



City of Grand Island

Tuesday, November 28, 2006

Council Session

Item F7

**#9094 - Consideration of Amending Chapter 4 of the Grand Island
City Code Relative to Alcoholic Beverages**

Staff Contact: Dale Shotkoski

Council Agenda Memo

From: Dale M. Shotkoski, Interim City Attorney

Meeting: November 28, 2006

Subject: Revisions to Grand Island City Code
Chapter 4 – Alcoholic Beverages

Item #'s: F-7

Presenter(s): Dale M. Shotkoski, Interim City Attorney
Gary D. Greer, City Administrator
RaNae Edwards, City Clerk

Background

One of the goals set this year by Administration, the Mayor and City Council was to revise and update the Grand Island City Code. As the effort to update the code is continued, meetings were held to review and discuss changes to Chapter 4, Alcoholic Beverages.

In order to provide a backdrop to the discussion, a summary history of liquor regulations, a listing of liquor license classes, and the current Chapter 4 is included.

Discussion

The City Code Revision Committee, along with the City Administrator, Chief of Police and the Building Department Director have met to discuss Chapter 4 of the Grand Island City Code. Possible revisions to Chapter 4 – Alcoholic Beverages, are as follows:

- **Section 4-1. Definitions.** Current definitions in Section 4-1 would be replaced with definitions of the State Statutes of Nebraska, which would allow the City of Grand Island to be in conformity with state statutes.
- **Section 4-6. Liquor Application Procedure.** The language in Section 4-6 pertaining to the specifics of the order of the proceedings has been simplified to conform with state statute.
- **Section 4-7. Applications for Liquor Licenses.** The language in Section 4-7 would be replaced with language contained in Section 53-131.01 of the Revised Statutes of Nebraska. Again, this would allow the city to be in conformity with

state statutes. Also added to Section 4-7 is paragraph (H), wherein it is stated that the license shall not be issued until approval of all inspections has been met.

- **Section 4-8. Grounds for Revocation.** Section 4-8 would be amended to include not only possible revocation, but also cancellation. Also included in this section is paragraph (G), which allows for revocation or cancellation when successive violations occur.

Section 4-9, Hours of Operation, is proposed as:

- **Section 4-9. Hours of Operation**

(A) No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1:00 a.m. and 6:00 a.m.

(B) No alcoholic liquor, including beer, shall be sold at retail or dispensed between the hours of 6:00 a.m. and 12:00 noon on Sunday.

(C) Alcoholic liquor, including beer, may be sold at retail and dispensed from 12:00 noon on Sunday until 1:00 a.m. the following Monday.

Section 4-20 – Minors Not Permitted after 9:00 p.m.. The current city code regarding minors being given access to liquor establishments is as follows:

“It shall be unlawful for any licensed retailer or his, her, or its agent or employee to suffer or permit any minor to be or remain in any room or compartment of such licensed premises where alcoholic liquor is being sold or consumed after 9 p.m. of any day; provided, that this section shall not apply to any minor who is accompanied by his or her parent or adult guardian, or to any licensed premises which derives its principal business from the sale of services or other commodities other than alcoholic liquor.”

Project Extra Mile submitted a request to amend Section 4-20 of the city code and presented their position to the City Council at the study session on November 21, 2006. During the study session, it was requested by a council member that the Project Extra Mile language be presented for council to possibly vote on at its meeting. The language that Project Extra Mile is requesting for 4-20 is:

“It shall be unlawful for any licensed retailer or his, her, or its agent or employee to suffer or permit any minor to be or remain in any room or compartment of such licensed premises after 9:00 p.m. of any day; provided, that this section shall not apply to any licensed premises which derives sixty percent (60%) or more of its principal business from the sale of services or other commodities other than alcoholic liquor.”

The current code section is in the ordinance for the packet purposes. If council wishes to amend Section 4-20 to the Project Extra Mile language, a motion to do so would be in order.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the revisions to Chapter 4 of the Grand Island City Code.
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approved the recommended revisions to Chapter 4 of the Grand Island City Code.

Sample Motion

Motion to approve the amendments to Chapter 4 – Alcohol, of the Grand Island City Code.

