

# ORDINANCE RECORD

No. 725—K-B PRINTING Co., OMAHA. COMPILED BY GEORGE R. MANN, ATTORNEY FOR NEBRASKA ORDINANCE REFERENCE BUREAU, LINCOLN

## OPENING

CITY HALL, LEXINGTON, Nebraska.  
JULY 5, 1935, 19

The Mayor and Council of the City of Lexington  
Dawson County, Nebraska, met in regular (special) session  
in the City Hall at 8:00 o'clock P. M.  
Mayor Battle presided. City Clerk Olsson recorded  
the proceedings of this meeting.

## ROLL CALL

The Mayor instructed the Clerk to call the roll. The Clerk called the roll and the following Councilmen were present:  
Councilmen Malone, Morganson, Hagadone, Spies, Kjar, Millan.

Absent: none.

## ORDER OF BUSINESS

Whereupon the Mayor announced that the introduction of ordinances was now in order.

### ORDINANCE NO. 307

Introduction of Ordinance No. 307 of the City of  
Lexington, Nebraska.

And the matter now coming before the Mayor and Council was the passage and approval of Ordinance No. 307 of the City of Lexington, Nebraska. This ordinance was introduced by Councilman Spies, and is in words and figures as follows, to-wit:  
(Insert copy of ordinance as finally passed, signed and sealed here.)

### ORDINANCE NO. 307

AN ORDINANCE relating to alcoholic liquors; making various definitions in relation thereto; providing rules and regulations for the manufacture, transportation and sale of such liquors; establishing certain regulations regarding premises where such liquors are sold; providing levy of occupation taxes upon businesses in such liquors; imposing fines and penalties for violations of the provisions of this ordinance; repealing various ordinances designated herein and other ordinances in conflict herewith; and prescribing when this ordinance shall be in full force and effect.

BE IT ORDAINED BY THE Mayor and City Council of Lexington, Nebraska:

Section 1. Unless the context otherwise requires, the words

# ORDINANCE RECORD



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and phrases herein defined are used in this ordinance in the sense given them in the following definitions: (1) The word "Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and includes synthetic ethyl alcohol. It does not include denatured alcohol or wood alcohol. (2) The word "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. (3) The word "Wine" means any alcoholic beverage obtained by the fermentation of the natural contents of fruit or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits, as above defined. (4) The word "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, among other things, beer, ale, stout, lager beer, near beer, porter and the like. (5) The phrase "Alcoholic liquor" includes the four varieties of liquor above defined "alcohol" "spirits" "wine" and "beer" and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being. The provision of this ordinance shall not apply to alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations promulgated thereunder. Nor shall the provisions of this ordinance apply to flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary or toilet preparations, or food products unfit for beverage purposes, but the provisions of this ordinance shall not be construed to exclude or not apply to alcoholic liquor used in the manufacture, preparation or compounding of such products. ~~None of the provisions of this ordinance shall apply to wine intended for use and used by any church or religious organization for sacramental purposes.~~ (6) The phrase "Original Package" means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor. (7) The word "manufacturer" means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or other person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquors as above defined. (8) The words "non-beverage user" mean every manufacturer of any of the products set forth and described in sub-section (a) of Section 50 and sub-section (g) of Section 25 of The Nebraska Liquor Control Act, when the same contains alcohol, and all laboratories and hospitals and sanatoria using alcohol for non-beverage purposes. (9) The word "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 this ordinance to serve drinks for consumption on the premises where sold. (10) The word "distributor" means the person, as hereinafter defined, importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquors for sale or resale to retailers licensed under Nebraska Liquor Control Act. (11) The word "person" includes any natural person, corporation, partnership or association. (12) The word "retailer" means a person who sells, or offers for sale, alcoholic liquors for use and consumption and not for resale in any form. (13) "Sell at retail" and "sale at retail" refer to and mean sales for use or consumption and not for resale in any form. (14) The word "commission" means the Nebraska Liquor Control Commission. (15) The word "sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee. (16) The words "to sell" include to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell. (17) The word

(If copy of ordinance as finally passed requires more space, insert here additional blank page or pages at end of set.)



# ORDINANCE RECORD

No. 728—THE K-B PRINTING CO., OMAHA. COMPILED BY MANN & WHITTEN, ATTORNEYS FOR NEBRASKA ORDINANCE REFERENCE BUREAU, LINCOLN.

"restaurant" means any public place 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, without sleeping accommodations, such space being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed therein a sufficient number and kind of employes to prepare, cook and serve suitable food for its guests. (18) The word "club" means a corporation 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 liquors; kept, used and maintained by its members through the payment of annual dues, and owning, hiring or leasing a building or space in a building, of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests and provided with suitable and adequate kitchen and dining room space and equipment and maintaining a sufficient number of servants and employees for cooking, preparing and serving food and meals for its members and their guests; Provided, that such club files with the city clerk at the time of its application for a license under The Nebraska Liquor Control Act two copies of a list of names and residences of its members, and similarly files within ten days of the election of any additional members his name and address; and provided further, that its affairs and management are conducted by a board of directors, executive committee or similar body chosen by the members at their annual meeting, and that no member or any officer, agent or employee of the club is paid, or directly or indirectly receives, 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 beyond the amount of such salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other governing body out of the general revenues of the club.~~ (19) The word "Hotel" means every building or other structure 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, in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and having one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same building in connection therewith and such building or buildings, structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity.

Section 2. It shall be unlawful for any person to manufacture for sale, sell, keep for sale or to barter, or exchange, under any pretext any alcoholic liquor within said city unless said person shall have in full force and effect a license therefor as provided by the Nebraska Liquor Act.

Section 3. (a) No person shall, within such city, sell or give any alcoholic liquors to, or procure any such liquor for, or permit the sale or gift of any such liquor to, or the procuring of any such liquor for, any minor or any person who is mentally incompetent or any person who is physically or mentally incapacitated due to the consumption of such liquors. (b) No minor shall within such city represent that he is of age for the purpose of asking for, purchasing or receiving any alcoholic liquors from any person. Any person violating any provision of sections "a" or "b" of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not more than \$50.

Section 4. No person shall within such city sell at retail any alcoholic liquor, including beer, on the day of any national, state, county, or municipal election, including primary election, during

# ORDINANCE RECORD

the hours the polls are open in said city. No person shall within such city sell at retail any alcoholic liquors, except beer, on the first day of the week commonly called Sunday. No person shall sell beer, at retail, on Sunday, within such city, except between the hours of 6 o'clock A.M. and 12 o'clock midnight. It shall be unlawful for any person to sell alcoholic liquors, including beer, within such city on secular days between the hours of 12 o'clock midnight and six o'clock A.M.

Section 5. It shall be unlawful for any person or persons holding a license or licenses for the sale at retail of beer and of alcoholic liquors other than beer to sell, or keep for sale, within any such city, beer and alcoholic liquor other than beer, except in separate and distinct rooms or premises. Rooms and/or premises shall be deemed separate and distinct only when located in buildings which are not adjacent, or when so separated by walls or partitions that access can not be had directly from one to the other by means of doors or other openings.

Section 6. No person holding a license for the sale at retail of alcoholic liquors, including beer, shall sell within such city, any such liquors or conduct any of the business for which such license is required in any room or premises not provided with a public entrance at the front thereof, opening upon a public street, and no person holding such license shall permit the use of any entrance other than such front entrance for any purposes other than the use thereof by the licensee, his family or employees, or for ingress and egress by other persons for the purposes of lawful labor or business other than the purchase at retail or the consumption of alcoholic liquors.

Section 7. In premises within such city upon which the sale of alcoholic liquor for consumption on the premises is licensed (other than restaurants, hotels or clubs) no screen, blind, curtain, partition, article or thing shall be permitted in the windows or upon the doors of such premises, and no booth, screen, wall, partition, or other obstruction, nor any arrangement of lights shall be permitted in or about the interior of such licensed premises which shall prevent a full and clear view of the entire interior of such premises from the streets, road or sidewalks.

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

Section 8. It shall be unlawful for any person to consume alcoholic liquors within such 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 theaters, dance halls or in any other place open to the public, and no person shall drink any alcoholic liquors other than beer upon any premises within which beer is sold at retail; provided that nothing herein contained shall be construed to prohibit persons purchasing beer upon premises within which beer is lawfully sold for consumption on the premises from drinking such beer on such premises.

Section 9. It shall be unlawful for any person to have in his possession within such city for sale at retail any alcoholic liquors contained in bottles, casks or other containers except the original package.

Section 10. Every licensee under the Nebraska Liquor Control Act within such city shall cause his license or licenses to be framed and hung in plain public view in a conspicuous place on the licensed premises.

Section 11. No non-beverage user shall within such city sell, give away or otherwise dispose of any alcohol, purchased under a license as such non-beverage user, in any form fit for beverage purposes.

Section 12. It shall be unlawful for any person to drive any motor vehicle on the streets of such city while under the influence of intoxicating liquor. Any person found guilty of such offense, in addition to the general penalty provided hereafter for the violation of the provisions hereof, shall be adjudged and ordered by the court not to drive a motor vehicle within the State of Nebraska for a period of one year from the date of such conviction.

Section 13. It shall be unlawful for any licensee under the Nebraska Liquor Control Act with a place of business within said city, to permit, on premises where alcoholic liquors are consumed thereon, entertainments other than music from musical instruments or entertainment from radios.

Section 14. It shall be unlawful for any person to dance or for any licensee under the Nebraska Liquor Control Act with a place of business within such city to permit dancing, on premises within which alcoholic liquors are sold for consumption.

Section 15. It shall be unlawful for any person to have possession of any alcoholic liquors within such city which shall have been acquired otherwise than from a licensee duly licensed to sell same to such person under the provisions of the Nebraska Liquor Control Act; Provided, however, nothing herein contained shall prevent the possession of alcoholic liquor for the personal use of the possessor, his family and guests, nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of a maker, his family and his guests; and provided further that nothing herein contained shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, or any hospital or institution caring for the sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution; and provided further that any drug store employing a licensed pharmacist may possess and use alcoholic liquors in the compounding of prescriptions of duly licensed physicians; and provided further that the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this ordinance.

Section 16. If the owner of the licensed premises or any person from whom the licensee derives the right to possession of such premises, or the agent of such owner or person, shall knowingly permit the licensee to use said licensed premises in violation of the terms of this ordinance, said owner, agent or other person shall be deemed guilty of a violation of this ordinance to the same extent as said licensee and be subject to the same punishment.

Section 17. Every act or omission of whatsoever nature constituting a violation of any of the provisions of this ordinance, by any officer, director, manager or other agent or employee of any licensee, if said act is committed or omission is made with the authorization, knowledge or approval of the licensee, shall be deemed and held to be the act of such employer or licensee, and said employer or licensee shall be punishable in the same manner as if said act or omission had been done or omitted by him personally.

Section 18. The violation of any provision of this ordinance shall constitute a misdemeanor and upon conviction thereof, except where a different penalty for said offense is herein provided, the defendant shall be fined in any sum not exceeding one hundred dollars; and in the case of all violations of this ordinance, the defendant shall be adjudged to pay the costs of prosecution, and shall be committed to the city or county jail at hard labor upon the streets or elsewhere for the benefit of the city until such fine and costs are paid or he be otherwise released by proper authority.

# ORDINANCE RECORD

Section 19. That all police officers of the City of Lexington are hereby authorized to enter at any time upon any premises of any licensee under the Nebraska Liquor Control Act within said city to determine whether any of the provisions of such Act or of this ordinance, or any rules or regulations adopted by such city or by Nebraska Liquor Control Commission have been or are being violated and at such time to examine sufficiently said premises of said licensee in connection therewith.

Section 20.

OCCUPATION TAX. For the purpose of raising revenue within said city there is hereby levied upon the following described businesses conducted in said city the following designated occupation taxes:

Manufacturer of Alcohol and Spirits - - - - -	\$	1,000.00
Manufacturer of Beer - - - - -	\$	250.00
Manufacturer of Wine - - - - -	\$	250.00
Alcoholic Liquor Distributor (except Beer) - - -	\$	500.00
Beer Distributor - - - - -	\$	250.00
Retailer of Beer only, for Consumption on the premises - - - - -	\$	25.00
Retailer of Beer only, for Consumption off the premises (sale in the original packages only) - - - - -	\$	25.00
Retailer of Alcoholic Liquors for Consumption on the premises and off the premises (sale in the original packages only) - - - - -	\$	250.00
Retailer of Alcoholic Liquors, including beer, for consumption off the premises (sale in the original packages only) - - - - -	\$	150.00 ✓
Non-beverage user		
Class 1 - - - - -	\$	5.00
Class 2 - - - - -	\$	25.00
Class 3 - - - - -	\$	50.00
Class 4 - - - - -	\$	100.00
Class 5 - - - - -	\$	250.00

Such occupation tax so levied shall be paid to the City Treasurer for the benefit of the general fund of said city immediately after the final issuance of license under the Nebraska Liquor Control Act for any such business.

The City Treasurer shall issue his receipt for such tax when paid, properly dated, specifying the person for whom paid and for what purpose. If such City Treasurer be unable to collect such occupation tax when due he shall immediately report such facts to the City Attorney who shall then proceed by civil suit in the name of the city to collect the amount due. This remedy shall not be exclusive of any other right of action but merely cumulative.

Section 21. That ordinances No. 226, No. 276 and No. 293 of such city and all other ordinances or parts of ordinances in conflict herewith be and hereby are repealed.

Section 22. That this ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

Passed and approved this 5th day of July, 1935.

**John Battle.**

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Mayor "

ATTEST

**J.L. Olsson**

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City Clerk

No. 728--The K-B Printing Co., Omaha. Compiled by Mann & Whitten, Attorneys for Nebraska Ordinance Reference Bureau, Lincoln.