

Alcoholic Beverages

PART 3

ALCOHOLIC BEVERAGES

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#### SECTION 3-101 PURPOSES OF CHAPTER

This chapter is enacted as an exercise of the police power of the city to preserve the public peace, safety, health and good order thereof, and to aid the enforcement of the policy of the state as established by the Oklahoma Alcoholic Beverage Control Act, Sections 501 et seq. of Title 37 of the Oklahoma Statutes, and to establish annual occupation taxes upon all persons engaged in the manufacture, sale or distribution of alcoholic beverages.

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### SECTION 3-102 TERMS AND PHRASES

For the purpose of this chapter, all of the terms and phrases used in this chapter shall be given the same use and meaning as defined by the Oklahoma Alcoholic Beverage Control Act. "Minor" shall mean a person who, in accordance with state law, has not yet attained the age at which consumption of alcoholic beverages is permitted. "State licensee" means any person who holds a license issued under authority of the Oklahoma Alcoholic Beverage Control Act.

### SECTION 3-103 OCCUPATION TAX

- A. There is hereby levied an annual tax not to exceed the amounts adopted by the city council by motion or resolution.
- B. The occupation taxes prescribed herein shall be reduced or prorated to the extent necessary to conform to applicable laws respecting the applicants or holders of state licenses.
- C. The license fee for those service organizations which are exempt under Section 501 (c) (19) of the Internal Revenue Code for mixed beverage or bottle club licenses shall be Five Hundred Dollars (\$500.00) per year.

### SECTION 3-104 WHEN DUE AND POSTING

- A. Any state licensee originally entering upon any occupation herein listed shall pay the tax therefor at the office of the city clerk of the city on or before the date upon which he enters upon such occupation. The licensee shall provide a copy of his current state license before payment of an occupation tax will be accepted. All occupation taxes shall expire on March 31 of each year. The occupation tax shall be prorated monthly for a year in which an occupation begins operations.
- B. Any state licensee carrying on his occupation in more than one location within the city limits of the city shall be subject to the tax set out for each such location.
- C. Upon payment of the occupation tax as set out, the city clerk shall issue a receipt to the state licensee which licensee shall post in a conspicuous place on the premises wherein he carries on his occupation. The city clerk shall also record the name of such licensee and the address where he engages in his occupation and such records shall be duly filed and kept in the permanent files of that office for at least three (3) years. Thereafter, upon approval of the governing body of the city, the records may be destroyed.

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- D. The city clerk shall make and transmit to the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission an annual report covering the final year showing the number and class of businesses upon which occupation taxes were levied, and the amount of money collected from such taxes.

### SECTION 3-105 TAX REQUIRED

Any person who engages in any of the occupations taxed by this chapter without first paying the occupation tax imposed therefor in advance of such operation is guilty of an offense against the city, and upon conviction thereof, shall be punished as provided in Section 1-108 of this code. A penalty in the form of increased tax may be levied upon any person not paying the tax within fifteen (15) days after it is due.

### SECTION 3-106 CIVIL PENALTY

All sums due from any person, firm or corporation by reason of occupation taxes imposed by this chapter shall be recoverable at the suit of the city brought against such person in any court of competent jurisdiction. In such suit, in addition to the tax, the city shall be allowed to recover interest at the maximum allowable rate permitted by state law upon all sums due by way of tax, from the date of accrual thereof, any penalty, and all costs of collection, judicial or otherwise including reasonable attorney's fees.

Prosecution for an offense against the city arising out of the failure to pay a tax levied by this chapter, regardless of the outcome or its continued pendency, shall not constitute a defense or a bar in any manner to the collection of any tax and penalties, if any are due, as herein provided

### SECTION 3-107 APPLICATION FOR CERTIFICATE, INVESTIGATIONS

- A. Every applicant for a certificate of compliance with the zoning, fire, health and safety codes of the city required by Title 37 of the Oklahoma Statutes shall apply at the office of the clerk by:
1. Filing a written application on forms prescribed by that office; and
  2. Paying a verification and certification fee in the amount set by the council at the time of filing.
- B. Upon receipt of an application for a certificate of compliance the city shall cause an investigation to be made to determine whether the premises proposed for licensed operations comply with the provisions of the zoning ordinance and any health, fire, building and other safety codes applicable to it.

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- C. The city shall act on all such applications within twenty (20) days of receipt thereof.

### SECTION 3-108 ISSUANCE OF CERTIFICATE OF ZONING AND CERTIFICATE OF COMPLIANCE

- A. Upon finding that the premise of an applicant for a certificate is in compliance with all applicable zoning ordinances, a certificate of zoning shall be issued to the ABLE Commission.
- B. Upon finding that the premises of an applicant for a certificate is in compliance with all applicable fire, safety, and health codes, a certificate of compliance shall be issued to the ABLE Commission.
- C. The above certificates of compliance shall be signed by the City Manager or his designee.
- D. A conditional certificate may be granted if construction, modification or alteration of the premises proposed for licensed operations is not completed. The conditional certificate shall indicate that the proposed premises will comply with city zoning, fire, safety and health codes. A certificate in accordance with Subsections A and B of this section shall be issued within ten (10) days after all final inspections are complete.

### SECTION 3-109 CONDITION OF SALE

- A. No person shall sell or deliver alcoholic beverages out of any retail alcoholic beverage store other than:
  - 1. In retail containers;
  - 2. At ordinary room temperatures;
  - 3. In the original package; and
  - 4. For consumption off the premises.
- B. No person owning, employed in, or in any manner assisting in the maintenance and operation of such a store shall suffer, or permit any alcoholic beverage to be consumed, or any retail container of such beverage to be opened on the premises of such a store.

### SECTION 3-110 CONSUMPTION PROHIBITED, WHERE

No person shall drink or consume in any manner any alcoholic beverage on the premises of a retail alcoholic beverage package store, nor in any other public place. Neither shall a person open or break the seal of any original package or retail container containing alcoholic beverages on the premises of any such retail beverage store.

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### SECTION 3-111 COMPLIANCE REQUIRED

No person shall sell at retail or otherwise, and no person shall deliver, in consequence of or in completion of such a sale, any alcoholic beverages at any place in the city except at a retail alcoholic beverage store in strict conformity with this chapter and the laws of the state.

### SECTION 3-112 COMPLIANCE WITH ZONING REGULATIONS REQUIRED

No retail alcoholic beverage package store, no bottle club, and no wholesale alcoholic beverage store, warehouse, brewery, distillery, winery or any other place, however described, and for the manufacture or production or bottling of alcoholic beverages of any kind, shall be located, maintained, or operated by any person, at any place within the boundaries of the city except at a location at which such an establishment is permitted or authorized by the zoning ordinances of the city. No person shall own, operate, maintain or be interested in any retail alcoholic beverage store which is located at a place within the city limits of the city which is in violation of or forbidden as a location by the city or under the laws of the state.

### SECTION 3-113 PROHIBITED LOCATION

The location of a retail package store, mixed beverage establishment or bottle club is specifically prohibited within three hundred (300) feet from any church property primarily and regularly used for worship services and religious activities, or public school. If any such church, or school, shall be established within three hundred (300) feet of any licensed premises after such premises have been licensed, this shall not be a bar to the renewal of such license so long as it has been in continuous force and effect. The distance indicated in this section shall be measured from the nearest property line of such church or school to the nearest public entrance door of the premises of such package store, mixed beverage establishment or bottle club along the street right-of-way line providing the nearest direct route usually traveled by pedestrians between such points.

For purposes of determining measured distance, property situated on the opposite side of the street from such church or school shall be considered as if it were located on the same side of the street with such church or school.

### SECTION 3-114 PROHIBITED SALES

- A. No person shall knowingly sell, deliver or furnish alcoholic beverages, at any place within the city limits of the city to any person who is a minor. Neither shall any minor misrepresent his age verbally or in writing, or present false documentation of age or otherwise for the purpose of inducing any other person to sell him alcoholic beverages.

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- B. No person shall sell, deliver or knowingly furnish alcoholic beverage or beverages within the city to an intoxicated person or to any person who has been adjudged insane or mentally deficient.

### SECTION 3-115 TRANSPORTING BEVERAGES

It is unlawful to transport any alcoholic beverage, unless the same is:

1. In an unopened original container with seal unbroken, and the original cap or cork not removed from the container; or
2. In the trunk or other closed compartment or container out of public view and out of reach of and not accessible to the driver or any occupant of a vehicle.

### SECTION 3-116 PROHIBITED EMPLOYMENT, MINORS ON PREMISES

- A. No minor shall be employed in the selling, manufacture, distribution or other handling of alcoholic beverages at any place within the city. No person shall employ or assist or aid in causing the employment of any minor at any place within the city in the selling, manufacture, distribution or other handling of alcoholic beverages. However, this section shall not prohibit a mixed beverage, caterer, or special event licensee who may employ servers who are eighteen (18) years of age or older, except in designated bar or lounge areas.
- B. No minor shall be permitted to remain within or to loiter about the premises of a retail alcoholic beverage store.
- C. Violation of this provision shall subject the owner or proprietor, as well as the underage person, to prosecution.

### SECTION 3-117 DATES, HOURS ON WHICH SALE PROHIBITED

- A. No person shall open for business or keep open for business or sell or deliver alcoholic beverages, as defined herein, to any person at a retail alcoholic beverage store in the city on any Sunday, New Year's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day or Christmas Day, or while the polls are open on the day of any general, primary, run-off or special election, whether national, state, county, or city, or any other day except between the hours of 10:00 A.M. and 9:00 P.M.

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- B. No alcoholic beverages may be sold, dispensed, served or consumed on the premises of a mixed drink beverage licensee or bottle club between the hours of 2:00 AM and 10:00 AM. No licensee shall permit any person, who has in his possession an open container, having as its contents an intoxicating alcoholic beverage, to remain in mixed beverage establishment between the hours of 2:15 AM to 10:00 AM. No person, having in his possession an open container, having as its contents an intoxicating alcoholic beverage, shall remain in mixed beverage establishment between the hours of 2:15 AM to 10:00 AM. For the purpose of this section, an open container shall mean any receptacle containing low-point beer or intoxicating alcoholic beverage, to include the original container of the beverage where the original seal has been broken or opened.
- C. No wholesale dealer in alcoholic beverages, and no officer, agent or employee of such a dealer shall sell or deliver to any retail alcoholic beverage store within the city any amount of spirits or wines on Saturday of any week, on Sunday of any week, on New Year's Day, on Memorial Day, on the Fourth of July, on Labor Day, on Veteran's Day, on Thanksgiving Day, on Christmas Day, or, while the polls are open on the day of any general, primary, run-off primary, or special election, whether national, state, county or city.

### SECTION 3-118 DRINKING AND INTOXICATION IN PUBLIC PLACE PROHIBITED

No person within this city shall drink intoxicating liquor in any public place, nor shall any person be intoxicated in a public place within this city

### SECTION 3-119 NOT TO PERMIT INTOXICATED PERSON IN CAFÉ CLUB

No person operating a café, restaurant, club, or any place of recreation within this city, and no employee engaged in connection with the operation of such a café, restaurant, club or place of recreation shall permit any person to be drunk or intoxicated in the place of business.

### SECTION 2-120 SOLICITATION. NUDITY PROHIBITED

- A. No licensee shall:
  - 1. Give any alcoholic beverage as a prize, premium or consideration for any lottery, game of chance or skill or any type of competition; or

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2. Advertise or offer "happy hours" or any other means or inducements to stimulate the consumption of alcoholic beverages including:
    - a. Deliver more than two (2) drinks to one person at one time;
    - b. Sell or offer to sell to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public;
    - c. Sell or offer to sell to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;
    - d. Sell or offer to sell drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
    - e. Increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week; or
    - f. Encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.
- B. No licensee shall:
1. Allow any person on the premises where low-point beer or alcoholic beverages are sold or dispensed for consumption on the premises of the licensee where such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic area, buttocks or genitalia;
  2. Permit any person to perform acts of, or acts which simulate sexual acts;
  3. Permit any person to use artificial devices or inanimate objects to depict any lewd activities; or
  4. Permit the showing of films, still pictures, electronic reproduction or other visual reproduction depicting any of the prohibited acts in this section.
- C. No licensee shall permit any drink solicitation, or request from a patron to purchase any low-point beer or intoxicating alcoholic beverage for consumption on the premises of the licensee, as that term is defined in this chapter.

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### SECTION 3-121 PENALTY

Any and each violation of any of the provisions of this chapter is an offense against the city and, upon conviction of such an offense; the violator shall be punished as provided in Section 1-108 of this code.

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#### SECTION 3-201 DEFINITIONS

In the administration of this chapter, the following words and phrases are given the meanings respectively indicated:

1. "Minor" means a person who, according to state law, has not yet attained the age at which consumption of low-point beer is permitted under state law;
2. "Low-point beer" means beverage containing more than one-half of one percent (.5%) alcohol by volume and less than three and two-tenths percent (3.2%) alcohol by weight;
3. "Place of business" means each separate location or service unit in which or from which low-point beer is sold, delivered or otherwise furnished; and
4. "Retail dealer" means and includes any person who sells any non- intoxicating alcoholic beverage as defined herein for consumption or use and not for resale.

#### SECTION 3-202 HOURS OF SALE

It is unlawful for any owner, firm, person, operator, corporation, proprietor, or manager of any beer tavern, beer garden, beer hall, tap room or any other premises or place in which the principal business is that of selling low-point beer for consumption on the premises to barter, sell, dispense or otherwise furnish low-point beer for consumption on the premises of his place of business between the hours of 2:00 AM and 7:00 AM on any day.

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### SECTION 3-203 LICENSE FEES

There is hereby levied on each retail dealer in low-point beer within the city selling such beverages for consumption on or off the premises of the dealer's place of business, and for a retail dealer selling such beverages not for consumption on his premises, a license fee per annum as set by the council by motion or resolution. A separate license fee shall be paid for each place of business, as herein defined, operated and conducted by the retail dealer.

### SECTION 3-204 LICENSE REQUIRED

- A. It is unlawful and an offense for any person to sell, distribute or dispense within the city any low-point beer to the public for consumption or use without first having obtained a license therefor from the city clerk. Every person desiring to engage in business as a retail dealer in low-point beer or to continue in the business within the city shall make application to the city clerk on forms to be provided, setting forth the locations of the business, together with the applicant's address, and if a corporation, the name of the president and managing officer. The application shall show the date and permit number of the permits issued by the district court judge and the Oklahoma Tax Commission as required by law.
- B. Upon a showing that the applicant has obtained his permits from the district court judge and the Oklahoma Tax Commission and after payment of the license fee to the city, such license shall be issued forthwith. All licenses shall expire on June 30 of each year. Licenses issued hereunder shall not be assignable or transferable, and the fee shall not be prorated for part of the year. The city license shall be displayed in the licensee's place of business. The license may be cancelled for any violation of the laws of the state for which the licensee's county or state license may be cancelled, and in a similar manner.

### SECTION 3-205 NOT TO SELL TO MINORS

It is unlawful for any person to sell, offer, give away, procure for, barter or otherwise dispense to any minor any low-point beer or for any minor to purchase, receive, or procure any low-point beer.

### SECTION 3-206 POSSESSION BY MINORS

- A. "Possession" under the terms of this chapter shall consist of actual physical possession and shall further include any low-point beer accessible or within the range of reach of hands of any such person.

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- B. It is unlawful for a minor to be in possession of any low-point beers upon any public street, avenue, alley, road, highway or public building or place.

