

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 18, 2010 AGENDA**

Subject:	Type:	Submitted By:
MUNICIPAL CODE 114.46 - HOURS OF SALE – ALCOHOLIC BEVERAGES	RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

Discussion regarding a change to Nebraska State Statute affecting retail sale or dispensing of alcoholic liquor on the premises.

FISCAL IMPACT

N/A

RECOMMENDATION

Council direction is requested.

BACKGROUND

In this last session of the Nebraska State Legislature, LB 861 passed and will go into effect July 15, 2010. One of the provisions allowed by this legislation is to enable governing bodies to permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, later than 1 a.m. and prior to 2 a.m. on any day.

The Municipal code follows current State Statute which allows the above until 1 a.m. If it is the desire of Council to amend the municipal code to allow for this change, the times in the code would be changed to reflect this and would come to City Council for action at a future meeting. Businesses would be able to decide whether or not they want to remain open. Adoption of this change would require a vote of at least two-thirds of the members of the City Council.

LB 861 did not change the time for sales for off premises consumption, which still must end by 1 a.m.

§ 114.45 MINOR ATTEMPTING TO PURCHASE PROHIBITED.

It shall be unlawful for any minor to purchase or attempt to purchase or to have any person purchase or procure for him or her any alcoholic liquors or alcoholic beverages, including beer, by the drink or in the original package.

('79 Code, § 10-120) (Ord. 43, passed - -) Penalty, see § 114.99

Statutory reference:

Similar provisions, see Neb. RS 53-180.01

§ 114.46 HOURS OF SALE.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

OFF SALE. Alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

ON SALE. Alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment.

(B) It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the city except during the hours provided herein, provided that such limitations shall not apply after 12:00 p.m. noon on Sunday to a licensee which is a nonprofit corporation holding a license pursuant to Neb. RS 53-124(5)(C) and (H):

HOURS OF SALE**Alcoholic Liquors (except beer and wine)****Secular Days**

Off Sale 6:00 a.m. to 1:00 a.m.

On Sale 6:00 a.m. to 1:00 a.m.

Sundays

Off Sale 12:00 noon to 1:00 a.m.

On Sale 12:00 noon to 1:00 a.m.

Beer and Wine

Secular Days

Off Sale 6:00 a.m. to 1:00 a.m.

On Sale 6:00 a.m. to 1:00 a.m.

Sundays

Off Sale 6:00 a.m. to 1:00 a.m.

On Sale 6:00 a.m. to 1:00 a.m.

(C) No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than 15 minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises.

(D) Nothing in this section shall be construed to prohibit licensed premises from being open for business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section.

('79 Code, § 10-123) (Ord. 212, passed - -; Am. Ord. 259, passed 12-4-79; Am. Ord. 306, passed 5-4-82; Am. Ord. 536, passed 9-3-91) Penalty, see § 114.99

Statutory reference:

Authority to alter statutory hours, see Neb. RS 53-179

§ 114.47 SALE OF BEER; UNLAWFUL FOR "ON SALE" LICENSED PREMISES TO HAVE OTHER ALCOHOLIC LIQUOR ON PREMISES.

In order to regulate the business of licensees of the sale of beer only for consumption upon the premises, it shall be unlawful for any person, firm, partnership or corporation, having a license to sell beer only for consumption on the premises, or any agent or servant of any such person, firm, partnership or corporation, to have, keep, store or possess in any manner whatsoever in any room or building, or in any place whatsoever upon the premises covered by such license in the city any alcoholic liquor except beer; provided, nothing herein shall apply where a license to sell alcoholic liquor other than beer has been obtained for such premises.

('79 Code, § 10-126) (Ord. 43, passed - -) Penalty, see § 114.99

§ 114.48 NO SALE OF ALCOHOL, FIT FOR BEVERAGE PURPOSES, BY NONBEVERAGE USERS.

No nonbeverage user shall, within the city, sell, give away or otherwise dispose of any alcohol, purchased under a license as such nonbeverage user, in any form fit for beverage purposes.

(Neb. RS 53-187) ('79 Code, § 10-127) (Ord. 43, passed - -) Penalty, see § 114.99

two years continuously prior to making of application for license and (b) to hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on, if such place of business so exempted was established for such purposes prior to May 24, 1935.

(2) If a proposed location for the sale at retail of any alcoholic liquor is within one hundred fifty feet of any church, a license may be issued if the commission gives notice to the affected church and holds a hearing as prescribed in section 53-133.

~~(2)~~ (3) No alcoholic liquor, other than beer, shall be sold for consumption on the premises within three hundred feet from the campus of any college or university in the state, except that this section:

(a) Does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events; and

(b) Does not prohibit sales of alcoholic liquor by a community college culinary education program pursuant to section 53-124.15.

Sec. 77. Section 53-179, Reissue Revised Statutes of Nebraska, is amended to read:

53-179 (1) No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1 a.m. and 6 a.m., except that the local governing body of any city or village with respect to area inside the corporate limits of such city or village, or the county board with respect to area outside the corporate limits of any city or village, may by ordinance or resolution (a) require closing prior to 1 a.m. on any day or (b) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, later than 1 a.m. and prior to 2 a.m. on any day.

(2) Except as provided for and allowed by ordinance of a local governing body applicable to area inside the corporate limits of a city or village or by resolution of a county board applicable to area inside such county and outside the corporate limits of any city or village, no alcoholic liquor, including beer, shall be sold at retail or dispensed between the hours of 6 a.m. Sunday and 1 a.m. Monday. No ordinance or resolution allowed by this subsection shall permit alcoholic liquor, other than beer and wine, to be sold at retail or dispensed between the hours of 6 a.m. Sunday and 12 noon Sunday. This subsection shall not apply after 12 noon on Sunday to a licensee which is a nonprofit corporation and the holder of a Class C license or a Class I license.

(3) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between the hours of ~~1:15 a.m. fifteen minutes after the closing hour applicable to the licensed premises~~ and 6 a.m. on any day. When any city or village provides by ordinance or any county provides by resolution for an earlier closing hour, the provisions of this subsection shall become effective fifteen minutes after such closing hour instead of ~~1:15 a.m.~~

(4) Nothing in this section shall prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic liquor is prohibited by this section.

Sec. 78. Section 53-1,104, Reissue Revised Statutes of Nebraska, is amended to read:

53-1,104 (1) Any licensee which sells or permits the sale of any alcoholic liquor not authorized under the terms of such license on the licensed premises or in connection with such licensee's business or otherwise shall be subject to suspension, cancellation, or revocation of such license by the commission.

(2) When an order suspending a license to sell alcoholic liquor becomes final, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the designated period if such election is not prohibited by order of the commission. Except as otherwise provided in subsection (3) of this section, for the first such suspension for any licensee, the penalty shall be fifty dollars per day, and for a second or any subsequent suspension, the penalty shall be one hundred dollars per day.

(3)(a) For a second suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension,