

## CHAPTER 10

### BUSINESS REGULATIONS

#### ARTICLE 1. ALCOHOLIC BEVERAGES

##### **§10-101 ALCOHOLIC BEVERAGES; DEFINITIONS.**

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

##### **§10-102 ALCOHOLIC BEVERAGES; LICENSE REQUIRED.**

It shall be unlawful for any person to manufacture for sale, sell, keep for sale, or to barter any alcoholic liquors within the Municipality unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. (*Ref. 53-102 RS Neb.*)

##### **§10-103 ALCOHOLIC BEVERAGES; LOCATION.**

It shall be unlawful for any person or persons to own, maintain, or hold open to the public any establishment for the purpose of selling at retail any alcoholic liquor within one hundred and fifty (150') feet of any church, school, hospital, or home for aged or indigent persons or veterans, their wives or children; Provided, this prohibition shall not apply to any location within such distance when the said establishment has been licensed by the Nebraska Liquor Control Commission at least two (2) years, and to hotels offering restaurant service, regularly organized clubs, or to restaurants where the selling of alcoholic liquors is not the principal business carried on, if the said hotel, club, or restaurant were licensed and in operation prior to May 24, 1935. No alcoholic liquor, other than beer, shall be sold for consumption on the premise within three hundred (300') feet from the campus of any college within the Municipality. (*Ref. 53-177 RS Neb.*)

##### **§10-104 ALCOHOLIC BEVERAGE; DWELLINGS.**

Except in the case of hotels and clubs no alcoholic liquor shall be sold at retail upon any premise which has any access which leads from such premise to any other portion of the same building used for dwelling or lodging purposes, and which is permitted to be used by the public. Nothing herein shall permit 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.*)

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### **§10-105 ALCOHOLIC BEVERAGES; LICENSE DISPLAYED.**

Every licensee under the Nebraska Liquor Control Act shall cause his license to be framed and hung in plain public view in a conspicuous place on the licensed premise. (*Ref. 53-148 RS Neb.*)

### **§10-106 ALCOHOLIC BEVERAGES; LICENSE 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 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 Chapter 28, Articles 3, 4, 7, 8, 10, 11, or 12 Reissue Revised Statutes of Nebraska, or any similar offense under a 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 in more than two (2) alcoholic beverage retail establishments since March 4, 1963; provided, the 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 twenty-five (25) sleeping rooms, or where the request is limited to on premises sale of beer only in a restaurant. (*Ref. 53-124.03, 53-125 RS Neb.*)

### **§10-107 ALCOHOLIC BEVERAGES; LIQUOR APPLICATION; MUNICIPAL EXAMINATION.**

Any person or persons desiring to obtain a license to sell alcoholic liquor at retail shall file an application with the Liquor Control Commission. Upon receipt from the Commission of the notice and copy of the application as provided in Neb. Rev. Stat. § 53-131, the Governing Body shall fix a time and place at which a hearing will be held, and at which time the Governing Body shall receive evidence, under oath, either orally, or in writing, from the applicant and any other person concerning the propriety of the issuance of such license. Such hearing shall be held not more than forty-five (45) days after the receipt of notice from the Commission. The Governing Body may examine, or cause to be examined, under oath, any applicant; examine, or cause to be examined, the books and records of any such applicant; to hear testimony, and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the Governing Body may authorize its agent, the Municipal Clerk, or the Municipal Attorney, to act on its behalf.

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

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desiring to give evidence before the Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing.

The Governing Body shall, after the hearing provided in subsection (1), approve or deny the application within forty-five (45) days of receipt of such application from the Commission and shall cause to be spread at large in the minute record of its proceedings a resolution approving or denying such application. The Municipal Clerk shall thereupon mail or deliver to the Commission a copy of the resolution within ten (10) days of the decision to approve or deny the application.

Any resolution denying an application rendered by the Governing Body shall be in writing or stated in the record and shall be accompanied by findings. The findings shall consist of concise statements of the conclusions upon each contested issue. The applicant shall be notified of the decision in person or by mail. *(Ref. 53-131, 53-132, 53-134, RS Neb.)*

### **§10-108 ALCOHOLIC BEVERAGES; LIQUOR LICENSE RENEWAL.**

Retail 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 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 licensee to submit an application. *(Ref. 53-135, 53-135.01 RS Neb.) (Amended by Ord. Nos. 80-3, 2/5/80; 83-25, 11/1/83)*

### **§10-109 ALCOHOLIC BEVERAGES; LICENSES; MUNICIPAL POWERS AND DUTIES.**

- (A) The Governing Body is authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all

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retail, or craft brewery licensees carried on within the corporate limits of the Municipality.

- (B) During the period of forty-five (45) days after the date of receiving from the Nebraska Liquor Control Commission an application for a new license to sell alcoholic liquor at retail, or a craft brewery license, the Governing Body may make and submit to the Commission recommendations relative to the granting or refusal to grant such license to the applicant.
- (C) The Governing Body, with respect to licenses within the corporate limits of the Municipality, has the following powers, functions, duties with respect to retail, and craft brewery licenses:
  - (1) To cancel or revoke for cause retail, or craft brewery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;
  - (2) To enter or authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation adopted by the Governing Body has been or is being violated and at such time examine the premises of such licensee in connection with such determination;
  - (3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the Act, any rule or regulation adopted and promulgated pursuant to the Act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the Act;
  - (4) To receive retail license fees, and craft brewery license fees as provided in Neb. Rev. Stat. § 53-124 and pay the same, after the license has been delivered to the applicant, to the Municipal Treasurer;
  - (5) To examine or cause to be examined any applicant or any retail licensee, or craft brewery licensee upon whom notice of cancellation or revocation has been served as provided in the Act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the Governing Body may authorize its agent or attorney to act on its behalf;

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(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in Neb. Rev. Stat. §134.04 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, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the Commission within thirty (30) days after the date of the order by filing a notice of appeal with the Commission.

(7)

(a) Upon receipt from the Commission of the notice and a copy of application as provided in Neb. Rev. Stat. § 53-131, to fix a time and place for a hearing at which the Governing Body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a 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 time not less than seven (7) and not 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 Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing.

(b) The hearing shall be held not more than forty-five (45) days after the date of receipt of the notice from the Commission, and after such hearing the Governing Body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The Municipal Clerk shall mail to the Commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license, the cost of publication of notice shall be paid by the Commission from the security costs.

(D)

(1) When the Nebraska Liquor Control Commission mails or delivers to the Municipal Clerk a license issued or renewed by the Commission, the Clerk shall deliver the license to the licensee upon proof of payment of:

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- (a) The license fee if by the terms of Neb. Rev. Stat. §53-124 (5) the fee is payable to the Municipal Treasurer;
  - (b) Any fee for publication of notice of hearing before the Governing Body upon the application for the license;
  - (c) The fee for publication of notice of renewal, if applicable, as provided in Neb. Rev. Stat. § 53-135.01; and
  - (d) Occupation taxes, if any, imposed by the Municipality.
- (2) Notwithstanding any ordinance or charter power to the contrary, the Municipality shall not impose an occupation tax on the business of any person, firm, or corporation licensed under the Nebraska Liquor Control Act and doing business within the Municipal corporate limits in any sum which exceeds two times the amount of the license fee required to be paid under the Act to obtain such license. *(Ref. 53-134 RS Neb)*

### **§10-110 ALCOHOLIC BEVERAGES; OWNER OF PREMISES.**

The owner of any premise used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall knowingly permit the licensee to use the said licensed premise in violation of any Municipal Code section or Nebraska Statute. *(Ref. 53-1,101 RS Neb.)*

### **§10-111 ALCOHOLIC BEVERAGES; EMPLOYER.**

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

### **§10-112 ALCOHOLIC BEVERAGES; MINORS.**

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 consumption of alcoholic beverages. *(Ref. 53-180 RS Neb.)*

### **§10-113 ALCOHOLIC BEVERAGES; CREDIT SALES.**

No person shall sell or furnish alcoholic liquor at retail to any person or person for credit of any kind, barter, or services rendered; Provided, nothing herein contained shall be construed to prevent any bona fide club from permitting checks or statements for alcoholic liquor to be signed by members, or guests of members,

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and charged to the accounts of the said 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 from permitting checks or statements for liquor to be signed by bona fide guests residing in the said hotel, and charged to the accounts of such guests. (Ref. 53-183 RS Neb.)

### **§10-114 ALCOHOLIC BEVERAGES; 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. 53-174 RS Neb.)

### **§10-115 ALCOHOLIC BEVERAGES; ORIGINAL PACKAGE.**

It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to have in their possession for sale at retail any alcoholic 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. (Ref. 53-184 RS Neb.)

