

DEC 05 2000

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

REGISTERED IN THE OFFICE OF
THE CLERK OF LANCASTER COUNTY, NEBRASKA

9 pages

PROCEDURES AND STANDARDS FOR)
ADMINISTRATING LIQUOR LICENSE)
APPLICATIONS IN LANCASTER)
COUNTY, NEBRASKA)

RESOLUTION NO. R-00-148

WHEREAS, pursuant to the Nebraska Liquor Control Act, NEB.REV.STAT. § 53-101 et seq. (Reissue 1984), the Lancaster County Board of County Commissioners, may provide the Nebraska Liquor Control Commission, with its recommendation regarding liquor license applications, renewals and revocations, for businesses located within Lancaster County and outside the corporate limits of any incorporated city; and

WHEREAS, the County Board's recommendation to the Nebraska Liquor Control Commission shall be based upon the facts and testimony received at a public hearing, when required and conducted pursuant to the Nebraska Liquor Control Act; and

WHEREAS, the Lancaster County Board of Commissioners of Lancaster County, Nebraska, desires to adopt procedures and standards for administrating liquor license applications for businesses located in Lancaster County and outside any incorporated City.

NOW, THEREFORE, BE IT RESOLVED, that the Lancaster County Board of Commissioners hereby adopts the following provisions for the administration of liquor license applications for businesses located in Lancaster County and outside the corporate limits of any City.

Section 1. PURPOSE. The Lancaster County Board of Commissioners' intent and purpose in adopting and administering the provisions of this Resolution is to achieve the following:

- a. Express the community sentiment that control over the availability of alcoholic liquor to the public in general, and to minors in particular, promotes the public health, safety, and welfare.
- b. Promote the state policy of temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof.
- c. 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 to minimize the abuse of alcohol and the occurrence of alcohol related offenses.

Section 2. DEFINITIONS. For the purpose of this Resolution, the following definitions

shall apply:

- a. ACT shall mean the Nebraska Liquor Control Act, NEB.REV.STAT. § 53-101 et seq. (Reissue 1984).
- b. COMMISSION shall mean the Nebraska Liquor Control Commission.
- c. COUNTY shall mean the County of Lancaster, Nebraska.
- d. COUNTY BOARD shall mean the Lancaster County Board of Commissioners.
- e. MANAGER shall mean a person appointed by a corporation to oversee the daily operation of the business license 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.
- f. PERSON shall mean any natural person, trustee, corporation, partnership, or limited liability company.
- g. PREMISES shall mean the designated area specified in a license issued under the Nebraska Liquor Control Act.
- h. SPECIAL DESIGNATED LICENSE shall mean a license issued for sale or consumption of alcoholic liquor at a designated location, for a period of not more than six (6) calendar days in any one calendar year. A special designated license may be issued to a retail licensee, a brewpub licensee, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income tax, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes.

Section 3. PUBLIC HEARING AND NOTICE.

- a. The County Board shall conduct a public hearing within 21 days of receipt of the liquor application from the Commission to receive evidence bearing upon the propriety of issuing the license.
- b. The County Clerk, on behalf of the County Board, shall have published one time in a daily newspaper having a general circulation in Lancaster County, notice of the time place and subject matter of such hearing. Notice of the time and place of such hearing shall also be given in writing to the applicant.

- c. Upon receiving the liquor license application, the County Clerk shall also forward copies of the liquor license application to the Lancaster County Sheriff, County Engineer, Lincoln-Lancaster County Health Department, Lincoln-Lancaster County Planning Department, and the Lincoln-Building and Safety Department requesting that they provide a written report regarding issuance of the liquor license. The written report shall be delivered to the County Clerk's Office at least five days prior to the public hearing on the issue so that the reports may be forwarded to the applicant and County Board members.
- d. 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 County Board that prejudice would result therefrom.

