

Summary: An ordinance creating Chapter 9 of Title 4 of the Lincoln County Code authorizing Lincoln County to establish Liquor and Gaming Licensing Board Policy and Procedures as authorized under Nevada Revised Statutes chapter 244 and allowed under Nevada Revised Statutes chapter 463.

BILL NO. 2008-__

ORDINANCE NO. 2008-__

AN ORDINANCE CREATING CHAPTER 9 OF TITLE 4 OF THE LINCOLN COUNTY CODE AUTHORIZING LINCOLN COUNTY TO ESTABLISH LIQUOR AND GAMING LICENSING BOARD POLICY AND PROCEDURES AS AUTHORIZED UNDER NEVADA REVISED STATUTES CHAPTER 244 ALLOWED UNDER NEVADA REVISED STATUTES CHAPTER 463, AND OTHER MATTERS PROPERLY RELATED THERETO

WHEREAS, pursuant to the authority of NRS 244.330, Lincoln County may adopt an ordinance or ordinances governing liquor businesses outside of an incorporated city and may impose and collect license taxes for revenue or regulation or both on such businesses located or operating within Lincoln County;

WHEREAS, pursuant to the authority of NRS 244.335, Lincoln County may adopt an ordinance or ordinances governing gambling games or devices outside of an incorporated city and may impose and collect license taxes for revenue or regulation or both on such business located or operating within Lincoln County;

WHEREAS, it is necessary for promoting the health, safety, and general welfare of the citizens of Lincoln County and to allow for orderly and timely development of liquor businesses, gaming and gaming establishments to occur in Lincoln County that the

County be able to establish and implement controls and guidelines governing liquor businesses, gaming and gaming establishments within Lincoln County;

WHEREAS, a uniform system of ordinances regarding the approval, administration, and enforcement of liquor businesses, gaming and gaming establishments within Lincoln County is necessary to ensure the health, safety, and general welfare of the citizens of Lincoln County;

WHEREAS, there are several large-scale land development projects proposed for southern Lincoln County that anticipate the development of liquor businesses, gaming and gaming establishments;

WHEREAS, the current Lincoln County Business and License Code (Title 4) does not anticipate such liquor businesses, gaming and gaming establishments and, therefore, does not adequately provide sufficient guidelines, requirements, and approvals for the licensing and regulation of such businesses that are necessary and appropriate for the protection of the public health and welfare; and

WHEREAS, the Commissioners have determined that it is in the public interest to adopt and implement an ordinance establishing the Liquor and Gaming Licensing Board Policy and Procedures necessary to govern the licensing and operation of liquor businesses, gaming, casinos, and gaming establishments in accordance with Title 4, Chapters 1 and 8 of the Lincoln County Code.

**THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF LINCOLN DO ORDAIN:**

Title 4

BUSINESS AND LICENSE REGULATIONS

Chapter 9

LIQUOR AND GAMING LICENSING BOARD POLICY AND PROCEDURES

SECTION:

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- 4-9-02: Definitions
- 4-9-03: Investigation and Reporting of Violations
- 4-9-04: License Application Determination
- 4-9-05: Licensing Board to Cooperate with Other Regulatory Agencies
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- 4-9-26: License Application Investigation Fees
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4-9-01: STATUTORY AUTHORITY:

Pursuant to the provisions of Nevada Revised Statutes chapters 244 and 463, the Lincoln County Board of County Commissioners may adopt ordinances governing and regulating liquor businesses, gaming, casinos, and gaming establishments occurring within the County.

4-9-02: DEFINITIONS:

As used in this chapter, the words and terms shall have the meaning ascribed to them pursuant to Title 4 Chapters 1, 8, and 9 unless a different meaning clearly appears in the context.

Violation of the regulations or ordinances means and includes violation of any provision of this code or the ordinance in force as enacted by the board of commissioners and regulation or ordinance passed or adopted by the Lincoln County liquor and gaming licensing board.

4-9-03 INVESTIGATION AND REPORTING OF VIOLATIONS

The sheriff is responsible for the enforcement of gaming regulations and liquor ordinances and the investigation of violations thereof, and shall report to the board and district attorney those violations which he deems appropriate for disciplinary action.

4-9-04 LICENSE APPLICATION DETERMINATION

A. Licenses are revocable privileges

All liquor, and gaming licenses are revocable privileges and the applicant therefore has no entitlement to any liberty or property interest and the holder thereof acquires no vested liberty or property interest. All procedures set forth in this chapter are for the convenience of the board and do not grant a licensee any additional right.

B. All applications for licenses shall be submitted, investigated and reported

All applications for licenses shall be submitted, investigated and reported as required by the specific chapter regulating the license sought. After the report of the sheriff and administrator has been received by the board, the board may, at its option:

1. Require the applicant to submit all arguments and evidence in support of such applications in writing to the administrator for consideration by the board;
2. Grant or deny the application upon the documents submitted with the application and investigation reports submitted by the sheriff, administrator, or district

attorney; or

3. Question the applicant regarding the merits of its application, its suitability and areas of concern disclosed by the investigation; or

4. Refer the investigation reports, application and supporting documents submitted pursuant to subsection (B)(1) of this section to a hearing officer for hearing of evidence and a preparation of findings of fact which will be submitted to the board for decision without further comment by applicant.

The applicant may submit such additional documentary evidence or argument as it deems advisable with the application.

All applications, history questionnaires, statement of fact and recommendations of third parties submitted by an applicant shall be made under oath.

All investigation reports submitted to the board shall be made a part of the record. The application and all documents submitted to the board by the applicant may be tendered to the clerk as part of the record. If the applicant desires a transcript of the proceeding, it shall provide a court reporter and file a copy of the certified transcript with the clerk.

4-9-05 LICENSING BOARD TO COOPERATE WITH OTHER REGULATORY AGENCIES

A. Board shall cooperate with other public agencies

The board shall cooperate with other public agencies concerned with the regulation and control of the liquor and gambling industries and to that end may exchange with such agencies any and all types of confidential information. When dealing with any gaming matter, the board may immediately inform the state gaming agencies of any investigation, hearing or other actions that the board, or its members or agents may take.

B. Agreement with state gaming agencies

The board may enter into agreement with the state gaming agencies such that duplication of effort shall be kept to a minimum; provided, however, that if the apparent violation is of such a character that action should be taken and if the state gaming agencies fail, refuse or decline to assume control of the investigation and hearing, then the board and the sheriff shall promptly investigate and if disciplinary action is apparently necessary the board shall conduct a hearing as provided.

C. Agreement with liquor and gaming boards

The board may enter into agreement with liquor and gaming boards of any incorporated city or town of Lincoln County so that overall regulation and control may be more effectively maintained.

4-9-06 COMPLAINT AGAINST LICENSEE

Upon the report by the sheriff to the board of a violation charging a liquor or gaming licensee with the commission of any act which is cause for disciplinary action the board shall consider the severity of the allegations and may:

A. Refer to Sheriff

Refer the same back to the sheriff for further investigation and administrative reprimand;
or

B. Show cause hearing

May order a show-cause hearing, setting the hearing for not less than 10 days from the sheriff's report, providing reasonable notice to the licensee, and requiring the licensee to appear before the board to show cause why a formal complaint for disciplinary action should not be issued; or

C. Refer to District Attorney

May refer the report to the District Attorney or his deputy for determination of the legal sufficiency of the evidence. If such evidence is sufficient for formal disciplinary action, the District Attorney may prepare a complaint for the signature of the sheriff and a citation for the signature of the chairman of the board. If such evidence is lacking, the District Attorney may request the sheriff to make further investigation of the alleged violation

4-9-07 COMPLAINT, CITATION.

Upon a finding by the District Attorney that there is sufficient evidence of a violation of the regulations or ordinances, or of a threat or hazard to the public health, safety, morals, or welfare, he shall draft a written complaint which shall set forth in ordinary and concise language the acts, omissions or the hazard or threat to the public health, safety, morals, welfare or good order with which the licensee or affected person (respondent) is charged.

The citation shall direct to the respondent, licensee within ten days after service thereof upon him to appear by filing with the clerk of the board, his verified answer to the complaint. The answer shall state whether or not the respondent requests a hearing, and shall admit or deny the facts alleged in the complaint and raise all legal and factual issues the respondent desires the board to consider. The citation shall notify the respondent that failure to file a verified answer shall result in disciplinary action against him by default.

Service of the citation with a copy of the complaint shall be made upon the respondent as provided by the Nevada Rules of Civil Procedure for the service of process in civil actions. Proof of service shall be filed with the clerk of the board.

The District Attorney shall thereafter be in charge of presenting the evidence to the board.

Upon the filing of the answer, the chairman of the board shall fix a time and place for hearing and give the respondent not less than fifteen days' notice. The clerk of the board or director shall give notice of such hearing date and time to the respondent and the District Attorney by depositing in the United States Mail a true copy of the notice enclosed in a sealed envelope with postage thereon fully paid, addressed to the respondent and his attorney, if any, and the District Attorney at the address shown on the pleadings.