### **§10-116 ALCOHOLIC BEVERAGES; MINORS PRESENT.**

It shall be unlawful for any person or persons who own, manage, or lease an establishment selling alcoholic beverages at retail to allow any person under the age of sixteen (16) years to frequent or otherwise remain in the said establishment after nine (9:00) o'clock P.M. or to allow any person under the age of eighteen (18) years to frequent or otherwise remain in said establishment after ten (10:00) o'clock P.M. unless the such person is accompanied by his or her parent or legal guardian, and remain under the immediate control of, the said parent or legal guardian; Provided, however, this section shall not apply to persons in the lawful employ of an establishment selling alcoholic beverages during the time such person is actually working for such establishment.

### **SECTION 10-117: HOURS OF SALE**

1. It shall be unlawful for any person or persons or their agents to sell any alcoholic beverages, for consumption off the premises, within the Village except during the hours provided herein:

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

Monday through Saturday

Off Sale

6:00 A.M. to 2:00 A.M.  
of the following day.

On Sale

6:00 A.M. to 2:00 A.M.  
of the following day.

Sundays

Off Sale

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

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On Sale	of the following day 6:00 A.M. to 2:00 A.M. of the following day.
<b>Beer and Wine</b>	
Monday through Saturday	
Off Sale	6:00 A.M. to 2:00 A.M. of the following day.
On Sale	6:00 A.M. to 2:00 A.M. of the following day.
Sundays	
Off Sale	6:00 A.M. to 2:00 A.M. of the following day.
On Sale	6:00 A.M. to 2:00 A.M. of the following day.

Said hours of sale shall only apply to those holding an appropriate and lawful liquor license of the State of Nebraska.

2. No person shall consume any alcoholic beverages on licensed premises for a period of time longer than 15 minutes after the time fixed in this section for stopping the sale of alcoholic beverages on the premises.

3. 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.

4. 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. (*Ord. No. 2017-02, Effective 01.18.2017; Ord. No. 25-12, Effective 12.31.25*)

### **§10-118 ALCOHOLIC BEVERAGES; SANITARY CONDITIONS.**

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

### **§10-119 ALCOHOLIC BEVERAGES; HIRING MINORS.**

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

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### **§10-120 ALCOHOLIC BEVERAGES; CONSUMPTION IN PUBLIC PLACES.**

It shall be unlawful for any person to consume alcoholic beverage within the corporate limits upon the public ways and property; provided, however, this prohibition shall not apply to that portion of public property which is covered by a proper license issued by the appropriate licensing agency permitting consumption of alcoholic beverages during a specific time in a specific location. (*Ref. 53-186, 53-186.01 RS Neb.*)

### **§10-121 ALCOHOLIC BEVERAGES; ACQUISITION OF ALCOHOLIC BEVERAGES.**

It shall be unlawful for any person to have possession of any alcoholic liquors which shall have been acquired otherwise than from a licensee duly licensed to sell same to such person under the provisions of the Nebraska Liquor Control Act; Providing, nothing herein shall prevent the possession of alcoholic liquor for the personal use of the possessor, his family and guests, not 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 prescriptions of duly licensed physicians; and Provided further, that the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this Section; Provided further, that persons who are sixteen (16) years old or older may carry beer from grocery stores when they are accompanied by a person not a minor, containers and beer in the course of their employment in grocery stores, and persons who are sixteen (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. (*Ref. 53-102, 53-175 RS Neb.*)

### **§10-122 GENERAL OFFENSES; DRINKING WITHIN A VEHICLE; POSSESSION OF OPEN ALCOHOLIC BEVERAGE CONTAINER.**

(A) For purposes of this subsection:

- (1) Alcoholic beverage means (a) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in

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- part, or from any substitute therefore, (b) wine of not less than one-half of one percent alcohol by volume, or (c) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;
- (2) Highway means a road or street including the entire area within the right-of-way;
  - (3) Open alcoholic beverage container means any bottle, can, or other receptacle:
    - (a) That contains any amount of alcoholic beverage;
    - (b) (i) That is open or has a broken seal; or
    - (ii) The contents of which are partially removed; and
  - (4) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.
- (B) It is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this Municipality.
  - (C) Except as provided in Neb. Rev. Stat. §53-186, it is unlawful for any person to consume an alcoholic beverage in a public parking area or on any highway in this Municipality

### **§10-123 ALCOHOLIC BEVERAGES; TRANSPORTING IN PUBLIC PLACES.**

It shall be unlawful for any person to carry, transport or possess any alcoholic beverage in any unsealed or opened container upon the public sidewalks, streets, alleys, parking areas, highways, public parks, or other public property; provided, however, that nothing herein shall be construed to prohibit the carrying or transportation of alcoholic liquor in unsealed or opened containers in a vehicle so long as such container is not carried or transported within the passenger compartment of said vehicle or within any compartment of said vehicle designed for carrying passengers or at any location in or upon said vehicle where such container would be accessible to any occupant of the passenger compartment of said vehicle.

### **§10-124 ALCOHOLIC BEVERAGES; CATERING LICENSE.**

- (1) The holder of a Class C, Class D, or Class I license issued under subdivision (5) of section 53-124 RS Neb., or a brewpub license, may obtain an annual catering license as prescribed in this section. Any such

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licensee desiring to obtain a catering license shall file an application with the Liquor Control Commission.

- (2) Upon receipt from the Commission of the notice and copy of the application as provided in Neb. Rev. Stat. § 53-124.12, the Governing Body shall fix a time and place at which a hearing will be held and at which time the Governing Body shall receive evidence, under oath, either orally, or in writing, from the applicant and any other person concerning the propriety of the issuance of such license. Such hearing shall be held not more than forty-five (45) days after the receipt of the notice from the Commission. The Governing Body may examine, or cause to be examined, under oath, any applicant; examine, or cause to be examined, the books and records of any such applicant, to hear testimony, and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the Governing Body may authorize its agent, the Municipal Clerk or the Municipal Attorney, to act on its behalf.
- (3) 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 Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing.
- (4) The Governing Body shall, after the hearing provided in subsection (2), approve or deny the application within forty-five (45) days of receipt of such application from the Commission, and shall cause to be spread at large in the minute record of its proceedings a resolution approving or denying such application. The Municipal Clerk shall thereupon mail or deliver to the Commission a copy of the decision to approve or deny the application.
- (5) Any resolution denying an application rendered by the Governing Body shall be in writing or stated in the record and shall be accompanied by findings. The findings shall consist of concise statements of the conclusions upon each contested issue. The applicant shall be notified of the decision in person or by mail.

The Governing Body with respect to catering licensees within its corporate limits may cancel a catering license for cause for the remainder of the period for which such license is issued. Any person whose catering license is canceled may appeal to the District Court. (*Ref. 53-124.012 RS Neb.*)

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### **ARTICLE 2. SALES AND ADVERTISING**

#### **SECTION 10-201: ITINERANT SALES; APPLICATION; REGULATION.**

A. To prevent the sale of fraudulent, dangerous, and unhealthy goods and services, and to protect the public by maintaining records of the products sold and the persons and companies responsible for such sales, all itinerant sales personnel shall, before doing business within the Municipality, make application for, and be issued a permit. This regulation shall apply to all sales made, or solicited by businesses or organizations having no permanent business office or store building located in the Municipality, or unless otherwise exempt by this Article.

B. Application for said permit shall be made to the Municipal Clerk's office and shall contain the necessary information required thereby and identification and documents required for the protection of the residents of the Municipality, including but not limited to: name, address, phone number of each applicant and salesperson involved; the name of all products/services to be sold and the nature of the same; sales tax permits, copies of all legal identification and driver's licenses. Upon approval by the Clerk's Office, the Clerk shall then have authority to issue a sales permit to said approved applicant. No group permits shall be allowed. Each person granted a permit shall pay a fee of twenty-five dollars (\$25.00) per person, for a seven (7) day permit or three hundred twenty-five dollars (\$325.00) per person for annual permit, to the Municipality, and upon payment, the Clerk may issue a sales permit to such approved applicant. The date of its expiration shall be clearly marked on the permit. A sales permit shall be required for each person desiring to do a business within the Municipality. Any person or persons granted such permit shall be subject to any occupation taxes and other rules and regulations which the Governing Body deems appropriate for the purposes stated herein. Any person or persons granted such permit shall also provide proof to the Clerk of any necessary State or Federal licensing and sales tax permits. Any permit so granted shall be subject to revocation for good and sufficient cause by the Clerk. The permit fee may be waived by the Municipality for seasonal sales events, including, but not limited to, weekly farmers market or flea markets. *(Effective October 4, 2011, Ordinance 2011-4)*

#### **SECTION 10-202: HOURS OF SOLICITATION.**

It shall be unlawful for any solicitor, salesman or peddler to solicit any individual between the hours of eight (8:00 p.m.) o'clock P.M. and eight (8:00 a.m.) o'clock A.M., unless he/she has a previous appointment with a resident or residents of the premises solicited. It shall be unlawful at any hour for a solicitor, salesman or peddler to solicit without a proper permit on his or her person at all times. *(Effective October 4, 2011, Ordinance 2011-4)*

#### **SECTION 10-203. ITINERANT SALES; REGULATION; EXCEPTIONS.**

The provisions of this Article shall not extend to individuals calling on retail merchants within the corporate limits of the municipality for the purpose of taking orders or selling of merchandise for resale by such merchants. This Article shall furthermore not extend to school-related fundraising or fundraising by non-profit organizations and clubs. *(Effective October 4, 2011, Ordinance 2011-4)*

#### **SECTION 10-204. ITINERANT SALES: DEFINITION.**

A transient merchant, itinerant merchant, or itinerant vendor is defined as any person, firm or corporation, whether as owner, agent, consignee, or employee, and whether a resident of the Municipality or not, who engages temporarily within the Municipality in the business of selling and delivering goods, wares or merchandise or taking orders for goods or merchandise to or at homes, apartments, or other residential premises in the Municipality without being invited by the resident or residents residing therein to do so.

