

CHAPTER 10

BUSINESS REGULATIONS

ARTICLE 1. ALCOHOLIC BEVERAGES

§10-101 ALCOHOLIC BEVERAGES; DEFINITIONS.

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

§10-102 ALCOHOLIC BEVERAGES; LICENSE REQUIRED.

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

§10-103 ALCOHOLIC BEVERAGES; LOCATION.

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

§10-104 ALCOHOLIC BEVERAGE; DWELLINGS.

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

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§10-105 ALCOHOLIC BEVERAGES; LICENSE DISPLAYED.

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

§10-106 ALCOHOLIC BEVERAGES; LICENSE REQUIREMENTS.

It shall be unlawful for any person or persons to own an establishment that sells at retail any alcoholic beverages unless said person is of good character and reputation; a citizen of the United States; a person who has never been convicted of a felony or any Class I misdemeanor pursuant to Chapter 28, Articles 3, 4, 7, 8, 10, 11, or 12 Reissue Revised Statutes of Nebraska, or any similar offense under a prior criminal statute or in another state; a person who has never had a liquor license revoked for cause; a person whose premises, for which a license is sought, meets standards for fire safety as established by the State Fire Marshal; or a person who has not acquired a beneficial interest in more than two (2) alcoholic beverage retail establishments since March 4, 1963; provided, the beneficial interest requirement in this section shall not apply to a person applying for an additional license for use in connection with the operation of a hotel containing at least twenty-five (25) sleeping rooms, or where the request is limited to on premises sale of beer only in a restaurant. (*Ref. 53-124.03, 53-125 RS Neb.*)

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

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

Notice of the time and place of such hearing shall be published in a legal newspaper in, or of general circulation in, the Municipality one (1) time not less than seven (7), nor more than fourteen (14), days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons

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

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

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

§10-108 ALCOHOLIC BEVERAGES; LIQUOR LICENSE RENEWAL.

Retail licenses issued by the Commission and outstanding may be automatically renewed in the absence of a request by the Governing Body to require the said licensee to issue an application for renewal. Any licensed retail establishment located in an area which is annexed to the Municipality shall file a formal application for a license, and while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to this Article until the original license expires, is canceled, or revoked. If such license expires within sixty (60) days following the annexation date of such area, the license may be renewed by order of the Commission for not more than one (1) year. The Municipal Clerk, upon notice from the Commission, between January tenth (10th) and January thirtieth (30th) of each year, shall cause to be published in a legal newspaper in, or of general circulation in the Municipality, one (1) time, a notice in the form prescribed by law of the right of automatic renewal of each retail liquor and beer license within the Municipality; provided, Class C license renewal notices shall be published between the dates of July tenth (10th) and July thirtieth (30th) of each year. The Municipal Clerk shall then file with the Commission proof of publication of said notice on or before February tenth (10th) of each year or August tenth (10th) of each year for Class C licenses. Upon the conclusion of any hearing required by this section, the Governing Body may request a licensee to submit an application. (*Ref. 53-135, 53-135.01 RS Neb.*) (*Amended by Ord. Nos. 80-3, 2/5/80; 83-25, 11/1/83*)

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

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

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

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

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- (6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in Neb. Rev. Stat. §134.04 it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the Commission within thirty (30) days after the date of the order by filing a notice of appeal with the Commission.
- (7)
 - (a) Upon receipt from the Commission of the notice and a copy of application as provided in Neb. Rev. Stat. § 53-131, to fix a time and place for a hearing at which the Governing Body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in the Municipality, one time not less than seven (7) and not more than fourteen (14) days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing.
 - (b) The hearing shall be held not more than forty-five (45) days after the date of receipt of the notice from the Commission, and after such hearing the Governing Body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The Municipal Clerk shall mail to the Commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license, the cost of publication of notice shall be paid by the Commission from the security costs.
- (D)
 - (1) When the Nebraska Liquor Control Commission mails or delivers to the Municipal Clerk a license issued or renewed by the Commission, the Clerk shall deliver the license to the licensee upon proof of payment of:

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

§10-110 ALCOHOLIC BEVERAGES; OWNER OF PREMISES.