Section 4. PROCEDURES. The following procedures are hereby adopted for all public hearings regarding liquor license applications:

- a. Hearings shall be informal and conducted by the Chair of the County Board. The intent is an inquiry into the facts, not an adversary action.
- b. Each witness shall be sworn by the County Clerk and may present their testimony in narrative fashion or by question and answer.
- c. The County Board 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 County Board may receive and consider evidence which possesses probative value commonly accepted by reasonably prudent individuals. The Chair may limit testimony where it appears incompetent, irrelevant, or repetitive.
- d. 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 Chair of his representation prior to the start of the hearing.
- e. The order of proceedings is as follows:
 - 1. Exhibits shall be marked by the County Clerk and presented to the Chair during the presentation;
 - 2. Presentation of evidence and witnesses by applicant;
 - 3. Testimony of any other citizens in favor of such proposed license;

4. Presentation of evidence and witnesses by opposition;
 5. Testimony of any other citizens in opposition to such proposed license;
 6. Presentation of evidence by County and law enforcement personnel;
 7. Testimony of any citizen holding a neutral view on the issue;
- f. In all cases the burden of proof and persuasion shall be on the party filing the application.
- g. Any member of the County Board and the County Attorney may question any person testifying, call additional witnesses, or request additional information.
- h. The County Board may make further inquiry and investigation following the hearing. It is the policy of the County Board to extend the public hearing for one week and make its recommendation at the close of the second public hearing on the issue. Exceptions to this policy may be made when there is a sufficient showing that prejudice would result therefrom or timeliness for submitting the recommendation to the Commission will not otherwise be met.

Section 5: QUALIFIED APPLICANTS. The applicant shall show by a preponderance of the evidence that:

- a. The applicant is fit, willing, and able to properly provide the service proposed;
- b. The applicant can conform to all requirements, rules and regulations provided for in the Act.
- c. The type of management and control exercised over the licensed premises will be sufficient to insure that the licensed business can conform to all requirements, rules and regulations provided in the Act.
- d. The issuance of the license is or will be required by the present or future public convenience and necessity.

Section 6. GUIDELINES FOR DETERMINING QUALIFIED APPLICANTS. In making its determination pursuant to Section 5, the County Board may consider the following:

- a. The adequacy of existing law enforcement.
- b. The recommendations of the Sheriff's Office, County Engineer, City-County Health Department, Building and Safety and Planning Department.

- c. Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed premises, potential traffic and parking problems, and the proximity and availability of on-and-off street parking.
- d. Sanitation or sanitary conditions on or about the proposed licensed premises.
- e. The existence of a citizens' protest and any other evidence in support of or in opposition to the application.
- f. The existing population of the County, and its projected growth.
- g. The existence or absence of other retail licenses or bottle club licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises.
- h. The nature of the neighborhood or community where the proposed premises are located as well as its projected growth.
- i. Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.
- j. The quality and management ability of the applicant as well as the background information of the applicants established by information contained in the records of the Nebraska Liquor Control Commission and investigations conducted by the Lancaster County Sheriff's Department.
- k. Past instances of discrimination involving the applicants as evidenced by findings of fact before any administrative board or agency of the County or any other governmental board of agency of the County or any other governmental unit or any court of law.
- l. Compliance with state laws and liquor regulations.
- m. The suppression of facts or the providing of nonfactual information by the applicant or its representative to the local governing body or its employees in regard to the license application or liquor investigations.
- n. Zoning restrictions and the County's zoning and land use policies.
- o. The type of entertainment, if any, to be offered.
- p. Proximity of and impact on schools, hospitals, libraries, and public institutions.

The preceding standards are not necessarily of equal value that can be computed in a mathematical formula. Rather, they are standards which can be weighed and cumulated positively and negatively.

Section 7. INELIGIBLE APPLICANTS. An applicant shall be deemed ineligible to hold a liquor license if one or more of the following apply:

- a. The applicant is a not a resident of Lancaster County, except in the case of railroad, airline or boat licenses.
- b. The applicant is a person who is not of good character and reputation in the community in which he or she resides. For purposes of this Resolution "not of good character" refers to one who has engaged in conduct which is contrary to justice, honesty, modesty or good morals and which shows moral indifference to the opinion of good and respectable members of the community.
- c. The applicant is a person who is not a citizen of the United States.
- d. The applicant plead guilty or has been convicted of a felony under the laws of the State of Nebraska, any other state, or of the United States.
- e. The applicant plead guilty to or has been convicted of a Class I Misdemeanor of the following types of offenses:
 1. Offenses against the person,
 2. Drugs and Narcotics,
 3. Offenses involving the family relation,
 4. Offenses relating to morals,
 5. Offenses against animals,
 6. Gambling,
 7. Offenses against public health and safety, or
 8. Any other similar offense committed under a prior criminal statute or in another state.
- f. The applicant previously held a license issued under this Act which has been revoked for cause.
- g. The applicant, at the time of application for renewal of a license, would not be eligible for such license upon initial application.
- h. The applicant is a partnership, unless one of the partners is a resident of the county and all partners are otherwise qualified to receive a license.

- i. The applicant is a limited liability company, unless one of the members is a resident of the county and all members are otherwise qualified to receive a license.
- j. The applicant is a corporation where any manager, director, officer or stockholder, owning in the aggregate more than twenty-five percent of the stock of such corporation, would be ineligible to receive a liquor license pursuant to the Act for any reason other than citizenship and residence within Lancaster County.
- k. The applicant employs a manager who is not qualified to receive a license pursuant to the Act.
- l. The applicant does not own the premises or does not have a lease on such premises for the full period for which the license is to be issued.
- m. The applicant is a person whose spouse is ineligible to receive a license, except that the applicant may be considered eligible where it appears from the evidence that the licensed business will be the sole property of the applicant and that such licensed property will be properly operated.
- n. The applicant is seeking a license for a premises that does not meet the standards of the State Fire Marshal.
- o. The applicant is a law enforcement officer except an officer may hold membership or management position in a nonprofit organization.
- p. The applicant is less than 21 years old.

Section 8. COUNTY BOARD'S RECOMMENDATION. After the public hearing the County Board shall recommend either approval or denial of the liquor license application. The recommendation shall be by Resolution and shall be provided to the Commission within 30 days of receipt of such application from the Commission. The Resolution shall include findings of fact consisting of concise statements of the conclusions upon each contested issue.

Section 9. SPECIAL DESIGNATED LICENSE. A special designated license may be issued within Lancaster County and outside the corporate limits of any City with the County Board's approval. In determining whether to approve a special designated license, the County Board may consider that criteria listed in Sections 6 and 7 of this Resolution which may be applicable. A public hearing regarding the special designated license is not required. All special

designated license applications shall be filed in the County Clerk's office at least 21 working days, excluding holidays, prior to the date of the event. The County Clerk shall notify the applicant of the date, time and location of the meeting in which the County Board will consider the application.

Section 10. LICENSE RENEWALS AND NOTICE. Pursuant to the Act, liquor licenses issued in Lancaster County may be automatically renewed on an annual basis and pursuant to the following:

- a. Pursuant to NEB.REV.STAT. § 53-135.01, the County Clerk shall cause to be published in a legal newspaper in or of general circulation in the county one time between January 10 and January 30 of each year, individual notice of the right of automatic renewal of each retail liquor and beer license, stating that written protests to the issuance of automatic renewal may be filed by any resident of the county on or before February 10 of that year.
- b. Thereafter, after required public notice, the County Board shall hold a public hearing to receive testimony and evidence regarding renewal of each retail liquor and beer license issued in the County and outside the corporate limits of any City. The County Board shall invite testimony and evidence from interested county agencies and community organizations including the Lincoln Council on Alcoholism and Drugs, Inc.
- c. Upon conclusion of the public hearing, the County Board may request in writing to the Commission that any licensee be required to submit a formal application for license renewal.

Section 11. ADDITIONS OR DELETIONS TO THE LICENSED PREMISES. Retail and bottle club licenses apply only to that part of the premises described in the application approved by the Commission. A licensee may apply for permission to add to, delete from or abandon the premises therein described, and if applicable, to move to another approved premises. The licensee shall file with the County Clerk a request in writing, and a statement under oath which shows that the premises as added to or deleted from, or to which such move is to be made, comply in all respects with the requirements of the Act. The same procedures and standards applicable to all liquor license applications as outlined above shall be followed except, a public hearing is not required when the request is to delete a portion of the premises.

Section 12. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be unconstitutional or invalid, such decision shall not affect any validity of the remaining portions of this Resolution. severability of sections

Section 13. Upon the execution of this Resolution, Lancaster County Resolution No. 5351 and all other Resolutions and parts of Resolutions in conflict herewith, are hereby repealed.

DATED this 12 day of December, 2000, in the County-City Building, Lincoln,
Lancaster County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this 5th day of
December, 2000.

David W. Johnson
for GARY E. LACEY
Lancaster County Attorney

Bob Workman
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Bernie Kern