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### ARTICLE 3. BUSINESS ENTERPRISES

#### §10-301 VENDING MACHINES; REGULATION.

Any person or person who shall install, own, or display for public use any vending machine, dispensing tobacco products of any type, shall secure a license for said machine from the Municipal Clerk. Any person or persons granted a vending machine license shall be subject to any fees, occupation taxes, and other rules and regulations which the Governing Body may deem necessary. All machines upon which a license is required shall be subject to inspection by the Municipal Law Enforcement at all reasonable hours. Nothing herein shall be construed to authorize or legalize any machine or device prohibited by law. Any license so issued shall be subject to revocation for good and sufficient cause after proper notice, and hearing. *(Ref. 41-106 RS Neb.)*

#### §10-302 DEFINITIONS.

The following definitions shall be applied throughout this Chapter. Where no definition is specified, the normal dictionary usage of the word shall apply.

**JUNK DEALER.** The term “junk dealer” as used in this Code is hereby defined as meaning, and shall include any person engaged in the business of buying, selling, receiving, collecting, or dealing in metal scraps, scrap iron, metals of any kind and in any form, bottles, rags, used lumber, and used tires; the dismantling or taking apart of automobiles, other than for repair, or the wrecking of automobiles; the storage of automobiles unfit for operation; the storage of automobile bodies and parts thereof; the storage of automobiles or parts thereof kept for salvage; the storage of scraps for automobiles; or the storage of iron, metals, or junk; except an establishment or place where automobiles, trucks, tractors, and farm machinery, wrecked or otherwise, are held or impounded for a period not to exceed **ninety (90)** days exclusively for storage, repair, or resale without alteration.

**JUNK COLLECTOR.** The term “junk collector” shall be construed to mean any person going from place to place, or house to house, collecting or buying iron, copper, brass and zinc scraps, rags, bottles, or old paper, and selling the same to a junk dealer.

**JUNK YARD.** The term “junk yard” as used in this Code is hereby defined as meaning, and shall include any place in the Municipality where or from which any person shall conduct, engage in, or carry on the business of junk dealer as herein defined.

**JUNK.** The term “junk” as used in this Code shall include scrap metals, scrap materials, whether they are liquids, solids, or gases, branches of trees, and dismantled or wrecked automobiles, tractors, and machinery or parts thereof. *(Ref. 17-207 RS Neb.)*

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### **§10-303 JUNK YARD; REGULATION.**

It shall be unlawful for any person to own, operate, or hold open for public use any junk yard as herein defined without first obtaining a license to do so from the Municipality. Application for a license to own, operate, or hold open for public use any junk yard shall be made in writing to the Municipal Clerk and shall require such information and documents, or copies thereof, that the Governing Body deems necessary to determine whether to grant or reject the said application.

Upon approval of the application, the Municipal Clerk shall issue the license upon the payment of a fee set by resolution of the Governing Body. The licensee shall then be subject to any occupation taxes, bond requirements, and other rules and regulations which the Governing Body may determine to be beneficial to the Municipality. Any such bond shall be set by resolution of the Governing Body and will be conditioned upon the faithful observance of the provisions of this Code. The bond shall be held for the benefit of any person who may suffer damage by the improper management of the said junkyard.

### **§10-304 CONTRACTORS; EXCAVATIONS.**

Any contractor carrying on business within the Municipality may, in lieu of acquiring the bonds required under Section **8-304** of this Code, acquire a single bond showing good and sufficient surety to ensure that upon the completion of all excavations of the Municipal streets or alleys performed during a calendar year will be completed in a good and workmanlike manner and that the street surface and subsurface shall be returned to the same condition in which it was immediately prior to the excavation. Such bond shall cover all such excavations done by the contractor during the calendar year in which the excavations are done and for a period of one (1) year following the completion and approval of the replacement of the street or alley surface by the Municipal Street Board. Such bond shall be in the face amount of ten thousand (\$10,000) dollars. The bond shall be filed with the Municipal Clerk prior to the issuance of any written permit required under this Code.

### **§10-305 COMMUNITY ANTENNA TELEVISION SERVICE (CATVS); FRANCHISE GRANT.**

Pursuant to Neb. Rev. Stat. 18-2202, The Village of Eagle may grant a nonexclusive Franchise for the maintenance and operation of a cable system. (Ord. No2005-03)

#### **(A) Grant of Non-Exclusive Franchise**

The Village of Eagle grants a non-exclusive franchise to Galaxy Cable, Inc., d/b/a Galaxy Cablevision, hereinafter referred to as the "Franchisee", to operate and maintain a cable system for a period of ten

## BUSINESS REGULATIONS

(10) years, with option to renew for an additional five (5) years upon renegotiation and acceptance by both parties.

### (B) **Definitions**

1. "Board" shall mean the Governing Body of the Village of Eagle.
2. "Franchise" shall mean the authorization to operate a cable television system, including all mutual rights, duties, and obligations of the Franchisee and the Village as contained in this agreement.
3. "Franchisee" shall mean Galaxy Cable, Inc., d/b/a Galaxy Cablevision, its successor or any affiliated company in accordance with the provisions of this agreement.
4. "Gross Basic Service Receipts" shall mean those receipts derived from the regular basic subscriber services consisting of the carriage of television broadcast signals and required non-broadcast signals.
5. "System" shall mean those antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed within the Municipality for the purpose of producing, providing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronic or directional duplex signals.

### (C) **Grant of Authority**

Franchisee shall be given the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over, and under the streets, alleys, public ways now laid out or dedicated and in compatible easements, and all extensions, thereof, and in additions thereto, in the Municipality, poles, wires, cables, underground conduits, and other equipment and fixtures necessary for the maintenance and operation of a cable system.

Franchisee shall raise or lower wires or equipment upon the reasonable request of any third person, including any person holding a building permit. Expenses associated with raising and lowering the wires or equipment shall be paid by the person requesting the same (except in cases where Franchisee is required to bear the costs under other provisions of this Franchise) and the Franchisee may require advance payment. Franchisee shall be entitled to require that it be given up to ten (10) days advance notice by the person requesting the movement.

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### (D) **Compliance with Applicable Laws**

Franchisee, shall at all times during the life of this Franchise, be subject, when not inconsistent with this Franchise, to all lawful exercise of the police power by the Municipality and to such reasonable regulation as the Municipality shall hereafter provide.

### (E) **Compliance with FCC Regulation**

Franchisee shall comply with all applicable rules and regulations of the Federal Communications Commission.

Copies of all petitions, applications, and communications submitted by the Franchisee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect of any matters directly affecting Cable System operations pursuant to the Franchisee, shall be submitted to the Governing Body upon request.

### (F) **Compliance with Electrical Standards**

Construction and maintenance of the transmission and distribution system including house connections, shall be in accordance with the provisions of the National Electrical Safety Code of the National Board of Fire Underwriters, and such safety codes as now exist or which may be established in the future. In the event of a conflict among safety codes, the strictest standard shall apply.

### (G) **Franchise Requirements for Other Franchise Holders**

In the event that the Municipality grants one (1) or more Franchise(s) or similar authorization(s), for the construction, operation, and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the Franchisee, it shall not make the grant on more favorable or less burdensome terms. If Franchisee finds that the agreement(s) granting said other Franchise(s) contain provisions imposing lesser obligations on the Company(s) thereof than are imposed by the provisions of this Franchise, Franchisee may petition the Municipality for a modification of this Franchise. The Franchisee shall be entitled, with respect to said lesser obligations to such modification(s) of this Franchise as may be determined to be necessary to insure fair and equal treatment by this Franchise and said other agreements.