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

§10-111 ALCOHOLIC BEVERAGES; EMPLOYER.

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

§10-112 ALCOHOLIC BEVERAGES; MINORS.

It shall be unlawful for any person or persons to sell, or make a gift of, any alcoholic liquor, or to procure any such alcoholic liquor for any minor, or other person who is mentally, physically, or otherwise incompetent, whether due to natural disabilities or the consumption of alcoholic beverages. *(Ref. 53-180 RS Neb.)*

§10-113 ALCOHOLIC BEVERAGES; CREDIT SALES.

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

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and charged to the accounts of the said members, or guests of members, and charged to the accounts of the said members or guests in accordance with the by-laws of any such club; and Provided further, nothing herein shall be construed to prevent any hotel from permitting checks or statements for liquor to be signed by bona fide guests residing in the said hotel, and charged to the accounts of such guests. (Ref. 53-183 RS Neb.)

§10-114 ALCOHOLIC BEVERAGES; SPIKING BEER.

It shall be unlawful for any person or persons who own, manage, or lease any premise in which the sale of alcoholic beverages is licensed, to serve or offer for sale any beer to which there has been added any alcohol, or permit any person or persons to add alcohol to any beer on the licensed premise of such licensee. (Ref. 53-174 RS Neb.)

§10-115 ALCOHOLIC BEVERAGES; ORIGINAL PACKAGE.

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

§10-116 ALCOHOLIC BEVERAGES; MINORS PRESENT.

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

§10-117 ALCOHOLIC BEVERAGES; HOURS OF SALE.

It shall be unlawful for any person or person or their agents to sell any alcoholic beverages within the Municipality except during the hours provided herein:

HOURS OF SALE

Alcoholic Liquors (except beer and wine)

Secular Days

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Off Sale 6:00 A.M. to 1:00 A.M.
of the following secular day.
On Sale 6:00 A.M. to 1:00 A.M.
of the following secular day.
Sundays
Off Sale 12:00 Noon to 12:00 Midnight
On Sale 12:00 Noon to 12:00 Midnight

Beer and Wine

Secular Days
Off Sale. 6:00 A.M. to 1:00 A.M.
of the following secular day
On Sale 6:00 A.M. to 1:00 A.M.
of the following secular day
Sundays
Off Sale 6:00 A.M. to 12:00 Midnight
On Sale 6:00 A.M. to 12:00 Midnight

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

The Governing Body may approve a one hour extension beyond 12:00 midnight on Sundays, by resolution, in the case of a Special Event.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. (Ref. 53-179 RS Neb)

§10-118 ALCOHOLIC BEVERAGES; SANITARY CONDITIONS.

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

§10-119 ALCOHOLIC BEVERAGES; HIRING MINORS.

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

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

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

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

It shall be unlawful for any person to have possession of any alcoholic liquors which shall have been acquired otherwise than from a licensee duly licensed to sell same to such person under the provisions of the Nebraska Liquor Control Act; Providing, nothing herein shall prevent the possession of alcoholic liquor for the personal use of the possessor, his family and guests, not prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker, his family and his guests; Provided further, that nothing herein shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, or any hospital or institution caring for the sick and diseased persons, from possessing any alcoholic liquor for the treatment of bona fide patients of such hospital or other institution; Provided further, that any drug store employing a licensed pharmacist may possess and use alcoholic liquors in the compounding of prescriptions of duly licensed physicians; and Provided further, that the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this Section; Provided further, that persons who are sixteen (16) years old or older may carry beer from grocery stores when they are accompanied by a person not a minor, containers and beer in the course of their employment in grocery stores, and persons who are sixteen (16) years old or older may remove and dispose of alcoholic liquor containers for the convenience of their employer and customers in the course of their employment as waiters, waitresses, or busboys, by any restaurant, club, hotel, or similar organization. (*Ref. 53-102, 53-175 RS Neb.*)

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

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

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

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

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

§10-124 ALCOHOLIC BEVERAGES; CATERING LICENSE.

