

## Chapter 10

### BUSINESS REGULATIONS

#### Article 1. Alcoholic Beverages

- §10-101** ALCOHOLIC BEVERAGES; DEFINITIONS. All words and phrases herein used are to have the definitions applied thereto, as defined in the Liquor Control Act of the State of Nebraska. (Ref. 53-103 RS Neb.)
- §10-102** ALCOHOLIC BEVERAGES; 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 Municipality unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (Ref. 53-168.06 RS Neb.)
- §10-103** ALCOHOLIC BEVERAGES; LOCATION. It shall be unlawful for any person or persons to own, maintain, manage, or hold open to the public any establishment for the purpose of selling at retail any alcoholic liquor within one hundred and fifty (150') feet of any church, school, hospital, or home for aged or indigent persons or veterans, their wives or children; Provided, this prohibition shall not apply to any location within such distance when the said establishment has been licensed by the Nebraska Liquor Control Commission at least two (2) years, and to hotels offering restaurant service, regularly organized clubs, or to restaurants where the selling of alcoholic liquors is not the principal business carried on, if the said hotel, club, or restaurant were licensed and in operation prior to May 24, 1935. No alcoholic liquor, other than beer, shall be sold for consumption on the premise within three hundred (300') feet from the campus of any college within the Municipality. (Ref. 53-177 RS Neb.)
- §10-104** ALCOHOLIC BEVERAGES; DWELLINGS. Except in the case of hotels and clubs no alcoholic liquor shall be sold at retail upon any premise which has any access which leads from such premise 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 herein shall prevent any connection with such premise, and such other portion of the building which is used only by the licensee, his family, or personal guests. (Ref. 53-178 RS Neb.)
- §10-105** ALCOHOLIC BEVERAGES; LICENSE DISPLAYED. Every licensee under the Nebraska Liquor Control Act shall cause his license to be framed and hung in plain public view in a conspicuous place on the licensed premise. (Ref. 53-148 RS Neb.)
- §10-106** ALCOHOLIC BEVERAGES; LICENSEE REQUIREMENTS. No license of any kind shall be issued to (1) a person who is not a resident of Nebraska, 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 to Chapter 28, article 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 subdivision on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such 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 such license upon initial application, (8) a partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, unless one of the members is a resident of Nebraska and unless all the members of such company are otherwise qualified to obtain a license, (10) a corporation, if any officer, manager, or director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, except that a manager of a corporate license shall be a resident of Nebraska. This subdivision shall not apply to railroad licenses, (11) a person whose place of business is conducted by a manager or agent unless such 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 such premises for the full period for which the license is to be issued, (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant shall become eligible for a liquor license only if the commission finds from the evidence that the public interest will not be fringed upon if such 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. Such prima facie evidence shall be overcome if it is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant and (b) that such 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 subdivision 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 twenty-one years of age.

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. (*Ref. 53-125 RS Neb.*)

**§10-107** **ALCOHOLIC BEVERAGES; MUNICIPAL EXAMINATION.** Any person or persons desiring to obtain a license to sell alcoholic liquors at retail shall file with the Liquor Control Commission. The Commission shall then notify the Municipal 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 or any such applicant; to hear testimony, and to 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, Municipal Clerk or the Municipal Attorney, to act on its behalf. The Governing Body may conduct the examination and hold the hearing upon the 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, and 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 Municipal 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. (Ref. 53-131, 53-134 RS Neb.)

**§10-108     ALCOHOLIC BEVERAGES; SPECIAL DESIGNATED PERMIT; ISSUANCE; PROCEDURE; FEE.**

- (1) The Nebraska Liquor Commission may issue a special designated permit for consumption of alcoholic liquor at a designated location to a licensee, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes under conditions specified in this section.
- (2) No licensee, organization, or corporation enumerated in this section may be provided a special designated permit under this section for more than six (6) calendar days in any one (1) calendar year. Only one (1) permit shall be required for any application for two (2) or more consecutive days. This subsection shall not apply to any licensee holding a catering permit.
- (3) Except for any special designated permit issued to a licensee holding a catering permit, there shall be a fee of forty dollars (\$40.00) for each day identified in the special designated permit. Such fee shall be submitted with the application for the special designated permit and collected by the Commission and deposited with the State Treasurer who shall credit the fee to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring a registration fee and the provisions that require an expiration of forty-five (45) days from the time the application is received by the Commission prior to the issuance of a permit, if granted by the Commission. The licensees, municipal corporations, organizations, and nonprofit corporations enumerated in this section seeking a special designated permit shall file an application on such forms as Commission may prescribe. Such forms shall contain, along with other information as required by the Commission, (a) the name of the applicant, (b) the particular place for which a special designated permit is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the place, (c) the name of the owner or lessee of the premises for which the special designated permit is requested, (d) sufficient evidence that the holder of the special designated permit, if issued, will carry on the activities and business authorized by the special designated permit for him, her, or itself

and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a permit is requested, and (f) sufficient evidence that the activity will be supervised by persons or management who are agents of and directly responsible to the permittee.

