

## TITLE XI: BUSINESS REGULATIONS

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### **OCCUPATION TAX**

#### **§ 110.01 TELECOMMUNICATIONS OCCUPATION TAX: DEFINITIONS.**

- A. “Telecommunications Company,” for purposes of this Article, is defined as every person, firm partnership, corporation, limited liability company or association engaged in the business of offering or providing telecommunication services to the public for hire in the corporate limits of the City. (*Established by Ord. 2-24, 11/4/02; 08-02, 2/4/08*)

#### **§ 110.02 TELECOMMUNICATIONS OCCUPATION TAX: AMOUNT.**

- A. There is hereby levied upon every Telecommunications Company an occupation tax as follows:

1. At the rate of five percent (5%) on the gross receipts resulting from any toll services and other charges on basic local exchange services, inter-exchange services, mobile services, and other telecommunication services as follows:
  - (a). “Basic local exchange services” shall include the access and transmission of two-way switched communications within the city, including local telephone and telecommunications services;
  - (b) “Inter-exchange services” shall mean the access and transmission of communications between two or more local exchange areas, provided that such inter-

exchange service either (i) originates from an end user within the City or (ii) terminates with an end user within the City, and is charged to a service address within the City regardless of where the charges are actually paid;

- (c) “Mobile telecommunication services” shall mean wireless communication services 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.

(i) If the telecommunication services provided are Mobile telecommunication services as defined herein, the tax shall be five percent (5%) of the gross income received from furnishing Mobile telecommunication services that originates and terminates in the same state to a customer with a place of primary use within the corporate limits of the City. Gross receipts shall not mean (i) the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 2008, 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.

- (d) Any other similar telecommunication services involving any electronic or electromagnetic transmission of messages originating or terminating in the State of Nebraska and charged to a service address in the City of Lincoln, regardless of where the charges are actually paid.

2. Gross receipts shall not include any tolls services and charges as follows:

- (a) Interstate telecommunications between persons in the City and persons outside of the State of Nebraska;
- (b) Local carrier access charges, transmission facilities and switching services provided to Telecommunications Companies;
- (c) Accounts charged to the United State government or any of its departments, of the State of Nebraska, or any of its agencies, subdivisions, or departments

No part or portion of the tax provided for in this Article shall be levied upon or assessed against or taken from any such gross receipts so excepted from the provisions hereof. *(Established by Ord. 02-24, 11/4/02; 08-02, 2/4/08)*

**§ 110.03 TELECOMMUNICATIONS OCCUPATION TAX: PAYMENTS; CREDIT; REPORTS.**

- A. The payment of any occupation tax levied and imposed by the provisions of this Article shall be made in quarterly payments using the calendar year as a basis for determining the due date and shall be paid to the City Treasurer. Each quarterly payment shall be due fifteen (15) days immediately following the termination of each calendar quarter year; provided that such Telecommunication Company shall be entitled to a credit for any occupation tax or other similar tax based on gross receipts, satisfactory documented or verified as paid to any other jurisdiction upon any gross receipts taxed herein. All delinquent deferred payments shall draw interest at the rate of one percent (1%) per month; and, if delinquent for six months or more, a penalty of five percent (5%) shall be added in addition to the interest charges.
- B. Every Telecommunications Company coming within the provisions of this Article shall, on or before the fifteenth day of the month immediately following the termination of each calendar year, submit to the City Treasurer a full, complete and detailed statement of the income and gross receipts, omitting any exemptions provided for in this Article, and said statement shall be duly verified and sworn to by the officer or officers in charge of the Telecommunications Company. All such Telecommunications Companies shall at any reasonable times during business hours permit the City, through its officers, agents or representatives, to inspect the books and records of the Telecommunications Company for the purpose of verifying such report or reports.
- C. Upon payment of the occupation taxes levied and imposed by the provisions of this Article, the City Treasurer shall give a receipt, properly dated, and specifying the Telecommunications Company paying the same, and amount thereof, and the time for which the same takes effect. The City Treasurer shall keep a record of the receipts so issued.
- D. It is hereby made the duty of any person desired to exercise, carry on or engage in any occupation within the provisions of this chapter, to pay to the City Treasurer the amount specified for the occupation tax, as provided for in this Article. The amount of the occupation tax shall be due and payable to the City Treasurer immediately after such person shall begin business in any occupation within the provisions of this Article.
- E. The City Attorney may bring suit in the name of the City against any person, firm, partnership, corporation, limited liability company, or association in any court of competent jurisdiction for the amount of such tax levied by this chapter upon the failure of such person, firm, partnership, corporation, limited liability company, or association to pay the same as herein provided whenever the City Attorney is so directed by the City Treasurer.
- F. The money realized from the collection of the occupation taxes provided for in this Article shall be placed to the credit of the General Fund or such other fund or funds as designated by the City Council.

2. The imposition of the occupation tax as set forth herein shall commence June 1, 2008, and shall first be pay able to the City on or before July 31, 2008, and monthly thereafter as set forth herein. *(Established by Ord. 02-24, 11/4/02; 08-02, 2/4/08)*

#### **§ 110.04 HOTEL; DEFINITIONS.**

(a) Hotel, Defined. Hotel shall mean any facility in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, campgrounds, courts, lodging houses, inns, state-operated hotels, and nonprofit hotels, but hotels shall not be defined so as to include hospitals, sanitariums, nursing homes, chronic care centers, or dormitories or facilities operated by an educational institution and regularly used to house students.

(b) Occupancy, Defined. Occupancy shall mean the use or possession, or the right to the use or possession of any space in a hotel, if the space is one ordinarily used for sleeping accommodations and if the occupant's use, possession, or right to the use or possession is for less than a period of thirty days.

(c) Occupant, Defined. Occupant shall mean anyone who, for consideration, uses, possesses, or has a right to use or possess, any space in a hotel, if the space is one ordinarily used for sleeping accommodations.

(d) Consideration, Defined. Consideration shall mean the monetary charge for the use of space in a hotel; only if the space is one ordinarily used for sleeping accommodations and shall not include the charge for any food or beverage served or personal services rendered to the occupant of such space.

(e) Visitor Attraction, Defined. A Location open to the public, which location is of educational, historical, artistic, or recreational significance or provides entertainment, or in which are exhibits, displays or performance of educational, cultural, historic, artistic or entertainment value.

(f) Exception to the Occupancy Tax. Consideration paid for sleeping accommodations which are not subject to the hotel sales tax imposed by Neb Rev Stat 81-1253 shall not be subject to the occupation tax. *(Established by Ord. 08-06, 7/11/08)*

#### **§ 110.05 HOTEL; TAX AMOUNT.**

There is hereby imposed an occupation tax fee in the amount of four percent (4%) upon all revenues collected by the hotel from the total consideration charged for occupancy and use of any space furnished by any hotel in the City of Waverly, Nebraska. *(Established by Ord. 08-06, 7/11/08)*

#### **§ 110.06 HOTEL; COLLECTIONS.**

The tax imposed by this Article shall be collected by the hotel operator from the occupant of each room to which the tax applies. The tax may be shown as an add on to the charge for occupancy of the room and shall be collectable at the time the lodging is fur-

nished, regardless of when the charge for occupancy is paid. The operator shall remain responsible for payments of all taxes imposed, whether or not the taxes are actually collected from the occupant.

It shall be unlawful for any hotel operator subject to this Article to fail to maintain or fail to make available to the City, within one hundred twenty (120) hours after request for such records, written records accurately and completely evidencing the number of rooms occupied, the dates the rooms were occupied, the amount of occupation tax due and/or paid under this Article, and such other information as is required by the City Administrator or City Council. Such records shall be maintained for a period of three (3) years after the occupation tax is due.

Notwithstanding any contrary provisions of this Section, the tax imposed by this Article shall be due and payable on the first day of each calendar month next succeeding the month during which the room was occupied. All taxes not paid by the twenty-fifth (25<sup>th</sup>) day of the month in which they are due and payable shall be deemed delinquent. The operator shall be assessed a penalty of ten percent (10%) on all delinquent amounts as well as interest of one percent (1%) per month or fraction thereof from the first of the month in which such tax becomes due and payable, until the date of payment. *(Established by Ord. 08-06, 7/11/08)*

#### **§ 110.07 HOTEL; USE OF OCCUPATION TAX PROCEEDS.**

It is the intent of the Council Members of the City of Waverly that the City of Waverly shall use the revenue generated by the occupation tax imposed by this Article for any lawful expenditure including but not limited to community betterment purposes as defined in Neb Rev Stat 9-604, for economic development purposes as defined in Neb Rev Stat 13-315, and/or for grants to expand and improve facilities of any existing visitor attraction, acquiring or expanding exhibits for existing visitor attractions, or planning or developing such expansions, improvements or additions: grants shall be available for any visitor attraction in the City of Waverly owned by the public or any nonprofit organization, the primary purpose of which is to operate the visitor attraction, except that grants shall not be available for any visitor attraction where pari-mutuel wagering is conducted. *(Established by Ord. 08-06, 7/11/08)*

#### **§ 110.08 HOTEL; PENALTY.**

Any person, partnership, firm, L.L.C. or corporation violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a minimum fine of \$500.00. In addition, the City may, by action in District Court, enforce the provisions of this Article through equity and injunctive processes. Each distinct act or violation of the terms of this Article shall constitute a separate offense. *(Established by Ord. 08-06, 7/11/08)*

## ***FRANCHISES***

### ***C.A.T.V.***

#### **§ 110.20 C.A.T.V.; SHORT TITLE.**

This Article shall be known and may be cited as the Waverly Community Antenna Television Franchise Ordinance; or, the Waverly CATV Franchise Ordinance.

#### **§ 110.21 C.A.T.V.; DEFINITIONS.**

For the purposes of this Article and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory. The captions supplied herein for each Section are for convenience only. Said captions have no force of law, are not a part of the Section, and are not to be used in constructing the language of the Section. The following terms, phrases, words, and derivations as used herein shall be given the meaning set forth below:

- A. City shall mean the City of Waverly, Nebraska.
- B. Council shall mean the City Council of Waverly, Nebraska, or its designated representative.
- C. Company shall mean the grantee of rights under this Article.
- D. Person shall mean any individual, firm, partnership, association, corporation, company, or organization of any kind.
- E. Franchise Area shall mean that area within the corporate limits of the City as now laid out or dedicated and all extensions thereof and additions thereto.
- F. Street shall mean the surface of and the space above and below any public street, right-of-way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communication or utility easement, now or hereafter existing as such within the franchise area.
- G. Federal Communications Commission or FCC shall mean the present Federal Agency of that name as constituted by the Communications Act of 1934, or any successor agency.
- H. Property of Company shall mean all property owned, installed, or used by the Company in the conduct of a Community Antenna Television System business in the City.
- I. CATV shall mean a cable television system as hereinafter defined.
- J. Cable Television System shall mean a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters,

equipment, or facilities, designed, constructed, or wired for the purpose of producing, receiving, amplifying, and distributing by coaxial cable audio and/or visual radio, television, electronic, or electrical signals to and from persons, subscribers, and locations in the franchise area.

- K. Basic CATV Services shall mean the simultaneous delivery by the Company to television receivers, or any other suitable types of audio video communication receivers, of all subscribers in the City of all signals of over-the-air television broadcasts which at the time the current franchise is granted by the Governing Body and accepted by the Company are required by the FCC to be carried by the Cable Television System as defined hereinabove. Basic service shall also include five (5) additional channels including original cablecast programming at the option of the Company.
- L. Additional Service shall mean any communications service other than basic CATV service provided over its Cable Television System by the Company directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in communications services including, but not limited to, satellite distributed programming, burglar alarm, data, or any other electronic intelligence transmission, facsimile reproduction, meter reading, and home shopping.
- M. Pay Television Service shall mean the delivery over CATV of video signals in intelligible form to subscribers for a fee or charge, over and above the charge for basic CATV service, on a per program, per channel, or other subscription basis.
- N. Subscriber shall mean any person or entity receiving basic CATV service.
- O. Gross Annual Basic Subscriber Revenues shall mean any and all compensation or receipts and other consideration received directly by the Company from subscribers in payment for regularly furnished basic CATV service. Gross Annual Basic Subscriber Revenue shall not include any taxes on services furnished by the Company imposed directly on any subscriber or user by the City, State, or other governmental unit and collected by the Company for such governmental unit, nor shall it include revenue from "auxiliary" services which include, but are not limited to, advertising, leased channels, and pay television service.

#### **§ 110.22 C.A.T.V.; FREEDOM OF INFORMATION.**

The City Council finds and determines that in order to insure the free flow of news and other information to the public and/or the dissemination of information to the public in a free and unfettered atmosphere it is desirable to reserve unto the City Council of the City of Waverly, Nebraska, the authority to issue non-exclusive franchises authorizing CATV service within the corporate limits of said City. And, it shall be the policy of the City Council to amend this Article upon application of the Company, when the City Council shall find and determine that such is necessary to enable the Company to take advantage of any development in the field of CATV which will afford the Company an opportunity to serve the public more effectively, efficiently, or economically.



**§ 110.23 C.A.T.V.; NON-EXCLUSIVE GRANT OF AUTHORITY.**

- A. Whereas, the City has approve the legal character, financial, technical, and other qualifications of the Company and the adequacy and feasibility of the Company's construction arrangements as part of a full public process affording due process, there is hereby granted by the City to the Company the right and privilege to engage in the business of operating and providing a CATV in the City and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, and retain in or over, under, upon, across, and along any public street, public way, and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the Cable Television System; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the City.
- B. The right to use and occupy said street, public ways, and public places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, public ways, and public places to any person at any time during the period of the franchise; Provided, however, that nothing contained herein shall be deemed to require the granting of additional franchises for CATV, if, in the opinion of the City Council, it is in the public interest to restrict such franchises to one (1) or more.

**§ 110.24 C.A.T.V.; TERMS OF FRANCHISE.**

This franchise shall take effect and be in full force from and after acceptance by the Company as provided in §110.27, and the same shall continue in full force and effect for a term of twenty (20) years from the date the same is initially granted by the Governing Body and accepted by the Company; Provided, however, that should FCC certification be necessary in connection with implementation or continuation of the system contemplated by this franchise, then the term shall begin upon the effective date by the FCC of the necessary certification.

**§ 110.25 C.A.T.V.; RENEWAL PROCEDURE.**

- A. The Company shall have the unlimited option to renew this franchise for an additional period not to exceed fifteen (15) years. Should the Company elect to exercise this option, it shall so notify the City, in writing of this, not less than three (3) nor more than eight (8) months prior to the expiration of this franchise.
- B. No renewal hereof shall be granted unless authorized by the City following a public hearing held after at least two (2) public meetings at which the rate payers and the Company may comment on the programming content and rates of the Company. At least thirty (30) days prior to the first (1<sup>st</sup>) public meeting held to examine programming content and rates, each ratepayer or subscriber shall be notified by a billing statement or other written notice when and where such public meeting shall be held. Said notice shall also state the reasons for the public meeting.

**§ 110.26 C.A.T.V.; ABANDONMENT.**

- A. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property of the Company has been installed in any street or public place without complying with the requirements of this Article, or the rights granted hereunder have been terminated, cancelled, or have expired, the Company shall promptly remove from the street, or public places, all such Company property, other than any which the City may permit to be abandoned in place. In the event of such removal, the Company shall promptly restore the street or other areas from which such property has been removed to a condition satisfactory to the City.
- B. Any property of the Company to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of the Company, in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

**§ 110.27 C.A.T.V.; ACCEPTANCE.**

This Article shall become effective when accepted by the Company and shall then be and become a valid and binding contract between the City and the Company; Provided, however, that the Company applying for a franchise to construct, install, operate, and/or maintain a CATV within the corporate limits of the City of Waverly, pursuant to this Article, must file with the City Clerk upon acceptance, a written notice of its acceptance of this Article and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by this Article.

**§ 110.28 C.A.T.V.; SURRENDER RIGHT.**

The Company may surrender this franchise at any time upon the filing with the City Clerk of the City a written notice of its intention to do so; Provided, however, that such notice shall be filed no less than six (6) months prior to the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties, and liabilities of the Company in connection with this franchise shall terminate.

**§ 110.29 C.A.T.V.; PROCEDURE UPON TERMINATION.**

Upon expiration of the franchise or upon the happening of any event that terminates the obligations, duties, and liabilities of the Company in connection with this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets, public ways, and public places, for the purpose of removing therefrom any or all of the Company's property, at any time, after the City has had ample time and opportunity to purchase, condemn, or replace them. In so removing said property, the Company shall refill, at its own expense, any excavation that shall be made by it, and shall leave said streets, public ways, and public places, in as good condition as that prevailing prior to the Company's removal of its property.

**§ 110.30 C.A.T.V.; REMOVAL OF FACILITIES UPON REQUEST.**

Upon termination of service to any subscriber, the Company shall promptly remove all of its property from the premises of such subscriber upon his or her request, except service drops above or below ground.

**§ 110.31 C.A.T.V.; POLICE POWER.**

- A. The Company shall at all times during the term of this franchise be subject to all lawful exercise of police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinance, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Nebraska, the laws of the United States of America, or the rules, regulations, and policies of any regulatory board or agency, including specifically the FCC.
- B. This franchise is governed by and subject to all applicable rules, regulations, and policies of the FCC, specifically including Part 76, and the laws of the State of Nebraska. Should there be any modifications of the provisions of Part 76 of the Rules and Regulations of the FCC, specifically including §76.31, that must be incorporated into this franchise, the City and Company agree that such incorporation shall be accomplished within one (1) year after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.
- C. This Section shall not be construed to require or compel a violation of any constitutional enactment of the United States of the Government of the State of Nebraska or any lawful rule or regulation of any agency of the United States Government or of the State of Nebraska pertaining to CATV.

**§ 110.32 C.A.T.V.; COMPANY RULES.**

The Company shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and to perform its obligations under this Article and to assure an uninterrupted service to each and all its customers; Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, shall be filed with the City Clerk, and shall be approved by the City Council prior to the adoption thereof by the Company; and Provided, that equal opportunity in employment shall be afforded by the Company to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion national origin, or sex. The Company shall establish, maintain, and carry out a positive, continuing program of specific practices designed to assure equal opportunity in every aspect of Company employment policy and practice. The Company shall immediately comply with all federal, state, and local equal opportunity employment acts and practices, and provided further, that the Company shall not, as to rates, charges, service, facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage. Nothing in this Article shall be deemed to prohibit the estab-

lishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification would be entitled. And, it shall not be deemed to prohibit the waiver or modification of connection and service charges during promotional campaigns of the Company.