### SECTION 3-207 PERSONS UNDER EIGHTEEN (18) NOT TO BE EMPLOYED

- A. It is unlawful for any person under eighteen (18) years of age to be employed or permitted to work, in any capacity whatsoever, in a place where low-point beer is sold or dispensed for consumption on the premises.
- B. It is unlawful for any minor to be employed or permitted to work, in any capacity whatsoever, in the separate or enclosed bar area of a place where the main purpose of the area is the sale or consumption of low-point beer. The provisions of this subsection shall not apply to any area which has as its main purpose some objective other than the sale or serving of nonintoxicating beverages, in which sales or serving of the beverages are incidental to the main purpose; however, the incidental service of food in the bar area shall not exempt a holder of a license to sell low-point beer for consumption on the premises from the provisions of this subsection.
- C. A parent as regards the employment of his own child or children is exempted from the provisions of this section, provided that such employment shall in no capacity whatsoever be related to the selling or dispensing of such beverages.
- D. The provisions of Subsection A of this section shall not apply to any business or establishment where sales of the beverages do not exceed twenty-five percent (25%) of the gross sales of the business or establishment.

### SECTION 3-208 NOT TO PERMIT MINORS ON PREMISES, EXCEPTIONS

- A. It is unlawful for any person who holds a license to sell and dispense low-point beer for consumption on the premises, or any agent, servant, or employee of the license holder, to permit any minor to be admitted to or remain in a separate or enclosed bar area of the licensed premises which has as its main purpose the selling or serving of low-point beer for consumption on the premises, unless the minor's parent or legal guardian is present. The provisions of this section shall not prohibit minors from being admitted to an area which has as its main purpose some objective other than the sale or serving of low-point beer, in which sales or serving of the beverages are incidental to the main purpose, as long as minors are not sold or served the beverages; however, the incidental service of food in the bar area shall not except a licensee, agent, servant, or employee from the provisions of this section.

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- B. If the premise of a holder of a license to sell low-point beer contains a separate or enclosed bar area which has as its main purpose the sale or serving of low-point beer for consumption on the premises, no minor shall enter, attempt to enter, or remain in the area. The provisions of this subsection shall not prohibit minors from entering or remaining in an area which has as its main purpose some objective other than the sale or serving of low-point beer, in which sales or serving of the beverages are incidental to the main purpose, if the minors are not sold or served or do not consume low-point beer anywhere on the premises; however, the incidental service of food in the bar area shall not exempt minors from the provisions of this subsection.
- C. A showing by competent testimony that a minor was found upon premises of a retail dealer shall be prima facie evidence of a violation of Subsection B of this section.

### SECTION 3-209 UNLAWFUL TRANSPORTATION OF LOW-POINT BEER

It is unlawful for any person knowingly to transport in any moving vehicle upon a public street or alley, or any public way within this city any low-point beer unless it is:

1. In the original container which shall not have been opened and from which the original cap or seal shall not have been removed; or
2. If it is in an opened container, the opened container is in the rear trunk or rear compartment, which shall include the spare tire compartment in a station wagon or panel truck, or any outside compartment which is not accessible to the driver or to any other person in the vehicle while it is in motion.

### SECTION 3-210 PROHIBITED LOCATION

It is unlawful for any place licensed to sell low-point beer for on-premise consumption to be located within three hundred (300) feet from any public school or church property primarily and regularly used for worship services and religious activities. If any public school or church shall be established within three hundred (300) feet of any place which sells low-point beer for on-premise consumption after such place has been licensed, this shall not be a deterrent to the renewal of such license so long as there has not been a lapse of more than sixty (60) days. The distance indicated in this section shall be measured from the nearest property line of such public school or church to the nearest public entrance door of the premises of any place licensed to sell such low-point beer for on-premise consumption along the street right-of-way line providing the nearest direct route usually traveled by pedestrians between such points. For purposes of determining measured distance, property situated on the opposite side of the street from such

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public school or church shall be considered as if it were located on the same side of the street with the school or church. The above restrictions shall not affect premises already licensed as of the initial effective date of this section to sell low-point beer for on-premise consumption or premises which may presently or in the future be licensed to sell low-point beer for on-premise consumption even though a school or church is subsequently established within three hundred (300) feet of such licensed premises.

### SECTION 3-211 PENALTY

Any and each violation of any of the provisions of this chapter is an offense against the city and, upon conviction of such an offense; the violator shall be punished as provided in Section 1-108 of this code.