- (4) No special designated permit provided for by this section shall be issued by the Commission without the approval of the local Governing Body. The local Governing Body may establish criteria for approving or denying a special designated permit. The local Governing Body may designate an agent to determine whether a special designated liquor permit is to be approved or denied. Such agent shall follow criteria established by the local Governing Body in making his or her determination. The determination of the agent shall be considered the determination of the City of David City, Nebraska.
- (5) If the applicant meets the requirements of this section, a special designated permit shall be granted and issued by the Commission for use by the permittee. All statutory provisions and rules and regulations of the Commission that apply to a retail license shall apply to such permittee with the exception of such statutory provisions and rules and regulations of the Commission so designated by the Commission and stated upon the issued permit, except that the Commission may not designate exemption of State Statute sections 53-180 to 53-180.07. The decision of the Commission shall be final. If the applicant does not qualify for a special designated permit, the permit shall be denied by the Commission.
- (6) A special designated permit issued by the Commission shall be mailed to the City Clerk, who shall deliver such permit to the permittee upon receipt of any fee or tax imposed by the City of David City, Nebraska. (*Ref. 53-124.11 RS Neb.*)

**§10-109**

**ALCOHOLIC BEVERAGES; LIQUOR LICENSE RENEWAL.** Retail liquor licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the Governing Body to require the said licensee to issue an application for renewal. The Municipal Clerk, upon notice from the Commission, between January tenth (10<sup>th</sup>) and January thirtieth (30<sup>th</sup>) of each year, shall cause to be published in a legal newspaper in, or of general circulation in the Municipality, one (1) time, a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the Municipality; Provided, class C license renewal notices shall be published between the dates of July tenth (10<sup>th</sup>) and July thirtieth (30<sup>th</sup>) of each year. The Municipal Clerk shall then file with the Commission proof of publication of said notice on or before February tenth (10<sup>th</sup>) of each year or August tenth (10<sup>th</sup>) of each year for Class C licenses. In the event that written protests are filed by three (3) or more residents of the Municipality against said license renewal, the Municipal Clerk shall deliver the protests to the Governing Body who shall thereupon proceed to notify the Commission that they are to require the said licensee to submit an application.

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

(*Ref. 53-135, 53-135.01 RS Neb.*)

- §10-110** **ALCOHOLIC BEVERAGES; OWNER OF PREMISES.** The owner of any premise used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall knowingly permit the licensee to use the said licensed premise in violation of any Municipal Code section or Nebraska Statute.
- §10-111** **ALCOHOLIC BEVERAGES; EMPLOYER.** 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 said act or omission had been committed by him personally.
- §10-112** **ALCOHOLIC BEVERAGES; CLEAR VIEW.** It shall be unlawful to use any screen, blind, curtain, partition, article, or other device in the windows or upon the doors of any retail liquor establishment, other than restaurants, hotels, and clubs, which will have the effect of preventing a clear view into the interior of such licensed premise from the street, road, or sidewalk at all times. All licensed premises shall be continuously lighted during business hours by natural or artificial white lights to insure the clear visibility into said establishment. Any licensee who willfully violates the provisions of this section shall be subject to a revocation of his license by the Municipality as provided herein.
- §10-113** **ALCOHOLIC BEVERAGES; MINORS.** It shall be unlawful for any person or persons to sell, or make a gift of, any alcoholic liquors, or to procure any such alcoholic liquors for any minor, or other person who is mentally incompetent, whether due to natural disabilities or the prior consumption of alcoholic beverages. *(Ref. 53-180 RS Neb.)*
- §10-114** **ALCOHOLIC BEVERAGES; CREDIT SALES.** No person shall sell or furnish alcoholic liquor at retail to any person or persons for credit of any kind, barter, or services rendered; Provided, nothing herein contained 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 said members or guests in accordance with the by-laws of any such club; and Provided further, nothing herein shall be construed to prevent any hotel or restaurant holding a Class C license from permitting checks or statements for liquor to be signed by regular guests residing in the said hotel, and charged to the accounts of such guests. *(Ref. 53-183 RS Neb.)*
- §10-115** **ALCOHOLIC BEVERAGES; SPIKING BEER.** It shall be unlawful for any person or for any licensee to sell or offer for sale in this state any beer to which has been added any alcohol, or to permit any person to add any alcohol to any beer on the premises of such person or licensee. *(Ref. 53-174 RS Neb.)*
- §10-116** **ALCOHOLIC BEVERAGES; ORIGINAL PACKAGE.** It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to have in their possession for sale at retail any alcoholic liquors contained in bottles, casks, or other containers except in the original package. *(Ref. 53-184 RS Neb.)*

**§10-117** **ALCOHOLIC BEVERAGES; HOURS OF SALE.** For purposes of this section, “on sale” shall be defined as alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment. “Off sale” shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment. It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the Municipality except during the hours provided herein:

**HOURS OF SALE (Amended by Ordinance #1179 10/10/12)**

Alcoholic Liquors / Beer and Wine

Secular Days and Sundays

Off Sale ..... 6:00 A.M. to 1:00 A.M.

