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## CHAPTER 5 – BUSINESS REGULATIONS

### Article 1 – Alcoholic Beverages

#### SECTION 5-101: DEFINITIONS

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

#### SECTION 5-102: CONSUMPTION IN PUBLIC PLACES

It shall be unlawful for any person to consume alcoholic beverages within the corporate limits upon the public ways and property, including inside vehicles while upon the public ways and property, or within any public business or public building which is not a licensed liquor establishment, except that the Village Board may grant permits for the consumption of alcoholic beverages upon public property and within public buildings and public businesses upon such terms and conditions as the Board may establish from time to time in accordance with state law. The Village Board may permit the consumption of alcoholic beverages within the corporate limits upon the public ways and property, but not inside vehicles while upon the public ways and property, by adopting a resolution approving an application containing:

A. The name of the person or organization submitting the application and an agreement that such person or organization will assume complete responsibility for insuring that the laws governing alcoholic beverages will be complied with and indemnifying the Village and its officials and employees from and against any claims arising from the consumption of alcoholic beverages on public property;

B. The type of alcoholic beverages proposed;

C. The time and place where alcoholic beverages will be provided;

D. Whether or not the alcoholic beverages will be sold; and

E. If the alcoholic beverages will be sold, how the proceeds from the sale will be utilized.

**(Neb. Rev. Stat. §53-186, 53-186.01)**

#### SECTION 5-103: VILLAGE POWERS AND DUTIES

The Village Board is authorized to regulate by ordinance, not inconsistent with the provisions of the Nebraska Liquor Control Act, the business of all retail and bottle club licensees carried on within the corporate limits. The Village Board shall further have the power and duties in respect to licensed retailers of alcoholic beverages to cancel or revoke for cause retail or bottle club licenses to sell or dispense alcoholic liquors issued to persons for premises within its jurisdiction, subject to the right of ap-

peal to the Liquor Control Commission; to enter or to authorize any law enforcement officer to enter at any time upon any premises licensed by the State to determine whether any of the provisions of village or state laws are being violated; to receive signed complaints from any citizens within its jurisdiction that any village or state laws are being violated, and to act upon such complaints in the manner herein provided; to cancel or revoke on its own motion any license if, upon the same notice and hearing as provided herein, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance or regulation duly enacted relating to alcoholic liquors; and to collect for the benefit of the State and the Village all license fees and occupation taxes as prescribed by law. **(Neb. Rev. Stat. §53-134)**

#### **SECTION 5-104: LICENSE REQUIRED**

It shall be unlawful for any person to manufacture for sale, sell, keep for sale, or to barter any alcoholic liquors within the Village unless said person shall have in full force and effect a license as provided by the Nebraska Liquor Control Act. **(Neb. Rev. Stat. §53-168.06)**

#### **SECTION 5-105: LOCATION**

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

#### **SECTION 5-106: SANITARY CONDITIONS**

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

#### **SECTION 5-107: LICENSEE REQUIREMENTS**

No license to sell alcoholic beverages at retail shall be issued to:

A. A person who is not a resident of Nebraska, except in case of railroad, airline, or boat licenses;

B. A person who is not of good character and reputation in the community in which he or she resides;

C. A person who is not a citizen of the United States;

D. A person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States;

E. A person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to **Neb. Rev. Stat. Chapter 28, Article 3, 4, 8, 10, 11, or 12**, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this subsection on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such license if the conviction or plea occurred prior to May 18, 1983;

F. A person whose license issued under the Nebraska Liquor Control Act has been revoked for cause;

G. A person who at the time of application for renewal of any license issued under the act would not be eligible for such license upon initial application;

H. A partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license;

I. A limited liability company, unless one of the members is a resident of Nebraska and unless all the members of such company are otherwise qualified to obtain a license;

J. A corporation, if any officer, manager, or director of the corporation or any stockholder owning in the aggregate more than 25% of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subsections (A) and (C) of this section, except that a manager of a corporate licensee shall be a resident of Nebraska. This subsection shall not apply to railroad licenses;

K. A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

L. A person who does not own the premises for which a license is sought or does not have a lease or combination of leases on such premises for the full period for which the license is to be issued;

M. Except as provided in this subsection, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant shall become eligible for a liquor license only if the Liquor Control Commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license, the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if it is shown to the satisfaction of the Commission that the licensed business will be the sole property of the applicant and that such licensed premises will be properly operated;

N. A person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal;

O. A law enforcement officer, except that this subsection shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization; or

P. A person less than 21 years of age. When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or person who is mentally incompetent.

(Neb. Rev. Stat. §53-125)

#### **SECTION 5-108: PAYMENT OF FEES**

At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in **Neb. Rev. Stat. §53-124** and, if the applicant is an individual, provide the applicant's social security number. All applicable license fees shall be paid by the applicant or licensee directly to the Village Treasurer. (Neb. Rev. Stat. §53-124)

#### **SECTION 5-109: 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 premises. (Neb. Rev. Stat. §53-148)

#### **SECTION 5-110: INSPECTIONS**

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



**SECTION 5-111: HOURS OF SALE**

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

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

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

C. Such limitations shall not apply after 12:00 noon on Sunday to a licensee which is a nonprofit corporation and the holder of a Class C or Class I license.

D. It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between fifteen minutes after the closing hour applicable to the licensed premises and 6 a.m. on any day.

E. 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. **(Neb. Rev. Stat. §53-179)**

**SECTION 5-112: ACCESS TO DWELLINGS ON PREMISES**

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

**SECTION 5-113: OWNER OF PREMISES**

The owner of any premises used for the sale at retail of alcoholic beverages shall be deemed guilty of a violation of these laws to the same extent as the said licensee if the owner shall knowingly permit the licensee to use the said licensed premises in violation of any municipal code section or Nebraska statute. (Neb. Rev. Stat. §53-1,101)

**SECTION 5-114: EMPLOYER LIABLE**

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 or omission or violation of any law or ordinance, if such act is committed or omission made with the authorization, knowledge or approval of the employer or licensee. 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. (Neb. Rev. Stat. §53-1,102)

**SECTION 5-115: HIRING MINORS**

It shall be unlawful for any person to hire a minor regardless of sex under the age of 19 years to serve or dispense alcoholic liquors, including beer, to said licensee's customers. (Neb. Rev. Stat. §53--168.06)

**SECTION 5-116: MINORS AND INCOMPETENTS**

It shall be unlawful for any person or persons to sell, give away, dispose of, exchange, permit the sale of or make a gift of any alcoholic liquor or to procure any such alcoholic liquor to or for any minor or to any person who is mentally incompetent. (Neb. Rev. Stat. §53-180)

**SECTION 5-117: MINOR'S PRESENCE**

It shall be unlawful for any person or persons who own, manage, or lease an establishment selling alcoholic beverages at retail to allow any minor under the age of 18 years to frequent or otherwise remain in the said establishment unless the said minor is accompanied by his parent or legal guardian and unless said minor remains seated with and under the immediate control of, the said parent or legal guardian. (Neb. Rev. Stat. §53-134.03)

**SECTION 5-118: CREDIT SALES**

No person shall sell or furnish alcoholic liquor at retail to any person or persons for credit of any kind, barter, or services rendered; provided, nothing herein contained shall be construed to prevent any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or guests of members and charged to the accounts of the said members or guests in accordance with the bylaws of any such club; and provided further, nothing herein shall be con-

strued to prevent any hotel or restaurant holding a retail alcoholic beverage license from permitting checks or statements for liquor to be signed by regular guests residing in the said hotel and charged to the accounts of such guests. (Neb. Rev. Stat. §53-183)

#### **SECTION 5-119: ORIGINAL PACKAGE**

No person except a manufacturer or wholesaler shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor. It shall be unlawful for any person to have in his/her possession for sale at retail any bottles, casks, or other containers containing alcoholic liquor except in original packages. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale. (Neb. Rev. Stat. §53-184)

#### **SECTION 5-120: LICENSE RENEWAL**

Retail or bottle club licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the Village Board to require the said licensee to issue an application for renewal. Any licensed retail or bottle club establishment located in an area which is annexed to the Village shall file a formal application for a license, and while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this article until the original license expires or is canceled or revoked. If such license expires within 60 days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one year. The Village Clerk, upon notice from the Commission, between January 10 and January 30 of each year shall cause to be published one time in a legal newspaper in or of general circulation in the Village a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the Village; provided, Class C license renewal notices shall be published between the dates of July 10 and July 30 of each year. Upon the conclusion of any hearing required by this section, the Village Board may request a licensee to submit an application. (Neb. Rev. Stat. §53-135, 53-135.01)

#### **SECTION 5-121: PROTESTS AGAINST RENEWAL**

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

**SECTION 5-122: CITIZEN COMPLAINTS**

Any five residents of the Village shall have the right to file a complaint with the Village Board stating that any retail licensee subject to the jurisdiction of the Board has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant to the act. Such complaint shall be in writing in the form prescribed by the said Board and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the Village Board is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for such belief, it shall set the matter for hearing within ten days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint. The complaint shall in all cases be disposed of by the Village Board within 30 days from the date the complaint was filed by resolution thereof, which resolution shall be deemed the final order for purposes of appeal to the Liquor Control Commission as provided in **Neb. Rev. Stat. §53-1,115. (Neb. Rev. Stat. §53-134.04)**

**SECTION 5-123: FORM FOR CITIZEN COMPLAINT**

The following form is hereby prescribed for the use of residents of this village desiring to complain to the Chairperson and the Board that any licensee is violating any provision of the Nebraska Liquor Control Act, regulations prescribed by the Nebraska Liquor Control Commission, or any provision of this ordinance:

To the Chairperson and Board of the Village of Waterloo, Nebraska; the undersigned respectfully state:

1. That they are each residents of the Village of Waterloo, Nebraska.

2. That they believe that \_\_\_\_\_, the holder of a Class \_\_\_ license in the aforesaid village, has violated Section \_\_\_\_\_ of (check one or more)

\_\_\_\_\_ the Nebraska Liquor Control Act.

\_\_\_\_\_ the regulations prescribed by the Nebraska Liquor Control Commission.

\_\_\_\_\_ the Municipal Code of the Village of Waterloo, Nebraska.

3. That the aforesaid belief is based on the following facts, to-wit:

\_\_\_\_\_

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)



his/her home or to place such person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctor which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury and under no circumstances longer than 24 hours. The placement of such person in civil protective custody shall be recorded at the facility or jail at which he/she is delivered and communicated to his/her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

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

C. For purposes of this section, "public property" shall mean any public right-of-way, street, highway, alley, park, or other state, county, or village-owned property.

D. For the purposes of this section, "quasi-public property" shall mean and include private or publicly-owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress.  
**(Neb. Rev. Stat. §53-1,121)**

## **Article 2 – Solicitors and Itinerant Merchants**

### **SECTION 5-201: REGULATION**

To prevent the sale of fraudulent, dangerous, and unhealthful 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 door-to-door or itinerant salespersons shall, before doing business within the Village, make application for and be issued a sales permit. Application for said permit shall be made to the Village Clerk and shall contain all the necessary information and documents required for the protection of the residents of the Village. Any person or persons granted a sales permit shall be subject to any fees and any other rules and regulations which the Village Board deems appropriate for the purposes stated herein. Any permit so granted shall be subject to revocation for good and sufficient cause by the Village Police. (Neb. Rev. Stat. §17-134, 17-525)

### **SECTION 5-202: EXCEPTIONS**

Nothing herein shall be construed to apply to (A) any person(s) selling produce raised within the county; (B) wholesale salespersons soliciting merchants directly; or (C) a representative of a nonprofit or charity organization soliciting on behalf of that organization.

### **SECTION 5-203: DUTY TO CARRY AND DISPLAY PERMIT**

The sales permit as herein provided shall at all times be carried on the person of said salesperson and shall be displayed by him/her upon the request of any citizen of the Village or any Village Police Officer.

### **SECTION 5-204: HOURS OF SOLICITATION**

It shall be unlawful for any door-to-door salesperson to solicit any household between the hours of 6:00 P.M. and 9:00 A.M. unless he/she has a previous appointment with the resident(s) of the premises solicited.