4-9-08 FORM OF ANSWER – FILING DEADLINE.

The answer to the complaint shall be signed and verified by the licensee, served upon the District Attorney which prepared the complaint and filed with the clerk of the board within ten days after service upon respondent of the citation. The complaint, citation and answer shall form the pleadings for the hearing.

The answer shall read substantially as follows:

BEFORE THE LINCOLN COUNTY LIQUOR AND GAMING
LICENSING BOARD, COUNTY OF LINCOLN, STATE OF NEVADA

In the Matter of)
)
Disciplinary Action Against)
)
)
A.B.,) ANSWER
_____)

To the Members of the Licensing Board:

1. The Respondent does not request a hearing. (Note: If a hearing is desired, omit word "not".)
2. The Respondent admits the following facts set forth in the complaint:
3. The Respondent denies the following facts set forth in the complaint:
4. The Respondent believes the following defenses and explanations should be considered by the Board:
5. The Respondent raises the following legal defenses:

LICENSEE

If the licensee files a verified answer as required herein and requests a hearing he shall be entitled to a hearing on the merits upon the issues denied by the answer.

4-9-09 FAILURE OF LICENSEE TO ANSWER CHARGES.

Failure of the licensee to answer as required shall be deemed an admission by him of the commission of the act or acts charged in the complaint. If an answer is filed which does not request a hearing, the matter shall be decided upon the pleadings and documents produced by the sheriff. Thereupon, the board shall forthwith impose disciplinary action, as the case may be, and shall give notice of such disciplinary action by mailing a true copy thereof by United States Mail in a sealed envelope with postage thereon fully prepaid, addressed to the licensee at the licensed address by mail or by service upon his attorney.

Failure to request a hearing, or to file an answer as required within the time designated shall further constitute a waiver of respondent's right to a hearing and to judicial review of any decision or order, but the board in its discretion, may nevertheless order a hearing, limited as it deems appropriate. All affirmative defenses must be specifically stated and unless objection is taken in the answer, all objections to the form and content of complaint are waived.

4-9-10 PRESUMPTIONS.

The following presumptions are disputable, and apply in all disciplinary proceedings conducted before the board:

1. That an unlawful act or violation of the code was done with unlawful intent;
2. That a person intends the ordinary consequences of his voluntary act;
3. That evidence willfully suppressed would be adverse if produced, this includes, but is not limited to the production of business records required by law to be kept;
4. That higher evidence would be adverse from inferior being produced, this includes the failure of the licensee to attend the hearing and subject himself to examination by the board and prosecutor, or refusal to answer questions posed by the board or prosecutor;
5. That official duty has been regularly performed;
6. That a judicial record, or record of proceedings before the board correctly determines or sets forth the record of events as they actually occur;
7. That a letter duly directed and mailed was received in the regular course of the mail;
8. That a proven act of code violation is an indication of the usual course of business operation;
9. That records, reports, statements or data compilations, in any form of public officials or agencies are authentic, if it is certified as correct by the custodian or other person authorized to make the certification. "Records" includes, but is not limited to investigation files of the metropolitan police department.
10. That records, reports, statements or data compilations, in any form, of public officials or agencies are accurate and truthful reports of the information contained therein.

4-9-11 WITNESS – AFFIDAVIT – SERVICE.

The testimony of any material witness residing within or without the state of Nevada may be preserved by deposition in the manner provided by the Nevada Rules of Civil Procedure upon stipulation of counsel or the consent of the deponent. Affidavits may be received in evidence at any hearing of the board provided that the party wishing to use such affidavit shall, not less than five days prior to the day set for hearing, serve either personally or by certified mail, upon the opposing party or counsel, a copy of the affidavit which he proposes to introduce into evidence. Discovery is permissible only upon stipulation of counsel.

4-9-12 HEARING PROCEDURE – RECORD.

To provide for an orderly meeting the following procedures shall be followed at hearing conducted by the board for disciplinary matters:

A. Board presence at hearing

At least three members of the board shall be present at every hearing, and they shall exercise all powers relating to the conduct of the hearing and shall enforce all decisions with respect thereto.

B. Hearing of evidence before voting

No member of the board who did not hear the evidence shall vote on the decision.

C. Provision of certified court reporter

The respondent/licensee is responsible to provide a certified court reporter to transcribe the proceedings and file a certified transcript thereof with the county clerk, commission division. Said transcript shall become a part of the official record of the proceedings.

D. Oath or affirmation administered by the clerk

Oral evidence shall be taken only upon oath or affirmation administered by the clerk.