**§ 110.33 C.A.T.V.; CONSTRUCTION AND MAINTENANCE.**

- A. The system shall be constructed underground whenever possible. Where the system is constructed above ground, the system shall be attached first to the utility pole or other structures already in existence within the franchise area as far as possible; Provided, however, that upon a showing by the Company that existing poles or other structures are not available under reasonable terms and conditions, including excessive costs or unreasonable limitations upon the use of the Company's system, the Company may, subsequent to the approval of the City Council, at its own expense, make arrangements to acquire, erect, and maintain, its own poles as are necessary for the construction and maintenance of the system, such poles to be erected and located in accordance with the directions of the City Council and so as to cause minimum interference with the usual travel upon the City's streets. It shall be the responsibility of the Company to keep all such poles, at its own expense, in a safe and substantial condition.
- B. The City shall have the right to make additional use, for any public or municipal purpose, of any poles or conduits controlled or maintained exclusively by or for the Company in any street, provided such use by the City does not interfere with the use by the Company. The City shall indemnify and hold harmless the Company against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages, costs, or liabilities of every kind and nature whatsoever arising out of the use of the Company's poles or conduits. In addition, the Company shall have the right to make additional use of any poles or conduits controlled or maintained exclusively by or for the City in any street, provided such use by the Company does not interfere with the use by the City. The Company shall indemnify and hold harmless the City against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages, costs, or liabilities of every kind and nature whatsoever arising out of such use of the City's poles or conduits.
- C. All work done by the Company shall be done in a manner and at such times as will cause the least public inconveniences and such safety precautions will be taken and such notices or warnings will be given as are necessary to afford adequate protection to the public from any danger which may arise out of such work; and, the CATV shall be constructed and operated in compliance with all national, state, and local construction and electrical codes and shall be kept current with any new codes.
- D. In case of any disturbance of pavement, sidewalk, driveway, street, or other surface, the Company shall, at its own expense and in a manner approved by the City, remove, replace, and restore, all pavement, sidewalk, driveway, street, or other surface so disturbed in as good a condition as before the work involving such disturbance was done. Failure of the Company to replace and restore such pavement within seventy-two (72) hours after completion of the Company's work shall authorize the City

to cause proper restoration to be made and the expense thereof charged to the Company which shall be paid by the Company upon demand by the City.

- E. The Company shall, when necessary, and after being given not less than forty-eight (48) hours advance notice, on the request of any person holding an appropriate permit used by the City or any person planning or actually engaging in a construction or disturbances of the ground or other activities requiring a City permit, locate and mark its underground service; or in the case of aboveground or overhead service, temporarily raise or lower its system to permit the moving of any building or structure or when necessary to facilitate construction or other activities not requiring a City permit; Provided, however, that the actual expense of such marking, temporary removal, or temporary relocation, shall be paid by the person so requesting, and the Company shall have the authority to require such payment in advance. The Company shall not charge for these services in excess of its actual cost and shall, upon request, provide an accounting to the City of its actual costs.
- F. The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove property of the Company when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by public agencies.
- G. The Company shall have the authority to trim trees upon and overhanging streets and public ways and places of the franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, except that at the option of the City, such trimming may be done by it or under its supervisions and direction at the expense of the Company.
- H. Should it become necessary to shut-off or interrupt service for the purpose of making repairs, adjustments, or installation, the Company shall do so at such times as will cause the least amount of inconvenience to its subscribers, and unless such interruption is unforeseen and immediately necessary it shall give reasonable notice thereof to its subscribers.
- I. If at any time during the period of franchise the City shall lawfully elect to alter or change the route or grade of any street, the Company, upon reasonable notice by the City, shall, at its own expense, remove, relay, and relocate, when determined necessary by the City Council and within a reasonable time, the Company's property.

#### **§ 110.34 C.A.T.V.; RECORDS, REPORTS, AND MAPS.**

- A. The City shall have access at all reasonable hours to all of the Company's plans, all of its contracts, all of its records including but not limited to its engineering, accounting, financial, statistical, customer, and service records relating to the system within the franchise area and to the operation of the Company, and to all other records or reports which the Company is required to keep by any local, state, or federal rule, regulation, or law.

- B. The Company shall prepare and maintain accurate records and maps which show all aspects of the system and their exact nature within the franchise area whether on, above, or below the ground. Such records and maps shall be kept accurately current and shall be filed with the City Clerk from time to time as may be necessary to keep the records and maps so filed accurately current.
- C. The Company shall file all its rules with the City Clerk as provided for in §110.27.
- D. The Company shall file with the City Clerk an annual report showing gross annual basic subscriber revenues and receipts in accordance with the provisions of §110.43(C) of this Code.

**§ 110.35 C.A.T.V.; LOCAL BUSINESS OFFICE; UNRESOLVED COMPLAINTS.**

The Company shall maintain a business office or agent who, or which, persons may telephone during regular business hours without incurring added message or toll charges so that the CATV maintenance service shall be promptly available. Should a subscriber have an unresolved complaint regarding the quality of the CATV, equipment malfunctions, or similar matters, the subscriber shall first direct such matters to the business office or agent of the Company. Should the Company fail to satisfactorily resolve any such matter within thirty (30) days, it may then be directed to the office of the City Clerk for investigation. The subscriber and the Company shall be afforded a reasonable opportunity to present written statements of their positions to the City Clerk and the City Clerk shall attempt to resolve the matter. If this cannot be achieved within thirty (30) days, he or she shall submit a recommendation to the City Council, which shall after due deliberation either (1) dismiss the matter or (2) specify the corrective steps to be taken by the Company. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

**§ 110.36 C.A.T.V.; SAFETY REQUIREMENTS.**

All aspects of the system, wherever situated or located shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair; and, the Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

**§ 110.37 C.A.T.V.; COMPANY LIABILITY, INDEMNIFICATION.**

- A. The Company shall at all times protect, indemnify, and hold harmless the City from and against any and all claims, demands, causes of action, actions, suits, liability, loss, expenses, or damages whether arising in law or in equity or every kind and description including but not limited to investigation costs, court costs, and attorney's fees, and including specifically any liability for any claims arising under Workmen's Compensation laws, which may accrue to or be suffered or claimed by any person or persons arising out of, resulting from, or caused by the Company in the ownership construction, installation, replacement, maintenance, or operation of the CATV and/or by reasons of any license, copyright, property right, or patent of any article or system used in the construction or use of said system.

- B. The Company shall maintain in full force and effect, during the life of any franchise, written by a solvent insurance company or companies authorized and qualified to do business in the State of Nebraska, serviced through an authorized agent, and satisfactory to the City:
1. Workmen's Compensation insurance in compliance with the laws of the State of Nebraska, and upon its employees engaged in any manner in the installation or servicing of its plant and equipment in the City.
  2. Minimum property damage liability insurance to the extent of fifty thousand dollars (\$50,000.00) as to any person and one hundred thousand dollars (\$100,000.00) as to any one accident, and personal injury liability insurance to the extent of one hundred thousand dollars (\$100,000.00) as to any one person and three hundred thousand dollars (\$300,000.00) as to any one accident; Provided, that all such insurance may contain reasonable deductible provisions not to exceed one thousand dollars (\$1,000.00) for any type of coverage, and Provided, further, that the City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to the Company hereunder shall be made by, or at the expense of the Company or its insurer.

**§ 110.38 C.A.T.V.; SERVICE STANDARDS.**

- A. The Company shall operate and maintain the system and shall render efficient service in accordance and in compliance with the standards set forth or which may in the future be set forth by local, state, or national governments or any of their agencies.
- B. The Company shall operate and maintain the system so as not to interfere with television or radio reception now in use by the City or any person within the franchise area.
- C. Service by the Company shall specifically include, but shall not be limited to the following; provided, however, that nothing contained herein shall be so construed so as to cause the Company to be in violation of any local, state, or federal law or of any rule or regulation promulgated by any governmental body:
1. The Company shall carry all signals of every television station where the CATV tower or towers and antenna equipment are located within the FCC approved predicted Grade B contour line of that television station. Such television signals at no time shall be altered, interrupted, or blacked out in any way by the Company and all programs which the Company carries from any television station shall be carried in their entirety and without change.
  2. The Company shall operate and maintain at all times:
    - a. Equipment having a minimum channel capacity of not less than 120 MHz of bandwidth, that is the equivalent of twenty (20) television channels, available for immediate or potential use.

- b. Equipment that passes standard television signals without perceptive degradation and with no noticeable effect on color, fidelity, and intelligence: all programs received by the Company in color shall be distributed in color.
  - c. Equipment designated and rated for twenty-four (24) hour per day continuous operation.
  - d. Equipment with the technical capacity for non-voice return communication.
  - e. Equipment which is accurately calibrated for the testing of all service and operational standards contained in this Article.
- D. The Company shall install for the operation of the system in the City, a twelve (12) channel system capable of transporting and relaying all twelve (12) channels and shall provide at least ten (10) channels of video and audio service. One (1) channel shall be a public access channel.
- E. The Company shall improve the variety of service as the availability of signals makes practical.
- F. The Company shall provide, without charge to the City, unless prohibited by law or regulation, the use of adequate frequencies in the system for the purpose of police work, fire department work, civil defense work, public emergency work, or as a disaster warning system; Provided, however, that any and all necessary equipment installation, or maintenance expense for such use, other than the furnishing of the existing cable, shall not be borne by the Company. The City, through its duly authorized agent or agents, shall give written notice to the Company of the use the City desires to make of the system and of the person or persons authorized by the City to make such use; Provided, however, that arrangements may, at the option of the City, be made concerning the use of verbal instructions in the event of any emergency situation. Upon receipt of the written (or verbal) notice given by an authorized person, the Company shall cooperate in all respects with the City to accomplish the ends desired by the City for the public welfare. In addition, in the case of any emergency or disaster, the Company shall, upon request of the City, through its authorized agent or agents, make available its facilities to the City for emergency use during the emergency or disaster period.
- G. The Company shall not add, subtract, or move program services, from time-to-time, without first reviewing changes with the CATV Advisory Committee. The Committee must make a recommendation to the Governing Body within forty-five (45) days of receiving the service change request from the Company.

The CATV Advisory Committee shall hold at least one (1) public hearing annually during the same month each year, for the purpose of soliciting public input concerning cable television service and programming. A representative of the Company shall attend said hearing which may be held in conjunction with any regular meeting of the Committee. Notice of all such hearings shall be published in a newspaper published or of general circulation in the City for two (2) consecutive weeks preceding the hearing.



The last such publication must be not less than three (3) nor more than ten (10) days prior to the hearing, including the date of publication.

**§ 110.39 C.A.T.V.; PROHIBITION OF CERTAIN BUSINESS ACTIVITIES BY THE COMPANY.**

- A. The Company, any of its officers, agents, or employees, are specifically prohibited from directly or indirectly engaging in the business of selling, leasing, renting, servicing, repairing, or replacing home television receivers, home radio receivers, or television or radio receiver related parts and accessories to any person within the franchise area, whether for a fee or charge or not, excepting only the connection of televisions receivers to the Company's CATV. The Company shall prohibit its officers, agents, and employees from violating the terms of this Section at all times, whether in the performance of duties of the Company or otherwise.
- B. The Company, any of its officers, agents, or employees, are specifically prohibited from directly or indirectly recommending, in any manner, a specific sale or service establishment or person dealing with or in home television receivers, home radio receivers, or television or radio receiver related parts and accessories.

**§ 110.40 C.A.T.V.; SERVICE TO SCHOOLS; PUBLIC BUILDINGS.**

- A. The Company shall provide its system without installation or connection charges to each and every school and educational institution within the franchise area or located on property contiguous to the franchise area, whether public, private, or parochial. Said system shall be connected with a convenient point on the exterior of the school or educational institution and in no way shall this Section be read to oblige the company to furnish its system to points within the school or educational institution proper.
- B. The Company shall also provide its system without installation or connection charges and without charge thereafter for the regular subscriber service to three (3) sites selected by the City Council; Provided, however, that these sites shall be public buildings within the franchised area.

**§ 110.41 C.A.T.V.; TRANSFER.**

The Company shall not sell nor transfer its plant or system to another person nor transfer any rights under this franchise to another person, other than a parent company or a wholly-owned subsidiary of the Company, without prior approval by the City Council. Such approval shall not be unreasonably withheld. No sale or transfer thereof shall be effective until the vendee, assignee, or lessee files in the office of the City Clerk an instrument duly executed reciting the facts of such sale, assignment, or lease, accepting the terms of the franchise, and agreeing to perform all of the conditions thereof; Provided, however, that no such filing shall be required in connection with any mortgage or equivalent transfer in trust by the Company which has been approved by the City Council until such time as there is a foreclosure thereunder.

**§ 110.42 C.A.T.V.; RATES.**

Prior to beginning operation, the Company shall file with the City Clerk a schedule of tariffs which shall include all fees, charges, and rates to be charged to subscribers. At the time of the adoption of this Article the City chooses not to become involved in the rate making process, believing that supply and demand will be an effective rate control. However, the City reserves the right, at some future date, to become involved in the rate making process and to approve or disapprove proposed rates.

**§ 110.43 C.A.T.V.; PAYMENT TO THE CITY.**

- A. The Company hereby agrees to pay annually to the City, during the term of this franchise granted hereunder and commencing from the date of institution of service to subscribers, the sum of three percent (3%) of the total gross annual basic subscriber revenues as defined in §110.21(O).
- B. Such payment by the Company to the City shall be in lieu of any occupation tax, license tax, or similar levy and shall be paid annually. Anything contained herein shall in no way relieve the Company or its successors, lessees, or assigns from the obligation of paying property tax to the City or any other taxes lawfully levied by the State of Nebraska or any governmental subdivision of the State of Nebraska in the operation of the Company.
- C. So long as its franchise continues, the Company shall file with the City, on or before July 1, of each year, a certified statement prepared by a Certified Public Accountant showing the gross annual basic subscriber revenues as herein defined for the twelve (12) month period ending on June 30, of each year. It shall be the duty of the Company to pay to the City within fifteen (15) days after the time for filing such statement, any amount due for the operating year covered by such statement. The City shall have the right to inspect the Company's records showing the gross receipts from which its franchise payments are to be computed, and the right of audit and recomputation of any and all amounts paid under this Article. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for additional sums payable hereunder.

**§ 110.44 C.A.T.V.; BOND.**

- A. The City may require that the Company, within thirty (30) days after the effective date of the franchise and after the acceptance is filed by the Company, post with the City a performance bond in the amount equal to five percent (5%) of the estimated cost of construction of the system at the time of the franchise. Said bond shall be returned to the Company at the end of one (1) year provided the Company has in good faith during said time commenced the construction of the system to be operated pursuant to this franchise and has in good faith complied with the details of this Article and the rules and regulations herein required. In default of the Company performing the obligations herein set out, the bond shall be forfeited to the City.
- B. The City may require that the Company furnish bond to the City in the sum of three percent (3%) of the estimated gross annual basic subscriber revenues which shall re-

main in full force and effect throughout the term of this franchise to guarantee the payment of all sums which may become due to the City, and such bond shall guarantee to the City the performance by the Company of all of the provisions of this Article and all laws, rules, and regulations herein set forth or adopted by the City for compliance.

**§ 110.45 C.A.T.V.; VIOLATIONS OF PROVISIONS OF FRANCHISE.**

The Company shall maintain an operative system and render efficient service in accordance with generally accepted standards. Failure of the Company, its successors, or assigns to comply with the conditions herein set forth or in the event that the Company, its successors, or assigns is or shall become subject to the jurisdiction of the FCC or similar regulatory body and the Company, its successors, or assigns, shall fail to comply with the rules, regulations, orders, or conditions of any such regulatory body having jurisdiction of the Company, its successors, or assigns, and said rules, regulations, orders, or conditions are unappealed from, or are appealed from, and become final, then the City shall have the right to terminate and cancel the franchise after written notice to the Company and continuance of such violation, failure, or default for a period of more than ninety (90) days after receipt by the Company of such notice; Provided, however, that before the franchise may be terminated and canceled, the Company must be provided with an opportunity to be heard before the City Council.

**§110.46 C.A.T.V.; UNLAWFUL ACTS.**

- A. From and after the effective date of this Article, it shall be unlawful for any person to construct, install, or maintain within any public street in the franchise area, within any other public property of the franchise area, or within any privately-owned area within the franchise area which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a CATV, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.
- B. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchised CATV within the franchise area for the purpose of enabling himself or herself or others to receive any television signal, radio signal, radio signals, pictures, programs, or sound.

**§110.47 C.A.T.V.; ESTABLISHMENT OF A CATV ADVISORY COMMITTEE.**

The CATV Advisory Committee established by this Section, shall be composed of seven (7) persons, appointed by the Mayor, and who shall represent, insofar as is possible, the different professions or occupations in the City and shall be residents of the City. The term of each member shall be three (3) years from the date of appointment, unless reappointed, except that three (3) of the Committee members to be appointed in 1985 shall serve for the term of two (2) years from the date of that appointment. All members shall hold office until their successors are appointed. Said members shall serve without compensation. The

CATV Advisory Committee shall be funded by the Governing Body from time to time out of the General Fund. A majority of the Committee shall constitute a quorum for the purposes of doing business. The Committee shall elect a Chairperson and a Secretary from its members and create and fill such other of its offices as it may determine. The Committee shall hold at least two (2) regular meetings in each year.

It shall be the duty of the Secretary to keep full and correct minutes and records of all meetings and file the same with the Municipal Clerk where they shall be available for public inspection at any reasonable time. The Committee shall meet on the second (2<sup>nd</sup>) Tuesday of every other month with the first meeting to be held March, 1985. It shall be the duty of the Committee to advise the Governing Body concerning the CATV. All actions by the Committee shall be subject to the review and supervision of the Governing Body. The Committee shall hold at least one (1) public hearing annually in accordance with the requirements of §110.38(G) of this code, and shall be responsible for making such reports and performing such other duties as the Governing Body may, from time to time, designate. *(Amended by Ord. No. 85-1, 2/12/85)*

### *Electrical*

#### **§ 110.60 SHORT TITLE.**

This Article shall be known and may be cited as the Waverly Electrical Fee in Lieu of Tax Ordinance.

#### **§ 110.61 PURPOSE AND POWER.**

The Governing Body does hereby deem it necessary, appropriate and the best interests of the City to authorize the entering into franchise agreements with providers of electrical service to serve the City upon such terms and conditions as are appropriate, and the Mayor and Clerk are authorized to execute such franchise agreements on behalf of the City upon a vote of the majority of the Council so authorizing. Such franchise agreements, to be in such form and content as agreed to from time to time shall incorporate, as though set forth in its entirety, this Article as it is may be amended from time to time.

#### **§ 110.62 NONEXCLUSIVE GRANT OF AUTHORITY.**

- A. The City hereby grants to any Company entering into an electrical franchise agreement in accordance with the terms and conditions of this Article, the right and privilege to erect, install, construct, repair, replace, reconstruct, maintain, and retain in or above, under, upon, across, and along any public street, public way, and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to an electrical distribution system.
- B. The right to use and occupy such streets, public ways, and public places for the purposes herein set forth shall not be exclusive and the City reserves the right to grant a similar use of said streets, public ways and public places to any person at any time during the period of any franchise agreement entered into in accordance herewith.