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

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- licensee desiring to obtain a catering license shall file an application with the Liquor Control Commission.
- (2) Upon receipt from the Commission of the notice and copy of the application as provided in Neb. Rev. Stat. § 53-124.12, the Governing Body shall fix a time and place at which a hearing will be held and at which time the Governing Body shall receive evidence, under oath, either orally, or in writing, from the applicant and any other person concerning the propriety of the issuance of such license. Such hearing shall be held not more than forty-five (45) days after the receipt of the notice from the Commission. The Governing Body may examine, or cause to be examined, under oath, any applicant; examine, or cause to be examined, the books and records of any such applicant, to hear testimony, and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the Governing Body may authorize its agent, the Municipal Clerk or the Municipal Attorney, to act on its behalf.
 - (3) Notice of the time and place of such hearing shall be published in a legal newspaper in, or of general circulation in, the Municipality one (1) time not less than seven (7), nor more than fourteen (14), days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the Governing Body in support of or in protest against the issuance of such license may do so at the time of the hearing.
 - (4) The Governing Body shall, after the hearing provided in subsection (2), approve or deny the application within forty-five (45) days of receipt of such application from the Commission, and shall cause to be spread at large in the minute record of its proceedings a resolution approving or denying such application. The Municipal Clerk shall thereupon mail or deliver to the Commission a copy of the decision to approve or deny the application.
 - (5) Any resolution denying an application rendered by the Governing Body shall be in writing or stated in the record and shall be accompanied by findings. The findings shall consist of concise statements of the conclusions upon each contested issue. The applicant shall be notified of the decision in person or by mail.

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

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ARTICLE 2. SALES AND ADVERTISING

§10-201 PEDDLERS AND HAWKERS; REGULATIONS.

To prevent the sale of fraudulent, dangerous, and unhealthful goods and services; to protect the public by maintaining records of the products sold and the persons and companies responsible for such sales; all peddlers and hawkers shall, before doing business with the Municipality, register with the Municipality. Registration shall be made to the Municipal Body Chairperson or his/her designee, and shall contain all the necessary information and documents required for the protection of the residents of the Municipality. These documents may include, but are not limited to, photograph(s) and fingerprint(s) of the registrant.

Any person or persons so registered shall pay a \$25.00 (twenty-five dollars) permit fee to the Municipal Treasurer and shall be subject to any additional occupation taxes, and/or other rules and regulations which the Governing Body deems appropriate for the purposes stated herein. *(Ref. 17-525 RS Neb.)*

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ARTICLE 3. BUSINESS ENTERPRISES

§10-301 VENDING MACHINES; REGULATION.

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

§10-302 DEFINITIONS.

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

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

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

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

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

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§10-303 JUNK YARD; REGULATION.

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

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

§10-304 CONTRACTORS; EXCAVATIONS.

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

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

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

(A) Grant of Non-Exclusive Franchise

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

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

(B) **Definitions**

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

(C) **Grant of Authority**

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

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

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(D) **Compliance with Applicable Laws**

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

(E) **Compliance with FCC Regulation**

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

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

(F) **Compliance with Electrical Standards**

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

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

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

(H) **Cable System Franchise Required**

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

(I) **Service Territory**

Franchise shall include the entire area of the Municipality.

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

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

(J) **Customer Service**

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

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

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

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

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

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

(K) **Service to Municipality**

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

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

(L) **Fee to Municipality**

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

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

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

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

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

(M) **Conditions on Street Use**

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

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

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

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

(N) **Indemnification and Insurance.**

Workers' Compensation

Statutory Limits

Commercial General Liability

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

Auto Liability including coverage
on all owned, non-owned, and
hired autos

\$1,000,000 per occurrence C.S.L.

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Umbrella Liability \$1,000,000 per occurrence C.S.L.

The Municipality shall be added as an Additional Insured to the above Commercial General Liability and Auto Liability Insurance Coverage.

The Franchisee shall furnish the Municipality with current Certificates of Insurance evidencing such coverage.

(O) Notice

Any notices to be sent to the parties hereto shall be sent to the following addresses; unless either party notifies the other in writing of another address:

Village of Eagle	Galaxy Cablevision
540 "C" Street	Attn: Director of Government Relations
Eagle, Ne. 68347	One Montgomery Bank Plaza
Attn: Municipal Clerk	4th Floor
	Sikeston, Mo. 63801

(P) Duration and Renewal of Franchise.

This Franchise and the rights, privileges and authority hereby granted shall take effect and be in force thirty (30) days from and after the final passage hereof, and shall continue in force and effect for a term of ten (10) years.

This Franchise may be renewed for an additional five (5) years if the Franchisee has substantially complied with the material terms of the Franchise and with applicable law.

(Q) Emergency Use of Facilities

In the case of any emergency or disaster, the Franchisee shall upon request of the Municipality, make available its facilities for emergency use during the emergency or disaster.

(R) Public Records

The Municipality shall have access to records and other like materials of the Franchisee upon reasonable prior notice as mutually agreed upon by the Municipality and Franchisee.

(S) Forfeiture of Franchise.

a) In addition to all other rights and powers pertaining to the Municipality by virtue of this Franchise or otherwise, The Municipality reserves the right

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

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

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

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

(T) Equal Employment Opportunity Compliance

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

(U) Severability

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

(V) Integration

This agreement sets forth the entire Agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations, and warranties, expressed and implied, oral and written,

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

(W) **Rate Regulation**

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

§10-306 CATVS; EASEMENTS.

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

§10-307 CATVS; PUBLICATION COSTS.

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

§10-308 CATVS; RULES AND REGULATIONS.

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

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ARTICLE 4. OCCUPATION TAXES

§10-401 OCCUPATION TAX; AMOUNTS.

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

Alcoholic Beverages

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

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

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

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

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

§10-402 OCCUPATION TAX; FIRE INSURANCE COMPANIES.

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

§10-403 OCCUPATION TAX; COLLECTION DATE.

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

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

§10-404 OCCUPATION TAX; CERTIFICATES.

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

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

§10-405 OCCUPATION TAX; FAILURE TO PAY.

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

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ARTICLE 5. NATURAL GAS REGULATIONS

§10-501 MUNICIPAL NATURAL GAS REGULATIONS; DEFINITIONS.

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

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

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

§10-503 NATURAL GAS; RATES; REASONABLE.

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

§10-504 NATURAL GAS; RATE SCHEDULES.

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

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

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

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determined and a map showing the boundaries of the rate area. Each time a new rate area is established or the boundaries of rate area are changed, a new rate area boundary notice shall be filed.

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

§10-506 NATURAL GAS; INTEREST.

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

§10-507 NATURAL GAS; INTERIM RATES.

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

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

§10-508 NATURAL GAS; FILING; NOTICE.

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

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

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

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

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

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

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

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

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

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

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

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

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

§10-513 NATURAL GAS; SUPPLEMENTAL INFORMATION.

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

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

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

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

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

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

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

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

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

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

§10-517 NATURAL GAS; REVIEW AND ADJUSTMENT.

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

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

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

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

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§10-518 NATURAL GAS; CIVIL PROCEDURE.

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

§10-519 NATURAL GAS; RECORDS; ACCURATE.

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

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

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

§10-521 NATURAL GAS; FRANCHISE.

1. Grant of Franchise. That in consideration of the benefits to be derived from the installation and operation of a gas distribution system in the Municipality of Eagle, Nebraska, (hereinafter sometimes designated as "Municipality") by the Municipality and its inhabitants, there is hereby granted to Aquila, Inc., [a corporation, its successors or assigns], a public service corporation duly incorporated under the laws of the State of Delaware, and authorized to do business in the State of Nebraska (hereinafter sometimes designated as "Grantee"), its successors and assigns, the right, permission and authority to law, install, maintain, and operate a gas transmission and distribution system within the limits of Municipality, as the same now exists or may be hereafter extended, for a period of twenty-five (25) years from and after the effective date of this section; and for this purpose there is hereby further granted to Grantee the right, permission and authority during said period to lay, install, maintain, and operate in, upon, over, across and along all of the streets, avenues, alleys, bridges and Municipal public places all main, services, pipes, conduits and/or appliances necessary or convenient for transmitting,

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transporting, distributing and supplying gas for heating, industrial, power and other purposes for which gas may be used, and for the purpose of transmitting, transporting and conveying such gas into, through or beyond the immediate limits of the Municipality to other cities, villages, and customers.