On Sale ..... 6:00 A.M. to 2:00 A.M.

Provided that such limitations shall not apply after twelve (12:00) o'clock Noon on Sunday to a licensee which is a non-profit corporation holding a license pursuant to section 53-179(2) Reissue Revised Statutes of Nebraska.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer that fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises.

Nothing in this section shall be construed to prohibit licensed premises from being open for business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section. (Ref. 53-179 RS Neb.)

**§10-118** **ALCOHOLIC BEVERAGES; SANITARY CONDITIONS.** It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons and said licensed premise shall be subject to any health inspections the Governing Body or the Municipal Police may make, or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for, or renewal of, a liquor license. (Ref. 53-118 RS Neb.)

**§10-119** **ALCOHOLIC BEVERAGES; HIRING MINORS.** It shall be unlawful for any person to hire a minor regardless of sex under the age of nineteen (19) years to serve or dispense alcoholic liquors, including beer, to said licensee’s customers. Persons who are sixteen years old or older may carry alcoholic liquor from licensed establishments when they are accompanied by a person not a minor. Persons who are sixteen years old or older may handle alcoholic liquor containers and alcoholic liquor in the course of their employment. Persons who are sixteen years old or older may remove and dispose of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment. (Ref. 53-168.06 RS Neb.)

**§10-120** **ALCOHOLIC BEVERAGES; 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 same to such person under the provisions of the Nebraska Liquor Control Act; Providing, nothing herein shall prevent the possession of alcoholic liquor for the personal use

of the possessor, his family and guests, nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetable or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker, his family and his guests; Provided further, that nothing herein shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his 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; Provided further, that any drug store employing a licensed pharmacist may possess and use alcoholic liquors in the compounding of prescriptions of duly licensed physicians; and Provided further, that 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. (Ref. 53-168.06 RS Neb.)

**§10-121**     **LIQUOR APPLICATIONS; RETAIL LICENSING STANDARDS.** The City Council adopts the following licensing standards and criteria for consideration by the Liquor Control Commission of any applicant for a retail alcoholic liquor license, for the upgrading of a license to sell alcoholic liquor, or for the expansion or change in location of the premises, in accordance with the Nebraska Liquor Control Act, Neb. Rev. Stat. §53-132(3)

1. The adequacy of existing law enforcement resources and services in the area.
2. 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.
3. Zoning restrictions.
4. Sanitation or sanitary conditions on or about the proposed licensed premises.
5. The existing population, and projected growth, both city-wide and within the area to be served.
6. The existing liquor licenses, the class of such license, and the distance and times of travel to such licenses.
7. The nature and needs of the neighborhood or community where the proposed premises are located as well as its projected growth.
8. Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.
9. Whether the applicant can insure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with Neb. Rev. Stat. §53-168.06 of the Nebraska Liquor Control Act.
10. Whether the applicant has taken every precaution to protect against the possibility of shoplifting of alcoholic beverages, which must be displayed, kept, and sold from an area which is secured to the greatest extent possible.
11. Whether the applicant is fit, willing, and able to properly provide the service proposed in conformance with all provisions, requirements, needs and regulations provided for in the Nebraska Liquor Control Act.
12. 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, requirements, rules and regulations provided for in the Nebraska Liquor Control Act.
13. The background information of the applicants established by information contained in the public records of the Nebraska Liquor Control Commission.

