

## Chapter 5.04 ALCOHOLIC LIQUOR

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### Contents:

- 5.04.010 Declared Legislative Intent.
- 5.04.020 Definitions.
- 5.04.030 License Required.
- 5.04.035 Responsible Beverage Management Certificate Required.
- 5.04.040 License; Notice and Hearing.
- 5.04.050 License; Posting Notice of Application.
- 5.04.060 City Clerk Agent for Approval of Special Designated Licenses.
- 5.04.062 Special Designated License Qualifications and Restrictions.
- 5.04.064 Criteria for Approval of Special Designated Licenses.
- 5.04.066 Limitations on Authority to Issue Special Designated Licenses.
- 5.04.068 Special Designated Licenses for a Series of Events.
- 5.04.070 Allow Possession by Incapacitated Persons; Prohibited.
- 5.04.080 Furnishing False Identification.
- 5.04.090 Minors; Misrepresenting Age.
- 5.04.100 Minors; Possession of Alcoholic Liquor Prohibited.
- 5.04.115 Supervision on Licensed Premises.
- 5.04.120 Minors; Prohibited on Premises.
- 5.04.124 Responsible Beverage Server/Seller Permit; Education Required.
- 5.04.125 Responsible Beverage Server/Seller Permit; Application, Terms, & Conditions.
- 5.04.126 Responsible Beverage Server/Seller Fund.
- 5.04.127 Responsible Beverage Server/Seller Permit; Denial, Suspension, or Revocation.
- 5.04.130 Hours for Sale at Retail and Dispensing.
- 5.04.135 Bottle Clubs Prohibited.
- 5.04.140 Building Requirements; Inspection.
- 5.04.150 Public Entrances.
- 5.04.160 Places Where Drinking Prohibited.
- 5.04.165 Open Alcoholic Beverage Container in Motor Vehicle Prohibited.
- 5.04.170 Licenses to be Conspicuously Displayed.
- 5.04.175 Records Requirement.
- 5.04.180 Liability of Owner of Premises.
- 5.04.190 Liability of Licensee.
- 5.04.200 Entry for Inspection; Police Officers; Health Director.
- 5.04.210 Occupation Taxes.
- 5.04.220 Drinking on Licensed Premises.
- 5.04.230 Nude Entertainment.
- 5.04.240 Physical Contact.
- 5.04.250 Minors; Delivering Liquor Prohibited.
- 5.04.260 Licensee or Employees; Drinking While on Duty Prohibited.
- 5.04.270 Discontinuance of Business; Provisions; Exceptions.
- 5.04.280 Licensee to File List of Members.
- 5.04.290 Maintaining Common Nuisances Unlawful.

**5.04.295 Entertainment District License; Prohibitions.****5.04.300 Penalty for Violations.****5.04.310 Severability and Savings Clause.****5.04.010 Declared Legislative Intent.**

It is hereby declared to be the intent and purpose of the City Council in adopting and administering the provisions of this chapter:

- a. To express the community sentiment that the control of availability of alcoholic liquor to the public in general and to minors in particular promotes the public health, safety, and welfare;
- b. To encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof;
- c. To ensure that the number of retail outlets and the manner in which they are operated is such that they can be adequately policed by local law enforcement agencies so that the abuse of alcohol and the occurrence of alcohol-related crimes and offenses is kept to a minimum; and
- d. To ensure that individuals who serve or sell alcohol at retail are educated on state and local laws, and to hold individuals accountable for their actions. (Ord. 19712 §1; May 21, 2012: prior Ord. 15454 §1; March 5, 1990: P.C. §6.08.010: Ord. 14385 §5; May 12, 1986).

**5.04.020 Definitions.**

Unless the context otherwise requires, the words and phrases herein defined are used in this chapter in the sense given them in the following definitions:

**Alcohol** shall mean the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and shall include synthetic ethyl alcohol, but shall not include denatured alcohol or wood alcohol.

**Alcoholic liquor** shall include alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and capable of being consumed as a beverage by a human being. The provisions of this chapter shall not apply to:

1. alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations promulgated thereunder;
2. flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but this chapter shall not be construed to exclude or not apply to alcoholic liquor used in the manufacture, preparation, or compounding of such products, or confections or candy that contains more than one-half of one percent alcohol; or
3. wine intended for use and used by any church or religious organization for sacramental purposes.

**Beer** shall mean a beverage obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water; and shall include, among other things, beer, ale, stout, lager beer, near beer, porter, and the like.

**Beer garden** shall mean an outdoor area included in licensed premises, which is used for the service and consumption of alcoholic liquors, and which is contained by a six foot or higher fence, or other rigid barrier, preventing the uncontrolled entrance or exit of persons from the premises, and preventing the passing of alcoholic liquors to persons outside the premises.

**Bottle club** shall mean any business or commercial operation, whether open to the public or where entrance is limited by any fee, cover charge, membership or other similar requirement, to which patrons bring with them alcoholic liquor to be consumed or stored for consumption on the business premises, and where such business or premises is not licensed to sell alcoholic liquor.

**Catering** shall mean the act of providing, pursuant to a written or oral contract between a licensee with a valid catering license and an unlicensed individual or entity, alcoholic liquor at an event hosted by the unlicensed individual or entity and at an event location that is not currently licensed by the licensee.

**Club** shall mean a corporation organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquors, which is kept, used, and maintained by its members through the payment of annual dues, and which owns, hires, or leases a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests. Such club shall file with the city at the time of its application for a license two copies of a list of names and residences of its members and similarly shall file within ten days of the election of any additional member his or her name and address. The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member or any officer, agent, or employee of the club shall be paid, or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than the amount of such salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other governing body out of the general revenue of the club.

**Commission** shall mean the Nebraska Liquor Control Commission.

**Commons Area** shall mean an area:

- a. Within an Entertainment District designated by the City Council pursuant to [Chapter 5.21](#);
- b. Shared by authorized licensees with annual Entertainment District licenses issued by the Commission;
- c. Abutting the licensed premises of such licensees;
- d. Having limited pedestrian accessibility by use of a physical barrier, either on a permanent or temporary basis; and
- e. Closed to vehicular traffic when used as a commons area.