E. Ability of parties

Every party to a hearing shall be able:

1. To call and examine witnesses; and
2. To introduce exhibits relevant to the issues of the case, including the transcript of testimony at an investigative hearing conducted by or on behalf of the board; and
3. To cross-examine opposing witnesses on matters relevant to the issues of the case, even though the matter was not covered in a direct examination;

and

4. To impeach any witness regardless of which party first called him to testify; and
5. To offer rebuttal evidence.

F. Attendance of licensee at hearing required

The licensee is required to attend the hearing and may be called as a witness by either party if the licensee does not testify on his own behalf, he may be called and examined as if under cross-examination after he rests his case, whether the prosecution has rested or not.

G. Conduct of hearing

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted and shall be sufficient to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

H. Evidence stipulation by agreement

The parties or their counsel may by stipulation agree that certain specified evidence may be admitted even though such evidence might otherwise be subject to objection.

4-9-13 QUASI-JUDICIAL NOTICE – EVIDENCE ADMISSIBLE.

The board may take official notice of any generally accepted or previously expressed policy, information or technical or scientific matter within the area of liquor, or gaming conduct and control and of any fact which may be judicially noticed by the courts of this state.

4-9-14 AMENDMENTS – FILING OF AMENDED PLEADINGS.

The board may, in its discretion, before submission of the case for decision, permit the filing of amended or supplemental pleadings and shall notify all parties thereof, and provide a reasonable opportunity for objections thereto.

4-9-15 MISCONDUCT DURING HEARING – REFERRAL TO DISTRICT COURT – CONTEMPT.

If any person in proceedings before the board disobeys or resists any lawful order or refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during the hearing or near the place thereof so as to obstruct the proceedings, the board may, in addition to remedies available to it, certify the facts to the district court. The court shall thereupon issue an order directing the person to appear before the court and show cause why he should not

be punished for contempt. The court order and a copy of the statement of the board shall be served on the person cited to appear. Thereafter the court shall have jurisdiction of the matter; and the same proceedings shall be had, the same penalties may be imposed, and the person charged may purge himself of the contempt as in the trial of a civil action before a district court.

4-9-16 WRITTEN DECISION OF THE BOARD – MAJORITY VOTE NEEDED.

After the hearing of a contested matter, the board shall render a written decision on the merits which shall contain findings of fact, a determination of the issues presented and the disciplinary action to be imposed, if any, and shall thereafter make and enter its written order in conformity with such decision. The affirmative votes of a majority of the board hearing the evidence shall be required to impose any disciplinary action. Copies of any decision and order shall be served on the parties or their counsel as provided in the Nevada Rules of Civil Procedure 5(b). The decision takes effect upon the vote of the board, whether or not a written decision is prepared. The decision shall become and remain effective until reversed or modified on judicial review.

4-9-17 AGGRIEVED PARTY – PETITION FOR REHEARING.

Within ten days after service of an order of the board, any party aggrieved may petition for a rehearing. Such petition shall not be granted except upon a showing that there is additional evidence which is material, necessary and reasonably calculated to change the decision of the board. The petition shall be supported by an affidavit of the moving party or his counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not introduced at the hearing. Upon rehearing, rebuttal evidence to the additional evidence shall be permitted. After rehearing, the board may modify its decision and order as the additional evidence may warrant.

4-9-18 JUDICIAL REVIEW.

Exclusive power to regulate the businesses of liquor sales and gaming are vested by the Nevada Legislature in the liquor and gaming licensing board pursuant to NRS 244.335, 244.345, and 244.350. Such businesses operate pursuant to a license which is a revocable privilege as the licensees acquire no vested rights by reason of licensure. The licenses and the decision of the board are subject to judicial review to protect against arbitrary action. In all disciplinary matters conducted before the board it is presumed that the board acted lawfully and there shall be no stay of its decision pending judicial review.

Any person aggrieved by final decision or order of the board made after hearing may obtain a judicial review of questions of law thereof in the Seventh Judicial District Court.

A. Judicial review instituted.

The judicial review shall be instituted by filing a petition in district court within twenty days after the effective date of the board's final decision or order. A petition for review may not be filed while a petition for rehearing is pending before the board. The petition for review shall set forth the order or decision appealed from, and shall set forth the

specific rulings on questions of law which the petition contends constitutes error.

B. Copies of petition served

Copies of the petition shall be served upon the board and all other parties of record, and their counsel of record, as provided for such service in NRCP.

C. Petition filing shall not stay enforcement or order

The filing of the petition shall not stay enforcement of the decision or order of the board; and only the board itself may grant a stay upon such terms and conditions as it deems proper, upon timely-filed motion.