**§ 110.63 FEE IN LIEU OF TAX.**

- A. Any Company providing services in accordance with an electrical franchise agreement entered into in accordance with this Article, hereby agrees to pay annually, to the City, during the term of any electrical franchise agreement, a fee of tax equal to the sum of a four and one half percent (4½%) of the total gross annual revenue collected by the franchisee for services rendered in accordance with the franchise agreement within the City limits of the Waverly, Lancaster County, Nebraska, within any calendar year during which this ordinance is effective.
- B. Such payment to the City shall be in lieu of any occupation tax, license tax, or similar levy and shall be paid annually.
- C. Any franchisee operating under a franchise agreement as authorized by this Article, shall file with the City, on or before February 20 of each year, a certified statement showing the gross annual electrical service charges provided within the City limits of the City during the preceding twelve (12) month period ending on December 31 of each year. The City shall have the right to inspect the franchisees records showing the gross receipts from which its payments in lieu of tax are to be computed, and the right of audit and recomputation of any and all amounts paid under this Article. No acceptance of this payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for additional sums payable hereunder. *(Amended by Ord. 02-07, 12/16/02)*

**§ 110.64 NOTICE OF WAVERLY ELECTRICAL FEE IN LIEU OF TAX ORDINANCE.**

- A. The City Clerk shall deliver to any potential franchisee a copy of this Article at or prior to the time of entering into a franchise agreement with the City.
- B. It is the intention of the Governing Body and it is hereby ordained, that the provisions of this Ordinance shall become and made part of the Code of the City of Waverly, Nebraska, and the Sections of this Ordinance may be renumbered to accomplish such intention.

**CHAPTER 111: ALCOHOLIC BEVERAGES**

Section

***General Provisions***

- 111.01 Definitions
- 111.02 License required
- 111.03 Location
- 111.04 Dwellings
- 111.05 License displayed
- 111.06 New application; municipal examination
- 111.07 Liquor license renewal
- 111.08 Special designated liquor licenses

- 111.09 Municipal powers and duties
- 111.10 Owner of premises
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- 111.12 Minors
- 111.13 Credit sales
- 111.14 Spiking beer
- 111.15 Original package
- 111.16 Hours of sale
- 111.17 Sanitary conditions
- 111.18 Hiring minors
- 111.19 Consumption in public places
- 111.20 Acquisition of alcoholic beverages
- 111.21 Removal of intoxicated persons from public property
- 111.22 Citizen complaints

**§ 111.01 DEFINITIONS.**

All words and phrases herein used are to have the definitions applied thereto, as defined in the Nebraska Liquor Control Act. (*Ref. 53-103 RS Neb.*) (*Amended by Ord. No. 05-17, 12/19/05*)

**§ 111.02 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 Municipality unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (*Ref. 53-102 RS Neb.*)

**§ 111.03 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 feet (150') 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. (*Ref. 53-177 RS Neb.*) (*Amended by Ord. No. 05-17, 12/19/05*)

**§ 111.04 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 purposed, 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.*)

**§ 111.05 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.

**§ 111.06 NEW APPLICATION; MUNICIPAL EXAMINATION.**

Any person or persons desiring to obtain a new license to sell alcoholic liquors at retail or a craft brewery license 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 shall fix a time and place at which a hearing on the application 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 recorded 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 RS ) (Amended by Ord. Nos. 83-24, 10/17/83; 86-3, 7/21/86; 05-17, 12/19/05)*

**§ 111.07 LIQUOR LICENSE RENEWAL.**

Retail or bottle club 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. Any licensed retail or bottle club establishment located in an area which is annexed to the Municipality shall file a formal application for a license, and while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this Article until the original license expires, is canceled, or revoked. If such license expires within sixty (60) days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one (1) year. 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. Upon the conclusion of any hearing required by this Section, the Governing Body may request a li-

censee to submit an application. (*Ref. 53-135, 53-135.01 RS Neb.*) (*Amended by Ord. Nos. 83-22, 10/17/83; 05-17, 12/19/05*)

#### **§ 111.08 SPECIAL DESIGNATED LIQUOR LICENSES.**

- A. The City Clerk shall be the agent of the Governing Body to receive special designated license applications and to determine whether such applications shall be approved or denied pursuant to the Nebraska Liquor Control Act and this Code, subject to appeal to the Governing Body. The City Clerk shall follow the criteria in Subsection C herein, the Nebraska Liquor Control Act, and regulations issued thereunder in making the determination.
- B. Applicants seeking a special designated license shall file an application for such with the City Clerk on forms prescribed by the Nebraska Liquor Control Commission, and shall file such applications with the City Clerk not less than ten (10) working days prior to the event.
- C. In reviewing applications for special designated licenses, the City Clerk shall approve such applications only when:
  - 1. The Municipal Fire/Rescue Chief or Emergency Services Coordinator has reviewed the application and recommends approval of same;
  - 2. The applicant identifies specific measures to prevent the possession or consumption of alcoholic beverages by minors and intoxicated persons;
  - 3. The applicant has provided adequate restroom facilities;
  - 4. The applicant has completely and accurately provided information requested by the City Clerk and has not made any material misrepresentations or omissions; and
  - 5. The applicant and proposed service of alcohol otherwise complies with all other requirements of this Code and the Nebraska Liquor Control Act;
  - 6. The City Clerk shall approve a special designated license application authorized under the Nebraska Liquor Control Act and this Code. If the City Clerk denies an application, the City Clerk denies an application, the City Clerk shall inform the applicant stating the reasons for denial in writing.
- D. Any applicant where application has been denied by the City Clerk may appeal such denial by delivering written notice of appeal to the City Clerk within three (3) business days of receiving notice of such denial. The Governing Body shall conduct a public hearing on such appeal at its next regular meeting or at a special meeting, and may approve or deny the application. (*Amended by Ord. 05-17, 12/19/05*)

#### **§ 111.09 MUNICIPAL POWERS AND DUTIES.**

The Governing Body is authorized to regulate by ordinance not inconsistent with the provisions of the Nebraska Liquor Control Act, the business of all retail and bottle club li-



censees carried on within the corporate limits. The Governing Body shall further have the power and duties in respect to licensed retailers of alcoholic beverages to cancel or revoke for cause retail or bottle club licenses to sell or dispense alcoholic liquors issued to persons for premises within its jurisdiction subject to the right of appeal to the Commission; to enter or to authorize any law enforcement officer to enter at any time upon any premise licensed by the State of Nebraska to determine whether any of the provisions of the Municipal laws, or the laws of the State of Nebraska, are being violated; to receive signed complaints from any citizens within its jurisdiction that any of the Municipal laws, or laws of the State of Nebraska, are being violated, and to act upon such complaints in the manner herein provided; to cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in Section 111.22, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance or regulation duly enacted relating to alcoholic liquors; and to collect for the benefit of the State of Nebraska and the Municipality all license fees and occupation taxes as prescribed by law. (*Ref. 53-134 RS Neb.*) (*Amended by Ord. No. 83-22, 10/17/83*)

#### **§ 111.10 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. (*Ref. 53-1,101 RS Neb.*)

#### **§ 111.11 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, if such act is committed or omission made with the authorization, knowledge or approval of the employer of licensee, 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. (*Ref. 53-1,102 RS Neb.*)

#### **§111.12 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, physically, or otherwise incompetent, whether due to natural disabilities or the prior consumption of alcoholic beverages. (*Ref. 53-180 RS Neb.*)

#### **§ 111.13 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 retail alcoholic beverage license from permitting checks or statements for liquor

to be signed by regular guests residing in the said hotel, and charged to the accounts of such guests. (Ref. 53-183 RS Neb.)

**§ 111.14 SPIKING BEER.**

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 serve or offer for sale any beer to which there has been added any alcohol, or permit any person or persons to add alcohol to any beer on the licensed premise of such licensee. (Ref. 53-103.03 RS Neb.)

**§ 111.15 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.)

**§ 111.16 HOURS OF SALE.**

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

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 ..... 1:00 p.m. to 1:00 a.m.

On Sale ..... 1:00 p.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.

Provided, that such limitations shall not apply after twelve o'clock (12:00) Noon on Sunday to a licensee which is a non-profit corporation holding a license pursuant to Section 53-124(5)(C) and (H) Reissue Revised Statutes of Nebraska 1943.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. For the purposes of this section "on sale" shall be defined as alcoholic beverages sold 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.

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. (*Ref. 53-179 RS Neb.*) (*Amended by Ord. Nos. 10-100.116, 9/7/82; 83-25, 10/17/83; 95-6, 11/6/95; 97-10, 12/2/97; 11-05, 2/22/11*)

#### **§ 111.17 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 for retail on-sale establishments shall be adequate and convenient for customers and patrons and said licensed premise shall be subject to any health inspections the Governing Body 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. (*Amended by Ord. 02-10, 3/18/02*)

#### **§ 111.18 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.

#### **§ 111.19 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. It shall further be unlawful for any person to consume alcoholic beverages within any other public business that is not a licensed liquor establishment.

#### **§ 111.20 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, vegetables, 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 prescription 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.

#### **§ 111.21 REMOVAL OF INTOXICATED PERSONS FROM PUBLIC PROPERTY.**

Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or to others, or who is otherwise incapacitated, from public property. Such removal shall be in compliance with section 53-1,121 RS Neb.