CHAPTER 4

ALCOHOLIC BEVERAGES

§4-1. Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form. Alcohol does not include denatured alcohol or wood alcohol;

Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances;

Wine means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits;

Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer;

Alcoholic liquor includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor also includes confections or candy with alcohol content of more than one-half of one percent alcohol. The act does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes;

Near beer means beer containing less than one-half of one percent of alcohol by volume;

Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor;

Manufacturer means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer;

Nonbeverage user means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes;

Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in the act to serve drinks for consumption on the premises where sold;

Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an

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agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the Nebraska State Liquor Control Commission on May 1, 1970, or has been so licensed since that date. Wholesaler does not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells alcoholic liquor other than beer or wine to another retailer pursuant to Neb. Rev. Stat. §53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler includes a distributor, distributorship, and jobber;

Person means any natural person, trustee, corporation, partnership, or limited liability company;

Retailer means a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in Neb. Rev. Stat. § 53-175;

Sell at retail and sale at retail means sale for use or consumption and not for resale in any form except as provided in Neb. Rev. Stat. § 53-175;

Commission means the Nebraska Liquor Control Commission;

Sale means any transfer, exchange, or barter in any manner or by any means for a consideration and includes any sale made by any person, whether principal, proprietor, agent, servant, or employee;

To sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell;

Restaurant means any public place (a) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (b) which has no sleeping accommodations, and (c) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests;

Club means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and (d) which has suitable and adequate kitchen and dining room space and equipment and a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club;

Hotel means any building or other structure (a) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (b) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (c) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity;

Nonprofit corporation means any corporation organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes;

Minor means any person, male or female, under twenty-one years of age, regardless of marital status;

Brand means alcoholic liquor identified as the product of a specific manufacturer;

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Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes one or more of the following: (a) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing; (b) a relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer; (c) a relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system; (d) a relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and (e) a relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer;

Territory or sales territory means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

Suspend means to cause a temporary interruption of all rights and privileges of a license;

Cancel means to discontinue all rights and privileges of a license;

Revoke means to permanently void and recall all rights and privileges of a license;

Generic label means a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law;

Private label means a label which the purchasing wholesaler or retailer has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler or retailer has otherwise protected pursuant to state or federal statutory or common law;

Brewpub means any restaurant or hotel which produces on its premises a maximum of ten thousand barrels of beer per year;

Manager means a person appointed by a corporation to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the act as though he or she were the applicant, except for residency and citizenship;

Shipping license means a license granted pursuant to section 53-123.15 of the Revised Statutes of Nebraska;

Sampling means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period;

Microbrewery means any small brewery producing a maximum of ten thousand barrels of beer per year;

Craft brewery means a brewpub or a microbrewery;

Local governing body means (a) the city council of the City of Grand Island; and

Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor.

§4-2. Declared Legislative Intent

It is hereby declared to be the intent and purpose of the city council in adopting and administering the provisions of this chapter:

(A) To express the community sentiment that the control of availability of alcoholic liquor to the public in general and to minors in particular promotes the public health, safety, and welfare;

(B) To encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof; and

(C) To ensure that the number of retail outlets and the manner in which they are operated is such that they can be adequately policed by local law enforcement agencies so that the abuse of alcohol and the occurrence of alcohol-related crimes and offenses is kept to a minimum.

§4-3. Liquor Application; Standards

The city council shall consider the licensing standards and criteria at the hearing and evaluate any applicant for a retail alcoholic liquor license, whether for a new license, a renewal of an existing license, or

a modification of an existing license, for the purpose of formulating a final order from the governing body to the Nebraska Liquor Control Commission in accordance with the Nebraska Liquor Control Act.

§4-4. Applicant to Appear Personally at Hearing

It shall be the duty of every applicant for an alcoholic liquor license, whose application is pending before the council, to appear before the council personally (if a partnership, at least one of the partners; and if a corporation, at least one managing officer thereof) on the date of the hearing upon the propriety of granting or recommending such license, provided for by §53-134, R.R.S. 1943, of said Liquor Control Act, to answer such questions as may be asked him or her in determining the facts required by law and this chapter, concerning the propriety of granting such license, and a failure to so appear without reasonable excuse, shall be grounds for denying such application. Such applicant may at said hearing present evidence, other than his or her own testimony, which shall be considered by the council in determining the propriety of recommending approval of such license. In adopting any recommendation for approval of such license, the council may require certain conditions to be effected to ensure that the applicant performs in conformance with applicant's representations and to protect the public health, safety, and welfare.

§4-5. Notice

Notice of a hearing held pursuant to Neb. Rev. Stat. §53-134 shall be given to the applicant by the city clerk and shall contain the date, time, and location of the hearing. Two or more proceedings which are legally or factually related may be heard and considered together unless any party thereto makes a showing sufficient to satisfy the council that prejudice would result therefrom.