D. Written request of petitioner

Upon written request of petitioner and upon payment of such reasonable costs and fees as the clerk may prescribe, copies of the filed pleadings and exhibits introduced into evidence, shall be prepared by the clerk, the original of which shall be certified and filed in the action, and a copy of which shall be delivered to the petitioner and a copy to the District Attorney. If the petitioner designates the transcript of the proceeding, he shall file with the clerk a transcript of the hearing proceeding before the board as reported and transcribed by a certified court reporter. The clerk shall then include the transcript with the record. Otherwise, only the minutes of the hearing shall be certified by the clerk and included in the record.

E. Complete record

The complete record on review shall include copies of all pleadings in the case, all notices and interim orders issued by the board in connection with the case, all stipulations, the decision and the order appealed from, a transcript of all testimony if reported by petitioner's evidence and proceedings at the hearing, the exhibits admitted and any other papers in the case.

F. Copy of document

A copy of any document may be used in lieu of an original. The record on review may be shortened by stipulation of all parties to the review proceedings.

4-9-19 EMERGENCY SUSPENSION.

A. Order for immediate suspension

Notwithstanding any provision of this chapter, in an emergency the board may issue an order for immediate suspension or limitation of a liquor or gaming license. Said emergency order shall state the reason for suspension or limitation and shall afford the licensee a hearing before the hearing officer in accordance with the procedures of Section 23 of this chapter. The board may, if it desires, take jurisdiction to hear the matter at the next regular meeting or a special meeting of the board pursuant to hearing procedures in

Section 12 of this chapter. At the hearing either before the hearing officer, or the board, the license may be suspended for a specific time, or until compliance with a specific requirement has been accomplished, or it may be conditioned, restricted or revoked at the option and discretion of the hearing officer or board.

B. Suspension by sheriff until next regular monthly board meeting

In addition to the suspension provided in Section 23 of this chapter, the sheriff, in an emergency, for cause, or upon affidavit of code violation by officers of the sheriff's department of specific acts which endanger the public welfare; and finding that such suspension is necessary for the immediate preservation of the public peace, health, safety, morals, good order or public welfare, may suspend any alcoholic liquor license and any restricted gaming license, until the next regular monthly meeting of the board.

Written notice of the suspension shall be given by the sheriff to the licensee and also to the board. At its next regular monthly meeting, after such license suspension, the board shall determine whether such suspension shall be rescinded; but if the board decides that the suspension shall continue, then, if demanded by verified answer to suspension order, a hearing upon such suspension order shall be held either by the board, or by reference to the hearing officer for hearing pursuant to Section 23 of this chapter. By such act of reference, a stay in the suspension is granted until decision by the hearing officer is rendered. The board or the hearing officer may revoke, restrict, suspend or condition the license.

C. Suspension by sheriff for a maximum of eight consecutive hours

In addition to the suspension provided in Section 23 of this chapter, the sheriff (or his authorized designee) in an emergency, for cause, or upon code violation of specific acts which endanger the public welfare; and finding that such suspension is necessary for the immediate preservation of the public peace, health, safety, morals, good order or public welfare, may suspend any alcoholic liquor license and any restricted gaming license for a period not to exceed eight consecutive hours.

Written notice of the suspension shall be given by the sheriff (or his authorized designee) to the licensee and the board. Nothing in this subsection shall preclude the sheriff or the board from taking any additional action as the situation may merit (i.e., additional emergency suspension.)

D. No hearing demanded

If no hearing is demanded, the board may either discontinue or continue the suspension, and exercise its options as prescribed in Section 07 of this chapter, relative to license suspension and/or revocation, with required notice and hearing or refer to the hearing officer pursuant to Section 23 of this chapter but without a stay in the suspension.

E. Emergency order contents

The emergency order must set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action.

F. Emergency suspension order effective immediately

The emergency suspension order is effective immediately upon issuance and service, as is provided in NRCP, upon the licensee or its resident agent or its key employee or managing agent at the licensed place of business. The emergency order may suspend, limit, condition or take other action in relation to the license of one or more persons in an operation without affecting other individual licensees or the licensed establishment. The emergency order remains effective until further order of the commission or final disposition of the case, unless referred by the board to the hearing officer pursuant to Section 23 of this chapter.

G. Licensee desire for hearing

If the licensee desires a hearing upon the facts contained in the emergency order, he must demand such by filing a verified answer to the allegations in the order as is required in Section 08 of this chapter, in which case the order shall serve as the show cause order and complaint.