**Entertainment District** shall mean an area of real property designated and permitted by City Council pursuant to [Chapter 5.21](#) whereby the Commission may issue annual entertainment district licenses pursuant to the Nebraska Liquor Control Act to allow retail licensees, craft brewery licensees, microdistillery, and/or manufacturer's licensees to share in the use of one or more commons areas.

**Entrance** shall be defined as any means of ingress and egress from a premises.

**Health Director** shall mean the Director of the Lincoln-Lancaster County Health Department or an authorized representative of the Director.

**Manufacture** shall mean to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor, and shall include blending but shall not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in this chapter to serve drinks for consumption on the premises where sold.

**Manufacturer** shall mean every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, restaurant, hotel, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquors as above defined.

**Minor** shall mean any person, male or female, under twenty-one years of age, regardless of marital status.

**Nonprofit corporation** shall mean a corporation, whether located within any incorporated city or village or not, organized under the laws of this state, not for profit, and which has been exempted from the payment of federal income taxes.

**Original package** shall mean any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container whatsoever, used, corked, or capped, sealed, and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor.

**Person** shall mean any natural person, corporation, partnership, or association.

**Premises** shall mean the designated area specified in a license issued under the Nebraska Liquor Control Act.

**Restaurant** shall mean any public place kept, used, maintained, advertised, and held out to the public as a place where meals are served, and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests.

**Retailer** shall mean a person who sells, or offers for sale, alcoholic liquors for use and consumption and not for resale in any form.

**Sale** shall mean any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee.

**Sell at retail and sale at retail** shall refer to and mean sales for use or consumption and not for resale in any form.

**Serve** shall mean to provide for immediate consumption.

**Sidewalk café** shall mean an outdoor area included in licensed premises, which is used for the service and consumption of food and alcoholic liquors, and contained by a thirty-six inch or higher fence, or other rigid barrier, defining the area. There shall be no more than one open entrance which shall not exceed eight feet in width, except where approved by City Council as part of the design of an Entertainment District.

**Spirits** shall mean any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and shall include brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances.

**To sell** shall mean to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell.

**Wine** shall mean any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of spirits, as above defined. (Ord. [20491](#) §1; May 15, 2017: prior Ord. [19874](#) §1; May 6, 2013: Ord. [19712](#) §2; May 21, 2012: Ord. [17484](#) § 1; April 5, 1999: Ord. [15454](#) §2; March 5, 1990: P.C. §6.08.015: Ord. 14385 §6; May 12, 1986: Ord. 13933 §1; September 4, 1984: Ord. 13239 §1; October 26, 1981).

**ANNOT.:** Insofar as these ordinances preclude the sale of alcohol on Sundays by bottle clubs they are inconsistent with the Liquor Control Act and are, therefore, void. Arrow Club, Inc. v. Nebr. Liquor Control Commission, 177 Neb. 686, 131 N.W.2d 134 (1964).

#### **5.04.030 License Required.**

It shall be unlawful for any person to manufacture for sale, sell, keep for sale or to barter, or exchange, under any pretext any alcoholic liquor unless said person shall have in full force and effect a license therefor as provided by the Nebraska Liquor Control Act. (Ord. [15454](#) §3; March 5, 1990: P.C. §6.08.020: Ord. 14385 §7; May 12, 1986: prior Ord. 8321 §1; February 24, 1964: Ord. 3489 §19-202; July 6, 1936).

#### **5.04.035 Responsible Beverage Management Certificate Required.**

It shall be unlawful for any person to sell alcoholic liquor at retail until the manager or licensee has successfully completed a course in responsible beverage management training approved by the City Council. This requirement shall also apply to special designated licenses. The Responsible Beverage Management Certificate shall be valid for a period of three years. A Responsible Beverage Server/Seller Permit will be issued in conjunction with a Responsible Beverage Management Certificate. The cost of the training shall be paid by the manager or licensee. (Ord. [20491](#) §2; May 15, 2017: prior Ord. [19712](#) §3; May 21, 2012: Ord. [16307](#) §1; February 8, 1993).

#### **5.04.040 License; Notice and Hearing.**

The following shall be applicable to an application for a license:

- a. Notice of a hearing held pursuant to *Neb. Rev. Stat.* §53-134 shall be given to the applicant by the City Clerk and shall contain the date, time, and location of the hearing. Two or more proceedings which are legally or factually related may be heard and considered together unless any party thereto makes a showing sufficient to satisfy the City Council that prejudice would result therefrom.
- b. Procedure. Hearings will be informal and presided over by the chair of the City Council. The purpose is an inquiry into the facts, not an adversary proceeding. The name of each individual who desires to cross-examine the applicant's witnesses or present rebuttal evidence shall be registered with the City Clerk at least one working day in advance of the hearing. Such individuals so registered shall select a spokesperson to perform such functions who shall notify the chair of their representation prior to the start of the hearing. The chair may, at the chair's discretion allow more than

one such spokesperson to appear. All witnesses shall be sworn and may present testimony in narrative fashion or by question and answer.

The City Council shall not be bound by the strict rules of evidence, and shall have full authority to control the procedures of the hearing, including the admission or exclusion of testimony or other evidence. The Council may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent individuals. The chair may limit testimony or cross-examination where it appears incompetent, irrelevant, or unduly repetitious.

The order of proceedings shall be as follows:

- a. Presentation of evidence by applicant;
- b. Testimony of any other person in favor of such proposed license;
- c. Cross-examination of applicant, or persons testifying in favor of such proposed license by spokesperson for opposition, if any;
- d. Presentation of evidence by opposition;
- e. Testimony of any other person in opposition to such proposed license;
- f. Presentation of evidence by city and law enforcement personnel;
- g. Cross-examination by applicant;
- h. Rebuttal evidence;
- i. Summation by applicant and opposition spokesperson, if any.

In all cases, the burden of proof and persuasion shall be on the applicant.

Any member of the council and the City Attorney may question any person testifying, call additional witnesses, or request additional information.

After the hearing, the City Council shall, by resolution, recommend approval or denial of the application by affirmative vote of at least four members of the council. (Ord. 19712 §4; May 21, 2012: prior Ord. 15454 §4; March 5, 1990: P.C. §6.08.030: Ord. 14385 §9; May 12, 1986).