14. Past compliance with state laws and liquor regulations and municipal ordinances and regulations.
15. If the application is for an on-sale license, whether it is adjunct to a legitimate food service operation as evidenced by percent of gross income allocated to food and liquor, and the type and extent of kitchen facilities.
16. Whether the application will provide an improvement to the neighborhood, a betterment to the Municipality, or a true increase in service to the public at large.
17. Proximity of and impact on schools, hospitals, libraries and public institutions.
18. Whether the type of entertainment to be offered, if any, will be appropriate and non-disruptive to the neighborhood where the premises are located and to the community at large.
19. Whether the application is for a business, and the sole purpose for which is the sale or dispensing of liquor, or when the sale or dispensing of liquor is a substantial integral part of the business, and not just incidental thereto.
20. Applications for Class "B", "C," and "D" licenses (as defined by section 53-124, R.S.S. reissue 2004) Must be for premises which are separate and distinct from any other business activity. Premises shall be deemed separate and distinct only when located in a building which is not adjacent to any other building, or when located within the same building, they shall be so separate by walls (floor to ceiling), that access cannot be had directly from the area of alcoholic liquor sales to any other business activity by means of doors or other openings; provided, nothing herein shall prevent the construction or maintenance of doors that are used by employees; further, any nonconforming premises in existence on the effective date of this ordinance may be continued for the life of the license. Such nonconforming premises may not be enlarged, extended, or restored after damage during interim. For the purposes of this section, other business activity shall mean the sale or display of any food, produce, mercantile product, item or service other than keeping or selling of alcoholic liquors at retail for consumption off the premises and the sale or display of ice, drink mix, tobacco, cups, or carbonated beverages.
21. Whether or not 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 for forfeiting bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquors.
22. Other information and data that may be reasonably be considered pertinent to the issuance of the license.

The preceding standards are not necessarily of equal value that can be computed in a mathematical formula. Rather, they are standards which can be weighed and cumulated positively and negatively. The burden of proof and persuasion shall be on the party filing the application. When applicable, the term "applicants" as used herein is synonymous with "licensee." (*Ref. 53-134 RS Neb.*)



## Article 2. Sales and Advertising

- §10-201** **ITINERANT SALES; REGULATION.** To prevent the sale of fraudulent, dangerous, and unhealthy goods and services, and to protect the public by maintaining records of the products sold and the persons and companies responsible for such sales, all itinerant sales personnel shall, before doing business within the Municipality, make application for and be issued a permit. Application for said permit shall be made to the Police Department and shall contain the necessary information required thereby and identification and documents required for the protection of the residents of the Municipality. Upon approval by the Police Department, the Chief of Police shall certify to the Municipal Clerk such approval, and the Clerk shall then have the authority to issue a sales permit to said approved applicant. Each person granted a permit shall pay a fee of twenty-five dollars (\$25.00) to the Clerk, and upon payment, the Clerk may issue a sales permit to such approved applicant. Such permit shall be valid for a period of seven (7) days from and after date of issuance. The date of its expiration shall be clearly marked on the permit. A sales permit shall be required for each person desiring to do business within the Municipality. Any person or persons granted such permit shall be subject to any occupation taxes and other rules and regulations which the Governing Body deems appropriate for the purposes stated herein. Any permit so granted shall be subject to revocation for good and sufficient cause by the Municipal Police. *(Ref. 17-134 RS Neb.)*
- §10-202** **ITINERANT SALES; HOURS OF SOLICITATION.** It shall be unlawful for any solicitor, salesman, or peddler to solicit any individual between the hours of six o'clock (6:00) P.M., and eight o'clock (8:00) A.M., unless they have a previous appointment with the resident, or residents, of the premise solicited. It shall be unlawful for any hour for a solicitor, salesman, or peddler to solicit without a proper permit on his person at all times. *(Ref. 17-134 RS Neb.)*
- §10-203** **ITINERANT SALES; REGULATION, EXCEPTIONS.** The provisions of this Article shall not extend to individuals calling on retail merchants in the corporate limits of the City for the purpose of taking orders or selling of merchandise for resale by such merchants.
- §10-204** **ITINERANT SALES; DEFINITION.** A transient merchant, itinerant merchant, or itinerant vendor is defined as any person, firm, or corporation, whether as owner, agent, consignee, or employee, not a resident of Butler County, who engages temporarily within the Municipality in the business of selling and delivering, or taking orders for, goods, wares, and merchandise, including but not limited to magazines, cleaning supplies, vacuum cleaners, and meat and/or fruit products, to or at homes, apartments, or other residential premises in the Municipality. *(Ref. 17-134 RS Neb.)*
- §10-205** **SIGNS; PERMIT REQUIRED.** Any person or persons wishing to erect or cause to be erected any advertising display, sign, or other construction for the purpose of advertising on or over any Municipal property, or wishing to distribute leaflets or pamphlets upon any Municipal property, shall make an application the Municipal Clerk. Such application shall contain all the necessary information, and documents which the Governing Body deems appropriate. The Governing Body shall then assign to a committee the duty to consider such application, and to recommend the

acceptance or rejection of the proposed application. If the Governing Body accepts the application, they shall then direct the Municipal Clerk to issue the said permit. Any person or persons granted a sign permit shall be subject to any fees, taxes, or other rules and regulations which the Governing Body deems appropriate. Any permit so granted shall be subject to revocation for good and sufficient cause by the Governing Body. *(Ref. 17-140, RS Neb.)*