### (H) **Cable System Franchise Required**

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No cable system shall be allowed to occupy or use the streets or public right-of-way of the Municipality or be allowed to operate without a cable system Franchise.

### (I) **Service Territory**

Franchise shall include the entire area of the Municipality.

Franchisee's distribution system shall be capable of providing service to all potential subscribers requesting service within the incorporated limits of the Municipality and shall extend its distribution system to serve additional subscribers in any unserved areas of the Municipality as of the effective date of this Ordinance whenever the number of unserved homes passed by such extension would exceed forty (40) homes per mile; provided that such extensions are technically and economically feasible to the Franchisee.

Where the length of a drop cable required to serve an individual resident would exceed 150-feet, the subscriber served by such a drop cable shall pay the cost of installing a feeder cable to a point where the subscriber will receive a signal without degradation of picture quality or reliability.

### (J) **Customer Service**

Franchisee shall comply with applicable Federal, State, and local laws for the protection of the privacy of cable subscribers.

Franchisee shall render efficient repair service, and interrupt service only for good cause and for the shortest time possible. A toll-free telephone number shall be maintained so that complaints and repair requests may be received by Franchisee at any time. All non-emergency service requests and complaints shall be responded to within five (5) days of receipt. All emergencies and/or system outages will be responded to within twenty-four (24) hours.

Franchisee shall give the Municipality thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

The Franchisee shall by appropriate means, as subscribers are connected or reconnected to the system, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address, and toll-free telephone number of the Franchisee.

The equipment installed by the Franchisee in the subscriber's home shall remain the property of the Franchisee, unless otherwise purchased by the subscriber, and shall be subject to reasonable inspection and

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service by the Franchisee at reasonable hours, and removal upon nonpayment or termination of the service.

### (K) **Service to Municipality**

Franchisee shall provide and maintain one free connection of basic cable service to the Municipal Hall, fire stations, and to all public and parochial primary and secondary schools located within the Municipality. The cost of any internal wiring shall be borne by the institution.

Such connections shall be provided at such times as service can be provided from the Franchisee's existing distribution plant. If a distribution plant extension of the system is required which imposes an undue economic hardship, the Franchisee shall have the right to petition the Municipality for relief from the service commitments of this Section. Service shall be provided to newly constructed Municipal facilities under the same terms and conditions and as soon as practical, but in no event less than two (2) years from the date of occupancy.

### (L) **Fee to Municipality**

a) For the reason that the Municipal streets to be used by the Franchisee for the operation of its system within the Municipal boundaries are valuable public properties acquired and maintained by the Municipality at great expense to its taxpayers, and the grant to the Franchisee of the limited use of said streets is a valuable property right without which the Franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, the Franchisee shall pay the Municipality an amount equal to three percent (3%) of the Franchisee's Gross Revenue attributable to the operations of the Franchisee within the confines of the Municipality (hereinafter the "franchise fee")

b) This payment shall be in addition to any other tax or payment owed to the Municipality by the Franchisee, including real and personal property taxes,

c) The franchise fee and any other cost or penalties assessed shall be payable annually, to the Municipal Clerk's office and the Franchisee shall file a complete and accurate verified statement of the gross revenue derived from the system covered by this Franchise, during the period for which said annual payment is made, and said payment shall be made to the Municipality not later than one hundred twenty (120) days after the close of the fiscal year of the Franchisee.

d) The Municipality shall have the right to inspect the Franchisee's income records and the right to audit and to recomputed any amounts

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determined to be payable under this Ordinance; provided, however, that any audit performed by the Municipality shall take place within twelve (12) months following the close of each of the Franchisee's fiscal years.

### (M) **Conditions on Street Use**

Franchisee shall endeavor to obtain rights to use facilities belonging to other Franchise holders within the Municipality. Approval of the assignment of such rights to the Franchisee by such other Franchise holders is hereby expressly given by the Municipality, it being the intention of the Municipality that the Franchisee will utilize public utility facilities wherever feasible.

All transmission and distribution structures, lines, and equipment erected by the Franchisee within the Municipality shall be located so as not to interfere with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places, and not to interfere with existing public utility installation.

If the Franchisee disturbs any pavements, sidewalks, driveways, or other surfacing, it shall, at its own expense, and in the manner provided by the Municipality, replace and restore all such pavings, sidewalks, driveways, or other surfaces of any streets or alleys thus disturbed.

If at any time during the period of this Franchise, the Municipality shall lawfully elect to alter, or change the grade or alley, or other public ways, the Franchisee shall upon reasonable notice by the Municipality, remove and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense, and in each instance comply with the requirements of the Municipality.

### (N) **Indemnification and Insurance.**

#### Workers' Compensation

#### Statutory Limits

Commercial General Liability

\$1,000,000 per occurrence,  
Combined Single Liability  
(C.S.L.)  
\$2,000,000 General Aggregate

Auto Liability including coverage  
C.S.L.  
on all owned, non-owned, and  
hired autos

\$1,000,000 per occurrence



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reserves the right to terminate and cancel this Franchise and all rights and privileges of the Franchisee hereunder in the event that the Franchisee:

- 1) Violates any provision of this Franchise.
- 2) Becomes insolvent, unable or willing to pay its debts, is adjudged bankrupt
- 3) Practices any fraud or deceit upon the Municipality.

b) Such termination and cancellation shall be by Ordinance duly adopted after thirty (30) days written notice to the Franchisee and shall in no way affect any of the Municipality's rights under this Franchise or any provisions of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact shall be made by the Governing Body or its representative. Before this Franchise may be terminated and canceled under this Section, the Franchisee must be provided with an opportunity to be heard before the Governing Body and an opportunity to cure any condition leading to termination or cancellation. If the Franchisee has corrected the condition leading to termination or cancellation within the thirty (30) days written notice of termination or cancellation, or, if such correction requires more than thirty (30) days, has begun to correct any such condition, this Franchise shall remain in effect.

c) Prevention or delay of any performance under this Franchise due to circumstances beyond the control of the Franchise or Municipality including, but not limited to, natural disaster, employee strikes, or war shall not be deemed noncompliance with or a violation of this Franchise.

### **(T) Equal Employment Opportunity Compliance**

Franchise shall comply at all times with applicable Federal, State, and local laws and all executive and administrative orders relating to nondiscrimination, equal employment, and affirmative action.

### **(U) Severability**

If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid, unconstitutional, or unenforceable, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not effect the validity of the remaining portions hereof.

### **(V) Integration**

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This agreement sets forth the entire Agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations, and warranties, expressed and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations, and warranties, expressed or implied, oral or written, have been made by any party to another with respect to the matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties, with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby. This is an integrated Agreement.

### (W) **Rate Regulation**

To the extent that Federal or State law or regulation may now, or as the same may hereafter be amended to, authorize the Municipality to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by the Franchisee, the Municipality shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Municipality. If and when exercising rate regulation, the Municipality shall abide by the terms and conditions set forth by the FCC.

### **§10-306 CATVS; EASEMENTS.**

Nothing herein shall be deemed as requiring the Municipality to provide the Franchisee with any easements, rights-of-way, or other public property except that already possessed by the Municipality and approved by it for the use of Franchisee. Any additional easements or rights-of-way required by Franchisee shall be acquired by Franchisee at its own cost and expense. Franchisee shall not enter upon any privately owned property without the express written consent of the titleholder thereof so to do.

### **§10-307 CATVS; PUBLICATION COSTS.**

The Franchisee will pay to the Municipality a sum to cover the publication costs for any new ordinance publications when presented with the bill by the Municipality, and the costs of any other publication required by this Article.

### **§10-308 CATVS; RULES AND REGULATIONS.**

This Franchise is granted subject to all rule and regulation making authority of the Governing Body and nothing herein shall be construed to restrict or limit such powers.

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### **§10-309 MOBILE FOOD VENDOR; DEFINITIONS.**

For the purpose of this chapter the following terms shall have the meanings respectively ascribed to them:

**Food:** Shall mean any raw, cooked; or processed edible substance or beverage used or intended for use or for sale in whole or in part for human consumption.

**Mobile Food Vendor:** Shall mean a person who travels from place to place selling or offering for sale food from a motor vehicle or trailer on public or private property. The following activities are excluded from such definition, and alone, do not subject a vendor to being covered under by such definition: (1) the sale or offer for sale of farm products produced or raised by such a vendor from land either occupied or cultivated by him or her; (2) the sale or offer of sale of homemade items, such as breads, pies, etc. for a Farmers Market event; (3) the sale or offer of sale of food by non-profit groups or at an event sponsored by a non-profit group; or (4) a minor who is selling liquid refreshments or homemade items on a temporary basis in a manner akin to a lemonade stand.

**Permanent Food Establishment:** A fixed building which a person occupies on a continual basis and from which such person sells or offers to sell food for immediate delivery and consumption upon purchase. Such term shall not include a location where a mobile food vendor sells or offers to sell food, a concession stand, a convenience store, a grocery store, or an automotive fueling station.

**Administrator:** The Municipal Clerk/Treasurer, or his or her designee.

### **§10-310. MOBILE FOOD VENDOR; PERMIT REQUIRED.**

It shall be unlawful for any person to operate as a mobile food vendor within the corporate limits, whether on public or private property, unless such person complies with the requirements and regulations of this chapter, including holding a valid and active mobile food vendor permit issued by the municipality under this chapter.

### **§10-311. MOBILE FOOD VENDOR; APPLICATION.**

All permit applications under this chapter shall be filed with the Administrator on a form to be furnished by the municipality, which shall require, at a minimum, the following:

- (a) The name, address, phone number, and email address of the individual, partnership, firm, or corporation applying for a permit;
- (b) The vehicle license numbers and descriptions of all vehicles from which the applicant proposes to sell food;
- (c) The names of all persons expected to drive such vehicles;
- (d) A copy of all vehicle registrations;

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- (e) Proof of motor vehicle insurance;
- (f) Proof of commercial general liability insurance for property damage and injury for no less than \$1,000,000.00 in the operation of said business and an agreement to hold the municipality harmless of all claims and damages;
- (g) A brief description of the foods to be sold;
- (h) The address of the physical location the vendor will set up trade, and:
  - a. for private property, written permission to sell or offer to sell food on said property;
  - b. for public property, a request for permission to the governing body setting for the requested location(s);
- (i) A copy of the State of Nebraska sales tax permit or proof of sales tax exemption; and
- (j) A copy of the applicant's permit issued by the Department of Agriculture of the State of Nebraska, as required by the Nebraska Pure Foods Act (Neb. Rev. Stat. secs. 81-2,239 to 81-2,292).

After receipt of the completed application and application fee, in the event permission is requested to operate on public property, the Administrator shall place the request on the next meeting agenda of the governing body for approval.

### **§10-312 MOBILE FOOD VENDOR; ISSUANCE OR DENIAL.**

- a. Upon receipt of a complete application for a permit pursuant to this chapter, the Administrator shall endeavor to determine if the statements contained within the application are true and correct and shall approve or deny such application within 30 days as provided herein (in the case of requests to operate on public property, only after the request has been granted by the governing body).
- b. Grounds for denial may include, but are not limited to, the following
  - i. A finding that the application is incomplete (the criteria set forth above is not met);
  - ii. Non-payment of applicable fees;
  - iii. A finding that the application is not in conformance with any applicable laws or this code including, but not limited to Chapter 10 of this code;
  - iv. A finding that the applicant has been convicted of two or more separate violations of the provisions of this chapter within the 12 months preceding the submission of a complete application.
- c. An application for a permit under this chapter shall be accompanied by a nonrefundable processing fee of \$30.00 per calendar year for each motor vehicle, trailer, cart or other piece of mobile equipment to be used.

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### **§10-313 MOBILE FOOD VENDOR; 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.

### **§10-314 MOBILE FOOD VENDOR; EXHIBITION OF PERMIT.**

Vendors shall exhibit their permit at all times when operating within the corporate limits of the municipality or upon the request of any Municipal official, Municipal employee, or customer.

### **§10-315 MOBILE FOOD VENDOR; RENEWAL.**

A permit issued under this chapter shall expire on December 31st of each year. The permittee shall renew the permit for the following year by filing with the Municipal Clerk prior to expiration. The renewal shall be on a form provided by the Municipal Clerk and shall include payment of a renewal fee of \$15.00 per year for each motor vehicle, trailer, cart or other piece of mobile equipment to be used.

### **§10-316 MOBILE FOOD VENDOR; SALES REGULATIONS.**

A mobile food vendor shall:

- a. have in full force and effect (1) a permit issued by the Municipal Clerk as provided herein, (2) a sales tax permit from the State of Nebraska (or show valid exemption), (3) a permit issued by the Department of Agriculture of the State of Nebraska, as required by the Nebraska Pure Food Act, (4) a motor vehicle liability insurance policy and be able to exhibit proof of such policy upon request; and (5) commercial general liability insurance for the operation of said business and be able to exhibit proof of such policy upon request.
- b. only sell or offer to sell food on private property that is zoned for commercial or industrial use, with written consent from the property owner, *or* only sell or offer to sell food on municipal public property as provided herein, holding the municipality harmless of all claims and damages, whichever applies;
- c. vend only when the vendor's truck is lawfully parked or stopped;
- d. vend only from the side of the truck that is away from moving traffic;
- e. comply with all local ordinances regulating noise;
- f. maintain in operable condition all fire suppression equipment or devices as required by local, state, or federal law;
- g. provide trash receptacles for the collection of trash and recyclable materials;
- h. pick up and properly dispose of any trash, litter, or recyclable materials prior to leaving a location;

A mobile food vendor shall not:

- a. sell or offer to sell alcoholic drinks;

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- b. sell or offer to sell food on private property zoned for residential use;
- c. sell or offer to sell food from a vehicle located in a public right-of-way;
- d. sell or offer to sell food from a vehicle located on a street or street parking stall unless the street is closed for a special event, with approval from the Municipal Board;
- e. sell or offer to sell food on county public property, school public property, or natural resource district public property without written consent of an authorized representative of said entity;
- f. vend to a person standing in the roadway;
- g. vend on state highways;
- h. dispose of any trash, litter, recyclable materials, or food waste (including grease) in public trash or recycling containers; or
- i. dump grease, waste, food waste, waste water, or grey water on the ground or in the storm sewers.

### **§10-317 MOBILE FOOD VENDOR; OPERATING ON MUNICIPAL PROPERTY.**

To operate on municipal property, a mobile food vendor must obtain permission from the governing body. A permit to operate on municipal property does not create a property interest in the location. Mobile food vendors are only allowed the opportunity to park and operate on the following municipal property:

- a. The northern or eastern portion of the lot located east of the Eagle Municipal Pool (Eagle-OT lots 1-6 of block 13); or
- b. The southern portion of the Eagle Municipal Office parking lot located at 747 S. 2<sup>nd</sup> Street; or
- c. Any other location specifically authorized by the governing body.

If the vendor has failed to receive permission to locate on public property, any authorized official or employee of the municipality may order a mobile food vendor to move or leave from public property. If the vendor has received permission, the vendor may be asked to remove or leave the public property for the following reasons: revocation/suspension issued by the Administrator; violation of zoning, local or state law, emergency necessity on the part of the Municipality, or the Municipality requires the use of the space for governmental purpose. No vehicles or other auxiliary equipment used by a mobile food vendor shall be left or parked on municipal property for more than 12 hours. The municipality may tow or otherwise move a mobile food vendor's vehicle or other auxiliary equipment if it presents a danger to public safety, in the event of revocation/ suspension of the permit, in the case of public emergency or requirement of use of the space for governmental purpose and only after request has been made of the vendor to remove and the mobile food vendor fails to remove the same.

### **§10-318 MOBILE FOOD VENDOR; HOURS OF OPERATION.**

Mobile food vendors are only permitted to operate between the hours of 7:00 a.m. and 12:00 midnight, seven days a week.

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### **§10-319 MOBILE FOOD VENDOR; REVOCATION OR SUSPENSION.**

**Grounds:** A permit issued under this chapter may be revoked or suspended by the Administrator for any of the following reasons:

- a. Any fraud, misrepresentation, or false statement contained in the application for a permit;
- b. Any fraud, misrepresentation, or false statement made in connection with the selling of food or operation of the business;
- c. Any violation of this chapter or any applicable laws or provisions of the Eagle Municipal Code or any agency or department of the State of Nebraska, or a violation of Nebraska law;
- d. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety, or general welfare of the public; or
- e. Upon conviction of two or more separate violations of this chapter within any consecutive 12-month period. For purposes of this section, conviction shall mean any finding of guilt or liability on the part of the mobile food vendor by a court of competent jurisdiction, and shall include any conviction that has previously been set aside.

**Notice:** To revoke or suspend a license, the Administrator shall provide written notice to the permit holder stating the revocation or suspension action taken, the grounds for such action, and the availability of an appeal under this section. Such notice shall be sent by regular U.S. mail or by certified mail (although return receipt is not required to prove service) to the license holder's address as stated in his/her/its application.

**Appeal:** A permit holder aggrieved by the decision of the Administrator under this section may file an appeal in writing with the Municipal Clerk within 5 business days of the decision, to be heard before the governing body.