4-9-20 LICENSING POLICY.

All procedures set forth herein are for the convenience of the board and the sheriff's department and do not grant any substantive right or increase any property or liberty interest in any license affected hereby. A departure from any procedure set forth herein is not grounds for reversal on judicial review.

All licenses issued pursuant to this title are privileged and neither the license nor ownership of the business is transferable without board approval. Licensees are responsible for the acts of their employees, and are required to keep business records as may be required by County Code. Failure to keep such records or disclose them to the board or the sheriff upon reasonable notice or conducting the business in a manner contrary to the peace, health, safety, and general welfare of the public are additional grounds for license suspension or revocation. All licensing procedures set forth in County Code not specifically addressed in this title are adopted as policy and procedure for licensing pursuant to Title 4. Title 4 provisions control in the event of a conflict. Unless otherwise specifically stated in Title 4, failure to renew when required terminates the license without further action by the board and all business operations must cease unless and until a new license is issued upon application for a new license.

4-9-21 RECORD ON REVIEW.

It is the responsibility of the applicant for a license, or licensee to provide a certified court reporter for all proceedings before the board if a transcript of said proceedings is desired for court review.

4-9-22 HEARING OFFICERS.

The board may appoint a hearing officer to act on behalf of the board in conducting any appeals to the board and in conducting disciplinary hearings as provided in this chapter. Reference by the board of matters for hearing by the hearing officer are in lieu of hearing by the board as provided in Section 12 of this chapter, although the procedures set out in Section 12 (C), (E), (F) and (H) of this chapter may apply to hearings conducted by the hearing officer.

A. Hearing officer qualifications

The hearing officer shall be appointed with regard to qualifications to conduct administrative or quasi-judicial hearings and must:

1. Be a resident of the state of Nevada; and
2. Be a graduate of an accredited law school; or
3. (a) Be a graduate of an accredited four-year college and have at least five years experience in public administration; and
(b) Complete at least a four-hour course of classroom instruction in administrative law provided by a Nevada licensed attorney.

B. Hearing officer relationship with others

The hearing officer shall not conduct or participate in any hearing or decision in which he or any of the following persons has a direct or substantial financial interest: his spouse, brother, sister, child, parent, in-laws, parents of business associates. The hearing officer shall not participate in any hearing concerning any business with which such officer is negotiating or has an arrangement or understanding concerning possible partnership or employment. Any actual or potential interest shall be disclosed prior to such hearing.

C. Interference with hearing officer

No member of the board, county official, or any other person shall interfere with or attempt to interfere with the officer in the performance of his duties.

D. Conduct of hearings -- evidence

When conducting hearings the officer shall follow chapter 9 of this title concerning the pleadings, admission, presumptions, procedure. Technical rules of evidence shall not apply. Any evidence made relevant by the pleadings may be admitted and shall be sufficient to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action. Business records which are authenticated by affidavit, and certified copies of official sheriff reports and investigation reports from the sheriff's department may be received in evidence if relevant to the pleadings and made a

part of the record if served upon the parties to a hearing as required in Section 11 of this chapter. Such records will also be a part of the record if certified by testimony of the person preparing the document or having official custody thereof.

E. Hearing officer to render findings and conclusions in writing

Except in the case of hearing an appeal of a notice of suspension or revocation by the sheriff or as set out in Section 23 of this chapter, the officer shall render in writing, findings of fact, and conclusions of law to the board within thirty days of the hearing, unless extended by the chairman. Such findings of fact and conclusions of law shall be delivered to the licensee or applicant, or his attorney and district attorney who may file objections thereto within ten days of delivery of same. Upon receipt of the findings of fact and conclusions of law, the board may act upon such findings of fact and conclusions of law at the next board meeting, or at its earliest convenience to impose such sanctions as it deems appropriate, or it may consider such argument as the license/applicant or district attorney may make in support of or in opposition to the filed objection to the findings of fact and conclusions of law.

Upon objection to the findings of fact and conclusions of law by the officer, the board shall base its decision upon a review of the record of the hearing as presented by the parties in argument and upon the findings of fact and conclusions of law by the hearing officer. The board may reverse, remand, sustain, or modify the findings of fact and conclusions of law by the officer upon hearing of the objection, based upon substantial evidence in the record, and may in a like manner modify a previously imposed sanction. In cases of appeal of a notice of suspension by the sheriff as set out in Section 23 of this chapter, the hearing officer shall render a decision in the matter which shall permanently bind the parties unless appealed as provided in Section 23 of this chapter.

F. Burden upon objector

The burden is upon the objector to the findings of fact and conclusions of law by the hearing officer to convince the board that an error has been made in the findings of fact and conclusions of law by specific reference to the record and/or law. The record shall consist of certified copies of the pleadings, exhibits, and a transcript of the proceedings if the objecting party deems it advisable. It is the responsibility of the licensee or applicant or business license department to provide a court reporter to record all proceedings before the officer if a transcript is desired for further proceedings before the board or court.

G. Hearing officer compensation

The hearing officer, unless employed by the county shall be entitled to compensation from the county for services rendered on any given hearing at an hourly rate, established from time to time by resolution of the board of county commissioners, with a maximum chargeable time of ten hours per hearing. In the event that a hearing officer serves more than ten hours on any given hearing, the hearing officer may submit to the board a written statement requesting additional compensation and setting forth reasons therefor. The

board may authorize such additional compensation, at the hourly rate established by the board of county commissioners, if it is satisfied that the additional hours of service were justified and necessary.

H. Hearing officer to set hearing date

The hearing officer shall determine the time and place of the hearing and shall give the sheriff and applicant/licensee or its attorney, not less than ten days' notice thereof. Continuances may be granted upon compliance with the grounds and procedure provided in Seventh Judicial District Court Rule rules. The hearing may be bifurcated at the option of the hearing officer.

4-9-23 APPEAL OF SUSPENSION OR REVOCATION IMPOSED BY SHERIFF.

A. Suspension or revocation by sheriff

For any of the reasons listed below, the sheriff or his designee may suspend or revoke any liquor license or restricted gaming license, and the sheriff or his designee may suspend or revoke any liquor server awareness instructor or program certified pursuant to chapter 1 of this title: (1) for violation of any rule, law or regulation of this chapter or the chapter under which the license was issued; (2) for violation of a condition placed on the license when the license was issued; (3) for a violation of any state or federal law which would be grounds for denial of the license or work card; or (4) upon conviction (regardless of appeal) of the licensee of a crime involving moral turpitude.

In construing and applying this section, conviction of a director, officer or stockholder holding more than ten percent, if the licensee is a corporation, a partner, including limited partner, if the licensee is a partnership, and the manager or other individual principally in charge of the operation of the licensee's establishment shall be deemed to be a conviction of the licensee. Any such license may be revoked by the sheriff for a violation of the law or regulations of this chapter or the chapter under which the licensee received his license or for a violation of a condition placed upon the licensee by the board by an agent or employee or one listed on the licensee's work identification card master list while said employee or agent is on the licensed premises.

Such revocation or suspension shall be effective ten days after written notice thereof is given to licensee or liquor server awareness instructor or program certified pursuant to chapter 1 of this title. Such notice shall inform the licensee or liquor server awareness instructor or program certified pursuant to chapter 1 of this title of the reason(s) for such revocation, the commencement date of such revocation, and the right to appeal under the provisions of these regulations. Such notice may be given by delivering the same to the licensee, the liquor server awareness instructor or program certified pursuant to chapter 1 of this title or by depositing the same in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the licensee, the liquor server awareness instructor or

program certified pursuant to chapter 1 of this title, at the address stated on the license or work card identification card application or liquor server awareness certification information and such notice shall be deemed given upon deposit of the notice in the United States mail as aforesaid.

This section is cumulative of all other rules, regulations and laws. An appeal, as provided herein, from any revocation hereunder, shall automatically stay such revocation pending such appeal. (1) After the effective date of revocation and if an appeal is not made or (2) if an appeal is made and the revocation is upheld, then and in either of those events, the sheriff shall have the authority to take possession of the liquor server awareness instructor or program certification and the sheriff shall have the authority to take possession of the license wheresoever they may be found.

B. Appeal by aggrieved person

1. Any person aggrieved by an action or decision of the sheriff or designee regarding the issuance, suspension or revocation of a license, liquor server awareness instructor or program certification may, within thirty days thereafter, appeal on the basis of mistake or error to a hearing officer appointed by the liquor and gaming licensing board.
2. The appeal to the hearing officer shall be initiated by filing a written objection with the board. The written objection shall be verified by the licensee or affected person and shall state the appellant's version of each allegation contained in the notice of suspension or revocation. A copy of the document containing the notice of the action or decision complained of shall be attached to said written objection. Upon receipt of said written objection and the attachment the appointed hearing officer shall set the same down for a hearing to be held within the next fifteen days and advise all parties of the date, time and place of hearing. The person aggrieved shall bring to the hearing all licenses or certificates issued to him pursuant to this title.
3. At the hearing before the hearing officer all witnesses will be sworn. The hearing officer will hear the testimony of the sheriff or his designee, and any witnesses having knowledge of the grounds for suspension or revocation. Additionally, the hearing officer will hear the testimony of the persons aggrieved along with witnesses the person aggrieved may call. Additionally, the hearing officer will review all documents and exhibits submitted to him by the parties. The hearing officer will not be bound by formal rules of evidence and will control the evidence, reserving to himself the powers to exclude testimony or exhibits he does not consider relevant as is provided in Section 12 of this chapter. The parties

may be represented by an attorney and the hearing shall proceed as provided in Section 12 (E) of this chapter.