## Article 3 – Occupation and Sales Taxes

### SECTION 5-301: OCCUPATION TAXES; AMOUNTS

For the purpose of raising revenue, occupations subject to taxes and the amounts of such taxes shall be established by ordinance from time to time by the Village Board. Said ordinance shall be on file in the village office and shall be available for public inspection during office hours. See Section 5-404 for occupation taxes on lotteries and games of chance. (Neb. Rev. Stat. §17-525)

### SECTION 5-302: OCCUPATION TAXES; TELECOMMUNICATION SERVICES

There is hereby levied upon every person, firm, partnership, corporation, or association engaged in the business of offering or providing telecommunication services to the public for hire in the Village of Waterloo an occupation tax as follows:

A. *Amount.* Three percent on the gross receipts resulting from any toll services and charges on basic local exchange services; inter-exchange services; mobile services; and other telecommunication services as follows:

1. “Basic local exchange services” shall include the access and transmission of two-way switched communications within the village, including local telephone and telecommunication services.
2. “Inter-exchange services” shall mean the access and transmission of communications between two or more local exchange areas, provided that such inter-exchange service either (a) originates from an end user within the village or (b) terminates with an end user within the village, and is charged to a service address within the village regardless of where the charges are actually paid;
3. “Mobile services” shall include any radio or similar communication services provided pursuant to license or authority granted by the Federal Communications Commission, charged to a service address within the village regardless of where the charges are actually paid; including cellular, radio paging, and mobile radio services; and
4. Any other similar telecommunication services involving any electronic or electromagnetic transmission of messages originating and terminating in the State of Nebraska and charged to a service address in the Village of Waterloo, regardless of where the charges are actually paid.

B. *Exceptions.* Gross receipts shall not include any toll services and charges as follows. No part or portion of the tax provided for in this chapter shall be levied upon or assessed against or taken from any such gross receipts so excepted from the provisions hereof:

1. For interstate telecommunications between persons in this village and persons outside of this state.
2. For local carrier access charges, transmission facilities and switching services provided to telecommunications companies;
3. From accounts charged to the United States government or any of its departments, or the State of Nebraska, or any of its agencies, subdivisions or departments.

**SECTION 5-303: OCCUPATION TAXES; TELECOMMUNICATION SERVICES; PAYMENTS; PENALTIES FOR LATE PAYMENT**

A. The payment of the occupation tax herein levied shall be in quarterly payments, using the calendar quarter year as a basis for determining and computing the amount of tax payable. Each quarterly payment shall be due 45 days after the termination of each calendar quarter year. All payments of tax made after the due date shall draw interest at the rate of one percent per month and, after payment has been in default for six months, a penalty of 14% shall be added thereto in addition to the interest charges and shall be paid by the company or companies subject to this occupation tax. Each succeeding payment may make such adjustment to be shown on the report hereinafter provided for as may be necessary for uncollectables or any other matters which may have resulted in either an excess or deficiency in the amount of tax paid in any previous quarter.

B. The occupation tax herein levied shall be paid the treasurer at the time provided herein, and he/she shall issue and deliver his/her receipt therefor on the payment thereon, and the amount of payment shall be credited by the treasurer to the General Fund or as otherwise directed by resolution

**SECTION 5-304: OCCUPATION TAXES; TELECOMMUNICATION SERVICES; REPORTS AND INSPECTIONS**

A. All telephone companies, at the same time as they make such quarterly payments of tax herein required, shall file with the Clerk a full, complete and detailed statement of the gross receipts subject to the occupation tax provided for in this ordinance. Said statement shall be duly verified and sworn to by the manager in charge of the business of the particular company in the Village or by a higher managerial employee of such company, and the Village shall have the right at any time, through its officers, agents or representatives, to inspect the books and records of such company for the purpose of verifying such reports.

B. If the telephone company shall refuse, fail or neglect to furnish or file such reports at the time required by this chapter or shall fail or refuse to permit the Village to inspect the books and records of such company for the purpose of verifying such

report or reports, then the occupation tax for the preceding quarter shall be \$25,000.00; said amount shall be paid within 45 days following the end of the calendar quarter as required by herein, and said amount shall draw 14% interest and penalties as further provided herein.

**SECTION 5-305: OCCUPATION TAXES; TELECOMMUNICATION SERVICES;  
FAILURE TO PAY; SUITS FOR COLLECTION**

In case any such company shall fail to make payment of the occupation tax as herein provided at the times herein specified, the Village shall have the right to and may sue any such company or companies in any court of competent jurisdiction for the amount of the occupation tax due and payable under the terms and provisions of this division and may recover judgment against any such company or companies for the amount so due, together with 14% interest and penalties, and may have execution thereon.

**SECTION 5-306: SALES TAX**

A. On May 15, 2007 a majority of all qualified electors of the Village of Waterloo voted at a special election to impose a sales and use tax of ½% in addition to the 1% sales and use tax currently in effect, for a total sales and use tax of 1½% within the Village. Pursuant to the approval of the electors, there is hereby adopted pursuant to the provisions of **Neb. Rev. Stat. §77-2701 to §77-27,135.01**, known as the Nebraska Revenue Act of 1967, and **Neb. Rev. Stat. §77-27,142 to §77-27,148**, known as the Local Option Revenue Act, and other pertinent statutes, a sales and use tax effective on or after October 1, 2007, of 1½% upon the same transactions within the corporate limits of the Village on which the State of Nebraska is authorized to impose a tax pursuant to the provisions of the aforementioned state statutes as the same may from time to time be amended; said tax shall continue in perpetuity unless repealed by the voters of the Village.

B. The proceeds of such sales and use tax shall be used for all lawful village purposes which may include but not be limited to meeting the Village's current economic development commitments and obligations; providing property tax relief; and the financing of capital improvement or acquisition projects, including the payment of interest or principal on any bonds as such principal and interest payments fall due.

(Ord. No. 685, 5/22/07)



## Article 4 – Lotteries and Games of Chance

### SECTION 5-401: DEFINITIONS

For the purposes of this article, the following definitions shall apply:

"Business engaged in the occupation of conducting games of chance and/or lotteries" shall mean (A) any business which operates, owns, or is the lessee of a place of business where any game of chance and/or lottery activity is conducted, whether or not any other type of business is conducted on the premises, or (B) any business which either directly controls or manages the games of chance and/or lotteries or owns any machine or device used to engage in the occupation of games of chance and/or lotteries but does not sell, lease, or deliver possession or custody of such a device to others.

"Distributor" shall mean any business engaging in the business of selling, leasing, or delivering possession or custody of gambling devices for consideration to a business engaged in the occupation of conducting games of chance and/or lotteries.

"Gambling device" shall mean any and all machines or devices used by a person engaged in the occupation of conducting games of chance and/or lotteries.

"Games of chance and/or lotteries" shall mean those forms of gambling authorized by the State of Nebraska pursuant to Article III, Section 24, of the Constitution of the State of Nebraska.

### SECTION 5-402: LICENSE REQUIRED

A. It shall be unlawful for any business to engage in the occupation of conducting games of chance or lottery activities without first obtaining a license to do so.

B. Every business desiring a license required by the provisions of this section shall make application to the Village Clerk. Accompanying each application shall be:

1. A sworn statement by each designated supervising member that such member will be responsible for compliance with rules and regulations for each occasion of games of chance and/or lotteries which he/she supervises; and
2. A sworn statement by the member designated as responsible for the proper utilization of gross receipts that no commission, fee, rent, seller profits, compensation, reward, or recompense will be paid to any person or organization not sanctioned by the laws of the State and the Village and that all profits will be spent for lawful purposes.

C. Every license issued under the provisions of this section shall be conspicu-

ously displayed at the place where the game of chance and/or lottery activity is conducted at all times during the conduct thereof.

D. An annual license fee for engaging in the occupation of conducting games of chance and lotteries within the Village shall be levied for each location wherein such activity is conducted and shall be paid to the Village Clerk upon the issuance or renewal of the license. Such fee shall be set from time to time by the Village Board and shall be on file at the village office for public inspection during office hours.

### **SECTION 5-403: PARTICIPATION; RESTRICTIONS**

A. No person under 19 years of age shall play or participate in any way in the lottery established and conducted by the Village.

B. The following persons are prohibited from playing the lottery conducted by the Village:

1. Any owner or officer of a lottery operator with whom the Village contracts to conduct its lottery.
2. Any owner or officer of an authorized sales outlet location for the Village.
3. Any employee or agent of the Village, of the lottery operator, or of any authorized sales outlet location for which he/she performs work during such time as he/she is actually working at such lottery or while on duty.

C. Nothing shall prohibit any member of the Village Board, a village official, or the immediate family of such member or official from playing the lottery conducted by the Village as long as such person is 19 years of age or older.

D. No person, or employee or agent of any person or of the Village shall knowingly permit an individual less than 19 years of age to play or participate in any way in the lottery conducted by the Village.

E. For purposes of this section, "immediate family of a member of the Village Board or a village official" shall mean:

1. A person who is related to the member or official by blood, marriage, or adoption and resides in the same household; or
2. A person who is claimed by the member or official as a dependent for federal income tax purposes; or
3. The spouse of the member or official.

(Neb. Rev. Stat. §9-646)

### **SECTION 5-404: OCCUPATION TAX**

A. Occupation taxes are hereby imposed on each business engaged in the occupation of conducting games of chance and lottery activities and every business engaged in the occupation of distributing gambling devices within the Village.

B. The occupation tax for each business engaging in the occupation of conducting games of chance and lottery activities within the Village shall be 5% of the gross receipts received by the business in each quarter of a calendar year.

C. The occupation tax for each business engaging in the occupation of distributing gambling devices within the Village shall be 5% of the gross receipts received by the business in each quarter of a calendar year.

D. All occupation taxes for the previous calendar quarter shall be due and payable to the Village Clerk on the 15th day of April, July, October and January. All delinquent taxes shall bear interest at the rate of 1% per month until paid.

**SECTION 5-405: EXEMPTIONS**

Operations under the Nebraska County and Village Lottery Act, the Nebraska Small Lottery and Raffle Act, and the Village of Waterloo Keno Regulations shall be exempt from the provisions of this article.





## Article 5 – Tobacco Sales

### SECTION 5-501: REGULATIONS

A. It shall be unlawful to sell tobacco products, including cigarettes, in any form except original factory-wrapped packages. The sale of individual cigarettes is specifically prohibited.

B. It shall be unlawful for any person or organization to give away, hand out, or otherwise distribute free samples of tobacco products or coupons that can be redeemed for free samples of tobacco products anywhere in the Village's zoning jurisdiction.

C. It shall be unlawful for any person to:

1. Sell, permit to be sold, or offer for sale tobacco products by means other than with the assistance of a vendor store employee, or
2. Display tobacco products in a manner allowing customers access to tobacco products without vendor assistance except as permitted under subsection (D).

D. This ordinance shall not apply to tobacco vending machines regulated by Nebraska state law, tobacco retail stores, to any business licensed by the Nebraska Liquor Control Commission, or to any other sale or distribution permitted under federal or state law.

(Ord. No. 684, 5/14/07)



## Article 6 – Fair Housing

### SECTION 5-601: PURPOSE

The purpose of this article is to promote the general welfare of the residents of Waterloo, Nebraska, by endorsing the provisions of the Nebraska Fair Housing Act, **Neb. Rev. Stat. §20-301 through §20-344**, to the effect that there shall be no discrimination in the Village in the acquisition, ownership, possession or enjoyment of housing in accordance with Article 1, Section 25, of the Constitution of the State of Nebraska.

### SECTION 5-602: DEFINITIONS

"Aggrieved person" shall include any person who claims to have been injured by a discriminatory housing project or believes that he/she will be injured by a discriminatory housing practice that is about to occur.

"Commission" shall mean the Nebraska Equal Opportunity Commission.

" Dwelling " shall mean any building, structure or portion thereof which is occupied as or designed or intended for occupancy as a residence for one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

"Familial status" shall mean one or more minors being domiciled with: (A) a parent or another person having legal custody of such individual; or (B) the designee of a parent or other person having legal custody, with written permission of the parent or other person.

"Handicap" shall mean, with respect to a person: (A) a physical or mental impairment, excluding current illegal use of or addiction to a controlled substance as defined in **Neb. Rev. Stat. §28-401**, which substantially limits one or more of such person's major life activities; (B) a record of having such an impairment; or (C) being regarded as having such an impairment.

"Person" shall include one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

"Rent" shall include lease, sublease, let and otherwise grant for consideration the right to occupy premises not owned by the occupant.