**Re-application:** A person/entity whose license has been revoked under this chapter may not re-apply for a new license for a period of 12 months after the effective date of the revocation.

### **§10-320 MOBILE FOOD VENDOR; PENALTY.**

It shall be unlawful for any person to violate the provisions of this chapter. In addition to revocation as provided herein, any violation shall be punishable as provided in the penalty article of this chapter.

*(Sections 10-309 to 10-320 added by Ordinance 2022- 03, adopted April 18, 2022 and effective May 3, 2022)*

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**ARTICLE 4. OCCUPATION TAXES**

**§10-401 OCCUPATION TAX; AMOUNTS.**

For the purpose of raising revenue an occupation tax is hereby levied on the following businesses:

**Alcoholic Beverages**

Retailer of beer, on sale only, per year . . . . . \$ 50.00

Retailer of beer, off sale only, per year . . . . . \$ 50.00

Retailer of alcoholic liquors, off sale  
Only (sales in original package). . . . .  
..\$100.00

Retailer of on and off sale alcoholic  
Liquors (Class "C" License) . . . . . .\$250.00

Fire Insurance Companies, per year . . . . . \$ 5.00  
(*Ref. 17-525 RS Neb.*)

**§10-402 OCCUPATION TAX; FIRE INSURANCE COMPANIES.**

For the use, support, and maintenance of the Municipal Fire Department all revenue realized from the occupation tax on Fire Insurance Companies shall be appropriated to the Fire Department Fund. (*Ref. 35-106 RS Neb.*)

**§10-403 OCCUPATION TAX; COLLECTION DATE.**

All occupation taxes shall be due, and payable on the first (1<sup>st</sup>) day of May of each year, except in the event that the said tax is levied daily, and upon the payment thereof by any person or persons to the Municipal Clerk, the said Clerk shall give receipt, properly dated, and specifying the person paying the said tax, and the amount paid; Provided, occupation taxes collected from Class C liquor licensees shall be due and payable on the first (1<sup>st</sup>) of November.

The revenue collected shall then be immediately deposited into the General Fund by the Municipal Treasurer. The Municipal Treasurer shall keep an accurate account of all revenue turned over to him/her. All forms, and receipts herein mentioned shall be issued in duplicate. One (1) copy shall then be kept by each party in the transaction. (*Ref. 17-525 RS Neb.*)

**§10-404 OCCUPATION TAX; CERTIFICATES.**

The receipt issued after the payment of any occupation tax shall be the Occupation Tax Certificate. The said certificate shall specify the amount of the tax and the name of the person, and business that paid the said tax. The

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Occupation Tax Certificate shall then be displayed in the prominent place, or carried in such a way as to be easily accessible, while business is being conducted. *(Ref. 17-525 RS Neb.)*

### **§10-405 OCCUPATION TAX; FAILURE TO PAY.**

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

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### ARTICLE 5. NATURAL GAS REGULATIONS

#### §10-501 MUNICIPAL NATURAL GAS REGULATIONS; DEFINITIONS.

As used in this Article, unless the context otherwise requires, words shall be defined as set forth in Neb. Rev. Stat. Sec. 19-4602, as from time to time amended.

#### §10-502 NATURAL GAS; MUNICIPAL AUTHORITY AND POWER.

This Municipality shall exercise all power and authority granted it to regulate natural gas rates as set forth in this Article; Provided, in the event the Municipality by ordinance or resolution enters into an agreement to carry out all, or any portion, or its powers to regulate rates in conjunction, or coordination, with other governmental entities, this Article shall apply only to those provisions not inconsistent with that agreement. Any agreements entered into prior to this ordinance are hereby ratified.

#### §10-503 NATURAL GAS; RATES; REASONABLE.

1. Every rate made, demanded, or received by any utility shall be just and reasonable. Rates shall not be unreasonably preferential or discriminatory and shall be reasonably consistent in application to a class of customers and to a rate area. Rates negotiated under Subsection 3 of this Section shall not be considered discriminatory.
2. No utility shall, as to rates or service make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.
3. A utility may negotiate price and other contract terms with customers whose natural gas requirements exceed fifty thousand cubic feet per day. *(Ref. 19-4604 RS Neb.)*

#### §10-504 NATURAL GAS; RATE SCHEDULES.

A utility shall provide to the Municipality, for informational purposes, copies of rate schedules for all rates charged customers and requirements for service under such schedules within the Municipality. The schedules shall also show the natural gas supply costs and natural gas supply cost adjustments included in the total end rate. *(Ref. 19-4605 RS Neb.)*

#### §10-505 NATURAL GAS; RATE AREA; NOTICE.

1. The Natural Gas Company serving the Municipality shall file a notice of proposed rate area boundary with the office of the Clerk of the Municipality. There shall be no filing fee charged for filing the notice. The notice shall include an explanation of how the boundaries of the rate area were

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- determined and a map showing the boundaries of the rate area. Each time a new rate area is established or the boundaries of rate area are changed, a new rate area boundary notice shall be filed.
2. Within sixty (60) days after the notice of proposed area boundaries is filed, the Municipality will accept or reject its inclusion within the rate area. Failure of the Municipality to act on its inclusion within the boundaries of the proposed rate area within the sixty-day (60) period shall be deemed acceptance.
  3. After a rate area has been accepted, (a) all rate filing shall be initiated simultaneously in each Municipality within the rate area and (b) area rates shall be deemed appropriate for this Municipality within the rate area.
  4. If area rates are applied which do not have uniform rates for customers in all Municipalities on the effective date of this Article, the rates in this Municipality shall be adjusted in a manner which equalizes the rates in all Municipalities in the rate area. Such equalization of rates shall be established by January 1, 1992, or in the first rate request of utility filed after such date.

### **§10-506 NATURAL GAS; INTEREST.**

Whenever the utility is required by this Article, or State Statute, to refund amounts collected from customers for any reason, the utility shall make such refund with interest at a rate equal to one and one half (1-1/2%) percentage points above the rate, calculated in Neb. Rev. Stat. Section 45-103, in effect on the date of final determination giving rise to the refund. Interest shall be calculated from the date the utility collected the funds from the customer.

### **§10-507 NATURAL GAS; INTERIM RATES.**

1. No utility shall impose, charge, or collect any rate upon its customers until such time as any proposed rate has been finally determined, except that a utility shall have the right to collect interim rates, subject to refund, if the Municipality has not taken final action to allow the rate increase within ninety (90) countable days of the date of filing for the increase. The rates requested in the rate filing shall become final and no longer subject to refund if the Municipality has not taken final action within one hundred eighty (180) countable days of the date of filing.
2. If the utility takes timely action to initiate judicial review of the rates adopted by a Municipality, the utility shall be permitted to continue to collect interim rates from the date the rates are adopted by the Municipality until a rate ordinance adopted by the Municipality is affirmed by the District Court or accepted by the utility subject to refund as provided in this Section.
3. Upon final order of the District Court, when no further appeal to the Supreme Court is pursued, or upon acceptance by the utility of a lower rate than that being collect, a utility shall, within sixty (60) days of such final order or acceptance, refund the difference between the rate found proper or agreed to and the rate collected.

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4. Upon final determination of rates following the exhaustion of all appeals, the utility shall be permitted to recover the amount of revenue which would have been produced had the finally determined rates been in effect throughout the period following the decision by the District Court until the final rates were adopted by the Municipality. In the event that the revenue actually collected by the utility through interim rates is less than that which would have been collected had the final rates been effective throughout such period, the utility shall be permitted to recover the deficiency plus interest at the rate provided in this Article through a surcharge on customer billings over a reasonable period not to exceed twelve (12) months. In the event that the revenue actually collected by the utility through interim rates exceeds that which would have been collected had the final rates been effective throughout such period, the utility shall refund the excess with interest as provided in this Article. *(Ref. 19-4607 RS Neb.)*

### **§10-508 NATURAL GAS; FILING; NOTICE.**

The utility shall notify the Municipality of its intent to change the rates charged to customers in the Municipality under the provisions of this Article by filing a notice of proposed filing with the office of the Clerk of this Municipality at least sixty (60) days prior to the date of filing of any request for change. *(Ref. 19-4608 RS Neb.)*

### **§10-509 NATURAL GAS; SUPPLY-COST-ADJUSTMENT; REVIEW.**

1. A utility shall be permitted to file and implement natural gas supply-cost-adjustment rate schedules which provide for adjustment and collection of rates to reflect changes in natural gas supply costs for natural gas sold in the Municipality.
2. The Municipality may review natural gas supply-cost-adjustment rate schedules. The Municipality shall initiate such review by resolution and shall provide a copy of the resolution to the utility at least thirty (30) days prior to the hearing on the issue. The Municipality may request and the utility shall provide all documents and work papers supporting the actually purchased natural gas adjustment amounts charged customers. The Municipality shall give the utility at least thirty (30) days' prior notice of the time and place of the hearing and a copy of the proposed findings of fact. If after review and hearing, the Municipality concludes that the utility is charging more than the amount allowed by the natural gas supply-cost-adjustment rate schedule, the Municipality shall order the utility to refund excess amounts collected from customers plus interest at the rate provided in this Article. If the utility initiates judicial review of such an order, the order of the Municipality shall not take effect during the pendency of such review. However, interest on any refund judicially ordered shall commence as of the date of the Municipality's order.
3. Any refund, including interest thereon, if any, received by the utility with respect to natural gas purchased under a Federal Energy Regulatory Commission natural gas tariff at the border station of a Municipality related to

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increased rates paid by the utility, subject to refund, and applicable to natural gas purchased for resale within the Municipality shall be passed on to presently served customers by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the utility, not to exceed twelve (12) months, or by a cash refund at the option of the utility. Refunds unpaid after sixty (60) days from the date of receipt by the utility shall bear interest at the rate set in this Article.

4. Nothing contained in this Section shall change or modify existing natural gas supply-cost-adjustment rate provisions in an ordinance or franchise agreement without the review specified in Subsection 2 of this Section. The Municipality may initiate an action to change the purchased natural gas supply-cost-adjustment rate schedules. (*Ref. 19-4609 RS Neb.*)

### **§10-510 NATURAL GAS; RATE FILING; FEE; APPEAL.**

1. If a utility desires to change its rates for natural gas service within the Municipality other than to reflect an adjustment for natural gas supply costs, the utility shall present to the Municipality information as required by statute supporting the proposed natural gas rates within the Municipality.
2. There is hereby assessed a filing fee for a rate filing of seventy-five (\$75.00) dollars. (For a City of the First Class, one thousand (\$1,000.00) dollars; for a City of the Second Class, three hundred (\$300.00) dollars; and for a Municipality, seventy-five (\$75.00) dollars.
3. The Municipality may reject a rate filing only on the grounds that the information given by statute has not been filed with the Municipality. The utility shall be given at least seven (7) days' prior written notice of any meeting to consider rejection of the utility's rate filing. Rejection shall be made by resolution of the Municipality and shall state the reasons upon which the rejection is based.

In the event of any such rejection, a copy of the written resolution shall be delivered to the utility within seven (7) days after final action by the Municipality. After receipt of the resolution, the utility shall have fifteen (15) days to remedy the deficiencies stated in such resolution. If the Municipality has not received the information to cure the deficiencies within the fifteen (15) day period or within such additional period of time as may be agreed to by the utility and the Municipality, the filing shall be deemed to be rejected and the utility shall be required to initiate a new rate filing.

4. The utility may appeal from the decision of the Municipality rejecting a rate filing. The appeal shall be to the District Court. (*Ref. 19-4610 RS Neb.*)

### **§10-511 NATURAL GAS; RATE FILING; FEE; APPEAL.**

When making a rate filing, the utility shall provide to the Municipality three (3) copies of the most recent annual report to the stockholder, and three (3) copies of all other information and data required by statute.

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### **§10-512 NATURAL GAS; COST OF SERVICE; DETERMINATION.**

1. The Municipality, in the exercise of its power under this Article to determine rates, shall give due consideration to the public need for adequate, efficient, and reasonable natural gas service and to the need of the utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provisions for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property.
2. Cost of service shall include operating expenses and a fair and reasonable return on rate base, less appropriate credits.
3. In determining a fair and reasonable return on the rate base of a utility, a rate of return percentage shall be employed that is representative of the utility's weighted average cost of capital including, but not limited to, long-term debt, preferred stock, and common equity capital.
4. The rate base of the utility shall consist of the utility's property, used and useful in providing utility service, including the applicable investment in utility plant, less accumulated depreciation and amortization, allowance for working capital, such other items as may be reasonably included, and reasonable allocations of common property, less such investment as may be reasonably attributed to other than investor-supplied capital unless such deduction is otherwise prohibited by law.
5. Operating expenses shall consist of expenses prudently incurred to provide natural gas service including a reasonable allocation of common expenses.
6. In determining the cost of service, the Municipality shall give effect to all costs and allocations upstream of the town border station of the utility as reflected in the rate schedules approved by the Federal Energy Regulatory Commission or its successor. *(Ref. 19-4612 RS Neb.)*

### **§10-513 NATURAL GAS; SUPPLEMENTAL INFORMATION.**

1. After a rate filing has been filed with a Municipality, the Municipality may request supplemental information from the utility relevant to the rate filing. Relevant or relevance shall relate only to the limitations on information requests that are authorized by this Section. Relevant supplemental information shall relate to factors involved in setting appropriate rates.
2. All supplemental information requests shall be made as soon as reasonably possible after the filing. The utility shall respond completely and faithfully to any relevant request for supplemental information.
3. Request for supplemental information made by a Municipality shall be subject to appeal to the District Court. *(Ref. 19-4614 RS Neb.)*

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### **§10-514 NATURAL GAS; RATE INCREASE; NOTICE TO PUBLIC.**

The utility shall give public notice of filing for any rate increase under this Article within (30) days of filing by placing a notice of the proposed change in a newspaper having general circulation in the Municipality or by mailing such notice by United States mail, postage prepaid, to the billing address of each directly affected customer or by including the notice in such customer's bill in a conspicuous form. An affidavit signed by an official of a utility and describing the method of publication of the notice shall be filed with the office of the Clerk of the Municipality. The notice shall contain:

1. The name and address of the utility,
2. The dollar amount of the increase as it pertains to the typical residential customer;
3. The percentage amount of the increase; and
4. The name and address of the Clerk of the Municipality. (*Ref. 19-4615 RS Neb.*)

### **§10-515 NATURAL GAS; REPORT; REBUTTAL; HEARING; JUDICIAL REVIEW.**

1. A report specifying the reasons supporting any action recommended to the Municipality by the Municipal rate regulation advisers shall be provided to the Municipality and the utility within one hundred twenty (120) countable days of the date of the rate filing; Provided, nothing herein shall be deemed to require disclosure of information from Municipal legal counsel considered attorney-client communication. Relevant information requests regarding the report may be made by the utility to the Municipality and shall be responded to as soon as reasonably possible prior to the date for the filing of the rebuttal.
2. The utility shall file its rebuttal within fourteen (14) days of receipt of the Municipal report. Relevant information requests regarding the rebuttal may be made by the Municipality to the utility and shall be responded to as soon as reasonably possible prior to the area rate hearing.
3. An area rate hearing shall be held as required by statute. The utility shall be given written notice of such rate hearing and the name of the Hearing Officer by the end of the one hundred twenty-eighth (128<sup>th</sup>) countable day after the date of filing. Following the hearing, the utility and the Municipality shall provide to the Hearing Officer their proposed findings of fact and conclusions of law. A copy of the official record shall be transmitted by the Hearing Officer to each Municipality in the rate area.
4. Following the hearing and within one hundred eighty (180) countable days of the date of filing, the Municipality shall take final action on the rate filing by adopting findings of fact and conclusions. If the Municipality does not take action within that one hundred eighty (180) countable day period, the rates filed by the utility in its rate filing shall become final and no longer subject to refund. The adoption of a rate ordinance shall require a vote of a majority of

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the elected members of any Governing Body of a Municipality made at one (1) public meeting after compliance with public notice requirements and a public hearing on the proposed ordinance.

5. The utility shall, within thirty (30) days of the date of final action, unless it takes timely action to initiate judicial review, implement the rates established by the action of the Municipality and shall, within sixty (60) days of such action, make refunds, if any. (*Ref. 19-4616 RS Neb.*)

### **§10-516 NATURAL GAS; LOAN FUND; APPLICATION.**

The (Mayor/City Administrator; City Manager/Clerk) or the Municipality's Rate Area Committee Member is hereby authorized and directed to act on behalf of the Municipality to cooperate and coordinate with other Municipalities in the same rate area to obtain funds from any State or Federal source to assist in the payment of the costs for carrying out the functions under this Article or any provisions of the Municipal Natural Gas Regulation Act.

### **§10-517 NATURAL GAS; REVIEW AND ADJUSTMENT.**

1. Once in any thirty-six (36) month period, the Municipality may initiate a proceeding for a review and possible adjustment in rates to conform such rates to the standard of this Article and the Municipal Natural Gas Regulations Act by the introduction of a resolution for such purpose. The Municipality shall provide to the utility seven (7) days' prior written notice of the meeting at which such resolution is to be considered and a copy of the proposed resolution.

Following adoption of the resolution, the Municipal Clerk shall send a copy of a resolution by certified mail to the utility. During the first one hundred twenty (120) days following the receipt of the notice, the Municipality may request information to be provided by the utility; unless extended by agreement. Following filing of such information, the Municipality may make additional requests.