2. Installation of Mains, Services and Pipes. That all mains, services and pipes which shall be laid or installed under this grant shall be located and laid so that not to obstruct or interfere with any water pipes, drains, sewers, paving or other structures already installed, and all such mains, services and pipes shall be laid in place subject to the approval of the Committee on Streets and Alleys of the Municipality or subject to the approval of such representative as mains, services and pipes shall be laid in the alleys of Municipality where reasonably practicable. Grantee shall, in doing any work in connection with mains, pipes and services, avoid, so far as may be practicable, interfering with the use of any streets, alleys or other highway, and where paving of surface of the street is disturbed, Grantee shall at its own expense, and in a manner satisfactory to the duly authorized representative of Municipality, replace such paving or surface of the street or alley in as good condition as before the work was commenced.
3. Construction and Extension of Mains. That Grantee, its successors or assigns, shall make such reasonable extensions of its mains and shall install services to parties located within Municipality who have requested and received from Grantee approved applications therefore; provided, however, that no obligation shall extend to, or be binding upon Grantee, to construct or extend its mains or furnish natural gas or gas service within the Municipality. If Grantee is, for any reason, unable to obtain delivery of an adequate supply of natural gas at or near the corporate limits of the Municipality to warrant the construction or extension of its mains; provided, further, that when the amount of natural gas supplied to Grantee at or near the Municipal limits is insufficient to meet the additional firm requirements of connected or new consumers, Grantee shall have the right to prescribe reasonable rules and regulation for allocating the available supply of natural gas for such additional firm requirements to domestic, commercial, and industrial consumers, in that order of priority.
4. Meters. That Grantee shall furnish and install for its customers reliable meters and shall keep the same in repair without cost to the customer.
5. Grantee Holds Municipality Harmless. That Grantee, during the term of this section, agrees to save harmless the Municipality from and against all claims, demands, loss and expense arising out of the negligence of Grantee in the laying, installing, removing, inspection or repair of any mains, pipes, services, or appliances of Grantee or in the use and operation thereof; provided. However, that Grantee need not save harmless the Municipality from claims,

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demands, loss and expense arising out of the negligence of the Municipality, its employees or agents.

6. Acceptance of Franchise. That this section shall be in full force and effect from and after its passage and publication as required by law, and its acceptance by Grantee. If Grantee does not, within sixty (60) days following passage of this section, express in writing its objections to any term or provisions contained therein, or rejected this section in its entirety, then Grantee shall be deemed to have accepted this section.
7. Rate Schedule. That Grantee shall file and make effective a schedule of rates for gas service and shall furnish gas at the schedule of rates set forth therein or at such other reasonable rates as may be hereafter established from time to time under the Nebraska Municipal Gas Regulation Act, Neb. Rev. Stat. 19-4601, et seq. (1943).
8. Franchise Fee. That Grantee shall pay to the Municipal Treasurer an amount equal to three percent (3%) of its gross receipts derived from sales or transportation of natural gas delivered within the Municipality excluding sales or transportation to governmental agencies, departments, or other bodies whether they be federal, state or local, computed from and after the first day of the billing month following the effective date of this section.
Such payments shall be in lieu of any and all other fees, charges, licenses, taxes or assessments which the Municipality may impose on Grantee for the rights and privileges granted herein or for the privilege of conducting a gas business within the Municipality

In the event that, after the effective date of this section, the business of Grantee in the Municipality shall be subjected to any additional taxes measured by its gross revenues from the operation of its business or as a fee for carrying on such business, or in the event that (i) the rate of any tax or (ii) the amount of any fee shall be increased after the effective date of this section, Grantee shall be entitled to increase its rates so as to offset such increase.

9. Operative Date. This section shall constitute a binding contract between the Municipality and Aquila, Inc., a corporation, its successors and assigns, and shall be in full force and take effect (after written acceptance by Grantee in accordance with the provisions of subsection 6 above) upon approval and publication, which shall be within fifteen (15) days of passage

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ARTICLE 6. SPECIAL EVENTS

§10-601 SPECIAL EVENT PERMITS

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

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

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

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ARTICLE 7. PENAL PROVISION

§10-701 VIOLATION; PENALTY.

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