

# ORDINANCE RECORD

No. 728—REDFIELD & COMPANY INC., OMAHA

## ORDINANCE NO. 1354

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTIONS 114.02, 114.23, 114.24, 114.30 AND 114.51; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Section 114.02 of the La Vista Municipal Code is amended to read as follows:

### **§ 114.02 CITY POWERS AND DUTIES.**

(A) The City Council is authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, bottle club, craft brewery, or microdistillery, licensees carried on within the corporate limits of the city.

(B) The City Council shall further have the following power and duties in respect to licensees within the corporate limits of the city:

(1) To cancel or revoke for cause retail, craft brewery or microdistillery licenses to sell or dispense alcoholic liquor or bottle club licenses, issued to persons for premises within its jurisdiction, subject to the right of appeal to the Nebraska Liquor Control Commission;

(2) To enter or to 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 City Council has been or is being violated, and at that time examine the premises of the licensee in connection with such determination;

(3) To receive a signed complaint from any resident 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 relative to alcoholic liquor has been or is being violated, and to act upon such complaints in the manner provided in the Act; and

(4) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided for resident complaints, it determines that the licensee has violated any of the provisions of the Nebraska Liquor Control Act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted relating to alcoholic liquor; and to collect for the benefit of the State of Nebraska and the city all license fees and occupation taxes as prescribed by law.

(Neb. RS 53-134) ('79 Code, § 10-112) (Am. Ord. 1163, passed 1-17-12)

SECTION 2. Section 114.23 of the La Vista Municipal Code is amended to read as follows:

### **§ 114.23 LIQUOR APPLICATION; CITY EXAMINATION.**

Any person or persons desiring to obtain a license to sell alcoholic liquors at retail, a bottle club license, a craft brewery license, or a microdistillery license shall file with the Liquor Control Commission. The Commission shall then notify by registered or certified mail the City Clerk. The City Council shall then meet and determine the desirability of the application and report in writing or in person to the Commission within 45 days. The City Council 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 the purpose of obtaining any of the information desired, the City Council may authorize its agent, or the City Attorney, to act on their behalf. The City Council may hold the said examination and hearing upon the receipt from the Commission of the notice and copy of the application. The City Council shall fix a time and place at which a hearing will be held, and at which time the City Council may receive competent evidence under oath, either orally or by affidavit, from the applicant or any other person concerning the propriety of the issuance of such license. Notice shall be published in a legal newspaper in or of general

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circulation in the city one time not less than seven, nor more than 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 local City Council in support of or protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than 45 days after the receipt of the Commission's letter of notice, and after such hearing, the City Council shall cause to be read at large in the minute record of their proceedings a resolution recommending either issuance or refusal of said applicant. The City Clerk shall thereupon mail to the Commission a copy of the resolution which shall state the cost of the published notice except that failure to hold a hearing and to examine the said applicant shall not render void any license issued by the Commission. In the event the Commission refuses to issue a license, the cost of the publication of notice as herein required shall be paid by the Commission.

('79 Code, § 10-105) (Am. Ord. 471, passed 10-18-88; Am. Ord. 493, passed 2-6-90; Am. Ord. 546, passed 6-16-92)

**Statutory reference:**

*Application; hearings, Neb. RS 53-131 through 53-134*

**SECTION 3.** Section 114.24 of the La Vista Municipal Code is amended to read as follows:

**§ 114.24 LICENSING CONSIDERATION CRITERIA.**

(A) The City Council shall only consider the following licensing standards and criteria at the examination hearing held pursuant to § 114.23 and in evaluation of any applicant for a retail alcoholic liquor license, bottle club license, craft brewery license, or microdistillery license for the upgrading or a license to sell alcoholic liquor or for the expansion or change in the location of the premises, and for the purpose of formulating a recommendation from the city to the Nebraska Liquor Control Commission in accordance with the Nebraska Liquor Control Act:

- (1) The adequacy of existing law enforcement resources and services in the area;
- (2) The recommendation of the Police Department or any other law enforcement agency;
- (3) Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises; potential traffic and parking problems and the proximity and availability of on street and off street parking;
- (4) Zoning restrictions and the City Council's zoning and land use policies;
- (5) Sanitation or sanitary conditions on or about the proposed licensed premises;
- (6) The existence of a citizen's protest and similar evidence in support of or in opposition to the application;
- (7) The existing population and projected growth within the jurisdiction of the local governing body and within the area to be served;
- (8) The existing liquor licenses, the class of each license and the distance between establishments that issued such licenses;
- (9) Whether the proposed license would be compatible with the neighborhood or community where the proposed premises are located;
- (10) Whether the type of business or activity proposed to be operated or presently operated in conjunction with the proposed license is and will be consistent with the public interest as declared in Neb. R.S. 53-101.01;
- (11) Whether the applicant can ensure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with Neb. RS 53-102;
- (12) Whether the applicant has taken every precaution to protect against the possibility of shoplifting of alcoholic liquor, which alcoholic liquor shall be displayed and kept in and sold from an area which is reasonably secured;

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(13) Whether the applicant is fit, willing and able to properly provide the service proposed in conformance with all provisions and requirements of and rules and regulations adopted and promulgated pursuant to the Nebraska Liquor Control Act;

(14) Whether the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensee can conform to all the provisions and requirements of and rules and regulations adopted and promulgated pursuant to the Nebraska Liquor Control Act;

(15) The background information of the applicant established by information contained in the public records of the Commission and investigations conducted by law enforcement agencies;

(16) Past evidence of discrimination involving the applicant as evidenced by findings of fact before any administrative board or agency of the local governing body, any other governmental board or agency of the city, any other governmental unit or any court of law;

(17) Whether the applicant or the applicant's representatives suppressed any fact or provided any inaccurate information to the Nebraska Liquor Control Commission, the City Council or the employees of the Nebraska Liquor Control Commission in regard to the license application or liquor investigations. The applicant shall be required to cooperate in providing a full disclosure to the investigating agents of the City Council;

(18) Proximity of and impact on schools, hospitals, libraries, parks and public institutions;

(19) Whether activities proposed to be conducted on the licensed premises or in adjacent related outdoor areas will create unreasonable noise or disturbance; and

(20) Compliance with state laws, liquor rules and regulations and city ordinances and regulations and whether or not the applicant has ever forfeited bond to appear in court to answer charges of having committed a felony or charges of having violated any law or ordinance enacted in the interest of good morals and decency or has been convicted of violating or has forfeited bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquor.

(B) It shall be the applicant's duty to produce evidence pertaining to the designated criteria prescribed in this subsection. The burden of proof and persuasion shall be on the party filing the application. When applicable for purposes of this section, "applicant" shall be synonymous with "licensee."

('79 Code, § 10-106) (Ord. 43, passed - -; Am. Ord. 412, passed 5-20-86; Am. Ord. 494, passed 2-6-90)

Statutory reference:

Similar provisions, see Neb. RS 53-132

**SECTION 4.** Section 114.30 of the La Vista Municipal Code is amended to read as follows:

## **§ 114.30 CATERING LICENSE.**

(A) The holder of a Class C, Class D, Class I or Class J license issued under Neb. RS 53-124 or a craft brewery license, or a manufacturer's license issued under Neb. RS 53-123.01 may obtain an annual catering license as prescribed in this section. Any such licensee desiring to obtain a catering license shall file an application with the Nebraska Liquor Control Commission.  
(Neb. RS 53-124.12(1))

(B) Upon receipt from the Commission of the notice and copy of the application as provided in Neb. RS 53-124.12, the City Council shall process the application in the same manner as provided in § 114.23.

(C) The City Council with respect to catering licensees within its corporate limits may cancel a catering license for cause for the remainder of the period for which that license is issued. Any person whose catering license is canceled may appeal to the District Court.

(Neb. RS 53-124.12(4)) ('79 Code, § 10-134) (Am. Ord. 545, passed 6-16-92; Am. Ord.

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638, passed 12-19-95; Am. Ord. 708, passed 11-18-97; Am. Ord. 1035, passed 5-1-07)

**SECTION 5.** Section 114.51 of the La Vista Municipal Code is amended to read as follows:

**§ 114.51 ACQUISITION AND POSSESSION.**

It shall be unlawful for any person to purchase, receive, acquire, accept or possess any alcoholic liquor acquired from any other person other than one duly licensed to handle alcoholic liquor under the Nebraska Liquor Control Act; provided, nothing in this section shall prevent:

(A) The possession of alcoholic liquor for the personal use of the possessor and his or her family and guests, as long as: (i) the quantity of alcoholic liquor transported, imported, brought or shipped into the state by such possessor, other than from a holder of retail direct sales shipping license or its equivalent, does not exceed nine liters in any one calendar month, and (ii) the quantity of alcoholic liquor imported, brought or shipped into the state by such possessor from a holder of a retail direct sales shipping license or its equivalent, does not exceed 109 liters in any one calendar year;

(B) 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 made solely for the use of the maker and his or her family and guests;

(C) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in compounding of prescriptions of licensed physicians;

(D) 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;

(E) Persons who are 16 years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor;

(F) Persons who are 16 years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment;

(G) Persons who are 16 years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment;

(H) Persons who are 16 years old or older from completing a transaction for the sale of alcoholic liquor in the course of their employment if they are not handling or serving alcoholic liquor; or

(I) Persons who are 19 years old or older from serving or selling alcoholic liquor in the course of their employment.

(Neb. RS 53-168.06, 53-175, 53-194.03) ('79 Code, § 10-131) (Am. Ord. 405, passed 11-19-85; Am. Ord. passed 7-1-97) Penalty, see § 114.99

**SECTION 6. Repeal of Conflicting Ordinances.** All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

**SECTION 7. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION 8. Effective Date.** This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

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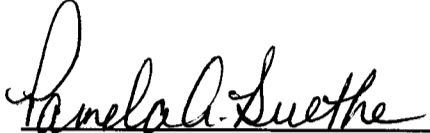
PASSED AND APPROVED THIS 2ND DAY OF JULY 2019.

CITY OF LA VISTA



Douglas Kindig, Mayor

ATTEST:



Pamela A. Buethe  
Pamela A. Buethe, CMC  
City Clerk