4. The hearing officer will keep all exhibits introduced at the hearing available for review by the board, but he is not required to transcribe testimony. The party interested in a transcript must provide his own court reporter as provided in Section 12 (C) of this chapter.
5. Within five working days of the close of hearing, the hearing officer will notify the sheriff and the person aggrieved of his decision. If the decision upholds the revocation or suspension, such revocation or suspension becomes immediately effective. Within three additional working days the hearing officer will reduce to writing his report, which will consist of a finding of fact, conclusions of law, and his decision. The hearing officer will file the original of his report and all original evidence, pleadings and documents with the county clerk. He will keep a copy of the report for himself, will send one copy to the person aggrieved and will send one copy to the sheriff.
6. If the sheriff or the aggrieved person is dissatisfied with the hearing officer's decision, he may, within five days from the date the hearing officer filed his report, file a written objection with the county clerk and serve a copy on the other party. When such an objection is filed, the clerk will refer the matter for placement on the agenda of the liquor and gaming licensing board for review at the next regular meeting thereof which is at least five working days after the filing of the objection. Upon notice of such filing, the chairman of the board may grant a stay in the decision of the hearing officer upon a showing it is in the best interest of the public that such stay be granted and notice to the other party. If the objection is filed by the sheriff, notice that the matter is on the agenda will be sent to the licensee by mail. When the matter comes before the liquor and gaming licensing board, it will review the matter, considering such information as is in the hearing officer's report, the pleadings, the exhibits and transcript of the hearing, if any, is offered by either party, and such argument as may be made by the parties. The liquor and gaming licensing board will either affirm, modify or reverse the decision of the hearing officer.

4-9-24 AGENT FOR RECEIPT OF SERVICE PROCESS.

The key employee, manager of the licensee or person in charge of business operations on the licensed premises at the time of service is for the purpose of service, the managing agent of the licensee and is the person to whom service of all notices, citations, complaints, orders and other official documents may be made or issued for the purposes set forth in this chapter.

4-9-25 PENALTIES.

The board or hearing officer, after finding that disciplinary action is necessary, may:

1. Limit, condition, suspend, or revoke the license of any licensee;
2. Fine each licensee
 - (a) for late payment of fees a penalty of not less than \$50 or 25 percent of the amount due, whichever is the greater, in addition to the license fees, but not more than \$1,000 if the fees are less than 10 days late and in no case more than \$5,000. The penalty must be collected as are other charges, license fees and penalties under this chapter; or
 - (b) for evading, not paying, or otherwise defeating a license fee, a penalty not to exceed the amount due in addition to the amount due. The penalty must be assessed and collected in the same manner as are other charges, license fees, and penalties under this chapter.
3. For the second violation of any single provision or section, the board shall revoke the license of the licensee.
4. Waive all or part of any penalty due pursuant to this section if the board of county commissioners issues a written finding that the licensee did not pay the license fees in a timely manner because of circumstances beyond the licensee's control.

4-9-26 LICENSE APPLICATION INVESTIGATION FEES.

Every applicant or person for which a separate background investigation is required shall pay the entire cost incurred to complete such investigation whether the application is approved or denied. All investigation fees shall be paid directly to the sheriff prior to issuance of any license or finding of suitability.

At the time of application for any license which requires investigation, applicant shall pay a nonrefundable investigation fee deposit, in the amount established from time to time by the board of county commissioners, as required for each respective license or finding of suitability.

The sheriff may require prepayment of additional investigation fees as necessary to cover anticipated costs. In the event additional investigation costs exceed one thousand dollars, the sheriff shall request approval from the board of such additional cost. Any investigation fees paid by the applicant in excess of those necessary to cover the full cost of such investigation, other than the nonrefundable deposit, shall be refunded to the applicant upon written request. If the applicant withdraws the application prior to the

Commissioner _____

Attest:

County Clerk

Ronda Hornbeck, Chairman of the Board

This ordinance shall be in force and effect from and after the First day of the month of XXXXX of the year 200X.