"Restrictive covenant" shall mean any specification limiting the transfer, rental or lease of any housing because of race, creed, religion, color, national origin, sex, handicap, familial status or ancestry.

**SECTION 5-603: UNLAWFUL ACTS**

A. It shall be unlawful to:

1. Refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of or otherwise make unavailable or deny, refuse to show, or refuse to receive and transmit an offer for a dwelling to any person because of race, color, religion, national origin, familial status or sex;
2. Discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection therewith because of race, color, religion, national origin, familial status or sex;
3. Make, print, publish or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, national origin, handicap, familial status or sex or an intention to make any such preference, limitation or discrimination;
4. Represent to any person because of his/her race, color, religion, national origin, handicap, familial status or sex that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available;
5. Cause to be made any written or oral inquiry or record concerning the race, color, religion, national origin, handicap, familial status or sex of a person seeking to purchase, rent or lease any housing;
6. Include in any transfer, sale, rental or lease of housing any restrictive covenants, or honor, exercise or attempt to honor or exercise any restrictive covenant pertaining to housing;
7. Discharge or demote an employee or agent or discriminate in the compensation of such employee or agent because of such employee's compliance with this article or the Nebraska Fair Housing Act; and
8. Induce or attempt to induce, for profit, any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, handicap, familial status or sex.

B. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of a minor.

**SECTION 5-604: HANDICAPPED PERSON; DESIGN AND CONSTRUCTION STANDARDS**

A. It shall be unlawful to:

1. Discriminate in the sale or rental of or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of (a) the buyer or renter; (b) any person associated with the buyer or renter; or (c) a person residing in or intending to reside in the dwelling after it is sold, rented or made available; or
2. Discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with a dwelling because of a handicap of (a) such person; (b) any person associated with such person; or (c) a person residing in or intending to reside in the dwelling after it is sold, rented or made available.

B. For purposes of this section, "discrimination" shall include:

1. A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises, except that in the case of rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
2. A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford the handicapped person equal opportunity to use or enjoy a dwelling; and
3. In connection with the design and construction of covered multi-family dwellings for first occupancy after September 1, 1991, a failure to design and construct the dwellings in such a manner that the public use and common use portions of the dwelling are readily accessible to and usable by handicapped persons, all the doors designed to allow passage into and within all premises within the dwelling are sufficiently wide to allow passage by handicapped persons in wheelchairs, and all premises within the dwellings contain the following features of adaptive design:
  - a. An accessible route into and through the dwelling;
  - b. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

- c. Reinforcements in bathroom walls to allow later installation of grab bars; and
- d. Kitchens and bathrooms such that a handicapped person in a wheelchair can maneuver about the space.

C. Compliance with the appropriate requirements of the American National Standards Institute's standard for buildings and facilities providing accessibility and usability for physically handicapped people, ANSI A117.1, shall satisfy the requirements of subdivision (B)(3)(c) of this section.

D. For purposes of this section, "covered multi-family dwellings" shall mean:

- 1. Buildings consisting of four or more units, if such buildings have one or more elevators; and
- 2. Ground floor units in other buildings consisting of four or more units.

E. Nothing in this section shall require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

#### **SECTION 5-605: TRANSACTION RELATED TO RESIDENTIAL REAL ESTATE**

A. It shall be unlawful for any person or other entity whose business includes engaging in transactions related to residential real estate to discriminate against any person in making available such a transaction because of race, color, religion, sex, handicap, familial status or national origin.

B. For purposes of this section, "transaction related to residential real estate" shall mean any of the following:

- 1. The making or purchasing of loans or providing other financial assistance (a) for purchasing, constructing, improving, repairing or maintaining a dwelling or (b) secured by residential real estate; or
- 2. The selling, brokering or appraising of residential real property.

C. Nothing in this section shall prohibit a person engaged in the business of furnishing appraisals or real property from taking into consideration factors other than race, color, religion, national origin, handicap, familial status or sex.

#### **SECTION 5-606: MULTIPLE LISTING SERVICE OR OTHER SERVICE**

It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or

participation on account of race, color, religion, national origin, handicap, familial status or sex.

**SECTION 5-607: RELIGIOUS ORGANIZATION, PRIVATE HOME; PRIVATE CLUB OR HOUSING FOR OLDER PERSONS; RESTRICTING USE NOT PROHIBITED**

A. Nothing in this article shall prohibit a religious organization, association or society or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with said religious organization, association or society from limiting the sale, rental or occupancy of a dwelling which it owns or operates for other than commercial purposes to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, national origin, handicap, familial status or sex.

B. Nothing in this article shall prohibit a private club not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than commercial purposes, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

C. Nothing in this article shall prohibit or limit the right of any person or his/her authorized representative to refuse to rent a room or rooms in his/her own home for any reason or for no reason or to change tenants in his/her own home as often as desired, except that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or family within his/her home.

D. Nothing in this article regarding familial status shall apply with respect to housing for older persons. For purposes of this subsection, "housing for older persons" shall mean housing:

1. Provided under any state program that the Commission determines is specifically designed and operated to assist elderly persons as defined in such program;
2. Intended for and solely occupied by persons 62 years of age or older; or
3. Intended and operated for occupancy by at least one person 55 years of age or older per unit.

**SECTION 5-608: INFORMATION**

The Village Clerk, upon inquiry, shall make available information regarding the Nebraska Fair Housing Act and the Nebraska Equal Opportunity Commission to an aggrieved person or any other person without cost to such individual.





## **Article 7 – Sexually Oriented Businesses**

### **SECTION 5-701: PURPOSE AND INTENT**

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

### **SECTION 5-702: FINDINGS**

Based on convincing documented evidence, studies, findings and reports concerning the negative secondary effects of sexually oriented businesses regarding both commercial and residential areas and the nexus between sexually oriented businesses, obscene materials and sexual exhibits and alcohol consumption, and illegal drug distribution and use, the Village Board finds:

A. Sexually oriented businesses have negative secondary effects on the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of property values, the downgrading of adjacent neighborhoods making adjacent neighborhoods significantly less attractive and less safe for raising children and denigrating both residential life and commercial activity for other types of businesses and sexually oriented businesses downgrade the quality of life and fitness of property for other uses in areas both immediate and adjacent to such businesses.

B. The negative secondary effects of sexually oriented businesses are increased when they are located in close proximity to each other and when the service or consumption of alcohol is permitted at or near such locations.

