

ORDINANCE RECORD

No. 728—REDFIELD & COMPANY INC., OMAHA

ORDINANCE NO. 1469

AN ORDINANCE OF THE CITY OF LA VISTA, NEBRASKA, TO AMEND MUNICIPAL CODE SECTIONS 114.01, 114.02, 114.24, 114.27, 114.30, AND 114.31; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE HEREOF.

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

SECTION 1. Section 114.01 of the La Vista Municipal Code is amended to read as follows:

§ 114.01 DEFINITIONS

For purposes of this chapter, the definitions found in Neb. RS 53-103.01 through 53-103.49 or otherwise in the Nebraska Liquor Control Act shall be used.

SECTION 2. 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 (sometimes referred to in this chapter 114 as the "Act"), the business of liquor licensees carried on within the corporate limits of the city, including without limitation retail, bottle club, craft brewery, microdistillery, manufacturer, farm winery, special designated, catering, and promotional farmers market special designated licensees and licensed premises and licensees within or adjacent to designated entertainment districts of the city.

(B) The City Council, without limiting authority described or provided in subsection "A" or the Nebraska Liquor Control Act, 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 any license in accordance with the Act, 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;

(4) To conduct or cause such examinations and other actions authorized by the Act in connection with any notice of cancellation or revocation served on any applicant or licensee;

(5) 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, subject to right of appeal to the Nebraska Liquor Control Commission;

(6) To fix times and places of hearings, receive evidence, and approve, and take other actions as authorized by the Act in connection with any application for a license, or renewal or expansion of a license or licensed area; and

(7) To collect for the benefit of the State of Nebraska and the city all license fees and occupation taxes as prescribed by law.

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

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§ 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 liquor license, renewal of a license, or expansion or change in the location of the licensed 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. RS 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;
- (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;

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- (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 division. 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; Am. Ord. 1354, passed 7-2-19)

Statutory reference:

Similar provisions, see Neb. RS 53-132

SECTION 4. Section 114.27 of the La Vista Municipal Code is amended to read as follows:

§ 114.27 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE.

A liquor license which the City Council is legally empowered to revoke, may be either revoked or suspended by the Council whenever it shall find, after notice and hearing as provided by law, that the holder of any such license has violated any of the provisions of the Nebraska Liquor Control Commission or any statutory provision or ordinance of the city now existing or hereafter adopted, enacted in the interest of good morals and decency or for any one or more of the following causes:

- (A) The licensee, his or her manager or agent in charge of the premises licensed has been convicted of or has pleaded guilty to a felony under the laws of the state of Nebraska or any other state of the United States.
- (B) The licensee, his or her manager or agent in charge of the premises licensed has been convicted of or pleaded guilty to being the proprietor, manager or agent in charge of a gambling house or of pandering or other crime or misdemeanor opposed to decency and morality.
- (C) The licensee, his or her manager or agent in charge of the premises licensed has been convicted of or pleaded guilty to violation of any federal or state law concerning the manufacture, possession or sale of alcoholic liquors.
- (D) That the licensee either swore falsely to any question in his or her application for said license, has failed to comply with the statements and representations made in answer to any question or questions in said application or has failed to keep any promise, oral or written, made to the licensee's request for said license.
- (E) The licensee, his or her manager or agent in charge of the premises licensed shall have forfeited bond to appear in court to answer charges for any one of the violations of laws or ordinances referred to in this section.

(F) The licensee, manager or agent shall allow any live person to appear or have reasonable cause to believe that any live person shall appear in any licensed premises in a state of nudity to provide entertainment, to provide service, to act as hostess, manager or owner or to serve as an employee in any capacity. For the purposes of this subsection, the term nudity shall mean the showing of the human male or female genitals, pubic area or buttocks, or the human female breasts, including the nipple or any portion below the nipple with less than a full opaque covering.

('79 Code, § 10-109) (Ord. 43, passed - -; Am. Ord. 499, passed 3-20-90)

SECTION 5. Section 114.30 of the La Vista Municipal Code is amended to read as follows:

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§ 114.30 CATERING LICENSE.

(A) The holder of a retail license issued under Neb. RS 53-124(6), a craft brewery license, a microdistillery license, a farm winery license, or a manufacturer's license issued under Neb. RS 53-123.01(2) may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, farm winery license, or manufacturer's license. 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. 638, passed 12-19-95; Am. Ord. 708, passed 11-18-97; Am. Ord. 1035, passed 5-1-07; Am. Ord. 1354, passed 7-2-19)

SECTION 6. Section 114.31 of the La Vista Municipal Code is amended to read as follows:

§114.31 SPECIAL DESIGNATED LICENSES.

Any proposed special designated license within the City pursuant to an application to the Nebraska Liquor Control Commission shall require approval of the City Council.

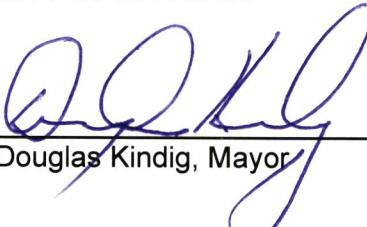
SECTION 7. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

SECTION 8. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, unenforceable or invalid, such unconstitutionality, unenforceability or invalidity shall not affect the constitutionality, enforceability or validity of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that they would have passed this Ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, unenforceable or invalid.

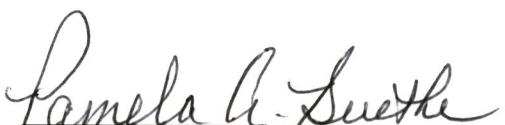
SECTION 9. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 6TH DAY OF DECEMBER 2022.

CITY OF LA VISTA


Douglas Kindig, Mayor

ATTEST:



Pamela A. Buethe, MMC
City Clerk