#### **5.04.050 License; Posting Notice of Application.**

Notice for public hearings required to be held by the City Council pursuant to Neb. Rev. Stat. § 53-134, in addition to that required by statute, shall be given as follows:

- a. A notice provided by the City Clerk shall be posted by the applicant on the public entrance or in a conspicuous place on or near the location set forth in any application for the granting of a liquor license or the expansion of the premises of an existing license notifying the public that an application for a liquor license at that location is pending before the City Council and advising the public of the time and date of the hearing thereon. It shall be unlawful for any person to remove, mutilate, destroy, or change the posted notice prior to the date of hearing on the application; and
- b. The City Clerk shall include, at the time of causing the required notice to be published in a legal newspaper, the publication of a caption directly above the legal notice stating "Liquor License Application" followed by the street address of the proposed licensed premises, which caption shall be printed in at least 5 1/2 point letters. Costs of publication of the legal notice and caption shall be paid by the applicant.

Immediately after publication of such notice, the City Clerk will cause a copy of the published notice to be posted upon the official bulletin board for the City and in all Lincoln city libraries.

- c. The notice required in (a) and (b) above shall not be required for any renewal of any liquor license.
- d. Any decision made by the City Council on any liquor license application shall not be void or invalidated or affected in any way for any irregularity, defect, error, or failure to provide the notice as set forth in (a) and (b) above. (Ord. 20491 §3; May 15, 2017: prior Ord. 16311 §1; February 16, 1993: Ord. 15454 §5; March 5, 1990: P.C. §6.08.031: Ord. 14385 §10; May 12, 1986: Ord. 13583 §1; May 2, 1983).

#### **5.04.060 City Clerk Agent for Approval of Special Designated Licenses.**

The City Clerk shall be the agent of the City Council to determine whether a special designated license is to be approved or denied pursuant to the Nebraska Liquor Control Act and this Code. The City Clerk shall follow the criteria in Section

[5.04.064](#) and the limitations in Section [5.04.066](#) in making the determination. If the City Clerk denies an application, the Clerk shall inform the applicant stating the reasons for denial in writing. The City Clerk shall approve a special designated license authorized under this section or as directed by the City Council. (Ord. [17386](#) §1; August 3, 1998; prior Ord. [15454](#) §6; March 5, 1990: P.C. §6.08.032: Ord. [14761](#) §1; September 21, 1987).

#### **[5.04.062 Special Designated License Qualifications and Restrictions.](#)**

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Applicants must qualify for issuance of a [special designated license](#) under the Nebraska Liquor Control Act. [Applications for a special designated license](#) shall be filed on forms provided by the City Clerk in the office of the City Clerk. All applicants shall apply not less than twenty-one days prior to the date requested for liquor sales. Except for caterers, special designated licenses shall be issued to one applicant for no more than six calendar days in any one calendar year. All applicants shall complete the required form completely and accurately. Material misrepresentations or omissions shall constitute grounds for denial or canceling the related special designated license. Only one special designated license shall be required for any application for two or more consecutive days. (Ord. [19816](#) §6; December 17, 2012: prior Ord. [18038](#) §1; July 22, 2002 (effective June 1, 2003); prior Ord. [17386](#) §2; August 3, 1998).

#### **[5.04.064 Criteria for Approval of Special Designated Licenses.](#)**

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In reviewing applications for special designated licenses, the City Clerk shall approve the same only when:

- a. The Chief of Police, or a representative designated by the Chief, has completed a report of the applicant showing that the applicant is qualified to hold a license under the Nebraska Liquor Control Act and the [premises](#) and proposed services can conform in all respects to applicable liquor laws and in particular those relating to the [sale](#) and consumption of liquor by [minors](#).
- b. The Director of Building and Safety, or a representative designated by the Director, has completed a report of the proposed premises and concluded that the premises can conform in all respects to any applicable fire code, building code, or other health or safety code and in particular those relating to maximum occupancy.
- c. The applicant has provided all required restroom facilities.
- d. The applicant will not violate the noise control ordinance, [Lincoln Municipal Code Chapter 8.24](#).
- e. The applicant will not create or allow the requested services and related activities to create a traffic congestion hazard or other public safety hazards.
- f. The applicant has obtained any necessary food service or other permits required by law for any related activities on the licensed premises.
- g. The applicant and the proposed service of [alcohol](#) otherwise complies with all other requirements of the Nebraska Liquor Control Act.

In addition to the above requirements, all applications under Section [5.04.068](#), relating to special designated licenses for a series of events, requesting hours of operation for one or more licenses at any time between 12:01 a.m. the day of any University of Nebraska home football game through 6:30 a.m. the following day, the proposed service of alcohol shall be limited to outdoor premises immediately adjacent to the applicant's own currently licensed premises under the Nebraska Liquor Control Act; and the applicant shall provide adequate supervision upon the premises by utilizing at a minimum two [persons](#) on duty at each entry and exit point and one additional staff person on duty within the proposed premises for each and every 50 persons based on capacity of the proposed premises.

Notwithstanding the above, the City Clerk may issue special designated licenses upon application of or on behalf of the State of Nebraska or any agency or office of the State of Nebraska. (Ord. [20491](#) §4; May 15, 2017: prior Ord. [18038](#) §2; July 22, 2002 (effective June 1, 2003); Ord. [17386](#) §3; August 3, 1998).

#### **[5.04.066 Limitations on Authority to Issue Special Designated Licenses.](#)**

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Unless authorized by Section [5.04.068](#) or otherwise directed by the City Council, the City Clerk shall not approve any application where:

- a. The applicant is an existing retail liquor license holder and the application is for property owned or leased by the applicant which is not adjacent to the applicant's existing retail [premises](#).



- b. The applicant is an association, corporation or organization whose members are, in the majority, persons under the age of twenty-one.
- c. A location has not been previously approved for a Special Designated Liquor License. If the event is significantly different than past events, the City Clerk should consider the need for a public hearing on the application.
- d. The applicant is requesting hours of operation otherwise prohibited by law for a retail liquor license holder within the city.
- e. The applicant is requesting hours of operation at any time between 12:01 a.m. the day of any University of Nebraska home football game through 6:30 a.m. the following day.
- f. The City Clerk has received a written objection to the special designated liquor license.
- g. The location is property owned, leased, or controlled by the City of Lincoln. (Ord. [20491](#) §5; May 15, 2017: prior Ord. [18143](#) §1; March 3, 2003: Ord. [17386](#) §4; August 3, 1998).