C. Improper conduct involving sexual acts occurs at sexually oriented businesses which provide private or semi-private booths or viewing rooms for the viewing of films, videos or live performances.

D. The findings noted above raise substantial governmental concerns for the health, safety and welfare of the citizens of the Village and it is appropriate for the purpose of promoting and protecting the health, safety and welfare of the citizens of the Village, particularly the children of the community and those conducting general business that reasonable regulations be enacted so as to address the substantial

governmental concerns to minimize and control the negative secondary effects of sexually oriented businesses and thereby promote and protect the health, safety and welfare of the citizens of the Village, protect the citizens from increased crime, preserve the value of property, and preserve the quality of life and the quality and character of surrounding neighborhoods for residential and commercial purposes.

E. The enactment of reasonable regulations of sexually oriented businesses which involve locational criteria, licensing criteria, operational criteria, and the prohibition of alcohol and illegal substance use are appropriate to address the substantial governmental concerns and protect the health, safety and welfare of the citizens of the Village.

F. A reasonable licensing procedure and zoning requirements are appropriate mechanisms to place the burden of reasonable regulations on the owners of sexually oriented businesses and such a licensing procedure will place an incentive on the owners to see that the sexually oriented business is operated in a manner which is consistent with the health, safety and welfare of patrons, employees and citizens of the Village.

### **SECTION 5-703: DEFINITIONS**

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

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

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

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, laser or compact discs, or other visual representations which are characterized by their emphasis upon the exhibition or display of “specified sexual activities” or “specified anatomical areas;” or
- B. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomaso-

chistic use or abuse of the user or others.

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

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

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

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

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

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

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

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

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

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

“Establishment” shall mean any of the following:

- A. The opening or commencement of any sexually oriented business as a new business.
- B. The conversion of an existing business to a sexually oriented business or from one type of sexually oriented business to another type or types of sexually oriented business.
- C. The addition of any sexually oriented business to any other existing sexually oriented business.
- D. The relocation of any sexually oriented business.

“Inspector” or “Zoning Administrator” shall mean the Zoning Administrator for the Village of Waterloo.

“Licensee” shall mean a person in whose name a license to operate a sexually oriented business has been issued, but also includes the individual listed as an applicant on the application for a license.

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

and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

“Nude,” “nudity” or “state of nudity” shall mean the showing or depiction of the human, post-pubertal male or female genitals, pubic area or buttocks with less than a full opaque covering, the showing or depiction of covered male genitals in a discernibly turgid state, or the showing or depiction of the female breast with less than a full opaque covering of any portion thereof below the top of the areolae of the nipple. This definition shall include the entire portion of the human female breast below the top of the areolae of the nipple, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other clothing.

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

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

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

“Semi-nude” shall mean a state of dress in which clothing covers no more than the genitals, pubic region, and the female breast below the top of the areolae of the nipple, with other portions of the body covered by supporting straps, material or devices. This definition shall include the entire portion of the human female breast below the top of the areolae of the nipple, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other clothing.

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

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex.
- B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

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

ter.

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

“Specified sexual activities” shall mean:

- A. The fondling or other erotic touching of human genitals, pubic area, buttocks or female breasts whether clothed or unclothed; or
- B. Acts whether actual or simulated, of human sexual intercourse, oral copulation, masturbation, or sodomy; or
- C. Excretory functions as part of or in connection with any of the activities set forth in (A) and (B) above.

“Substantial enlargement” shall mean the increase in floor area occupied by the business by more than 25%, as the floor area exists on the date these regulations take effect or on the date of the issuance of a sexually oriented business license.

“Transfer of Ownership or Control” shall mean:

- A. The sale, lease or sublease of the business; or
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

#### **SECTION 5-704: CLASSIFICATION OF BUSINESSES**

Sexually oriented businesses are classified as follows:

- A. Adult arcade;
- B. Adult bookstore, adult video store or adult novelty store;
- C. Adult cabaret;
- D. Adult motel;
- E. Adult motion picture theater;
- F. Adult theater;
- G. Escort agency;
- H. Nude model studio;
- I. Sexual encounter center.

**SECTION 5-705: LICENSE REQUIRED; APPLICATION FOR LICENSE**

A. It is unlawful to establish, operate, or cause to operate, a sexually oriented business without a valid license issued by the Village for the particular type of classification of business.

B. An application for a license must be made to the Zoning Administrator on a form provided by the said Administrator.

C. The applicant must meet all qualifications stated in this article before a license is issued and continuously thereafter during the license term. The application shall require and the applicant shall provide such information and documentation as is specified in this article.

D. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each officer, director, general partner, managing partner or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as applicant. Each applicant must meet the qualifications as stated in this article and each applicant shall be considered as a licensee if a license is granted.

E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is:
  - a. An individual, the individual shall state his or her legal name and any aliases and submit proof that he or she is 21 or more years of age;
  - b. A partnership or limited liability company, the partnership or limited liability company shall state its complete name, and the names of all partners or members, residence address and whether the partnership or company is general or limited, a copy of the partnership, LLC/LLP organizational agreement, if any, and verification of current state registration, if any;
  - c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the name, capacity and address of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he/she must state the sexually oriented business's name and submit any registration documents.
  3. Whether the applicant has been convicted of a crime as specified in Subsection (A)(7)(a) of Section 5-707, and, if so, the crime, date, place and jurisdiction.
  4. Whether the applicant has had a previous license or holds a present license under this article or other similar sexually oriented business ordinances from another Village or county and whether any license has been denied, suspended or revoked in this or any other jurisdiction, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner or member in a partnership or limited liability company or an officer, director, or principal stockholder of a corporation that is licensed under this article or in another jurisdiction or whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.
  5. Whether the applicant holds any other licenses under this article or operates other similar sexually oriented businesses in another village or county and, if so, the names and locations of such other businesses.
  6. The classification of license for which the applicant is filing.
  7. The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number(s), if any.
  8. The applicant's mailing address and residential address.
  9. The applicant's driver's license number, social security number, and state or federal issued tax identification number.
  10. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.
- F. A person commits a misdemeanor if he/she operates a sexually oriented



business without a valid license issued by the Village for that particular classification of business.