§4-6. Liquor Application Procedure

The hearing will be informal and conducted by the Mayor. The hearing shall be held for the purpose of inquiring into the facts and shall not be an adversary action. Each witness may present testimony in narrative fashion or by question and answer.

The governing body or the applicant may order the hearing to be recorded by an official court reporter or by the Clerk, at the expense of the applicant.

The governing body and its representatives shall not be bound by the strict rules of evidence, and shall have full authority to control the procedures of the hearing including the admission or exclusion or testimony or other evidence. The governing body may admit and give consideration to evidence which possesses probative value commonly accepted by reasonably prudent individuals. The Mayor may limit testimony where it appears to be incompetent, irrelevant, or unduly repetitious. If there is opposition to any application and such opposition desires the opportunity to present arguments and to cross-examine the applicant and any witnesses in favor of such application, they shall choose a spokesperson to perform such function who shall notify the Mayor of his/her representation prior to the start of the hearing.

§4-7. Applications for Liquor Licenses

In order to assist the council in determining the general fitness of an applicant for a retail liquor license, and the character and reputation of the applicant in the community, the applicant shall provide the city clerk at least ten days before the council hearing on the application the following information:

The application for a new license shall be submitted upon such forms as the commission may prescribe. Such forms shall contain:

(A) The name and residence of the applicant and how long he or she has resided within the State of Nebraska.

(B) The particular premises for which a license is desired designating the same by street and number if practicable or, if not, by such other description as definitely locates the premises.

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(C) The name of the owner of the premises upon which the business licensed is to be carried on.

(D) A statement that the applicant is a citizen of the United States, that the applicant and the spouse of the applicant are not less than twenty-one years of age, and that such applicant has never been convicted of or pleaded guilty to a felony or been adjudged guilty of violating the laws governing the sale of alcoholic liquor or the law for the prevention of gambling in the State of Nebraska, except that a manager for a corporation applying for a license shall qualify with all provisions of this subdivision as though the manager were the applicant, except that the provisions of this subdivision shall not apply to the spouse of a manager-applicant.

(E) A statement that the applicant intends to carry on the business authorized by the license for himself or herself and not as the agent of any other persons and that if licensed he or she will carry on such business for himself or herself and not as the agent for any other person.

(F) A statement that the applicant intends to superintend in person the management of the business licensed and that if so licensed he or she will superintend in person the management of the business, and

(G) Such other information as the Nebraska Liquor Control Commission may from time to time direct. The applicant shall also submit two legible sets of fingerprints to be furnished to the Federal Bureau of Investigation through the Nebraska State Patrol for a national criminal history record check and the fee for such record check payable to the patrol.

(H) No license for the retail sale of alcoholic liquor for consumption on the premises shall be recommended for approval until the Building Department, Fire Department and Police Department have completed inspections and have certified that the premises meets all Building and Life Safety Codes. If a license is recommended for approval pending final inspections, the City Clerk shall not issue the license until such time as all inspections have been complete fro full compliance.

The application shall be verified by the affidavit of the petition made before a notary public or other person duly authorized by law to administer oaths. If any false statement is made in any part of such application, the applicant or applicants shall be deemed guilty of perjury and upon conviction thereof, the license shall be revoked and the applicant subjected to the penalties provided by law for that crime.

§4-7.1. Special Designated Liquor Licenses

All applications for a special designated liquor license shall be reviewed administratively, and approved or denied, in accordance with established criteria adopted by the City of Grand Island. Any applicant denied a special designated liquor license based on the adopted criteria may request that such application be heard by the City Council.

§4-8. Grounds for Revocation or Cancellation

A retail license to sell alcoholic liquors, which this council is legally empowered to revoke, may be revoked by the city 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 said Nebraska Liquor Control Act, or of this chapter, or rule or regulation of the Nebraska Liquor Control Commission; or any statutory provision or ordinance of the City now existing or hereafter passed, enacted in the interest of good morals and decency; or for any one or more of the following causes:

(A) The licensee, his/her manager or agent in charge of the premises licensed, has been convicted of or has pled guilty to a felony under the laws of the State of Nebraska, or of any other state of the United States.