### Article 3. Public Amusements

- §10-301** **BINGO; REGULATION.** Games of bingo shall be conducted within the Municipality in accordance with all laws of the Municipality and the State of Nebraska if the said game of bingo is played for or involves profit or gain. Any association duly licensed by the State of Nebraska to conduct the game of bingo shall obtain a written permit from the Governing Body before commencing operation of said game. Application shall be made to the Municipal Clerk for such permit. Said application form shall contain such information and documents or copies thereof as the Governing Body deems necessary to determine whether to grant or reject the application. Upon the determination that granting the application would be proper, the Governing Body shall immediately direct the Municipal Clerk to issue the said license to the applicant upon the payment of an annual permit fee of ten (\$10.00) dollars. Said license shall be subject to revocation at any time for good cause. Any person or persons, so licensed, shall be subject to any other fees, rules, and regulations which the Governing Body may designate. All permits so issued will automatically expire on September thirtieth (30<sup>th</sup>), following its issuance or renewal. The fee for each renewal unless otherwise prescribed shall be in the sum of ten (\$10.00) dollars. Said fee shall be credited to the General Fund. The permit shall be on display at any place where a game of bingo is conducted. *(Ref. 9-236 RS Neb.)*
- §10-302** **BINGO; INCORPORATED REGULATION.** The purpose of the Nebraska Bingo Act is to protect the health and welfare of the public, to protect the economic welfare and interest in the fair play of bingo, to insure that the gross receipts derived from the conduct of bingo are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits of bingo are used for lawful purposes, and to prevent the purposes for which the profits of bingo are to be used from being subverted by improper elements. All applicable State statutes as they now exist or may hereafter be amended shall be, and will constitute, a part of this Article as if repeated verbatim herein, and violation of any State statute will be a distinct and separate offense against the Municipality as well as against the State. Violators thereof shall be separately prosecuted by the Municipality for each of such offenses, and if convicted, shall be deemed to be guilty of a misdemeanor. *(Ref. 9-201 thru 9-266 RS Neb.)*

#### Article 4. Business Enterprises

- §10-401** **PLUMBERS; REGISTERED REQUIRED.** No person shall hereafter engage in or work at the business of a master plumber or journeyman plumber in the Municipality until he shall have registered as a master plumber or journeyman plumber. Application for registration shall be made in writing to the Municipal Clerk, showing the name and residence of the applicant, the business location of the applicant, and such other information as may be required. (*Ref. 18-1911 RS Neb.*)
- §10-402** **PLUMBERS; BOND.** Before a plumber may register with the Municipal Clerk, the applicant shall file with the Municipal Clerk a bond, in an amount set by resolution of the Governing Body and on file at the office of the Clerk, signed by one (1) or more sufficient sureties to be approved by the Governing Body or a surety bond of the same amount issued by an approved corporate surety Company. Said bond shall contain the condition that the applicant shall defend, save, keep harmless, and indemnify the Municipality from all liabilities, claims, damages, judgments, costs, and expenses of every nature and description caused by the willful or negligent conduct of the plumber while engaged in the business of plumbing. The provisions of this Section may be satisfied by the applicant depositing with the Clerk an insurance policy providing public liability and property damage insurance to the Municipality and the general public in the same amount as the bond, executed by an insurance company authorized to do business in the State of Nebraska; Provided, an endorsement, approved as to form by the Municipal Attorney, shall be attached to and become part of each and every such liability insurance policy deposited with the Municipality, and said endorsement shall contain each and every condition of said bond required by the Governing Body. The obligee of said bond or the beneficiary of said insurance policy shall be the Municipality, and action may be maintained thereon by anyone injured by a breach of the conditions of said bond or of the covenants contained in the required endorsement on said policy of insurance for a period of one (1) year after the completion of any plumbing work. (*Ref. 17-505 RS Neb.*)
- §10-403** **ELECTRICIANS; REGISTRATION REQUIRED.** No person shall install any electric apparatus within the corporate limits without first having registered with the Municipal Clerk.
- §10-404** **ELECTRICIANS; BOND REQUIRED.** Before any electrician shall be registered with the Municipal Clerk, the applicant shall execute and file with the Municipal Clerk, a bond in a sum set by resolution of the Governing Body and on file at the office of the Clerk to be approved by the Governing Body and conditioned that the licensee shall indemnify and hold harmless the Municipality from all liability, caused by any negligent or intentional act arising from his electrical work or violation of this Code and shall pay all fines imposed upon him for any violation thereof. The obligee of said bond shall be the Municipality, and action may be maintained thereon by anyone injured by a breach of its conditions for a period of one (1) year after the completion of any electrical work. (*Ref. 17-505 RS Neb.*)
- §10-405** **RAILROAD COMPANIES; SAFE CROSSING.** It shall be the duty of every railroad company doing business in, or traveling through, the Municipality to keep in a suitable, and safe condition the crossings and right-of-way in the Municipality. If any such crossing shall at any time fall into disrepair and become unsafe, or

inconvenient for public travel, the Governing Body may, by resolution, call upon the said company to make whatever repairs that they may deem necessary to correct the dangerous condition. Notice of the said resolution shall be served upon the local agent of the said company. In the event that the railroad shall fail, or neglect to repair, and correct the said condition as aforesaid within forty-eight (48) hours, neglect for each twenty-four (24) hours thereafter shall be deemed, and is hereby made a separate, and distinct offense against the provisions herein. (Ref. 17-143, 17-144 RS Neb.)