#### **§ 111.22 CITIZEN COMPLAINTS.**

Any five (5) residents of the Municipality shall have the right to file a complaint with the Governing Body stating that any retail or bottle club licensee, subject to the jurisdiction of the Governing Body, has been or is violating any provisions of the Nebraska Liquor Control Act or the rules or regulations issued pursuant thereto. Such complaint shall be in writing in the form prescribed by the Governing Body 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 Governing Body 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 (10) 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; Provided, that the complaint must in all cases be disposed of by the Governing Body within thirty (30) days from the date the complaint was filed by resolution thereof, said resolution shall be deemed the final order for purposes of appeal to the Nebraska Liquor Control Commission as provided by law. (*Ref. 53-134.04 RS Neb.*) (*Amended by Ord. No. 83-26, 10/17/83; 05-17, 12/19/05*)

### **CHAPTER 112: TOBACCO**

#### Section

112.01 Retail sales; license required

#### **§ 112.01 RETAIL SALES; LICENSE REQUIRED.**

Every person, partnership, limited liability company, or corporation desiring a license to sell tobacco at retail shall file with the Municipal Clerk a written application on forms provided by the municipality, stating the name of the person, partnership, limited liability company, or corporation for whom the license is desired and the exact location of the place of business and shall deposit with the application a license fee in the amount of \$10. If the applicant is an individual, the application shall include the applicant's social security number. (Neb. RS 28-1422 and 28-1423) (Ord. 2777, 2-16-99)

## CHAPTER 113: SALES AND ADVERTISING

### Section

#### *Solicitors and Peddlers*

- 113.01 Definitions
- 113.02 Permit required, procedure, fee, exhibition while soliciting
- 113.03 Calling at posted residences prohibited
- 113.04 Non-profit organizations or institutions exempted
- 113.05 Religious organizations or institutions exempted
- 113.06 Application
- 113.07 Investigation and issuance
- 113.08 Application of applicant
- 113.09 Transfer
- 113.10 Duty of law enforcement to enforce
- 113.11 Peddling; hours restricted
- 113.12 Penalty for violations

#### **SOLICITORS AND PEDDLERS**

##### **§ 113.01 DEFINITIONS.**

For the purposes of this Article, the following definitions shall prevail:

- A. Person. Whenever used in this Article, the word "person" shall include all natural persons, artificial persons, including, but not limited to, firms, partnerships, associations, corporations, companies, political and corporate bodies, societies, communities, the public generally, individuals, joint stock companies, and shall include all aggregate organizations of any character whatsoever.
- B. Individual. Whenever used in the Article, the work "individual" shall mean natural persons.
- C. Non-profit Organizations or Institutions. Whenever used in this Article, the words "non-profit organizations or institutions" shall include those organizations or institutions which are charitable in nature and whose internal rules provide that any income accruing to any such organization may not be distributed to or otherwise inure to the benefit of its members, directors, or officers.

##### **§ 113.02 PERMIT REQUIRED, PROCEDURE, FEE, EXHIBITION WHILE SOLICITING.**

It shall be unlawful for any person to appear in person to solicit funds or sell goods by calling on residents of the City in their homes, unless an appointment has been made with the resident in advance, without first obtaining a valid permit from the City Clerk.

In order to cover the administrative costs of this Section, the City Clerk shall charge a fee of twenty-five dollars (\$25.00) to process the application, and a permit fee of ten dol-

lars (\$10.00) per day per individual for the issuance of a permit to solicit funds or sell goods at the homes of residents of the City.

Any person required to obtain such permit under the provisions of this Article shall, at all times while soliciting, prominently display such permit on his or her outer clothing and shall exhibit the same to any law Enforcement Officer, any City Official, or at the home of any resident of the City upon request. *(Amended by Ord. 05-04, 4/18/05)*

### **§ 113.03 CALLING AT POSTED RESIDENCES PROHIBITED.**

It shall be unlawful for any person to appear in person to solicit funds or sell goods by calling on residents of the City in homes which are posted with a sign which contains the words "NO SOLICITING – NO PEDDLERS" or otherwise plainly requests that individuals not call at that home to solicit funds or sell goods.

### **§ 113.04 NON-PROFIT ORGANIZATIONS OR INSTITUTIONS EXEMPTED.**

Members of non-profit organizations or institutions shall be exempt from the provisions of this Article when their activities are directed and authorized by the non-profit organization or institution.

### **§ 113.05 RELIGIOUS ORGANIZATIONS OR INSTITUTIONS EXEMPTED.**

Members of religious organizations or institutions shall be exempt from the provisions of this Article when their activities involve the distribution of religious materials.

### **§ 113.06 APPLICATION.**

Applications for permits under this chapter shall be filed with the City Clerk on a form to be furnished by the City Clerk which shall give the following information:

- (a) Name, age, and description of the applicant;
- (b) Address;
- (c) Brief description of the nature of the business and the goods to be sold or services to be provided;
- (d) If employed, the name and address of the employer, together with documents verifying such employment;
- (e) The length of time (not to exceed one year) for which the right to do business as a peddler is desired;
- (f) If a vehicle is to be used, description of the same, together with the license number;
- (g) A photograph of the applicant, taken within sixty days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner;

- (h) The fingerprints of the applicant;
- (i) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor, the nature of the offense, and the punishment or penalty assessed therefore;
- (j) At the time of filing the application, a nonrefundable permit fee of twenty-five dollars shall be paid to the City Clerk.

### **§ 113.07 INVESTIGATION AND ISSUANCE.**

(a) Upon receipt of an application as described in Section 113.06, the original shall be referred to the Lancaster County Sheriff's Office, who shall cause an investigation of the statements contained within the application to be made to determine if the same be true and correct.

(b) If, as a result of such investigation, the Lancaster County Sheriff's Office finds that the statements within the application are materially untrue or incorrect, or if it is found that the applicant has been convicted within the past ten years of a felony or a crime involving moral turpitude, the Lancaster County Sheriff's Office shall disapprove such application in writing and provide the reasons for the same, and return said application to the City Clerk, who shall notify the applicant that the application is disapproved and that no permit will be issued.

(c) If, as a result of such investigation, the statements contained in the application are found to be true and correct, and the applicant has not been convicted within the past ten years of any felony or any crime involving moral turpitude, the Lancaster County Sheriff's Office shall approve the application in writing, and shall return the said application to the City Clerk for issuance of the permit.

The Permit shall contain the signature and seal of the issuing officer and shall show the name and address of the permittee and the kind of goods to be sold thereunder, or services to be furnished or performed, the date of issuance, and the length of time the same shall be operative. The Clerk shall keep a permanent record of all permits issued.

### **§ 113.08 APPLICATION OF APPLICANT.**

No permit shall be issued to any person:

(a) who has been convicted of a felony or a crime involving moral turpitude within the ten years immediately preceding the date of the filing of such application with the City Clerk;

(b) who is under the age of sixteen years unless the applicant first obtains an employment certificate as required by state law; or

**§ 113.09 TRANSFER.**

Permits issued under this chapter shall be nontransferable and no such permit shall be used at any time by any person other than the one to whom it was issued.

**§ 113.10 DUTY OF LAW ENFORCEMENT TO ENFORCE.**

It shall be the duty of the Lancaster County Sheriff's Office to enforce the provisions of this chapter against any person found to be violating the same. The Sheriff's Office shall report to the City Clerk all convictions for violations of this chapter, and the City Clerk shall maintain a record for each permit issued and record reports of violations therein.

**§ 113.11 PEDDLING; HOURS RESTRICTED.**

It shall be unlawful to make in-person calls as a peddler to prospective customers before 8:00 a.m. or after 7:00 p.m. on Monday through Saturday, unless requested to do so by the prospective customer. In-person calls as a peddler to prospective customers shall be prohibited on Sundays.

**§ 113.12 PENALTY FOR VIOLATIONS.**

Any person who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period not to exceed six months or by a fine not to exceed \$500.00, recoverable with costs, or both. Each day that a violation of this chapter continues shall constitute a separate and distinct offense and shall be punishable as such. The penalty provided in this section shall be cumulative with and in addition to the revocation of a permit granted under the provisions of this chapter. *(Established by Ord. 05-04, 4/18/05)*

**CHAPTER 114: LOTTERY**

Section

**§ 114.15 MUNICIPAL LOTTERY.**

- 1. AUTHORIZATION.** Approval by a majority of the registered voters of the City of Waverly, having been received in accordance with Neb. Rev. Stat. 9-625 (Reissue 1991), the City Council is authorized to establish and conduct a lottery, as defined in Neb. Rev. Stat. 9-607 (Reissue 1991). The lottery shall be conducted by a lottery operator pursuant to contract and subject to the provisions of the Nebraska County and City Lottery Act (the NCCLA). Gross proceeds of the lottery shall be used solely for the awarding of prizes, taxes, authorized expenses and for community betterment purposes, as defined in the NCCLA.

**2. LOTTERY OPERATOR**

A. The lottery shall be operated by a Lottery Operator. "Lottery Operator" shall mean any individual, sole proprietorship, partnership, or corporation which operates the lottery on behalf of the City pursuant to a written contract.



B. Lottery Operator Selection.

1. The selection of the Lottery Operator shall be at the sole discretion of the Governing Body.

2. The Lottery Operator shall (a) be a resident of Nebraska, or if a partnership or corporation, shall be organized under the laws of this state as a partnership or incorporated under the Nebraska Business Corporation Act, and (b) be licensed to conduct a lottery by the Nebraska Department of Revenue pursuant to the NCCLA.

3. The rights and obligations of the Lottery Operator shall be set forth in a contract between the Governing Body and the Lottery Operator which shall include terms and conditions as required by the Waverly Municipal Code and the NCCLA.

C. Lottery Facilities

1. The Lottery Operator selected by the Governing Body shall not operate the lottery at a sales outlet location other than the location of the Lottery Operator without prior approval of the sales outlet location by the Governing Body. The Governing Body shall approve or disapprove each sales outlet location and individual, sole proprietorship, partnership, or corporation which desires to conduct the lottery at its sales outlet location solely on the basis of the qualification standards prescribed in subsection 2. below.

2. Any individual, sole proprietorship, partnership, or corporation which seeks to have its location approved as an authorized sales outlet location shall: (a) be subject to the same qualification standards as the Lottery Operator, including the provisions of the Waverly Municipal Code; (b) not have been convicted of, forfeited bond upon a charge of, or pleaded guilty to forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, filing false reports with any such agency, or any similar offense or offenses or any crime, whether felony or misdemeanor, involving gambling activity or moral turpitude; (c) not have had a gaming license revoked or canceled under the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act; and (d) be fit, willing, and able to properly provide the service proposed in conformance with all provisions and requirements of the Nebraska County and City Lottery Act and the rules and regulations adopted and promulgated pursuant to the act.

3. If the person seeking to have its location approved as an authorized sales outlet location is a partnership or corporation, the qualification standards shall apply to every partner of such partnership, every officer of such corporation, and stockholder owning more than ten percent (10%) of the stock of such corporation.

4. The Governing Body shall notify the Department of Revenue of all approved lottery locations within thirty (30) days of approval. (*Ref. 9-642.01 RS Neb.*)

D. Security. The Lottery Operator shall be required to install and maintain security devices and measures to ensure the integrity, honesty, and fairness of the lottery operation. Any such security system is subject to the approval and inspection of the Governing Body and its representatives.

E. Alcohol. The Lottery Operator may sell alcoholic liquor, provided that the Lottery Operator complies with all applicable federal, state and local laws, to include but not be limited to the Nebraska Liquor Control Act, Neb. Rev. Stat. 53-101 et seq. (Reissue 1988). Authorized sales outlets shall be authorized to sell alcoholic liquor subject the same provisions.

### **3. MONITORING AND CONTROL**

A. The ultimate responsibility for the establishment and operation of the lottery rests with the Governing Body. The Mayor, subject to confirmation by the Governing Body, shall appoint a Lottery Auditor to supervise the day to day operation of the lottery.

#### **B. Lottery Auditor**

1. Cost of the position of Lottery Auditor shall be borne as set forth in the Lottery Operator Agreement; Provided, however, to the extent permitted by the NCCLA, such costs shall be paid from the proceeds of the lottery. (*Amended by Ordinance 21-09, 9/28/21.*)

2. The Lottery Auditor shall (a) keep and maintain complete and accurate records of all receipts and disbursement of lottery funds, including an accurate accounting of gross proceeds less the amount awarded in prizes and fees to the Lottery Operator in a segregated account in accordance with the NCCLA and rules and regulations promulgated in accordance there with; (b) periodically audit, examine, or cause to have examined by an independent agent any books, papers, records, or memoranda relating to the conduct of the lottery including the books and records of the Lottery Operator; (c) provide for application and renewal of the license to conduct a lottery pursuant to the NCCLA; (d) act as a liaison between the City of Waverly and the Department of Revenue; (e) act as a liaison between the City of Waverly and the Lottery Operator; (f) perform such other and further acts related to the operation and supervision of the lottery as a Mayor shall reasonably direct from time to time; and (g) provide for the termination, filing, and payment of the state lottery tax, in accordance with Neb. Rev. Stat. 9-610 (Reissue 1991).

### **4. PARTICIPATION RESTRICTIONS**

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

(B) No owner or officer of a lottery operator with whom the Governing Body contracts to conduct its lottery shall play the lottery conducted by the Governing Body.

(C) No employee or agent of the City of Waverly, lottery operator, or any authorized sales outlet location shall play the lottery conducted by the Governing Body for which he or she performs work during the time that he or she is actually working at the lottery or while on duty with the lottery.

(D) Nothing shall prohibit the following persons from playing the lottery conducted by the Governing Body provided such person is 19 years of age or older:

(1) Any member of the Governing Body, a municipal official, or the immediate family of such member or official; or

(2) an owner or officer of an authorized sales outlet location for the municipality.

(E) For purposes of this section, immediate family of a member of the Governing Body or a municipal official shall mean spouses, children, grandchildren, siblings, or parents, including those individuals with the same relationship to the spouse, residing in the same household under the control and support of the head of such household.

## **CHAPTER 115: SEXUALLY ORIENTED BUSINESSES**

### Section

- 115.01 Purpose and intent
- 115.02 Findings
- 115.03 Definitions
- 115.04 Classification of sexually oriented businesses
- 115.05 Films or videos
- 115.06 Additional regulations concerning nudity and semi-nudity
- 115.07 Location of sexually oriented business
- 115.08 Additional regulations concerning alcohol
- 115.09 Children Prohibited in a sexually oriented business
- 115.10 Hours of operation
- 115.11 Display of sexually oriented materials to minors
- 115.12 Enforcement and penalties

### **§ 115.01 PURPOSE AND INTENT**

It is the purpose of this article to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious effects produced by such sexually oriented businesses within the City, especially in conjunction with the sale and consumption of alcohol by and in such sexually oriented businesses. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials.

## § 115.02 FINDINGS

Based on evidence concerning the adverse secondary effects of sexually oriented businesses on the surrounding community presented in hearings and in reports made available to the City Council, and on findings incorporated in the cases of *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *Iacobucci v. City of Newport, Ky*, 479 U.S. 92 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *California v. LaRue*, 409 U.S. 109 (1972); *S.O.B., Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5<sup>th</sup> Cir. 1995); *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir. 1984); *Village of Winslow v. Sheets*, 261 Neb. 203 (2001); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628 (1972); and *Midtown Palace, Inc. v. City of Omaha*, 193 Neb. 785 (1975), as well as studies conducted in other cities including, but not limited to, Rochester, New York; San Diego, California; Denver, Colorado; Kansas City, Missouri; New York City, New York; Newport News, Virginia; St. Paul, Minnesota; Springfield, Missouri; Indianapolis, Indiana; Los Angeles, California; and Austin, Texas; and summaries of studies of from thirty-two other cities; and statistics compiled by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and the Nebraska Department of Health and Human Services, the City Council hereby finds that:

A. Sexually oriented businesses have negative secondary effects on the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of property values, the downgrading of adjacent neighborhoods making adjacent neighborhoods significantly less attractive and less safe for raising children, denigrating both residential life and commercial activity for other types of businesses, and increasing the likelihood that long-established standards of public decency will be violated through drug use, prostitution, tax evasion, and fraud. Sexually oriented businesses downgrade the quality of life and fitness of property for other uses in areas both immediate adjacent to and within the proximity of such sexually oriented businesses.

B. The negative secondary effects of sexually oriented businesses are amplified when the service or consumption of alcohol is permitted and engaged in on the premises of such sexually oriented businesses.

C. The findings noted above raise substantial governmental concerns for the health, safety, and welfare of the citizens of the City, and it is appropriate for the purpose of promoting and protecting said health, safety, and welfare of the citizens of the City, particularly the children of the community and those conducting general business within the City, that reasonable regulations be enacted so as to address the substantial governmental concerns to minimize and control the negative secondary effects of sexually oriented businesses, and thereby promote and protect the health, safety and welfare of the citizens of the City and to preserve the quality of life and the quality and character of surrounding neighborhoods for residential and commercial purposes and uses.

D. The enactment of reasonable regulations governing sexually oriented businesses within the City, which involve operational criteria and the regulation of alcohol and illegal substance use and consumption on the premises of such sexually oriented businesses, are appropriate to address the substantial governmental concerns noted above and to protect the health, safety and welfare of the citizens of the City, in conjunction with the zoning requirements applicable to sexually oriented businesses and businesses permitting the sale or consumption of alcohol currently contained in the Waverly Zoning Regulations.

E. It is not the intent of the City to extend these reasonable regulations and prohibitions to any expression of opinion or the performance of a bona fide play, ballet, or drama protected by the First Amendment to the U.S. Constitution or by Article I, section 5 of the Constitution of the State of Nebraska.

### **§ 115.03 DEFINITIONS**

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Adult arcade” shall mean any place to which the public is permitted or invited wherein coin operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” and/or “specified anatomical areas.”

“Adult bookstore,” “adult video store” or “adult novelty store” shall mean a commercial establishment which has a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for sale or rental, for any form of consideration, any one or more of the following:

A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, laser or compact discs, or other visual representations which are characterized by their emphasis upon the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

B. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

C. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental or material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe “specified sexual activities” or “specified anatomical areas,” or if the busi-

ness advertises the sale or rental of any such material in a way that can be seen or heard from the outside of the location.

“Adult cabaret” shall mean a nightclub, bar, restaurant, or similar commercial establishment which regularly features any of the following:

- A. Persons who appear in a state of nudity.
- B. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”
- C. Films, motion pictures, video cassettes or video reproductions, slides, laser or compact discs, or other visual representations which are characterized by their emphasis upon the exhibition or display of “specified sexual activities” or “specified anatomical areas.”

“Adult motel” shall mean a hotel, motel, or similar commercial establishment which does any of the following:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, compact discs or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions.
- B. Offers a sleeping room for rent for a period of time that is less than ten hours.
- C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

“Adult motion picture theater” shall mean a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the principal subject of depiction or description being “specified sexual activities” and/or “specified anatomical areas.”

“Adult theater” shall mean a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

“Employee,” “employ” and “employment” shall pertain to or describe any person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

“Escort” shall mean a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

“Escort agency” shall mean a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

“Establishment” shall mean any of the following:

A. The opening or commencement of any sexually oriented business as a new business.

B. The conversion of an existing business to a sexually oriented business or from one type of sexually oriented business to another type or types of sexually oriented business.