#### **5.04.068 Special Designated Licenses for a Series of Events.**

An applicant may submit a series of applications to the City Clerk for City Council consideration when the applicant requests more than one special designated license within a period of 180 days which the City Clerk cannot approve under Section [5.04.066](#). Applications under this section requesting hours of operation for one or more licenses to operate at any time between 12:01 a.m. the day of any University of Nebraska home football game through 6:30 a.m. the following day may only be submitted under this section if received by the City Clerk on or before August 1<sup>st</sup>. The City Council may consider the applications in advance of the first home football game day or as soon thereafter as may be practicable. Applications subject to the cutoff date and submitted after the cutoff date are not eligible for the procedure under this section and shall be considered by the clerk as submitted individually without further action or request by the applicant. The determination of the City Council shall not be considered final until a license for each requested date is either approved or denied by the City Clerk.

If the applications comply with the criteria under Section [5.04.064](#), the City Council shall consider the applications submitted under this section together at one public hearing. Unless specifically waived by the City Council, applications tentatively approved by the City Council shall be:

- a. Referred to the City Clerk who shall submit as approved each individual license one at a time so that each is timely submitted as required by the Nebraska Liquor Control Act allowing a reasonable amount of time, where possible, after the initial date and each succeeding date thereafter for the Clerk to receive reports under subsection (b) of this section.
- b. Subject to withdrawal from further processing and deemed denied by the City Clerk upon the Clerk's receipt of any of the following:
  - 1. A report from a peace officer that there is reasonable grounds to believe a violation of the Nebraska Liquor Control Act or a violation of this code related to liquor by the applicant or related to the applicant's special designated license has occurred or will occur if the license is issued.
  - 2. A report from a peace officer or the Director of Building and Safety or a representative designated by the director that there is reasonable grounds to believe a violation of any applicable fire code, occupancy code, building code or any other health and safety related code applicable to the applicant or the licensed premises has occurred or will occur if the license is issued.
- c. Restricted to operating hours closing at 10:30 p.m.

Nothing in Sections [5.04.060](#) to 5.04.068 shall prevent the City Council from acting on its own to approve or deny any special designated license as allowed by law. (Ord. [20491](#) §6; May 15, 2017: prior Ord. [17386](#) §5; August 3, 1998).

#### **5.04.070 Allow Possession by Incapacitated Persons; Prohibited.**

No licensee or employee shall, within the city, permit or allow the possession or control of alcoholic beverage by any person who is physically or mentally incapacitated by the consumption of alcoholic liquors in any licensed premises. (Ord. [19926](#) §1; October 7, 2013: prior Ord. [15454](#) §7; March 5, 1990: P.C. §6.08.040: Ord. 12974 §2; August 18, 1980: Ord. 12859 §1; March 3, 1980: Ord. 10492 §2; July 3, 1972: Ord. 9723 §1; March 31, 1969: Ord. 3489 §19-203(a), as amended by Ord. 6851; November 24, 1958).

#### **5.04.080 Furnishing False Identification.**

(Repealed by Ord. [19927](#) §2; October 7, 2013: prior Ord. [15454](#) §8; March 5, 1990: P.C. §6.08.041: Ord. 14385 §12; May 12, 1986: Ord. 7689 §1; April 9, 1962).

#### **5.04.090 Minors; Misrepresenting Age.**

(Repealed by Ord. [19927](#) §3; October 7, 2013: prior Ord. [16623](#) §1; June 27, 1994: Ord. [15454](#) §9; March 5, 1990: P.C. §6.08.050: Ord. 14385 §13; May 12, 1986: Ord. 12974 §3; August 18, 1980: Ord. 10492 §3; July 3, 1972: Ord. 9723 §2; March 31, 1969: Ord. 3489 §19-203(b), as amended by Ord. 6851; November 24, 1958).

#### **5.04.100 Minors; Possession of Alcoholic Liquor Prohibited.**

(Repealed by Ord. [19927](#) §4; October 7, 2013: prior Ord. [17987](#) §1; April 15, 2002: Ord. [15454](#) §10; March 5, 1990: P.C. §6.08.060: Ord. 14385 §14; May 12, 1986: Ord. 12974 §4; August 18, 1980: Ord. 12859 §2; March 3, 1980: Ord. 10492 §4; July 3, 1972: Ord. 9723 §3; March 31, 1969: Ord. 3489 §19-203(c), as amended by Ord. 6851; November 24, 1958).

#### **5.04.115 Supervision on Licensed Premises.**

At all times when alcoholic liquor is being lawfully sold or dispensed in any premises licensed under the Nebraska Liquor Control Act, there shall be on duty in the premises the licensee, an employee, or other authorized representative of the licensee who is twenty-one years of age or older. (Ord. [15658](#) §1; July 9, 1990).

#### **5.04.120 Minors; Prohibited on Premises.**

(Repealed by Ord. [20005](#) §1; April 7, 2014: prior Ord. [18424](#) §1; August 9, 2004: Ord. [15454](#) §12; March 5, 1990: P.C. §6.08.080: Ord. 14015 §1 January 2, 1985: Ord. 13541 §1; February 7, 1983: Ord. 12974 §5; August 18, 1980: Ord. 10492 §6; July 3, 1972: Ord. 9901 §1; December 22, 1969: Ord. 9723 §1; March 31, 1969: Ord. 8975 §2; April 4, 1966: Ord. 8182 §2; September 9, 1963: Ord. 3489 §19-203.1, as amended by Ord. 4679; November 14, 1949).

#### **5.04.124 Responsible Beverage Server/Seller Permit; Education Required.**

It shall be unlawful for any person to sell or serve alcoholic liquor at retail without a valid Responsible Beverage Server/Seller Permit. Such permit requirement may be waived by the Health Director pursuant to an application for a Special Event pursuant to [Lincoln Municipal Code Chapter 14.32](#).

Such permittee shall provide proof of permit or certification upon request of a police officer of the City of Lincoln or the Health Director. (Ord. [20491](#) §7; May 15, 2017: prior Ord. [19712](#) §5; May 21, 2012).

#### **5.04.125 Responsible Beverage Server/Seller Permit; Application, Terms, & Conditions.**

- a. A Responsible Beverage Server/Seller Permit shall be valid for three years after the date of issuance. Such permit is not transferable from one person to another person. A suspended, revoked, or expired permit is not a valid permit.
- b. An application for a Responsible Beverage Server/Seller Permit shall be submitted to the Health Director in a method provided by the Health Director. Before an application can be approved, the applicant must:
  1. Provide all information required in application form;
  2. Successfully complete a training and testing program approved by the City Council;
  3. Pay a permit fee of \$15.00 to be credited to the Responsible Beverage Server/ Seller Fund.
- c. Upon receipt of an application and permit fee, the Health Director shall review the application to determine compliance with the provisions of this chapter. The Health Director shall complete the review and issue or deny the permit within a reasonable time not to exceed thirty days. The Health Director shall issue a permit if the Health Director determines that the applicant complies with this chapter.
- d. The permit holder shall have the duty to notify the Health Director of any change of personal or work information contained within the permit record within thirty days of such change.
- e. Any failure to comply with this chapter or the Nebraska Liquor Control Act may be grounds for denial, suspension, or revocation of a Responsible Beverage Server/Seller Permit by the Health Director.



- f. The cost of the Responsible Beverage Server/Seller Permit shall be included in the cost of obtaining a Responsible Beverage Management Certificate. (Ord. [20491](#) §8; May 15, 2017; prior Ord. [19712](#) §6; May 21, 2012).

#### **5.04.126 Responsible Beverage Server/Seller Fund.**

All permit fees paid pursuant to Section [5.04.125](#) shall be deposited in a fund to be known as the Responsible Beverage Server/Seller Fund. The funds shall only be available for enforcement and administrative costs, and/or education of the provisions of the Nebraska Liquor Control Act or of this chapter, or any rules or regulations adopted by the City or by the Nebraska Liquor Control Commission. (Ord. [19712](#) §7; May 21, 2012).

#### **5.04.127 Responsible Beverage Server/Seller Permit; Denial, Suspension, or Revocation.**

- a. The [Health Director](#) shall provide notice of denial, suspension, or revocation as provided within this section. Such decision is effective immediately upon notice.
- b. A [person](#) whose Responsible Beverage Server/Seller Permit was revoked shall be ineligible to apply for a new permit for a period of one year or less from the date of revocation.
- c. A Responsible Beverage Server/Seller Permit may be suspended for a period of ninety days or less.
1. Any person whose permit has been suspended shall be prohibited from selling or serving [alcoholic liquor](#) at retail until such permit is reinstated.
  2. Any person whose permit has been suspended may apply for reinstatement of such permit in a method provided by the Health Director. The person shall include an acknowledgment stating that the conditions causing suspension of the permit have been corrected.
  3. The Health Director shall review the application within seven days after receiving the application for reinstatement.
  4. The Health Director shall reissue the permit if the conditions causing suspension of the permit have been corrected.
- d. The Health Director may [serve](#) notice authorized or required by this chapter as follows:
1. By personal service to the permit holder;
  2. By certified mail, postage prepaid, return receipt requested to the permit holder's last known address as contained within the permit record;
  3. The person making personal service may provide a written declaration under penalty of perjury identifying the person served and the time, date, and manner of service as proof of service.
- e. The Health Director shall conduct a hearing within seven days after a request for a hearing after a denial, suspension, or revocation. The Health Director may appoint a suitable hearing officer to hear the matter. Such hearing officer shall make recommendations based on the evidence adduced at the hearing for the Health Director's final determination of the matter. The hearing need not be conducted according to the technical rules relating to evidence and witnesses. The person requesting the hearing and the hearing officer may:
1. Call and examine witnesses on any matter relevant to the issues of the hearing;
  2. Introduce documentary and physical evidence;
  3. Cross examine opposing witnesses on any matter relevant to the issues of the hearing; and
  4. Rebut evidence.
- The Health Director may uphold, reverse, or modify the denial, suspension, or revocation and may take any other reasonable action. The Health Director shall make a final determination within fourteen days after the hearing. The Health Director's decision shall be final and binding upon the City and upon the person making the request. The Health Director's decision may be appealed to district court as provided by law.
- f. Actions for reinstatement, hearing, or appeal shall not stay or delay the suspension provided in this section in any manner. (Ord. [19712](#) §8; May 21, 2012).

#### **5.04.130 Hours for Sale at Retail and Dispensing.**

- a. No [person](#) shall sell at retail or dispense any [alcoholic liquor](#), including [beer](#), on any day between 2:00 a.m. and 6:00 a.m. for consumption on the [premises](#).
- b. No person shall sell at retail or dispense any alcoholic liquor, including beer, on any day between 1:00 a.m. and 6:00 a.m. for consumption off the premises. (Ord. [20491](#) §9; May 15, 2017; prior Ord. [19712](#) §11; May 21, 2012; Ord. [19445](#)

§1; August 30, 2010: Ord. [17245](#) § 1; September 8, 1997: Ord. [16709](#) §1; December 5, 1994: Ord. [16162](#) §1; July 20, 1992: Ord. [15454](#) §13; March 5, 1990: P.C. §6.08.090: Ord. [15353](#) §1; November 20, 1989: Ord. [14839](#) §1; March 7, 1988: Ord. 14385 §15; May 12, 1986: Ord. 13512 §1; December 20, 1982: Ord. 13147 §1; June 8, 1981: Ord. 12859 §4; March 3, 1980: Ord. 10071 §1; October 19, 1970: Ord. 9605 §1; October 7, 1968: Ord. 8889 §2; December 20, 1965: Ord. 8397 §1; May 11, 1964: Ord. 8352 §1; March 30, 1964: Ord. 8262 §1; December 10, 1963: Ord. 8247 §2; August 12, 1963: Ord. 3489 §19-204, as amended by Ord. 3980; October 2, 1944).

#### **5.04.135 Bottle Clubs Prohibited.**

- a. It shall be unlawful for any person to knowingly or intentionally operate a bottle club.
- b. It shall be unlawful for any person to knowingly or intentionally allow or permit the operation of a bottle club on premises owned by or under the direction and control of such person. (Ord. [17484](#) § 2; April 5, 1999).

#### **5.04.140 Building Requirements; Inspection.**

No license for the retail sale of alcoholic liquor for consumption on the premises shall be recommended for approval until the Department of Building and Safety has inspected the premises for which application is made, has approved the lighting facilities, and has reported to the City Council that the applicant has provided on such premises and in the same building separate toilet rooms for men and women with proper access, which toilet rooms shall be connected to the municipal wastewater system whenever such premises shall be within a distance of 300 feet of such wastewater system. It shall be the duty of each licensee to maintain such toilet rooms at all times, whether connected to the municipal wastewater system or otherwise in strict compliance with all ordinances and regulations of the City of Lincoln applicable thereto. (Ord. [15454](#) §14; March 5, 1990: P.C. §6.08.100: Ord. 14345 §1; March 24, 1986: prior Ord. 13125 §2; April 13, 1981: Ord. 11042 §1; March 18, 1974: Ord. 9606 §1; October 7, 1968).

#### **5.04.150 Public Entrances.**

No person holding a license for the sale at retail of alcoholic liquors shall sell within the city any liquor or conduct any of the business for which the license is required in any premises not provided with an approved public entrance. The applicant shall demonstrate that the public entrance adequately protects the public health, safety, and welfare. Any relocation, reconstruction, deletion, or addition of public entrances subsequent to the approval of the original liquor application shall be upon the approval of the Lincoln Police Department; provided, however, any denial of the Lincoln Police Department may be appealed to the City Council.

Further, said license holder shall permit, allow, or suffer the use of only approved entrances by the public. (Ord. [15454](#) §15; March 5, 1990: P.C. §6.08.110: Ord. 14385 §16; May 12, 1986: prior Ord. 13239 §2; October 26, 1981: Ord. 11043 §1; March 18, 1974: Ord. 10020 §1; July 13, 1970: Ord. 3489 §19-206, as amended by Ord. 6909; November 19, 1956).

#### **5.04.160 Places Where Drinking Prohibited.**

(Repealed by Ord. [19927](#) §4; October 7, 2013: prior Ord. [15454](#) §16; March 5, 1990: P.C. §6.08.130: Ord. 14693 §1; June 29, 1987: Ord. 14385 §18; May 12, 1986: Ord. 13125 §3; April 13, 1981: Ord. 12579 §23; May 29, 1979: Ord. 12120 §1; October 17, 1977: Ord. 11251 §1; December 16, 1974: Ord. 10180 §1; June 21, 1971: Ord. 9626 §1; November 12, 1968: Ord. 9055 §1; July 18, 1966: Ord. 8182 §3; September 9, 1963: Ord. 3489 §19-208; July 6, 1936).

#### **5.04.165 Open Alcoholic Beverage Container in Motor Vehicle Prohibited.**

(Repealed by Ord. [19927](#) §5; October 7, 2013: prior Ord. [19892](#) §2; July 15, 2013: Ord. [17717](#) §1; August 21, 2000).

#### **5.04.170 Licenses to be Conspicuously Displayed.**

Every licensee under the Nebraska Liquor Control Act within the city shall cause his or her license or licenses to be framed and hung in plain public view in a conspicuous place on the licensed premises. (Ord. [15454](#) §17; March 5, 1990: P.C. §6.08.150: Ord. 3489 §19-210; July 6, 1936).

#### **5.04.175 Records Requirement.**

Every licensee under the Nebraska Liquor Control Act shall maintain an up-to-date list of all individuals who sell or serve alcoholic liquor at retail on a form or other method provided by the Health Director. The list shall contain all individuals'

names and expiration date of the individual's Responsible Beverage Server/Seller Permit or Responsible Beverage Management Certificate. Such list shall be immediately available upon request of a police officer of the City of Lincoln or the Health Director. (Ord. [20491](#) §10; May 15, 2017; prior Ord. [19712](#) §10; May 21, 2012).

#### **5.04.180 Liability of Owner of Premises.**

If the owner of the licensed premises or any person from whom the licensee derives the right to possession of such premises or the agent of such owner or person, shall knowingly permit the licensee to use said licensed premises in violation of the terms of this chapter, said owner, agent or other person shall be deemed guilty of a violation of this chapter to the same extent as said licensee and be subject to the same punishment. (Ord. [15454](#) §18; March 5, 1990: P.C. §6.08.190: Ord. 3489 §19-215; July 6, 1936).

#### **5.04.190 Liability of Licensee.**

Every act or omission of whatsoever nature constituting a violation of any of the provisions of this chapter, by any officer, director, manager or other agent or employee of any licensee if said act is committed or omission is made with the authorization, knowledge, or approval of the licensee, shall be deemed and held to be the act of such employer or licensee, and said employer or licensee shall be punishable in the same manner as if said act or omission had been done or omitted by such employer or licensee personally. (Ord. [15454](#) §19; March 5, 1990: P.C. §6.08.200: Ord. 3489 §19-216; July 6, 1936).

#### **5.04.200 Entry for Inspection; Police Officers; Health Director.**

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

The Health Director is hereby authorized to enter at any time upon any premises of any licensee under the Nebraska Liquor Control Act within the city to determine compliance with the responsible beverage management provisions set forth in Section [5.04.035](#), the responsible beverage server training and education provisions set forth in Sections [5.04.124](#) through [5.04.127](#), and the associated record keeping requirements set forth in Section [5.04.175](#). (Ord. [19712](#) §11; May 21, 2012; prior Ord. [15454](#) §20; March 5, 1990: P.C. §6.08.210: Ord. 3489 §19-217; July 6, 1936).