- §10-406**     **RAILROAD COMPANIES; SPEED.** It shall be unlawful for any railroad company, its employees, agents, or servants to operate a railroad engine, locomotive, or other vehicle on its tracks within or through the Municipality at a speed in excess of ten (10) miles per hour. (Ref. 17-551, 17-552 RS Neb.)
- §10-407**     **RAILROAD COMPANIES; OBSTRUCTING TRAFFIC.** It shall be unlawful for any railroad company, its employees, agents, or servants operating a railroad through the Municipality to obstruct traffic on any public street, except in the event of an emergency, for a longer period at one time than five (5) minutes. (Ref. 17-552 RS Neb.)
- §10-408**     **RAILROAD COMPANIES; DRAINAGE.** It shall be the duty of any railroad company owning, maintaining, or operating a railroad within or through the corporate limits of the Municipality to construct and keep in repair ditches, drains, and culverts along and under their railroad tract at all places within the City limits, where the same may be necessary for the escape of water and proper draining of the territory on either side of said railroads.
- §10-409**     **RAILROAD COMPANIES; CROSSING LIGHTS.** At all points on Third (3<sup>rd</sup>), Fourth (4<sup>th</sup>), Fifth (5<sup>th</sup>), "D", "E", and "A" Streets within the corporate limits of David City, Nebraska, where any railroad or railway tracks shall intersect said platted streets, there shall be installed and maintained, wholly at the expense of the said railroad company or said railroad company maintaining said intersecting railroad or railway, an electric light not less than one hundred (100) candle power, which said electric light shall be kept lighted at all times in accordance with the uniform street lighting schedule provided by the Municipality.
- §10-410**     **RAILROAD COMPANIES; AUTOMATIC SIGNALS.** There shall be a bell attached to every engine which shall be continually rung by the engineer or fireman in charge of the engine while passing over any railroad track within the corporate limits of said City. When ordered by the Mayor and Council, approved automatic signals shall be installed at designated crossings.
- §10-411**     **RAILROAD COMPANIES; FLYING SWITCHES.** It is hereby declared unlawful for any railroad or railway company, its employees, agents, or servants, to make or permit or allow to be made any running or flying switches across any street opened and in public use.
- §10-412**     **RAILROAD COMPANIES; DEPOT PLATFORMS TO BE LIGHTED.** Railroad companies within the corporate limits of the Municipality shall, wholly at their own expense, construct and maintain on their depot platforms electrical light or lights at such height and of such candle power amply to light such platforms as the Mayor and Council shall by resolution direct.

- §10-413**     **RAILROAD COMPANIES; OBSTRUCTING VIEW AT CROSSINGS PROHIBITED.** It shall be unlawful for any railroad company to obstruct or obscure the traveling public's view by storing or parking any railroad car on a railroad track within fifteen (15') feet of the crossing of any such railroad track and a public road within the corporate limits of the Municipality; Provided, however, in no instance shall any person who is authorized to control the movement of such railroad car or cars within such distance be prevented from reasonable conducting his or her business. (*Ref. 74-1323 RS Neb.*)
- §10-414**     **FIREWORKS VENDOR; REGULATION.** It shall be unlawful for any person or persons to sell fireworks of any description whatsoever, except sparklers, Vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charges for the purpose of making a noise. Color wheels, toy cap pistols and permissible caps may be sold at retail at all times; Provided, that all other fireworks named may be sold only between June twenty-fourth (24<sup>th</sup>) and July fifth (5<sup>th</sup>); Provided, that fireworks of any description are permissible for purposes of public exhibitions or displays as authorized by the Governing Body; and further provided that said vendor shall secure a license prior to such sales. Application shall be filed with the Municipal Clerk upon forms supplied by the Municipality and requesting such information and documents as the Governing Body may deem necessary as to whether or not to grant said license. Upon the determination to grant the license, the Governing Body shall direct the Municipal Clerk to collect the appropriate fee and issue said license. Any license so issued may be revoked at any time by the Governing Body upon proper notice and hearing, if one is requested by the licensee. (*Ref. 17-137, 28-1241 thru 28-1250 RS Neb.*)
- §10-415**     **FIREWORKS; DEFINITION.** The term "fireworks" shall mean and include any composition or device manufactured or used for the purpose of producing a visible or audible effect by combustion or detonation but does not include model rockets, toy pistol caps, emergency signal flares, snakes or glow worms, party poppers, champagne bottles, or wire sparklers under 24 inches in length.
- §10-416**     **FIREWORKS; SALE.** Permissible fireworks may be sold at retail or offered for sale at retail within the City of David City only between 12:01 a.m. June 25 and ending 11:59 p.m. July 4<sup>th</sup> of each calendar year.
- §10-417**     **FIREWORKS; USE, HOURS RESTRICTED.**
1. It shall be unlawful to discharge, explode or use permissible fireworks from an automobile or other moving vehicles or objects.
  2. It shall be unlawful to discharge, explode or use permissible fireworks before 10:00 a.m. and after 11:00 p.m. with the following exceptions:
- Exceptions:
- a. Permissible fireworks may be lawfully discharged, exploded or used between the hours of 8:00 a.m. on July 4<sup>th</sup> and 1:00 a.m. on July 5<sup>th</sup>.
  - b. Permissible fireworks may be lawfully discharged, exploded or used between the hours of 8:00 a.m. on December 31<sup>st</sup> and 1:00 a.m. on January 1<sup>st</sup>.
- §10-418**     **FIREWORKS; PUBLIC DISPLAY, APPLICATION FOR PERMIT, LOCATION.**
1. Application for a permit required under this Section shall be made in the office of

the City Clerk at least thirty (30) days prior to the public display. The City Council may, upon written application, grant a permit for the public display of fireworks by religious, educational, fraternal or civic organizations, fair associations, amusement parks, or other organizations or group of individuals. After such permit is granted, sales, possession, use and distribution of fireworks for such public display shall be lawful for that purpose only.

2. All applications for permits to operate a public display of fireworks shall be in writing and shall set forth:
  - a. The name of the organization or person sponsoring the display, together with the name, age and qualifications of persons actually in charge of firing the display;
  - b. The date and time the display is to be held;
  - c. The exact location planned for the display;
  - d. The manner and place of storage of fireworks prior to the display
3. The actual point at which the fireworks are to be fired shall be at least two hundred (200) feet from the nearest permanent building, public highway or railroad, and fifty (50) feet from any telephone or electric power pole or line, tree, or other overhead obstruction(s).

**§10-419 FIREWORKS; VENDOR, APPLICATION FOR PERMIT.**

1. Application for a permit required under this Section shall be made in the office of the City Clerk by June 5<sup>th</sup> of each year in which the permit, if issued, would be valid. The City Clerk will provide such application form.
2. At the any regular City Council Meeting before June 24<sup>th</sup> of each year, the City Council will hold hearings on the applications for permits. The City Clerk will, at the time of accepting the application for a permit, give notice of the date and time of the hearing. Applicants are expected to appear at the hearing either in person or by representative.
3. At the time of an application, an applicant shall furnish to the City the name, address, and phone number of the fireworks stand manager. The person designated as manager must be at least 21 years of age. It shall be incumbent upon the applicant to keep this list current so that names of the employees having management responsibilities will always be on file in the office of the City Clerk.
4. Each applicant shall provide a plat plan showing the location of the stand, address, setbacks from right-of-way, distance to nearest building or structure, and occupancy of the nearest building.
5. Any permit issued may be revoked at any time by the City Council upon proper notice and hearing, if one is requested by the permit holder.

**§10-420 FIREWORKS; FEES.** Each permit application shall be accompanied by a nonrefundable application fee. Application fees are set by resolution and approved by the City Council.

**§10-421 FIREWORKS; ENFORCEMENT OF PROVISIONS.** The Chief of Police or designee is charged with the duty of enforcing all the provisions, terms and regulations of this Article.

**§10-422 FIREWORKS; PENALTY.** Any person violating the provisions of this article shall, upon conviction thereof, be fined not less than \$50 nor more than \$500 for each and every offense.

**Article 5. Occupation Taxes**

**§10-501**    **OCCUPATION TAX; AMOUNTS.** For the purpose of raising revenue an annual occupation tax is hereby levied.

Amusement Devices, electronic entertainment or similar machines, per machine, .....per year \$25.00

Pool Tables, per table, per year .....\$15.00

**Dealers in Alcoholic Beverages:**

The occupation tax on dealers in Alcoholic Beverages shall be equal to the license fee charged by the Nebraska Liquor Control Commission.

**§10-502**    **OCCUPATION TAX; FIRE INSURANCE COMPANIES.** For the use, support, and maintenance of the Municipal Fire Department all revenue realized from the occupation tax on Fire Insurance Companies shall be appropriated to the General Fund which shall then be disbursed to the D.C. Rural Volunteer Fire Department - District #9.    *(Ref. 35-106 RS Neb.)*

**§10-503**    **OCCUPATION TAX; COLLECTION DATE.** All occupation taxes shall be due, and payable on the first (1<sup>st</sup>) day of May of each year, except in the event that the said tax is levied daily, and upon the payment thereof by any person or persons to the Municipal Clerk, the said Clerk shall give a receipt, properly dated, and specifying the person paying the said tax, and the amount paid; Provided, occupation taxes collected from Class C liquor licenses shall be due and payable on the first (1<sup>st</sup>) day of November. The revenue collected shall then be immediately deposited into the General Fund by the Municipal Treasurer. The Municipal Treasurer shall keep an accurate account of all revenue turned over to her. All forms, and receipts herein mentioned shall be issued in duplicate. One (1) copy shall then be kept by each party in the transaction.    *(Ref. 17-525 RS Neb.)*

**§10-504**    **OCCUPATION TAX; CERTIFICATES.** The receipt issued after the payment of any occupation tax shall be the Occupation Tax Certificate. The said certificate shall specify the amount of the tax and the name of the person, and business that paid the said tax. The Occupation Tax Certificate shall then be displayed in a prominent place, or carried in such a way as to be easily accessible, while business is being conducted.    *(Ref. 17-525 RS Neb.)*

**§10-505**    **OCCUPATION TAX; FAILURE TO PAY.** If any person, company, or corporation fails, or neglects to pay the occupation taxes as provided herein on the day it becomes due, and payable, the Municipality shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of one percent (1%) per month until paid.    *(Ref. 17-525 RS Neb.)*



§10-506 OCCUPATION TAX; TELEPHONE COMPANIES AND ELECOMMUNICATIONS COMPANIES

- A. Revenue Measure. The provisions of this section are enacted solely as a revenue measure of the city.
- B. Telephone Companies and Telecommunications Companies. An occupation tax is hereby levied and imposed on every company or person who engages in the business of providing local exchange telephone service, intrastate message toll telephone service and mobile telecommunications services for revenue in the city.
- C. Mobile Telecommunications Services, defined. As used in this section, mobile telecommunications services shall mean a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes: (i) Both one-way and two-way wireless communications services; (ii) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and (iii) any personal communications service;
- D. Amount of Tax. The occupation tax shall be **three percent (3%)** of the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service, other than Mobile telecommunications services as defined in this Section, from subscribers within the corporate limits of the City of David City, Nebraska.

If the telecommunications services provided are Mobile telecommunication services as defined in this section, the tax shall be a percentage, as set by the City Fees ordinance, of the gross income received from furnishing service that originates and terminates in the same state to a customer with a place of primary use within the corporate limits of the City of David City, Nebraska. Gross receipts shall not mean (i) the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service or (ii) the gross income attributable to services rendered using a prepaid telephone calling arrangement.

- E. Quarterly payments; due dates. The payment of any occupation tax levied and imposed by the provisions of this article shall be made in quarterly payments using the calendar quarter year as a basis for

determining the due date. Each quarterly payment shall be due thirty (30) days immediately following the termination of each calendar quarter year.

- F. Statement to be filed. Every person coming within the provisions of this article shall, on or before the fifteenth day of the month immediately following the termination of each calendar quarter, file with the city clerk, in the case of those persons taxed by section 10-506, a full, complete and detailed statement of the income and gross receipts of said person for the preceding three (3) calendar months, omitting therefrom the appropriate exceptions and exemptions, if any. All statements shall be duly verified as true and correct and sworn to by the manager or managing officer of such person.
- G. City's right to inspect. The city shall have the right at any and all times during business hours to inspect, through the comptroller or some other officer appointed by the city council, the books and records of any person coming under the provisions of this article for the purpose of ascertaining the correctness of the required statement.
- H. Failure to file statement; interest and penalty. In the event any person coming under the provisions of this article shall refuse, fail or neglect to furnish or file the required statement at the time or times specified, the occupation tax for the preceding three (3) calendar months shall draw interest at the rate of one (1) percent per month after due and payable, and in addition thereto, a penalty of five (5) percent for the failure to file.
- I. Interest and penalty on delinquent payments. All delinquent payments shall draw interest at the rate of one (1) percent per month; and, if delinquent for six (6) months or more, a penalty of five (5) percent shall be added thereto in addition to the interest charge.
- J. Collection of tax by civil action. In case any person shall fail to make payment of the occupation tax as required by this article, the city shall have the right and may sue any such person or persons in any court of competent jurisdiction for the amount of the occupation tax due and payable and may recover judgment against such person for the amount so due, together with interest and penalties, and may have execution thereon.
- K. Disposition of receipts. The occupation taxes paid under the provisions of this article shall be credited to the general fund of the city.

## Article 6. Penal Provision

**§10-601** **VIOLATION; PENALTY.** Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.