C. The addition of any sexually oriented business to any other existing sexually oriented business.

D. The relocation of any sexually oriented business.

“Nude model studio” shall mean a commercial establishment which regularly features a person who appears in a state of nudity and is provided to be observed, sketched, drawn, painted, sculpted, or photographed by other persons who pay money or any form of consideration. “Nude model studio” shall not include a proprietary school licensed by the State; or a college, junior college or university supported entirely or in part by public taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

“Nude,” “nudity” or “state of nudity” shall mean the showing or depicting of the human male or female genitals or pubic area with less than a fully opaque covering, the showing or depicting of the female breast with less than a fully opaque covering on any part of the areola and nipple, or the showing or depicting of covered male genitals in a discernibly turgid state.

“Operate” or “cause to be operated” shall mean to cause to function or to put or keep in a state of doing business. Operator means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation, the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether or not that person is an owner, part owner, or licensee of the business.

“Person” shall mean an individual, proprietorship, partnership, limited liability company or partnership, corporation, association or other legal entity.

“Residential” shall mean a single-family, two-family, or multiple-family use as defined in the ordinances of the City of Waverly.

“Semi-nude,” “semi-nudity,” and “state of semi-nudity” shall mean the showing or depicting of the human body with no more than fully opaque clothing covering the genitals and pubic region of male or female persons and any part of the areola and nipple of the female breast.

“Sexual encounter center” shall mean a business or commercial enterprise that offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex.

B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

“Sexually oriented business” shall mean an adult arcade, adult bookstore or adult novelty store or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, semi-nude model studio or sexual encounter center.

“Specified anatomical areas” shall mean the human, post-pubertal male or female genitals, pubic area, or buttocks with less than a full opaque covering, and the male genitals in a discernibly turgid state even if completely and opaquely covered.

“Specified sexual activities”:

A. The fondling, kissing, or other erotic touching of human genitals, pubic area, buttocks or female breasts whether clothed or unclothed; or

B. Acts whether actual or simulated, of human sexual intercourse, oral copulation, masturbation, or sodomy; or

C. Excretory functions as part of or in connection with any of the activities set forth in (A) and (B) above.

#### **§ 115.04 CLASSIFICATION OF SEXUALLY ORIENTED BUSINESSES**

Sexually oriented businesses are classified as follows:

A. Adult arcade;

B. Adult bookstore, adult video store or adult novelty store;

C. Adult cabaret;

D. Adult motel;

E. Adult motion picture theater;

F. Adult theater;



- G. Escort agency;
- H. Nude model studio;
- I. Sexual encounter center.

### **§ 115.05 FILMS OR VIDEOS**

A. A person who operates or causes to be operated a sexually oriented business, classified as an adult arcade, which exhibits on the premises in a viewing room of 150 square feet or less of floor space a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. It is the duty of the owner and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

2. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any reason from at least one of the manager's stations and all must be staffed when viewing access is made available so that all areas other than restrooms are supervised at all times viewing access is permitted. The supervision required in this subsection must be by direct line of sight from the manager's station.

3. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in Subsection (A)(2) remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to this article.

4. No viewing room may be occupied by more than one person at any time.

5. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle as measured at the floor level.

6. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

B. A person having a duty under subsection (A) above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

**§ 115.06 ADDITIONAL REGULATIONS CONCERNING NUILITY AND SEMI-NUILITY**

A. It shall be unlawful for any person to knowingly or intentionally, or for any person to knowingly or intentionally authorize, permit, or suffer any person to, appear live in a state of nudity, or engage in or simulate specified sexual activities, in any public place or place open to the public, including a sexually oriented business; provided, however, that this subsection (A) shall not apply to:

(i) Any theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibit or performance;

(ii) Any dressing/changing room or restroom facility open to the public;

(iii) Any person under the age of 12;

(iv) Mothers who are breast feeding; or

(v) Any sexually oriented business that was operating and in existence within the municipal corporate limits on January 1, 2016.

B. There shall be no physical contact or other specified sexual activities between employees or performers and patrons for gratuity, pay, or other remuneration, direct or indirect, or in conjunction with or as part of any performance or entertainment in any sexually oriented business where alcohol is served or otherwise consumed on the premises. It shall further be unlawful for any owner, lessee, proprietor, or manager of any sexually oriented business to knowingly allow any employee or performer on the premises of such sexually oriented business where alcohol is served or otherwise consumed to engage in any act or acts prohibited under this subsection (B); provided, however, this subsection (B) shall not apply to:

(i) Any theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibit or performance;

(ii) Any dressing/changing room or restroom facility open to the public;

(iii) Any person under the age of 12;

(iv) Mothers who are breast feeding; or

(v) Any sexually oriented business that was operating and in existence within the municipal corporate limits on January 1, 2016.

## **§ 115.07 LOCATION OF SEXUALLY ORIENTED BUSINESS**

All sexually oriented businesses shall be sited, located, and operated in accordance with those requirements for “Restricted Businesses” and other applicable requirements set forth in the Waverly Zoning Regulations.

## **§ 115.08 ADDITIONAL REGULATIONS CONCERNING ALCOHOL**

In the event the licensee, manager, or agent of a sexually oriented business shall authorize, permit, or suffer any live person, including employees, to appear in the licensed premises in a state of nudity, or has any reason to believe that any live person shall appear in the licensed premises in a state of nudity, then the City Council may cause the sexually oriented business’s license to sell or permit the consumption of alcohol, including a bottle club license, to be cancelled, revoked, suspended, or recommended for non-renewal after providing notice and a hearing as provided by Nebraska law, where the license holder is found to have violated this Section, any provision of the Nebraska Liquor Control, any provision of this chapter, any rule or regulation of the state liquor control commission, or any other applicable statutory provision of the state or ordinance of the City now existing or hereafter passed. This section shall not apply to any sexually oriented business that: (a) was operating and in existence within the municipal corporate limits on January 1, 2016; and (b) obtained a valid retail license or bottle club license from the Nebraska Liquor Control Commission to sell alcoholic beverages within the municipal corporate limits on or before May 31, 2019.

## **§ 115.09 CHILDREN PROHIBITED IN A SEXUALLY ORIENTED BUSINESS**

No person under the age of 19 years shall be allowed on the premises of a sexually oriented business, and it is the duty of the sexually oriented business to enforce this minor age restriction through supervision and verification by identification.

## **§ 115.10 HOURS OF OPERATION**

No sexually oriented business may remain open at any time between the hours of 1:00 a.m. and 8:00 a.m. on weekdays and Saturdays and 1:00 a.m. and noon on Sundays.

## **§ 115.11 DISPLAY OF SEXUALLY ORIENTED MATERIALS TO MINORS**

A. No licensee or employee of a sexually oriented business shall permit a person under the age of 19 years of age to be present on its business premises, which age limitation will be enforced by age verification by said business.

B. No sexually oriented business shall display posters, signs, depictions or other visual representations outside walls or on any inside or outside window which depict any of the following:

1. Human sexual intercourse, masturbation, or sodomy;
2. Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;

3. Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areolae of the nipple; or

4. Human male genitals in a discernibly turgid state, whether covered or uncovered.

C. The windows and doors of a sexually oriented business will be tinted to the extent that there is no view of the interior from the exterior of the business.

D. "Display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

1. It is available to the general public for handling and inspection; or

2. The cover or outside packaging on the item is visible to members of the general public.

## **§ 115.12 ENFORCEMENT AND PENALTIES**

Any person who violates any of the prohibitions or provisions of any article or sections of this article shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular article or section for which the person stands convicted of violating, the penalty for such violation shall be a fine in any sum not exceeding \$500.00 or imprisonment for a term not to exceed three months or both said fine and imprisonment at the discretion of the sentencing court. A separate violation shall be deemed to have been committed each 24-hour period that a violation continues after conviction.

## **CHAPTER 116: RAILROADS**

### Sections

- 116.01 Safe crossing
- 116.02 Speed
- 116.03 Lighting
- 116.04 Obstructing traffic

### **§ 116.01 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 RS Neb.*)

### **§ 116.02 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 twenty-five (25) miles per hour. (*Ref. 17-551, 17-552 RS Neb.*)

### **§ 116.03 LIGHTING.**

It shall be the duty of all railroad companies owning, operating, and maintaining a railroad through the Municipality to sufficiently light all crossings and to install as many signal systems as the Governing Body shall deem necessary at the expense of the said company. (*Ref. 17-561 RS Neb.*)

### **§ 116.04 OBSTRUCTING TRAFFIC.**

It shall be unlawful, except in a situation beyond the control of the railroad operator, for any railroad company, its employees, agents, or servants, operating a railroad which passes through the Municipality, to allow a train, railroad car, engine, or railroad company, to stand idle and not moving on the railroad track, or a moving train, to block traffic on any public street or to block a railroad crossing, at any one time for a period of time in excess of ten (10) minutes. It shall also be unlawful, except in a situation beyond the control of the railroad operator, for any railroad company, its employees, agents, or servants, operating a railroad which passes through the Municipality, to allow a train, railroad car, engine, or railroad company, to stand idle and not moving on the railroad track, or a moving train, which causes an electrical or mechanical signal or a crossing gate to operate and legally prohibit traffic from crossing such railroad tracks at any time or to block a railroad crossing, for a period of time in excess of ten (10) minutes. (*Rev. 17-552 RS Neb.*) (*Amended by Ord. No. 93-7, 12/6/93 and 99-26, 12/6/99*)