(B) The licensee, his/her manager or agent in charge of the premises licensed, has been convicted of or has pled 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/her manager or agent in charge of the premises licensed, has been convicted of or pled 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/her application for said license, or has failed to comply with the statements and representations made by the answer to any question or questions in said application; or has failed to perform in accordance with any other statement or representation, or keep any promise, oral or written, made to the council, in connection with such licensee's request for said license.

(E) The licensee, his/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 law or ordinances referred to in this section.

(F) It shall be cause for revocation as herein provided if the licensee, his/her 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 breast including the nipple or any portion below the nipple with less than a full opaque covering.

(G) It shall be cause for revocation when a licensee, his/her manager or agent in charge of the premises has successive violations that meet the Nebraska Liquor Control Commission standard of violation, the City Council may revoke or cancel the liquor license.

§4-9. Hours of Operation; Retail Establishment

(A) No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1:00 a.m. and 6:00 a.m.

(B) No alcoholic liquor, including beer, shall be sold at retail or dispensed between the hours of 6:00 a.m. and 12:00 noon on Sunday.

(C) Alcoholic liquor, including beer, may be sold at retail and dispensed from 12:00 noon on Sunday until 1:00 a.m. the following Monday.

§4-10. Reserved

§4-11. Reserved

§4-12. Reserved

§4-13. Reserved

§4-14. Reserved

§4-15. Occupation Tax; Amounts

(A) For the purpose of raising revenue, there is hereby levied upon distributors, retailers, and nonbeverage users of alcoholic liquor in the City of Grand Island an annual occupation tax in accordance with the City of Grand Island Fee Schedule. No reduction in occupation tax except as hereinabove stated shall be made regardless of the time when the application for license is made, or the license is issued. Such occupation tax, or any part of it, shall not be refunded for any cause.

(B) All occupation taxes levied pursuant to section (A) above, shall be due and payable within thirty days of the date of the renewal of the licensee's state liquor license.

§4-16. Delivery by Distributor on Sunday

It shall be unlawful for any licensed distributor or wholesaler of beer to deliver such beverage to any retailers of the same in the city on the first day of the week, commonly called Sunday.

§4-17. Licensed Premises; Lights Required

All rooms where alcoholic liquors are sold shall be continuously lighted during business hours by natural or artificial light.

§4-18. Consumption in Public Places

It shall be unlawful for any person to consume alcoholic liquors within the city in the public streets, alleys, roads or highways, or upon property owned by the state or any governmental subdivision thereof, or inside vehicles while upon the public streets, alleys, roads, or highways, in any dance hall, restaurant, cafe, club, or any place open to the general public except as permitted by a license issued to such premises. It shall be unlawful for any person owning, operating, managing or conducting any dance hall, restaurant, cafe, club, or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises, except as permitted by a license issued to such premises.

§4-19. Possession in Parks Prohibited

It shall be unlawful for any person to have in his/her possession or physical control any alcoholic liquors upon any of the property belonging to the City designated as a city park or playground.

§4-20. Minors Not Permitted After 9 P.M.

It shall be unlawful for any licensed retailer or his, her, or its agent or employee to suffer or permit any minor to be or remain in any room or compartment of such licensed premises where alcoholic liquor is being sold or consumed after 9 p.m. of any day; provided, that this section shall not apply to any minor who is accompanied by his or her parent or adult guardian, or to any licensed premises which derives its principal business from the sale of services or other commodities other than alcoholic liquor.

§4-21. Violations; Liability of Licensee

Any act or the omission of any act constituting a violation of any of the provisions of this chapter by any officer, director, manager, or other agent or employee of any licensee under the Nebraska Liquor Control Act, if such act is committed or such omission is made with the authorization, knowledge, or approval of such licensee, shall be deemed and held to be the act of such employer or licensee, and such employer or licensee shall be punishable in the same manner as if such act or omission had been done or omitted by him personally.

§4-22. Right of Entry of Officers

All police officers of the city are authorized to enter at any time upon the premises of any license under the Nebraska Liquor Control Act within the City to determine whether or not any of the provisions of such Act or of this chapter, or any rules or regulations adopted by the City or by the Nebraska Liquor Control Commission have been or are being violated and at such time to examine sufficiently such premises of such licensee in connection therewith.

§4-23. Unlawful Presence in Establishments

It shall be unlawful for any person to be present in any establishment where alcoholic liquors are sold or dispensed at any time during which sales of alcoholic liquors are prohibited by the foregoing sections; provided, that a person may be present in such an establishment for only fifteen minutes after the time required for cessation of sales of alcoholic liquors set out in prior §4-9 to allow the person present in the establishment at closing time to leave the premises; provided further, that the word "person" shall not include the owner or operator or his/her agent or employee when actually engaged in cleanup or custodial work. This section shall not apply to restaurants which are open for business.

