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CHAPTER 4 – BUSINESS REGULATIONS

Article 1 – Alcoholic Beverages

SECTION 4-101: DEFINITIONS

All words and phrases herein used are to have the definitions applied thereto, as defined in the Liquor Control Act of the State of Nebraska. (Neb. Rev. Stat. §53-103)

SECTION 4-102: 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, (A) nothing herein shall prevent the possession of alcoholic liquor for the personal use of the possessor, his family and guests, as long as the quantity of alcoholic liquor transported, imported, brought, shipped or caused to be transported, imported, brought, or shipped into the state for personal use does not exceed one gallon at any one time or in excess of two gallons in any one calendar month; (B) nothing herein shall 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; (C) 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; (D) any drug store employing a licensed pharmacist may possess and use alcoholic liquors in the compounding of prescriptions of duly licensed physicians; (E) 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; (F) persons who are 16 years old or older may carry beer from grocery stores when they are accompanied by a person not a minor, persons who are 16 years old or older may handle beer containers and beer in the course of their employment in grocery stores, and persons who are 16 years old or older may remove and dispose of alcoholic liquor containers for the convenience of their employer and customers in the course of their employment as waiters, waitresses, or busboys, by any restaurant, club, hotel, or similar organization; and (G) persons who are 19 years old or older may serve or sell alcoholic liquor in the course of their employment. (Neb. Rev. Stat. §53-168.06)

SECTION 4-103: DRINKING AND POSSESSION OF ALCOHOLIC LIQUORS ON STREETS, IN PUBLIC PLACES OR ON PUBLIC PROPERTY; SPECIAL PERMITS

A. It shall be unlawful for any person to drink alcoholic liquor of any kind or to have in his/her possession or upon his/her person any bottle or receptacle containing

alcoholic liquors which is open or has been opened, or the seal of which has been broken, or the contents of which have been partially removed or consumed, while on the streets or alleys or upon property used or owned by the government of the United States, the State of Nebraska, or any governmental subdivision thereof, or in theaters, dance halls or in any other place open to or frequented by the public within said village, unless such premises are licensed for such purposes by the State of Nebraska or unless a special permit has been granted for the same by the Village Board.

B. A restaurant holding a license to sell alcoholic liquor at retail for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises as provided in Neb. Rev. Stat. §53-123.04.

C. Upon application for a special permit for the consumption of alcoholic liquor on public streets or other public places, the Village Board may permit such consumption on such terms and conditions as it may determine. For such permit to be issued, written application must be made to the village clerk and the same must be acted upon at a special or regular meeting of the Village Board. The terms and conditions for issuance of a special permit shall be set forth in the minutes of the meeting at which such application is considered.
(Neb. Rev. Stat. §53-186)

SECTION 4-104: VILLAGE POWERS AND DUTIES

The Village Board 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 licensees carried on within the corporate limits. The Village Board 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 premises licensed by the State of Nebraska to determine whether any of the provisions of the village ordinances or state laws are being violated; to receive signed complaints from any citizens within its jurisdiction that any of the village ordinances or state laws 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 herein, 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 and the Village all license fees and occupation taxes as prescribed by law. (Neb. Rev. Stat. §53-134)

SECTION 4-105: 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 Village unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (Neb. Rev. Stat. §53-102)

SECTION 4-106: LOCATION RESTRICTIONS

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 150 feet of any church, school, hospital, or home for aged or indigent persons or veterans, their wives or children; provided, this prohibition shall not apply to any location within such distance when the said establishment has been licensed by the Nebraska Liquor Control Commission at least two years, and to hotels offering restaurant service, regularly organized clubs, or to restaurants where the selling of alcoholic liquors is not the principal business carried on, if the said hotel, club, or restaurant were licensed and in operation prior to May 24, 1935. No alcoholic liquor, other than beer, shall be sold for consumption on the premises within 300 feet from the campus of any college within the Village. (Neb. Rev. Stat. §53-177)

SECTION 4-107: LICENSEE REQUIREMENTS

It shall be unlawful for any person or persons to own an establishment that sells at retail any alcoholic beverages unless said person is a resident of the county in which the premises is located; a person of good character and reputation; a citizen of the United States; a person who has never been convicted of a felony or any Class I misdemeanor pursuant to Neb. Rev. Stat. Chapter 28, Article 3, 4, 7, 8, 10, 11, or 12, or any similar offense under prior criminal statute or in another state; a person who has never had a liquor license revoked for cause; a person whose premises, for which a license is sought, meets standards for fire safety as established by the state fire marshal; or a person who has not acquired a beneficial interest requirement in this section shall not apply to a person applying for an additional license for use in connection with the operation of a hotel containing at least 25 sleeping rooms, or where the request is limited to on premises sale of beer only in a restaurant. (Neb. Rev. Stat. §53-124.03, 53-125)

SECTION 4-108: DISPLAY OF LICENSE

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 premises. (Neb. Rev. Stat. §53-148)

SECTION 4-109: HOURS OF SALE

A. For the purposes of this section, "on sale" shall be defined as alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment. "Off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

B. It shall be unlawful for any licensed person(s) or their agents to sell any alcoholic beverages within the Village except during the hours provided herein:

HOURS OF SALE	
<i>Alcoholic Liquors (except Beer and Wine)</i>	
Monday through Saturday	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 1:00 A.M.
Sunday	
Off Sale	12:00 Noon to 1:00 A.M.
On Sale	12:00 Noon to 1:00 A.M.
<i>Beer and Wine</i>	
Daily	
Off Sale	6:00 A.M. to 1:00 A.M.
On Sale	6:00 A.M. to 1:00 A.M.

C. Such limitations shall not apply after 12:00 Noon on Sunday to a licensee which is a nonprofit corporation holding a license pursuant to Neb. Rev. Stat. Section 53-124(5) (C) & (H).

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

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

SECTION 4-110: SANITARY CONDITIONS

It shall be unlawful to open for public use any retail liquor establishment that is not in a clean and sanitary condition. Toilet facilities shall be adequate and convenient for customers and patrons and said licensed premises shall be subject to any health inspections the Village Board or the village police may make, or cause to be made. All applications for liquor licenses shall be viewed in part from the standpoint of the sanitary conditions, and a report concerning the said sanitary conditions shall be made at all hearings concerning the application for, or renewal of, a liquor license. (Neb. Rev. Stat. §53-118)

SECTION 4-111: OWNER OF PREMISES

The owner of any premises 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 premises in violation of any municipal code section or Nebraska statute. (Neb. Rev. Stat. §53-1,101)

SECTION 4-112: EMPLOYER

The employer of any officer, director, manager, or employees working in a retail liquor establishment shall be held to be liable and guilty of any act of omission or violation of any law or ordinance, and each such act or omission shall be deemed and held to be the act of the employer, and will be punishable in the same manner as if the said act or omission had been committed by him personally. (Neb. Rev. Stat. §53-1,102)

SECTION 4-113: HIRING MINORS

It shall be unlawful for any person to hire a minor regardless of sex under the age of 19 years to serve or dispense alcoholic liquors, including beer, to said licensee's customers. (Neb. Rev. Stat. §53-102)

SECTION 4-114: MINORS AND INCOMPETENTS

It shall be unlawful for any person or persons to sell, or make a gift of, any alcoholic liquor, or to procure any such alcoholic liquor 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. (Neb. Rev. Stat. §53-180)

SECTION 4-115: MINOR'S PRESENCE

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

SECTION 4-116: ACCESS TO DWELLINGS

Except in the case of hotels and clubs no alcoholic liquor shall be sold at retail upon any premises which has any access which leads from such premises to any other portion of the same building used for dwelling or lodging purposes, and which is permitted to be used by the public. Nothing herein shall prevent any connection with such premises, and such other portion of the building which is used only by the licensee, his family, or personal guests. (Neb. Rev. Stat. §53-178)

SECTION 4-117: CREDIT SALES PROHIBITED; EXCEPTIONS

No person shall sell or furnish alcoholic liquor at retail to any person on credit, on a passbook, on an order on a store, in exchange for any goods, wares, or merchandise, or in payment for any services rendered, and if any person extends credit for any such purpose, the debt thereby attempted to be created shall not be recoverable at law. Nothing in this section shall prevent any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or bona fide guests of members and charged to the account of such members or guests in accordance

with the bylaws of such club, and nothing in this section shall prevent any hotel or restaurant holding a retail license from permitting checks or statements for liquor to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests. (Neb. Rev. Stat. §53-183)

SECTION 4-118: SPIKING BEER

It shall be unlawful for any person or persons who own, manage, or lease any premises 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 premises of such licensee. (Neb. Rev. Stat. §53-174)

SECTION 4-119: ORIGINAL PACKAGE

It shall be unlawful for any person or persons who own, manage, or lease any premises in which the sale of alcoholic beverages is licensed, to have in their possession for sale at retail any alcoholic liquor contained in casks, or other containers except in the original package. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale. (Neb. Rev. Stat. §53-184)

SECTION 4-120: GAMBLING

Unless sanctioned by Nebraska law, no licensee in this village holding a license covering premises open to the public for the sale of intoxicating liquor or beer shall directly or indirectly permit gambling on or in the licensed premises; nor shall he/she permit the operation or possession of any pay-off gambling device, slot machine or punch-board, mechanical or otherwise, whether pay-off is in cash or merchandise, in, on or about the licensed premises.

SECTION 4-121: CONDUCT PROHIBITED ON LICENSED PREMISES

No licensee in this village shall engage in, allow or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities or displays, brawls or unnecessary noise; or allow, permit or suffer the licensed premises to be used in such a manner as to create public censure or become a nuisance, public or private.

SECTION 4-122: INSPECTIONS

It shall be the duty of the Village Board to cause frequent inspections to be made on the premises of all retail and bottle club licensees. If it is found that any such licensee is violating any provision of the Nebraska Liquor Control Act or regulations of the Nebraska Liquor Control Commission or is failing to observe in good faith the purposes of said Act, the license may be suspended, cancelled, revoked after the licensee has been given an opportunity to be heard by the Village Board. (Neb. Rev. Stat. §53-116.01)

SECTION 4-123: REVOCATION OF LICENSE

The chairman and the Village Board shall, by resolution and subject to the right of appeal to the Liquor Control Commission, revoke the license of any licensee finally convicted of violating any provisions of this article. (Neb. Rev. Stat. §53-116.02)

SECTION 4-124: LIQUOR LICENSE RENEWAL

A. Retail or bottle club licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the Village Board 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 Village 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 60 days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one year.

B. The village clerk, upon notice from the Commission, between January 10 and January 30 of each year shall cause to be published one time in a legal newspaper in or of general circulation in the Village a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the Village; provided, Class C license renewal notices shall be published between the dates of July 10 and July 30 of each year. The village clerk shall then file with the Commission proof of publication of said notice on or before February 10 of each year or August 10 of each year for Class C licenses. Upon the conclusion of any hearing required by this section, the Village Board may request a licensee to submit an application.

NOTICE OF RENEWAL OF RETAIL LIQUOR LICENSE

Notice is hereby given that pursuant to Nebraska law, the liquor license may be automatically renewed for one year from May 1, 20____, (or August 10, 20____,) for the following retail liquor licensee, to-wit:

(Name of Licensee)
(Address of licensed premises)

Notice is hereby given that a written protest to the issuance of automatic renewal of license may be filed by any resident of the Village of Firth on or before February 10, 20____, (or August 10, 20____,) in the office of the village clerk; that in the event protests are filed by three or more such persons, hearing will be had to determine whether continuation of said license should be allowed.

(NAME)
(VILLAGE CLERK)

C. The village clerk shall file or cause to be filed with the Nebraska Liquor

Control Commission proof of publication of said notices on or before February 6 or August 6 of each year.

(Neb. Rev. Stat. §53-135, 53-135.01)

SECTION 4-125: PROTESTS AGAINST RENEWAL

In the event written protests are filed with the Village clerk by three or more residents of this Village against the automatic renewal of a license, the clerk shall present the same to the chairman and Village Board at their next meeting and they shall thereupon, by resolution, direct the licensee to submit an application in the same manner as he/she would be required to do for an original license. The village police shall forthwith serve said resolution on said licensee by delivering to him/her personally a true and certified copy thereof. Upon receipt by the village clerk from the Nebraska Liquor Control Commission of the notice and copy of application, the same procedure shall be followed as is provided for in the case of an application for an original license.

SECTION 4-126: CITIZEN COMPLAINTS

A. Any five residents of the City shall have the right to file a complaint with the City Council stating that any retail or bottle club licensee subject to the jurisdiction of the City Council has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant thereto. Such complaint shall be in writing in the form prescribed by the City Council and shall be signed and sworn by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based.

B. If the City Council is satisfied that the complaint substantially charges a violation and that from the fact alleged there is reasonable cause for such belief, it shall set the matter for hearing within ten days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint; provided, the complaint must in all cases be disposed of by the City Council within 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. (Neb. Rev. Stat. §53-1,114)

SECTION 4-127: COMPLAINTS; PROCEDURE

A. The village clerk shall supply the complaint forms prescribed herein and shall, on request, supply one to any resident of this village desirous of initiating a complaint against a liquor licensee. Any complaint duly executed on one of the aforesaid forms by five residents of this village and filed with the village clerk shall be presented by him/her to the chairman and Board at their next meeting. If the chairman and the Board are satisfied that the complaint substantially charges a violation and that from the facts alleged there is a reasonable cause for such belief they shall, by resolution, set the matter for hearing within ten days from the filing of the complaint. Said resolution shall state the time and place of said hearing and shall direct the village police to serve the

Subscribed in my presence and sworn to before me by _____,
_____, _____, _____, _____ and
_____ this _____ day of _____, 20_____.

My commission expires _____.

Notary Public

(Neb. Rev. Stat. § 53-134.04)

SECTION 4-129: REMOVAL OF INTOXICATED PERSONS FROM PUBLIC OR QUASI-PUBLIC PROPERTY

A. Any law enforcement officer with the power to arrest for traffic violations may take a person who is intoxicated and, in the judgment of the officer, dangerous to himself, herself, or others or who is otherwise incapacitated, from any public or semi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take such person to his or her home or to any hospital, clinic, alcoholism center, or medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctors who have previously represented a willingness to accept and treat such individuals and who regularly do accept such individuals. If these measures are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, except that such custody shall be used only as long as is necessary to preserve life or to prevent injury and under no circumstances longer than 12 hours. The placement of such person in civil protective custody shall be recorded at the facility or jail at which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

B. The law enforcement officer who acts in compliance with this section shall be deemed to be acting in the course of his or her official duty and shall not be criminally or civilly liable for such actions. The taking of an individual into civil protective custody under this section shall not be considered an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime. (Ord. No. 189, 11/5/79)

C. For purposes of this section, "public property" shall mean any public right-of-way, street, highway, alley, park or other state, county or village-owned property; "quasi-public property" shall mean and include private or publicly owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress.

(Neb. Rev. Stat. §53-1,121)

Article 2 – Solicitors and Peddlers

SECTION 4-201: PERMIT REQUIRED

It is in the best interests of village residents to prevent the sale of fraudulent, dangerous and unhealthy goods and services and to protect the public by maintaining records of the products sold and the persons and companies responsible for such sales within the Village. It shall be unlawful for any solicitor or peddler directly or indirectly to sell, attempt to sell, solicit, or make solicitations on the streets, in any office or business building, or on any piece of ground, lot or parcel thereof by house-to-house canvass or in any other private or public place by telephone, person solicitation or in any other way in the Village unless such person, organization, society, association, or corporation shall have first obtained a permit as provided herein.

SECTION 4-202: APPLICATION; ISSUANCE OF PERMIT

Before doing business within the Village, all peddlers and solicitors shall make application to the village clerk and be issued a permit. The cost of said permit shall be set by ordinance and shall be on file at the office of the village clerk, available for public inspection during office hours. The application form shall contain all the necessary information and documentation required for the protection of the residents of the Village. Any person granted a permit shall be subject to any fees, occupation, tax or other rules and regulations which the Village Board deems appropriate for the purposes stated herein. Any permit so granted shall be subject to revocation for good and sufficient cause by the Village Board or village clerk.

SECTION 4-203: EXCEPTIONS

Nothing herein shall be construed to require a permit for any person or persons selling produce raised within the county or at a local farmer's market, or to wholesale salespersons soliciting merchants directly, nor to fundraising solicitations for political subdivisions, non-profit or charitable organizations.

SECTION 4-204: HOURS

It shall be unlawful to make calls as a solicitor or peddler to prospective customers before 9:00 A.M. or after 6:00 P.M. any day unless requested to do so by the prospective customer.

Article 3 – Smoking Regulations

SECTION 4-301: SMOKING IN WORKPLACE OR PUBLIC PLACE; DEFINITIONS

“Smoke” or “smoking” means the lighting of any cigarette, cigar, pipe, or other smoking material or the possession of any lighted cigarette, cigar, pipe, or other smoking material, regardless of its composition. (Neb. Rev. Stat. §71-5727)

SECTION 4-302: SMOKING IN WORKPLACE OR PUBLIC PLACE; PROHIBITED

After June 1, 2009, except as provided in Section 4-303 hereafter, it shall be unlawful for any person to smoke in a place of employment or any public place within the Village. (Neb. Rev. Stat. §71-5729)

SECTION 4-303: SMOKING IN WORKPLACE OR PUBLIC PLACE; EXEMPTIONS

The following are exempt from the provisions of this article:

A. Guestrooms and suites that are rented to guests and are designated as smoking rooms, except that not more than 20 percent of rooms rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;

B. Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education; and

C. Tobacco retail outlets.
(Neb. Rev. Stat. §71-5730)

SECTION 4-304: SMOKING IN WORKPLACE OR PUBLIC PLACE; VIOLATION; PENALTY

A. A person who smokes in a place of employment or a public place in violation of the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses. A person charged with such offense may voluntarily participate, at his/her own expense, in a smoking cessation program approved by the Department of Health and Human Services, and such charge shall be dismissed upon successful completion of the program.

B. A proprietor who fails, neglects, or refuses to perform a duty under the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses.

C. Each day that a violation continues to exist shall constitute a separate and distinct violation.

D. Every act or omission constituting a violation of the Nebraska Clean Indoor Air Act by an employee or agent of a proprietor is deemed to be the act or omission of such proprietor, and such proprietor shall be subject to the same penalty as if the act or omission had been committed by such proprietor.

(Neb. Rev. Stat. §71-5733)

Article 4 – Penal Provision

SECTION 4-401: VIOLATION; PENALTY

Any person, firm, association or corporation violating any of the provisions of the chapter herein for which no other penalty is imposed shall, upon conviction, be deemed guilty of a misdemeanor and fined in an amount of not more than \$500.00. Each day's maintenance of a misdemeanor shall constitute a separate offense.