The utility shall be provided with a copy of any reports and analyses prepared for the Municipality in its consideration of a rate adjustment. Nothing in this Subsection shall require the participation in the proceedings of every Municipality in the rate area. During the pendency of all proceedings under this section and through the period of judicial review of those proceedings, the rate in effect prior to the time the Municipality adopts the resolution provided for in this section shall remain in effect.

2. If appropriate resolution initiating a proceeding for review and possible adjustment of natural gas rate are adopted by Municipalities representing seventy percent (70%) or more of the customers in the rate area, the Municipality shall participate with such Municipalities to obtain funding for such proceeding, and shall cooperate with such Municipalities in carrying out the proceeding. (*Ref. 19-4618 RS Neb.*)

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### **§10-518 NATURAL GAS; CIVIL PROCEDURE.**

To the extent not inconsistent with the provisions of this Article, the rules of civil procedure and discovery shall apply. *(Ref. 19-4619 RS Neb.)*

### **§10-519 NATURAL GAS; RECORDS; ACCURATE.**

1. Every utility shall be required to keep and render its books, accounts, papers, and records accurately and truthfully in accordance with the systems of accounts prescribed by the Federal Energy Regulatory Commission or its successor.
2. All accounting information provided by utilities to the Municipality shall be presented in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission. *(Ref. 19-4621 RS Neb.)*

### **§10-520 NATURAL GAS; CUSTOMERS; RIGHT TO APPEAR AT HEARING.**

Customers of the utility in the Municipality shall have the right to appear, participate and present testimony at hearings provided for in this Article and shall have such evidence considered by the Governing Body. When the interests of any customers are substantially similar, the Hearing Officer may provide that such class of customers join in presentation of the evidence at the hearing so as to expedite the proceedings. Customers who desire to present testimony and participate at the hearing shall provide a report within one hundred twenty (120) days of the rate filing and shall be subject to requests for information the same as the Municipality is. The utility shall provide all customers with notice of these rights. *(Ref. 19-4622 RS Neb.)*

### **§10-521 NATURAL GAS; FRANCHISE WITH BLACK HILLS ENERGY.**

#### 1. FRANCHISE GRANTED

The Village of Eagle, Nebraska (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy, a Delaware limited liability corporation (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public easements as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and all other apparatus and appliances necessary or convenient for transporting, distributing and supplying natural gas for all purposes for which it may be

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used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

### 2. TERM

The rights and privileges granted hereunder shall remain in effect for a period of twenty-five (25) years from the effective date of this Ordinance.

### 3. GOVERNING RULES AND REGULATIONS

The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken. In determining the rights and duties of the Grantee, the terms of this Ordinance shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

### 4. PROVISION FOR INADEQUATE ENERGY SUPPLIES

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

### 5. CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise, it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance and will fix its excavations within a commercially reasonable time period, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are

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necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible. Within a reasonable time thereafter, Grantee shall request and Grantor shall issue any permits or authorizations required by Grantor for the actions conducted by Grantee during the emergency situation.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee as soon as practical in advance of the actual commencement of the work, considering reasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

### 6. EXTENSION OF GRANTEE'S FACILITIES

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria as approved by the Nebraska Public Service Commission make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

### 7. RELOCATION OF GRANTEE'S FACILITIES

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, unless otherwise reimbursed by federal, state or local legislative act or governmental agency, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference with Grantor's facilities.

If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference with such project, then Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment.

Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. If alternative public right-of-way space is available, Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of-way until it (a) if applicable, receives the reasonable cost of relocating the same and (b) obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities.

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### 8. CONFIDENTIAL INFORMATION

Grantor acknowledges that certain information it might request from Grantee pursuant to this Ordinance may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

### 9. FORCE MAJEURE

It shall not be a breach or default under this Ordinance if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

### 10. HOLD HARMLESS

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or equipment; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

### 11. SUCCESSORS AND ASSIGNS

All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

### 12. NO THIRD PARTY BENEFICIARIES

This Ordinance constitutes a franchise agreement between the Grantor and Grantee. No provision of this Ordinance shall inure to the benefit of any third person, including the

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public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

### 13. SEVERABILITY

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

### 14. NON WAIVER

Any waiver of any obligation or default under this Ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

*(Ordinance 2019-10 adopted 9/16/19 Effective Date October 1, 2019)*

## **§10-522 NATURAL GAS; FRANCHISE FEE**

1. The Village of Eagle, Nebraska, (hereinafter referred to as the “Municipality”) hereby establishes a franchise fee on every natural gas company and every other person, firm or corporation, their successors and assigns, owning, operating, controlling, leasing or managing a natural gas plant or system and/or generating, manufacturing, selling, distributing or transporting natural gas (hereinafter referred to, collectively, as “Energy Providers,” each, individually, an “Energy Provider”).

2. Energy Providers shall collect from their customers located within the corporate limits of the Municipality as depicted on the Map (as defined below) (but not from the Municipality) and pay to the Municipality an amount equal to 3 percent (3%) of gross receipts Energy Providers derive from the sale, distribution or transportation of natural gas delivered within the present or future limits of the Municipality. Gross receipts as used herein are revenues received from the sale, distribution or transportation of natural gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

3. The amount paid by Energy Providers shall be in lieu of, and Energy Providers shall be exempt from, all other fees, charges, taxes or assessments which the Municipality may impose for the privilege of doing business within the Municipality, including, without limitation, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in the event the Municipality imposes any such fee, charge, tax or assessment, the payment to be made by Energy Providers in accordance with this Ordinance shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Energy Providers. Ad valorem property taxes imposed generally upon all real and personal property within the Municipality shall not be deemed to affect Energy Providers’ obligations under this Ordinance.

Energy Providers shall report and pay any amount payable under this Ordinance on an annual basis. Such payment shall be made no more than thirty (30) days following the

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close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by the Village of Eagle, Nebraska, to an Energy Provider.

4. Energy Providers shall list the franchise fee collected from customers as a separate item on bills for utility service issued to their customers. If at any time the Nebraska Public Service Commission or other authority having proper jurisdiction prohibits such recovery, Energy Providers will no longer be obligated to collect and pay the franchise fee. **In addition, Energy Providers may reduce the franchise fee payable for natural gas delivered to a specific customer when such reduction is required to attract or retain the business of that customer.**

5. Within ten (10) days of the date of this ordinance, the Municipality shall provide the Energy Providers with a map of its corporate limits (the "Map"). The Map shall be of sufficient detail to assist Energy Providers in determining whether their customers reside within the Municipality's corporate limits. The Map shall serve as the sole basis for determining Energy Provider's obligation hereunder to collect and pay the franchise fee from customers; provided, however, that if the Municipality's corporate limits are changed by annexation of otherwise, it shall be the Municipality's sole responsibility to (a) update the Map so that such changes are included therein, and (b) provide the updated Map to the Energy Providers. An Energy Provider's obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later: (a) of sixty (60) days after such Energy Provider's receipt from the Municipality of an updated Map including such annexed area, or (b) such time after such Energy Provider's receipt from the Municipality of an updated Map including such annexed area as is reasonably necessary for such Energy Provider to identify the customers in the annexed area obligated to pay the franchise fee.

6. The Municipality shall have access to and the right to examine, during normal business hours, such of an Energy Provider's books, receipts, files, records and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, that the Municipality shall not exercise such right more than twice per calendar year. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by an Energy Provider shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by an Energy Provider shall be deducted from the next payment of such franchise fee due by such Energy Provider to the Municipality; provided, that neither party shall have the obligation to correct a mistake that is discovered more than one (1) year after the occurrence thereof.

*(Ordinance 2019-11 adopted 9/16/2018 Effective Date October 1, 2019)*

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### ARTICLE 6. SPECIAL EVENTS

#### **§10-601 SPECIAL EVENT PERMITS**

Any person wishing to close a street(s) or other public right-of-way for the purpose of conducting a special event or block party shall file an application with the Municipal Clerk for a Permit, providing the Clerk with a permit application fee of \$25.00 and an application setting forth the following:

- a. Date(s) of event
- b. Public area affected, with a specific map showing the location of the proposed event
- c. Description of the Nature of the Event
- d. Description of where and what type of barricades will be used and how said barricades will be removed in the event emergency vehicles are required to pass.
- e. Name of the person or group applying for the permit.

The Governing Body reserves complete discretion to approve or deny such request, or request additional information, terms or conditions to approve the same.

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### ARTICLE 7. PENAL PROVISION

#### **§10-701 VIOLATION; PENALTY.**

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred (\$500.00) dollars for each offense, recoverable with costs. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply. (*Ref. 17-207*)