ORDINANCE NO. 9094

An ordinance to amend Chapter 4 of the Grand Island City Code; to amend Section 4-1 pertaining to definitions; to amend Section 4-6 pertaining to the liquor application procedure; to amend Section 4-7 pertaining to applications for liquor license; to amend Section 4-8 pertaining to grounds for revocation; Section 4-9, pertaining to hours of operation, to repeal Sections 4-1, 4-6, 4-7, 4-8 and 4-9 as now existing and any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Section 4-1 of the Grand Island City Code is hereby amended to read as follows:

§4-1. Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form. Alcohol does not include denatured alcohol or wood alcohol;

Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances;

Wine means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits;

Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer;

Alcoholic liquor includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor also includes confections or candy with alcohol content of more than one-half of one percent alcohol. The act does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes;

Near beer means beer containing less than one-half of one percent of alcohol by volume;

Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor;

Manufacturer means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer;

ORDINANCE NO. 9094 (Cont.)

Nonbeverage user means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes;

Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in the act to serve drinks for consumption on the premises where sold;

Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the Nebraska State Liquor Control Commission on May 1, 1970, or has been so licensed since that date. Wholesaler does not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells alcoholic liquor other than beer or wine to another retailer pursuant to Neb. Rev. Stat. §53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler includes a distributor, distributorship, and jobber;

Person means any natural person, trustee, corporation, partnership, or limited liability company;

Retailer means a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in Neb. Rev. Stat. § 53-175;

Sell at retail and sale at retail means sale for use or consumption and not for resale in any form except as provided in Neb. Rev. Stat. § 53-175;

Commission means the Nebraska Liquor Control Commission;

Sale means any transfer, exchange, or barter in any manner or by any means for a consideration and includes any sale made by any person, whether principal, proprietor, agent, servant, or employee;

To sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell;

Restaurant means any public place (a) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (b) which has no sleeping accommodations, and (c) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests;

Club means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and (d) which has suitable and adequate kitchen and dining room space and equipment and a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club;

Hotel means any building or other structure (a) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (b) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (c) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity;

Nonprofit corporation means any corporation organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes;

Minor means any person, male or female, under twenty-one years of age, regardless of marital status;

Brand means alcoholic liquor identified as the product of a specific manufacturer;

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Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes one or more of the following: (a) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing; (b) a relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer; (c) a relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system; (d) a relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and (e) a relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer;

Territory or sales territory means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

Suspend means to cause a temporary interruption of all rights and privileges of a license;

Cancel means to discontinue all rights and privileges of a license;

Revoke means to permanently void and recall all rights and privileges of a license;

Generic label means a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law;

Private label means a label which the purchasing wholesaler or retailer has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler or retailer has otherwise protected pursuant to state or federal statutory or common law;

Brewpub means any restaurant or hotel which produces on its premises a maximum of ten thousand barrels of beer per year;

Manager means a person appointed by a corporation to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the act as though he or she were the applicant, except for residency and citizenship;

Shipping license means a license granted pursuant to section 53-123.15 of the Revised Statutes of Nebraska;

Sampling means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period;

Microbrewery means any small brewery producing a maximum of ten thousand barrels of beer per year;

Craft brewery means a brewpub or a microbrewery;

Local governing body means (a) the city council of the City of Grand Island; and

Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor.

SECTION 2. Section 4-6 of the Grand Island City Code is hereby amended to read as follows:

§4-6. Liquor Application Procedure

The hearing will be informal and conducted by the Mayor. The hearing shall be held for the purpose of inquiring into the facts and shall not be an adversary action. Each witness may present testimony in narrative fashion or by question and answer.

The governing body or the applicant may order the hearing to be recorded by an official court reporter or by the Clerk, at the expense of the applicant.

The governing body and its representatives shall not be bound by the strict rules of evidence, and shall have full authority to control the procedures of the hearing including the admission or exclusion of testimony or other evidence. The governing body may admit and give consideration to evidence which possesses probative value commonly accepted by reasonably prudent individuals. The Mayor may limit testimony where it appears to be incompetent, irrelevant, or unduly repetitious. If there is opposition to any application and such opposition desires the opportunity to present arguments and to cross-examine the applicant and any witnesses in favor of such application, they shall choose a spokesperson to perform such function who shall notify the Mayor of his/her representation prior to the start of the hearing.

