

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 1, 2010 AGENDA**

Subject:	Type:	Submitted By:
AMEND MUNICIPAL CODE SECTION 114.46	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	PAMELA A. BUETHE CITY CLERK

SYNOPSIS

An ordinance has been prepared to amend Section 114.46 of the Municipal Code to change the hours of sale for serving alcohol on the premises of a licensed establishment.

FISCAL IMPACT

None.

RECOMMENDATION

Approval

BACKGROUND

In the last session of the Nebraska State Legislature, LB 861 which allows municipalities the option of allowing the retail sale or dispensing of alcoholic liquor for consumption on the premises until 2 a.m. passed. The previous law allowed such until 1 a.m.

This item was discussed at the May 18, 2010 meeting and direction was given to present the change to the City Council for possible action. This ordinance may only be adopted by a vote of at least two thirds of the members of the governing body.

An amendment to the lottery operator agreement is also being presented to allow the city's keno lottery operator to adjust the hours of closing.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTION 114.46; 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 114.46. Section 114.46 of the La Vista Municipal Code is amended to read as follows:

§ 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 ~~42~~:00 a.m.

Sundays

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

On Sale 12:00 noon to ~~42~~: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 ~~42~~:00 a.m.

Sundays

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

On Sale 6:00 a.m. to ~~42~~:00 a.m.

(C) ~~It shall be unlawful on premises licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in the possession or control of any person for purposes of consumption. 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 other business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section.

SECTION 2. 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 3. 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 4. 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 _____ DAY OF _____ 2010.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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,