G. The applicant must be qualified according to the provisions of this article and the premises must be inspected and found to be in compliance with the law and this article by the Village of Waterloo Zoning Administrator and Waterloo Police Department.

H. The fact that a person possesses other types of state or county licenses does not exempt him/her from the requirement of obtaining a sexually oriented business license.

### **SECTION 5-706: INVESTIGATION OF APPLICATION**

A. Upon receipt of an application for a sexually oriented business license, the Chief of Police or designee shall conduct an investigation of the applicant and application including a location inspection and shall issue an investigation report.

B. The Zoning Administrator or designee shall forward a copy of the application and investigation report to the Chief of Police and the Zoning Administrator shall inspect the location.

### **SECTION 5-707: LICENSE ISSUANCE AND DISPLAY**

A. The Zoning Administrator shall approve the issuance of a license to an applicant within 30 days after receipt of an application unless he/she finds one or more of the following to be true:

1. An applicant is not then 21 or more years of age.
2. An applicant is currently required to register pursuant to the Nebraska Sex Offender Registration Act.
3. An applicant or an applicant's spouse is overdue in his/her payment to the Village or County of fees, fines, or penalties assessed against or imposed upon him/her in relation to a sexually oriented business.
4. An applicant has failed to provide information reasonably necessary for issuance of the license, including all information requested on the application form, or has falsely answered a question or request for information on the application form.
5. The premises to be used for the sexually oriented business is not in compliance with state or local building and zoning codes, rules and regulations.
6. The investigation, inspection and license fees required by this article have not been paid.
7. An applicant has been convicted of a crime

a. Involving:

- i. Any of the following offenses as described in state statutes: (aa) prostitution; (bb) pandering; (cc) keeping a place of prostitution; (dd) debauching a minor; (ee) obscenity; (ff) contributing to the delinquency of a child; (gg) child pornography; (hh) possession, distribution or sale of child pornography;
  - ii. Any of the following offenses as described in state statutes: (aa) incest; (bb) public indecency; (cc) allowing a child to participate in child pornography;
  - iii. Sexual assault or sexual assault of a child as described in state statutes;
  - iv. Solicitation of a child, or harboring a runaway child as described in state statutes; or
  - v. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;
- b. For which:
- i. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, or the date of release from probation or parole, whichever is the later date, if the conviction is a misdemeanor offense;
  - ii. Less than ten years have elapsed since the date of conviction or the date of release from confinement for the conviction, or the date of release from probation or parole, whichever is the later date, if the conviction is a felony offense; or
  - iii. Less than ten years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, or the date of release from probation or parole, whichever is the later date, if the convictions are of two or more misdemeanors of the offenses listed subsection (A)(7)(a) of Section 5-707.

B. The fact that a conviction is being appealed has no effect on the disqualification of the applicant under subsection (A) of this section.

C. An applicant who has been convicted of an offense listed in subsection (A)(7)(a) above may qualify for a sexually oriented business license only when the time period required by subsection (A)(7)(b) has elapsed and all fines reference the criminal offenses have been fully paid.

D. The Zoning Administrator, upon approving the issuance of a sexually oriented business license, shall cause to be sent to the applicant, by certified mail, return receipt requested, written notice of that action and that the applicant must pay the investigation/inspection and license fees at the office of the Zoning Administrator. The Administrator's approval of the issuance of a license does not authorize the applicant to operate a sexually oriented business until the applicant has paid all fees required by this article and has obtained possession of the license. The Zoning Administrator, upon denial of the issuance of sexually oriented business license, shall

cause to be sent to the applicant, by certified mail, return receipt requested, written notice of that action and the applicant can appeal such decision to the Village Board in writing filed with the Village Clerk within 30 days of the date of denial. The Board will hear the appeal within 30 days from the date the written appeal is received. After hearing, the Board will affirm or reverse the decision of the Zoning Administrator within 30 days after conclusion of the hearing. The hearing will be informal and rules of evidence do not apply. The applicant has the right to be represented. In case of reversal, the license shall issue.

E. The license, if granted, must state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the classification for which the license is issued. The license must be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

F. A sexually oriented business license shall issue for only one classification and the applicant can operate a business for only one licensed location in the Village.

G. The Police Department, Fire Department, and the Zoning Administrator shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the Administrator. The certifications of the Police Department and Fire Department shall be promptly presented to the Zoning Administrator.

#### **SECTION 5-708: LICENSE FEE**

A. A sexually oriented business shall pay an annual license fee which shall be paid to the Village Clerk.

B. In addition to the annual license fee required by subsection (A) of this section, an applicant for an initial sexually oriented business license shall, at the time of making application, pay a nonrefundable investigation fee for the Village to conduct an investigation of the application and for the Village also to conduct inspections of the location to insure that the proposed sexually oriented business is in compliance with the locational and other restrictions set forth in Section 5-714.

C. The annual license fee and the investigation fee shall be set by the Village Board and filed at the office of the Village Clerk for public inspection during office hours

#### **SECTION 5-709: INSPECTIONS**

A. An applicant, licensee, operator or employee shall permit representatives of the Village of Waterloo Police Department, Fire Department, Zoning Administrator, and any other state, county or village agency, in the performance of any function connected with the enforcement of this ordinance or other applicable laws, to inspect

the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

B. An applicant, licensee or operator of a sexually oriented business or his/her agent or employee commits a misdemeanor offense if he/she refuses to permit an inspection of the premises by a representative of an agency designated in subsection (A) of this section at any time it is occupied or open for business.

### **SECTION 5-710: LICENSE TERM AND RENEWAL**

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 5-705. Application for renewal should be made at least 45 days before the expiration date, and when made less than 45 days before the expiration date, the expiration of the license will not be affected by the pendency of the application.

### **SECTION 5-711: LICENSE SUSPENSION**

A. The Zoning Administrator shall suspend a license for a period not to exceed 30 days if he/she determines that a licensee or an employee of a licensee:

1. Violated or is not in compliance with any section of these regulations.
2. Is required to register under the Nebraska Sex Offender Registration Act.
3. Engaged in or permitted or did not control excessive use of alcoholic beverages on the sexually oriented business premises.
4. Refused to allow an inspection of the sexually oriented business premises as authorized by this article.
5. Knowingly permitted gambling by any person on the sexually oriented business premises.

B. Appeal of the decision of the Zoning Administrator as to the existence of or non-compliance with the above matters shall be made to the Village Board. Hearing will be informal and the rules of evidence shall not apply. The hearing will occur within 15 days from the filing of the appeal upon written notice mailed at least ten days prior to the hearing to the business address and applicant residence address as it appears on the application, which the licensee is to amend if the residence address changes.

### **SECTION 5-712: LICENSE REVOCATION**

A. The Village Board shall revoke a license if a cause of suspension in Section 5-711 occurs and the license has been suspended within the preceding 12 months.

B. The Village Board shall revoke a license if the Board determines that:

1. A licensee gave false or misleading information in the material submitted

during the application process;

2. A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
3. A licensee or an employee has knowingly allowed prostitution on the premises;
4. A licensee or an employee knowingly operates the sexually oriented business during a period of time when the licensee's license was suspended;
5. A licensee has been convicted of an offense listed in subsection (A)(7)(a) of Section 5-707 for which the time period required in subsection (A)(7)(b) of Section 5-707 has not elapsed.
6. On two or more occasions within a twenty-four month period, a person or persons committed an offense in or on the licensed premises of a crime listed in subsection (A)(7)(a) of Section 5-707 for which a conviction has been obtained and the person or persons convicted were licensees or employees of the sexually oriented business at the time the offenses were committed; or
7. A licensee or an employee of the sexually oriented business has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the licensed premises. This subsection shall not apply to an adult motel unless the licensee or employee knowingly allowed such sexual acts to occur either in exchange for money or in a public place or within public view.

C. After revocation, the licensee shall not be issued a sexually oriented business license for two years from the date revocation became effective. If, subsequent to revocation, the Village Board finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date revocation became effective and a corrective plan which addresses the violation and assures that the violation will not occur again is provided to Board. If the license was revoked under Subsection (B)(5) above, an applicant may not be granted another license until the appropriate number of years required under Subsection (A)(7)(b) of Section 5-707 has elapsed.

D. The determination by the Village Board as to the existence of or non-compliance with the above matters shall be made in an open Village Board session after mailing notice of hearing time, place and date to the license holder or his/her/its representatives 15 days in advance of said hearing, stating that the Board will consider revoking the license and the grounds therefor. At said hearing, the license holder or his/her/its representatives may present oral or written evidence in support of

the continuance of the license and may confront and question any witnesses or evidence in opposition to the continuation of the license. Although rules of evidence do not apply, any decision will be based on credible evidence of violation of the requirements as stated herein.

### **SECTION 5-713: TRANSFER OF LICENSE**

A licensee shall not transfer his license to another, nor shall a licensee operate sexually oriented business under the authority of a license at any place other than the location designated in the license.

### **SECTION 5-714: LOCATION OF SEXUALLY ORIENTED BUSINESS**

A. No sexually oriented business shall be established, operated or caused to be operated in any zoning district other than a BC Business and Commercial zoning district as defined in the village zoning ordinances.

B. No sexually oriented business shall be established, operated or caused to be operated, within 1,000 feet of:

1. A church or other building primarily used for religious services or associated church structure such as a parish or fellowship hall;
2. A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, home schools, elementary schools, middle schools, high schools, special education schools and community colleges. "School" includes the school grounds and playgrounds;
3. A property line of a lot devoted to a residential use, either single or multiple family;
4. A park;
5. A hospital;
6. A community recreation center;
7. A public library;
8. A facility for youth service such as youth center, boys or girls club, 4-H, Scout, or other building for youth program meetings.

C. No sexually oriented business shall be established, operated, caused to be operated or substantially enlarged within 1,000 feet of another sexually oriented business.

D. For the purposes of Section 5-714(B), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a use listed in Section 5-714(B). The presence of any political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

E. For purposes of subsection (C) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to any intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

### **SECTION 5-715: NONCONFORMING USES**

A. Any sexually oriented business lawfully operating on the date of adoption of this code that is in violation of this article shall be deemed a nonconforming use. Such nonconforming use will be permitted to continue for a period not to exceed three years unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use upon application and issuance of a license.

B. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the establishment of a Section 5-714(B) use, subsequent to the grant of the sexually oriented business license, within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired, has not been continuously in effect, or has been revoked.

### **SECTION 5-716: FILMS OR VIDEOS**

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

1. It is the duty of the owner and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
2. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any reason from at least one of the manager's stations and all must be staffed when viewing access is made available so that all areas other than restrooms are supervised at all times during which viewing access is permitted. The supervision

required in this subsection must be by direct line of sight from the manager's station.

3. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (A)(2) remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to this article.
4. No viewing room may be occupied by more than one person at any time.
5. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle as measured at the floor level.
6. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

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

#### **SECTION 5-717: ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY OR SEMI-NUDITY**

A. No person shall appear in a sexually oriented business in a state of nudity or engage in or simulate specified sexual activities.

B. No person shall appear in a sexually oriented business in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six feet from any patron or customer and on a stage at least two feet from the door.

C. No employee shall, while semi-nude in a sexually oriented business, solicit any pay or gratuity from any patron or customer, and no patron or customer shall pay or give any gratuity to any employee while said employee is semi-nude in a sexually oriented business.

D. No employee shall, while semi-nude in a sexually oriented business, touch a patron or customer or the clothing of a patron or customer.



**SECTION 5-718: ADDITIONAL REGULATIONS CONCERNING ALCOHOL**

No sexually oriented business shall sell or serve alcohol and no sexually oriented business shall permit the consumption of alcohol on its premises.

**SECTION 5-719: CHILDREN PROHIBITED**

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

**SECTION 5-720: HOURS OF OPERATION**

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

**SECTION 5-721: DISPLAY OF SEXUALLY ORIENTED MATERIALS TO MINORS**

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

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

1. Human sexual intercourse, masturbation or sodomy;
2. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts;
3. Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areolae of the nipple; or
4. Human male genitals in a discernibly turgid state, whether covered or uncovered.

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

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

1. It is available to the general public for handling and inspection; or
2. The cover or outside packaging on the item is visible to members of the

general public.

**SECTION 5-722: ENFORCEMENT AND PENALTIES**

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

## **Article 8 – Penal Provision**

### **SECTION 5-801: 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 an offense and upon conviction thereof shall be fined not more than \$500.00 for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.