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SECTION 3. Section 4-7 of the Grand Island City Code is hereby amended to read as follows:

§4-7. Applications for Liquor License

In order to assist the council in determining the general fitness of an applicant for a retail liquor license, and the character and reputation of the applicant in the community, the applicant shall provide the city clerk at least ten days before the council hearing on the application the following information:

The application for a new license shall be submitted upon such forms as the commission may prescribe. Such forms shall contain:

(A) The name and residence of the applicant and how long he or she has resided within the State of Nebraska.

(B) The particular premises for which a license is desired designating the same by street and number if practicable or, if not, by such other description as definitely locates the premises.

(C) The name of the owner of the premises upon which the business licensed is to be carried on.

(D) A statement that the applicant is a citizen of the United States, that the applicant and the spouse of the applicant are not less than twenty-one years of age, and that such applicant has never been convicted of or pleaded guilty to a felony or been adjudged guilty of violating the laws governing the sale of alcoholic liquor or the law for the prevention of gambling in the State of Nebraska, except that a manager for a corporation applying for a license shall qualify with all provisions of this subdivision as though the manager were the applicant, except that the provisions of this subdivision shall not apply to the spouse of a manager-applicant.

(E) A statement that the applicant intends to carry on the business authorized by the license for himself or herself and not as the agent of any other persons and that if licensed he or she will carry on such business for himself or herself and not as the agent for any other person.

(F) A statement that the applicant intends to superintend in person the management of the business licensed and that if so licensed he or she will superintend in person the management of the business, and

(G) Such other information as the Nebraska Liquor Control Commission may from time to time direct. The applicant shall also submit two legible sets of fingerprints to be furnished to the Federal Bureau of Investigation through the Nebraska State Patrol for a national criminal history record check and the fee for such record check payable to the patrol.

(H) No license for the retail sale of alcoholic liquor for consumption on the premises shall be recommended for approval until the Building Department, Fire Department and Police Department have completed inspections and have certified that the premises meets all Building and Life Safety Codes. If a license is recommended for approval pending final inspections, the City Clerk shall not issue the license until such time as all inspections have been complete for full compliance.

The application shall be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If any false statement is made in any part of such application, the applicant or applicants shall be deemed guilty of perjury and upon conviction thereof, the license shall be revoked and the applicant subjected to the penalties provided by law for that crime.

SECTION 4. Section 4-8 of the Grand Island City Code is hereby amended to read as follows:

§4-8. Grounds for Revocation or Cancellation

A retail license to sell alcoholic liquors, which this council is legally empowered to revoke, may be revoked by the city 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 said Nebraska Liquor Control Act, or of this chapter, or rule or

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regulation of the Nebraska Liquor Control Commission; or any statutory provision or ordinance of the City now existing or hereafter passed, enacted in the interest of good morals and decency; or for any one or more of the following causes:

(A) The licensee, his/her manager or agent in charge of the premises licensed, has been convicted of or has pled guilty to a felony under the laws of the State of Nebraska, or of any other state of the United States.

(B) The licensee, his/her manager or agent in charge of the premises licensed, has been convicted of or has pled 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/her manager or agent in charge of the premises licensed, has been convicted of or pled 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/her application for said license, or has failed to comply with the statements and representations made by the answer to any question or questions in said application; or has failed to perform in accordance with any other statement or representation, or keep any promise, oral or written, made to the council, in connection with such licensee's request for said license.

(E) The licensee, his/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 law or ordinances referred to in this section.

(F) It shall be cause for revocation as herein provided if the licensee, his/her 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 breast including the nipple or any portion below the nipple with less than a full opaque covering.

(G) It shall be cause for revocation when a licensee, his/her manager or agent in charge of the premises has successive violations that meet the Nebraska Liquor Control Commission standard of violation, the City Council may revoke or cancel the liquor license.

SECTION 4. Section 4-9 of the Grand Island City Code is hereby amended to read as follows:

SECTION 5. Sections 4-1; 4-6; 4-7; 4-8 and 4-9 as now existing, and any ordinances or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 6. The validity of any section, subsection, sentence, clause, or phrase of this ordinance shall not affect the validity or enforceability of any other section, subsection, sentence, clause, or phrase thereof.

SECTION 7. That this ordinance shall be in force and take effect from and after its passage and publication, in pamphlet form, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: November 28, 2006.

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Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk