BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

PROCEDURES AND STANDARDS FOR ADMINISTRATING LIQUOR LICENSE APPLICATIONS IN LANCASTER COUNTY, NEBRASKA	) RESOLUTION NO. R-19-0032

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

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

WHEREAS, the Board desires to adopt procedures and standards for administrating liquor license and corporate manager applications for businesses located in the County and outside of any incorporated city;

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

Section 1. PURPOSE. The Board's 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 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..

b. BOARD shall mean the Lancaster County Board of County Commissioners.

c. COMMISSION shall mean the Nebraska Liquor Control Commission.

d. COUNTY shall mean the County of Lancaster, Nebraska.

e. CORPORATE MANAGER shall mean a person appointed by a business to oversee the daily operations of the liquor license issued to such business in Nebraska. A Corporate 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, except that the calendar day limitation shall not apply to a holder of a catering license. A special designated license may be issued to a retail licensee, a craft brewery licensee, a microdistillery licensee, a farm winery licensee, the holder of a manufacturer's license issued pursuant to subsection (2) of NEB. REV. STAT. § 53-123.01, 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 taxes, a political organization which has been exempted from the payment of federal income taxes, 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, under conditions specified in NEB. REV. STAT. § 53-124.11.

Section 3. PUBLIC HEARING AND NOTICE.

a. The Board shall conduct a public hearing within forty-five (45) 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 Board, shall have published one time in a daily newspaper having a general circulation in the 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 County Sheriff, County Engineer, Lincoln-Lancaster County Health Department, Lincoln-Lancaster County Planning Department, and the City of 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 the Board.

d. Two or more proceedings which are legally and factually related may be heard and considered together unless any party thereto makes a showing sufficient to satisfy the Board that prejudice would result therefrom.

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

a. Hearings shall be informal and conducted by the Chair of the Board ("Chair"). The intent is an inquiry into the facts, not an adversary action.

b. Each witness shall be sworn in by the County Clerk and may present testimony in narrative fashion or by question and answer.

c. The 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 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, the opposition 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 the 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 citizen 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 Board and the County Attorney may question any person testifying, call additional witnesses, or request additional information.

h. The Board may make further inquiry and investigation following the hearing for a new liquor license application or corporate manager application.

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 ensure that the licensed business can conform to all requirements, rules, and regulations provided in the Act; and

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 Board may consider the following:

a. The adequacy of existing law enforcement.

b. The recommendations of the County Sheriff, County Engineer, Lincoln-Lancaster County Health Department, Lincoln-Lancaster County Planning Department, and the City of Lincoln Building and Safety 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 and sanitary conditions on or about the proposed licensed premises.

e. The existence of a citizen's 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 Commission and investigations conducted by the County Sheriff.

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 or 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 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 pleaded guilty to, or has been convicted of, a felony under the laws of the State of Nebraska, any other state, or of the United States.

d. The applicant has pleaded 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.

e. The applicant previously held a license issued under the Act which has been revoked for cause.

f. The applicant, at the time of application for renewal of a license, would not be eligible for such license upon initial application.

g. 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.

h. 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.

i. 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 the County.

j. The applicant employs a manager who is not qualified to receive a license pursuant to the Act.

k. 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.

l. 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.

m. The applicant is seeking a license for a premises that does not meet the standards of the State Fire Marshall.

n. The applicant is a law enforcement officer except an officer may hold membership or management position in a non-profit organization.

o. The applicant is less than 21 years old.

Section 8. BOARD'S RECOMMENDATIONS. After the public hearing the Board may recommend either approval or denial of the liquor license application. The recommendation shall be by Resolution and shall be provided to the Commission with 45 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 the County and outside the corporate limits of any city with the Board's approval. In determining whether to approve a special designated license, the Board may consider the 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, to be considered timely filed, shall be filed in the County Clerk's office at least 21 working days, excluding holidays, prior to the date of the event.

Section 10. LICENSE RENEWALS AND NOTICE. Pursuant to the Act, liquor licenses issued in the County may be automatically renewed on an annual basis 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, except that notice of the right of automatic renewal of Class C licenses shall be published between the dates of July 10 and July 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, except that written protests to the issuance of automatic renewal of a Class C license may be filed on or before August 10 of that year.

b. Thereafter, after required public notice, if the County Clerk receives protests from three or more persons on the renewal of a license, the Board shall hold a public hearing to receive testimony and evidence regarding the renewal of that protested license. With respect to that protested license, the Board shall request reports pursuant to Section 3.c of this Resolution.

c. Upon conclusion of the public hearing, the Board may request in writing to the Commission that the licensee whose license renewal was the subject of the hearing be required to submit a formal application for license renewal.

d. The Board shall take no action, and hold no hearing, with respect to licenses not protested by three or more persons as provided by NEB. REV. STAT. §53-135.01.

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. Pursuant to NEB. REV. STAT. §53-129, 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, complies in all respects with the requirements of the Act. A public hearing is not required for such applications. The Board may recommend either approval or denial of the liquor license application. The recommendation shall be by Resolution and shall be provided to the Commission with 45 days of receipt of such application from the Commission. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the Board and by the Commission.

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 the validity of the remaining portions of the Resolution.

Section 13. Upon the execution of this Resolution, Lancaster County Resolution R-17-0082 and all other resolutions and parts of resolutions in conflict herewith, are hereby repealed.

Dated this 23 day of April, 2019, in the County-City Building, Lincoln, Lancaster County, Nebraska.

BY THE BOARD OF COUNTY COMMISSIONERS OF LANCASTER COUNTY, NEBRASKA

APPROVED AS TO FORM
this 23 day of
April, 2019.

Deputy County Attorney
for PAT CONDON
County Attorney