possess or have physical control of alcoholic liquor in his permanent place of residence.

(4) Whenever any person under the age of twenty-one (21) years is arrested for having in his possession or physical control any alcoholic liquor inside any motor vehicle at the places above prohibited under subsection (3) of this section, the arresting officer shall forthwith impound such motor vehicle as evidence, and neither the officer nor the county judge shall have authority to release such vehicle until the complaint is disposed of in the police court by trial, plea or dismissal, at which time either the county judge or the City Attorney may authorize release of the vehicle from impoundment; provided, that the arresting officer or authority shall release such vehicle unless the necessary complaint has been filed within twenty-four (24) hours after the arrest, or during the first (1st) full day on which the court is open after such arrest, whichever is the later. Upon receipt of written request, the court may release any motor vehicle so impounded to the holder of a bona fide lien thereon executed prior to such impounding, when possession of such motor vehicle is requested by such lienholder for the purpose of foreclosing and satisfying his lien thereon, or to the owner of such vehicle, if not a member of the arrested person's immediate family.

(Code 1973, 3-4; Ord. Nos. 2027, 2309 and 3176-5/90)

Reference: Neb. Rev. Stat. Section 53-180 to 53-180.07.

**8-105. Hours of sale -- Generally.**

(1) It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the City of Hastings except during the hours provided herein:

**ALLOWED HOURS OF SALE**

**Alcoholic Liquors (except beer and wine)**

**Secular Days**

Off Sale ..... 6:00 a.m. to 1:00 a.m.  
On Sale ..... 6:00 a.m. to 1:00 a.m.

**Sunday**

Off Sale ..... 12:00 noon to 1:00 a.m.  
On Sale ..... 12:00 noon to 1:00 a.m.

**Beer and Wine**

**Secular Days**

Off Sale ..... 6:00 a.m. to 1:00 a.m.  
On Sale ..... 6:00 a.m. to 1:00 a.m.

**Sunday**

Off Sale ..... 6:00 a.m. to 1:00 a.m.  
On Sale ..... 6:00 a.m. to 1:00 a.m.

(2) The foregoing limitations shall not apply after 12:00 o'clock noon on Sunday to a licensee which is a nonprofit corporation holding a license pursuant to Nebraska Revised Statutes Section 53-124(5)(C) or (5)(H).

(3) No provision herein 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.

(4) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open

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containers to remain or be in possession or control of any person for purposes of consumption after 1:15 a.m. on any day.

(Code 1973, 3-5; Ord. Nos. 2529, 2728, 3072-7/88, 3150-11/89, 3168-4/90, 3227-8/91)

**8-106. Reserved.**

**8-107. Consumption on property owned by the state or certain governmental subdivisions thereof.**

It shall be unlawful for any person to consume alcoholic liquors in the public streets, alleys, parking areas, roads, or highways, or inside vehicles while upon the public streets, alleys, parking areas, roads, or highways; or upon property owned by the State of Nebraska, Adams County, City of Hastings, or the School District of Hastings; provided however, alcoholic liquors, including beer, may be sold or distributed for consumption on the premises only:

(1) At Brickyard Park during the annual Cottonwood Prairie Festival, the Hastings City Auditorium, Central Park and the Hastings Museum and Museum Park, under a special designated permit issued by the Nebraska Liquor Control Commission with the approval of the Hastings City Council;

(2) At property controlled by the Chamber of Commerce;

(3) For any portion of Prairie Ridge Park for which a State of Nebraska liquor license is in effect; and

(4) The City may execute a license agreement for the use of a portion of the public sidewalk by a properly licensed establishment located within the downtown area. The terms of the license agreement shall be developed according to the circumstances of the parties and any laws, rules, and regulations applicable. For purposes of this section, downtown area shall be all property abutting or located within Bellevue Avenue on the west, Minnesota Avenue on the east, 1<sup>st</sup> Street on the south, and 3<sup>rd</sup> Street on the north.

(Code 1973, 3-9; Ord. Nos. 2027; 2190; 2987; Referendum of May 5, 1987; Ord. Nos. 3014-5/87, 3240-1/92, 3373-2/94, 3477-5/95, 3866-7/2002, 3964-8/2004, 4132-7/2007, 4164-2/2008 and 4259-6/28)

Reference: Neb. Rev. Stat. Section 53-186.

**8-108. Sale, etc., by nonbeverage user.**

No nonbeverage user shall, within the City, sell, give away or otherwise dispose of any alcohol, purchased under a license as such nonbeverage user, in any form fit for beverage purposes.

(Code 1973, 3-10; Ord. No. 2027)

Reference: Neb. Rev. Stat. Section 53-187.

**8-109. Occupation tax.**

(1) For the purpose of raising revenue for the City, there is hereby levied upon the following described businesses conducted in the City, the following designated annual occupation taxes:

|  |          |
|--|----------|
| (a) Manufacture of alcohol and spirits . . . . .   | 1,000.00 |
| (b) Manufacture of beer (State Class V) . . . . .  | 500.00   |
| (c) Manufacture of wine (State Class Y) . . . . .  | 250.00   |
| (d) Alcoholic liquor distributor, except beer (State Class X) . . . . .  | 500.00   |
| (e) Beer distributor (State Class W) . . . . .   | 250.00   |
| (f) Retailer of beer only for consumption on premises (State Class A) . . . . .  | 200.00   |
| (g) Retailer of beer only for consumption off premises (sale in original package only) (State Class B) . . . . .                                 | 200.00   |
| (h) Retailer of alcoholic liquors for consumption on the premises and off the premises (sale in original package only) (State Class C) . . . . . | 600.00   |

600.00

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Provided, however, a nonprofit corporation doing business under this section shall pay an occupation tax of ..... 100.00

(i) Retailer of alcoholic liquors, including beer for consumption off the premises (sale in original package only) (State Class D) ..... 400.00

(j) Repealed.

(k) Repealed.

(l) Retailer of spirits, wine and beer for consumption on premises (State Class I) .... 500.00

(m) Craft brewery (Brew Pub) in conjunction with State Class C or State Class I license (State Class L) ..... 100.00

(n) Craft brewery (Brew Pub) not in conjunction with State Class C or State Class I license ..... 500.00

(o) Catering license (per year) ..... 200.00

(p) Special designated license (per day) ..... 40.00

(2) Such occupation tax shall be paid to the City Clerk for the benefit of the general fund of the city upon the final issuance of license under the Nebraska Liquor Control Act for any such business. The City Clerk shall issue receipts for such tax when paid, specifying the person who paid the same and for what purpose. Collection of the occupation tax may be enforced by civil action. Any person who shall refuse, neglect or evade the payment of the occupation tax shall be guilty of a misdemeanor; and, upon conviction thereof, shall be punished as provided in this Code. The year for which such annual occupation tax is levied shall commence on the first day of May of each year and shall end on the thirtieth day of April next succeeding. No refund of any occupation tax paid shall be made for any cause whatever. New license holders shall pay a prorated tax on a quarterly basis.

(Code 1973, 3-11; Ord. Nos. 2027, 2188, 2771, 3176-5/90, 3614-12/97, 3997-3/2005 and 3997-4/2005)

Reference: As to expiration of occupation tax permits, see 5-103 of this Code.

### **8-110. Evasion of payment of tax or duty; possession of untaxed liquor.**

(1) It shall be unlawful for any person in the city to evade or attempt to evade the payment of tax or duty on any alcoholic liquor in any manner whatever and upon conviction thereof, in addition to the general penalty prescribed for the violation in this article, such person shall forfeit such alcoholic liquor.

(2) It shall be unlawful for any person in the city to have in his possession or transport any cask, package, bottle or bottles of any alcoholic liquor, without having thereon each mark and stamp for tax as required by the Nebraska Liquor Control Act; and such cask, package, bottle or bottles of alcoholic liquor not having the mark or stamp for tax as so provided shall be forfeited to the city.

(Code 1973, 3-12; Ord. No. 2027)

### **8-111. Reserved.**

### **8-112. Compliance with zoning regulations.**

Under the provisions of Chapter 34 of this Code, the sale of alcoholic liquors including beer shall be construed to be a business in and of itself where such sales are made by an incorporated club now established to members and guests only; and no permit for the sale thereof shall be issued to any applicant except upon the written consent of the owners of lots or parts of lots as provided in such chapter.

(Code 1973, 3-14; Ord. No. 2027)

### **8-113. Right of entry into licensed premises by police.**

All police officers of the city are hereby authorized to enter at any time upon any premises of any licensee under the Nebraska Liquor Control Act, within the city, to determine whether any of the provisions of such act or of this chapter or any rules or regulations adopted by the city or by the Nebraska Liquor Control Commission have been or are being violated and at such time to examine sufficiently the premises of the

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licensee in connection therewith.  
(Code 1973, 3-15; Ord. No. 2027)

### **8-114. Liability of licensee for acts of managers, agents, etc.**

Every act or omission of whatsoever nature constituting a violation of any of the provisions of this chapter, 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 such 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 him personally.  
(Code 1973, 3-16; Ord. No. 2027)

### **8-115. Liquor application; municipal examination.**

Any person or persons desiring to obtain a license to sell alcoholic liquors at retail shall file an application with the Liquor Control Commission. The Commission shall notify the City Clerk by registered or certified mail. The Governing Body shall then meet and determine the desirability of the application and report its recommendation for approval or denial of the application in writing to the Nebraska Liquor Control Commission within forty-five (45) days of receipt from the Nebraska Liquor Control Commission. The Governing Body may examine, or cause to be examined, under oath, any applicant; examine, or cause to be examined, the books and records of any such applicant; hear testimony, and take proof for its information in the performance of its duties. For the purpose of obtaining any of the information desired, the Governing Body may authorize its agent, the City Administrator, or the City Attorney, to act on its behalf. The Governing Body may conduct the examination and hold the hearing upon receipt from the Commission of the notice and copy of the application. The Governing Body shall fix a time and place at which a hearing will be held, at which time the Governing Body 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. Notice of the time and place of such hearing shall be published in a legal newspaper in, or of general circulation in, the municipality one (1) time not less than seven (7), nor more than fourteen (14) days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local Governing Body 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 forty-five (45) days after the receipt of notice from the Commission. After such hearing, the Governing Body shall cause to be spread at large in the minute record of its proceedings a resolution recommending either issuance or refusal of such license. The City Clerk shall thereupon mail to the Commission by first class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice.  
(Ord. No. 2972-5/86 and 3176-5/90)

### **8-116. Liquor application; municipal examination; notice.**

Notice of a hearing held pursuant to Neb. Rev. Stat. Section 53-134 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 thereto makes a showing sufficient to satisfy the Council that prejudice would result therefrom.  
(Ord. No. 2972-5/86)

### **8-117. Liquor application; municipal examination; hearing.**

(1) Hearing will be informal and conducted by the Mayor. The hearing shall be held for the purpose of inquiring into the facts, and shall not be an adversary action. Each witness may present testimony in narrative fashion or by question and answer.

(2) The Governing Body or the applicant may order the hearing to be recorded by an official court reporter or by the Clerk, at the expense of the applicant.

(3) The Governing Body 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 or testimony or other evidence. The Governing body may admit and give consideration to evidence which possesses probative value commonly accepted by reasonably prudent individuals. The Mayor may limit testimony where it appears to be 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, they shall choose a spokesperson to perform such function who shall notify the Mayor of his/her representation prior to the start of the hearing.  
(Ord. No. 2972-5/86)

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### **8-118. Liquor application; municipal examination; order of procedure.**

(1) The order of procedure shall be as follows:

(a) Exhibits will be marked in advance by the Clerk and presented to the Mayor during the presentation;

(b) Presentation of evidence, witnesses, and arguments by applicant;

(c) Testimony of any other citizens in favor of such proposed license;

(d) Examination of applicant, witnesses or citizens by City Attorney, City Administrator, Governing Body, or duly appointed agent.

(e) Cross-examination of applicant, witnesses or citizens by spokesperson for opposition, if any;

(f) Presentation of evidence and witnesses by opposition;

(g) Testimony of any other citizens in opposition to such proposed license;

(h) Presentation of evidence by City and law enforcement personnel;

(i) Cross-examination by applicant;

(j) Rebuttal evidence by both parties, and by City administration and agent;

(k) Summation by applicant and opposition spokesperson, if any.

(2) In all cases, the burden of proof and persuasion shall be on the party filing the application.

(3) Any member of the Governing Body and the City Attorney may question any witness, call witnesses, or request information.

(4) All witnesses shall be sworn.

(5) The Governing Body may make further inquiry and investigation following the hearing.

(6) The Governing Body or the applicant may order the hearing to be recorded by an official court reporter or by the Clerk, at the expense of the applicant.

(Ord. No. 2972-5/86)

### **8-119. Liquor application; retail licensing standards.**

For the purpose of taking any actions authorized by state statute, and in particular, Neb. Rev. Stat. 53-134, the Hastings City Council shall consider those criteria established by the Nebraska Liquor Control Act, and in particular, by Neb. Rev. Stat. 53-134. In order to assist the City Council in its consideration of those criteria, the city's police department, health department, and inspection department shall prepare reports to the City Council covering all of the criteria and other matters which may be considered by the City Council, and those reports shall be filed with the City Clerk prior to the public hearing, and shall become a part of the record of the public hearing.

(Ord. No. 2972; 3002, 3069-6/88 and 3176-5/90)

### **8-120. Agent for special designated license.**

The City Council hereby designates the City Administrator as the agent to determine whether a special designated license is to be approved or denied. The determination of the agent shall be considered the determination of the City Council unless otherwise provided by the City Council.

(Ord. No. 3650-8/98)

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As a result of revisions, page 110 has been deleted.