#### **5.04.210 Occupation Taxes.**

There is hereby levied and assessed upon the following business conducted in the city licensed under the Nebraska State Liquor Control Act, an annual occupation tax as follows:

Alcoholic liquor distributor (except beer)	\$1,000.00
Beer distributor	\$500.00
Operation of brew pub	\$500.00
Retailer of beer only, for consumption on premises	\$200.00
Retailer of beer only, for consumption off the premises (sale in the original package only)	\$200.00
Retailer of alcoholic liquors, for consumption off the premises (sale in original package only)	\$400.00
Retailer of alcoholic liquors, for consumption on the premises and off the premises	\$600.00
Retailer of alcoholic liquors for consumption on the premises	\$500.00
Entertainment District (to serve or sell alcoholic liquors in commons area)	\$600.00
Special designated license (except special designated licenses issued to licensees holding catering permits)	\$80 per day
Catering permit	\$200.00

Such occupation tax shall be paid to the City Treasurer for the benefit of the city immediately after the final issuance of a license under the Nebraska Liquor Control Act for any such business.

The year for which such occupation tax is levied shall commence on May 1st of each year and shall end on the following April 30th except for Class C licenses, which shall commence on November 1st of each year and shall end on the following October 31st unless otherwise provided in the Nebraska Liquor Control Act. However, no reduction in

occupation tax shall be made regardless of the time when the application for a license is made or the license or permit is issued. Such occupation tax, or any part of it, shall not be refunded for any cause.

When such tax is paid, the City Treasurer shall issue a receipt therefor, which shall set forth the date of the payment, the name of the person for whom paid, the location of the business for which the tax is paid, and the business classification for which paid. Collection of such occupation tax shall be enforced as provided in [Chapter 3.24](#) of this code for the collection of other occupation taxes. (Ord. [19950](#) § 1; November 25, 2013: prior Ord. [19874](#) §2; May 6, 2013: Ord. [19712](#) §12; May 21, 2012: Ord. [18416](#) §1; August 9, 2004: Ord. [15815](#) §1; January 21, 1991: Ord. [15454](#) §21; March 5, 1990: P.C. §6.08.220: Ord. [15413](#) §1; January 22, 1990: Ord. [15413](#) §1; January 22, 1990: Ord. [14912](#) §1; June 13, 1988: Ord. 13648 §1; July 18, 1983: Ord. 12365 §1; August 28, 1978: Ord. 12146 §1; November 21, 1977: Ord. 9129 §1; December 5, 1966: Ord. 8889 §3; December 20, 1965: Ord. 8147 §3; August 12, 1963: Ord. 3489 §19-218 as amended by Ord. 5482; August 27, 1953).

#### **5.04.220 Drinking on Licensed Premises.**

It shall be unlawful for any person, including the licensee and employees of the licensee, to consume alcoholic liquor, including beer, in any licensed premises during the hours when it is unlawful to sell at retail or dispense any alcoholic liquor as provided in this chapter. It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption fifteen minutes after the sale of liquor is prohibited, as provided in this chapter. (Ord. [15454](#) §22; March 5, 1990: P.C. §6.08.240: Ord. 14385 §23; May 12, 1986: prior Ord. 13417 §1; June 21, 1982: Ord. 12859 §5; March 3, 1980: Ord. 8147 §4; August 12, 1963: Ord. 3489 §19-220, as amended by Ord. 6338; April 24, 1956).

#### **5.04.230 Nude Entertainment.**

It shall be unlawful for a licensee, its manager or agent to authorize, permit, or suffer any live person to appear in a state of nudity as defined by Section [9.16.230](#) of this code in any licensed premises, for the purpose of providing entertainment, or providing service, while acting as a hostess or host, or while serving as an employee in any capacity, and violation of this section shall subject the licensee, its manager or agent to the penalties provided in Section [5.04.300](#) of this chapter. (Ord. [17758](#) §1; November 6, 2000: prior Ord. [15454](#) §23; March 5, 1990: P.C. §6.08.241: Ord. [14875](#) §1; May 9, 1988: Ord. 14337, as amended by Ord. 14385 §24; May 12, 1986).

#### **5.04.240 Physical Contact.**

There shall be no physical contact, such as kissing, fondling, or embracing, between employees or performers and patron for gratuity, pay or other remuneration, direct or indirect, or in conjunction with or as part of any performance or entertainment in premises licensed by the Nebraska Liquor Control Commission for consumption of alcoholic liquor, including beer, on such premises. (Ord. [15454](#) §24; March 5, 1990: P.C. §6.08.242: Ord. 14336 §1; March 10, 1986).

#### **5.04.250 Minors; Delivering Liquor Prohibited.**

It shall be unlawful for any liquor licensee, or any employees of the licensee to permit any minor to deliver any alcoholic liquor for any licensee, and it shall be unlawful for any minor to do so. No alcoholic liquor shall be delivered by any retail liquor licensee to a purchaser outside of the licensed premises, except by such licensee's own employees. No minor shall do any such delivering, and the liquor licensee shall be held responsible for any delivery by any employees of the licensee or by any such agency if such delivery shall be contrary to the ordinances of the City of Lincoln or the laws of the State of Nebraska. Provided, nothing herein contained shall prevent persons who are nineteen years of age or older from serving or selling alcoholic liquor in the course of their employment. (Ord. [20491](#) §11; May 15, 2017: prior Ord. [20295](#) §2; February 29, 2016: Ord. [15454](#) §25; March 5, 1990: P.C. §6.08.250: Ord. 12974 §6; August 18, 1980: prior Ord. 12859 §6; March 3, 1980: Ord. 8182 §4; September 9, 1963: Ord. 3489 §19-221, as amended by Ord. 3575; April 25, 1938).

#### **5.04.260 Licensee or Employees; Drinking While on Duty Prohibited.**

It shall be unlawful for any licensee, manager, or employee of such licensee or manager to drink any alcoholic liquor during the time that such person is on duty in the conduct of such business; and it shall be unlawful for any licensee, manager, or employee to serve or sell alcoholic liquors while under the influence of such liquors. (Ord. [15454](#) §26; March 5, 1990: P.C. §6.08.260: Ord. 12859 §7; March 3, 1980: prior Ord. 3489 §19-222, as amended by Ord. 3575; April 25, 1938).

#### 5.04.270 Discontinuance of Business; Provisions; Exceptions.

Any liquor licensee whose licensed premises shall be and remain voluntarily closed for ten consecutive days shall be deemed to have elected to discontinue business under such license and the Chief of Police shall obtain and take up such license and deliver it to the City Clerk of the City of Lincoln for cancellation, or recommend its cancellation by the State Liquor Control Commission; provided, however, this shall not apply if the licensee shall make application to the City Council within such ten-day period for permission, for good cause, to remain closed for a definite period, and provided the City Council shall grant such permission; and provided, further, that this section shall not apply in case the licensee's place of business remains closed as a result of the licensee's physical disability or as a result of closing for necessary alteration or repairs. (Ord. 15454 §27; March 5, 1990: P.C. §6.08.280: Ord. 3489 §19-225, as amended by Ord. 3575; April 25, 1938).

**ANNOT.:** The additional regulation as to non-use and forfeiture were additional requirements, not in conflict with state statute, and therefore the City of Lincoln was not precluded from enacting and enforcing this section. Bali Hai, Inc. v. Nebr. Liquor Control Commission, 195 Neb. 2, 236 N.W.2d 614 (1975).

The action of the Lincoln City Council in enacting this section was clearly within its local regulatory powers. Id.

The action of a municipal body revoking the liquor license is not final or effective until that body's action is either affirmed by the Liquor Control Commission on appeal, or until the licensee has acquiesced by failing to take an appeal. Id.

The power to regulate and control traffic in liquor necessarily confers the powers to refuse a license or limit the number of licenses granted. Id.

#### 5.04.280 Licensee to File List of Members.

Nonprofit corporation licensees shall file with the city at the time of the application for a license or renewal thereof under Chapter 53, Reissue Revised Statutes of Nebraska, two copies of a list of names and residences of its members, and similarly shall file within ten days of the election of any additional member, such additional member's name and address. (Ord. 20491 §12; May 15, 2017: prior Ord. 15454 §28; March 5, 1990: P.C. §6.08.330: Ord. 14385 §29; May 12, 1986: prior Ord. 8889 §5; December 20, 1965: Ord. 8147 §6; August 12, 1963).

#### 5.04.290 Maintaining Common Nuisances Unlawful.

It shall be unlawful for any person to knowingly permit any building, tenement or real estate owned, controlled, or leased by such person, or any part thereof, to be used in maintaining a common nuisance, as defined by Chapter 53, Reissue Revised Statutes of Nebraska. (Ord. 15454 §29; March 5, 1990: P.C. §6.08.350: Ord. 14385 §31; May 12, 1986: prior Ord. 8182 §7; September 9, 1963).

#### 5.04.295 Entertainment District License; Prohibitions.

It shall be unlawful for any licensee, manager, or employee of such licensee with an entertainment district license issued by the Commission pursuant to the Nebraska Liquor Control Act:

- a. To allow anyone other than a licensee, manager, or employee of such licensee to serve alcoholic liquor in the licensed premises, to include the commons area;
- b. To serve alcoholic liquor in a commons area when food service is not available for customers' consumption in the commons area by an on site food establishment;
- c. To serve alcoholic liquor in a commons area in containers that do not prominently display the licensee's trade name or logo or some other mark that is unique to the licensee under the licensee's retail license, craft brewery license, or microdistillery license;
- d. Except as allowed by law, to allow alcoholic liquor to leave the commons area or the premises licensed under its retail license, craft brewery license, or microdistillery license;
- e. To allow alcoholic liquor to be served or sold at retail in the commons area after 1:00 a.m. and before 6:00 a.m., except when hours are extended by the City Council's approval of a Special Designated Liquor License.
- f. To allow live entertainment, music, or amplified sound in the commons area after 1:00 a.m. and before 6:00 a.m., except when hours are extended by the City Council's approval of a Special Designated Liquor License.
- g. To sell at retail alcoholic liquor below the costs of purchasing alcoholic liquor from manufacturer or wholesaler.

- h. To serve at one time three or more individual drinks, or two or more bottles of wine, or pitchers containing beer, wine, or spirits to a person for immediate on-premise consumption. This shall not prohibit a person from purchasing a drink, bottle of wine, or a pitcher for another person or persons, however, the licensee, manager, or employee must personally serve the alcoholic liquor to the other person(s). (Ord. 19874 §3; May 6, 2013).

#### **5.04.300 Penalty for Violations.**

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- a. Any person who violates this chapter shall be guilty of a misdemeanor and upon conviction of a first offense shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not less than \$250.00 nor more than \$500.00, recoverable with costs, or both such fine and imprisonment.
- b. Any person who violates this chapter and has had one conviction for violation of this chapter in the ten years prior to the date of the current conviction shall be punished by imprisonment in the county jail for a period of not to exceed six months, or by a fine of not less than \$350.00 nor more than \$500.00, recoverable with costs, or both such fine and imprisonment.
- c. Any person who violates this chapter and has had two or more convictions for violation of this chapter in the ten years prior to the date of the current conviction shall be punished by imprisonment in the county jail for a period of three days to six months and a fine of not less than \$400.00 nor more than \$500.00, recoverable with costs.

The violation of any of the provisions of this chapter, or the violation of any other ordinances of the City of Lincoln, or the laws of the State of Nebraska, in connection with the operation of the licensed business by the licensee or any employees or agents of the licensee, shall be cause sufficient to justify the revocation or suspension of any permit or license by the City of Lincoln or the Commission.

Provisions of revocation or suspension as provided for in this chapter shall be cumulative in addition to any other penalty or fine imposed by the ordinance of the City of Lincoln. (Ord. 19874 §4; May 6, 2013; prior Ord. 19712 §13; May 21, 2012; Ord. 15454 §30; March 5, 1990: P.C. §6.08.360; Ord. 13478 §1; October 25, 1982: prior Ord. 8182 §8; September 9, 1963).

#### **5.04.310 Severability and Savings Clause.**

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- a. Each section and each subdivision of a section of this chapter is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the passage of this ordinance is concerned and invalidity of any section or subdivision of a section of this chapter shall not invalidate any other section or subdivision of a section thereof.
- b. This chapter shall in no manner affect pending actions, either civil or criminal, founded on or growing out of any ordinance or part of any ordinance hereby repealed; and this chapter shall in no manner affect rights or causes of action, either civil or criminal, not in suit that may have already accrued or grown out of any ordinance or part of any ordinance hereby repealed. (Ord. 19712 §14; May 21, 2012).

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