

6. "Beer keg" means any manufacturer-sealed, single container that contains not less than four (4) gallons of beer;

7. "Beer distributor" means and includes any person licensed to distribute beer for retail sale in the state, but does not include a holder of a small brewer self-distribution license or brewpub self-distribution license. The term "distributor", as used in this act, shall be construed to refer to a beer distributor;

8. "Bottle club" means any establishment in a county which has not authorized the retail sale of alcoholic beverages by the individual drink, which is required to be licensed to keep, mix and serve alcoholic beverages belonging to club members on club premises;

9. "Brand" means any word, name, group of letters, symbol or combination thereof, that is adopted and used by a licensed manufacturer to identify a specific beer and to distinguish that product from another beer;

10. "Brand extension" means:

a. after the effective date of this act, any brand of beer introduced by a manufacturer in this state which either:

(1) incorporates all or a substantial part of the unique features of a preexisting brand of the same licensed manufacturer, or

(2) relies to a significant extent on the goodwill associated with the preexisting brand, or

b. any brand of beer that a manufacturer, the majority of whose total volume of all brands of beer distributed in this state by such manufacturer on January 1, 2016, was distributed as low-point beer, desires to sell, introduces, begins selling or theretofore has sold and desires to continue selling a strong beer in this state which either:

(1) incorporates or incorporated all or a substantial part of the unique features of a preexisting low-point beer brand of the same licensed manufacturer, or

(2) relies or relied to a significant extent on the goodwill associated with a preexisting low-point beer brand;

11. "Brewer" means and includes any person who manufactures for human consumption by the use of raw materials or other ingredients any beer upon which a license fee and a tax are imposed by any law of this state;

12. "Brewpub" means a licensed establishment operated on the premises of, or on premises located contiguous to, a small brewer, that prepares and serves food and beverages, including alcoholic beverages, for on-premises consumption;

13. "Cider" means any alcoholic beverage obtained by the alcoholic fermentation of fruit juice, including but not limited to flavored, sparkling or carbonated cider. For the purposes of the distribution of this product, cider may be distributed by either wine and spirits wholesalers or beer distributors;

14. "Convenience store" means any person primarily engaged in retailing a limited range of general household items and groceries, with extended hours of operation, whether or not engaged in retail sales of automotive fuels in combination with such sales;

15. "Convicted" and "conviction" mean and include a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court or magistrate or the verdict of a jury, irrespective of the pronouncement of judgment or the suspension thereof;

16. "Director" means the Director of the ABLE Commission;

17. "Distiller" means any person who produces spirits from any source or substance, or any person who brews or makes mash, wort or wash, fit for distillation or for the production of spirits (except a person making or using such material in the authorized production of wine or beer, or the production of vinegar by fermentation), or any person who by any process separates alcoholic spirits from any fermented substance, or any person who, making or keeping mash, wort or wash, has also in his or her possession or use a still;

18. "Distributor agreement" means the written agreement between the distributor and manufacturer as set forth in Section 3-108 of this title;

19. "Drug store" means a person primarily engaged in retailing prescription and nonprescription drugs and medicines;

20. "Dual-strength beer" means a brand of beer that, immediately prior to the effective date of this act, was being sold and distributed in this state:

a. as a low-point beer pursuant to the Low-Point Beer Distribution Act in effect immediately prior to the effective date of this act, and

b. as strong beer pursuant to the Alcoholic Beverage Control Act in effect immediately prior to the effective date of this act.

Dual-strength beer does not include a brand of beer that arose as a result of a brand extension as defined in this section;

21. "Fair market value" means the value in the subject territory covered by the written agreement with the distributor or wholesaler that would be determined in an arm's length transaction entered into without duress or threat of termination of the distributor's or wholesaler's rights and shall include all elements of value, including goodwill and going-concern value;

22. "Good cause" means:

a. failure by the distributor to comply with the material and reasonable provisions of a written agreement or understanding with the manufacturer, or

b. failure by the distributor to comply with the duty of good faith;

23. "Good faith" means the duty of each party to any distributor agreement and all officers, employees or agents thereof to act with honesty in fact and within reasonable standards of fair dealing in the trade;

24. "Grocery store" means a person primarily engaged in retailing a general line of food, such as canned or frozen foods, fresh fruits and vegetables, and fresh and prepared meats, fish and poultry;

25. "Hotel" or "motel" means an establishment which is licensed to sell alcoholic beverages by the individual drink and which contains guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial;

26. "Legal newspaper" means a newspaper meeting the requisites of a newspaper for publication of legal notices as prescribed in Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

27. "Licensee" means any person holding a license under the Oklahoma Alcoholic Beverage Control Act, and any agent, servant or employee of such licensee while in the performance of any act or duty in connection with the licensed business or on the licensed premises;

28. "Low-point beer" shall mean any beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to, beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion by barley or other grain, malt or similar products;

29. "Manufacturer" means a brewer, distiller, winemaker, rectifier or bottler of any alcoholic beverage and its subsidiaries, affiliates and parent companies;

30. "Manufacturer's agent" means a salaried or commissioned salesperson who is the agent authorized to act on behalf of the manufacturer or nonresident seller in the state;

31. "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption. Provided, that the service of only food such as appetizers, sandwiches, salads or desserts shall not be considered "meals";

32. "Mini-bar" means a closed container, either refrigerated in whole or in part, or nonrefrigerated, and access to the interior of which is:

a. restricted by means of a locking device which requires the use of a key, magnetic card or similar device, or

b. controlled at all times by the licensee;

33. "Mixed beverage cooler" means any beverage, by whatever name designated, consisting of an alcoholic beverage and fruit or vegetable juice, fruit or vegetable flavorings, dairy products or carbonated water containing more than one-half of one percent (1/2 of 1%) of alcohol measured by volume but not more than seven percent (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is packaged in a container not larger than three hundred seventy-five (375) milliliters. Such term shall include but not be limited to the beverage popularly known as a "wine cooler";

34. "Mixed beverages" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, public event, charitable event or special event license;

35. "Motion picture theater" means an establishment which is licensed by Section 2-110 of this title to sell alcoholic beverages by the individual drink and where motion pictures are exhibited, and to which the general public is admitted;

36. "Nonresident seller" means any person licensed pursuant to Section 2-135 of this title;

37. "Retail salesperson" means a salesperson soliciting orders from and calling upon retail alcoholic beverage stores with regard to his or her product;

38. "Occupation" as used in connection with "occupation tax" means the sites occupied as the places of business of the manufacturers, wholesalers, beer distributors, retailers, mixed beverage licensees, on-premises beer and wine licensees, bottle clubs, caterers, public event and special event licensees;

39. "Original package" means any container of alcoholic beverage filled and stamped or sealed by the manufacturer;

40. "Package store" means any sole proprietor or partnership that qualifies to sell wine, beer and/or spirits for off-premise consumption and that is not a grocery store, convenience store or drug store, or other retail outlet that is not permitted to sell wine or beer for off-premise consumption;

41. "Patron" means any person, customer or visitor who is not employed by a licensee or who is not a licensee;

42. "Person" means an individual, any type of partnership, corporation, association, limited liability company or any individual involved in the legal structure of any such business entity;

43. "Premises" means the grounds and all buildings and appurtenances pertaining to the grounds including any adjacent premises if under the direct or indirect control of the licensee and the rooms and equipment under the control of the licensee and used in connection with or in furtherance of the business covered by a license. Provided that the ABLE Commission shall have the authority to designate areas to be excluded from the licensed premises solely for the purpose of:

a. allowing the presence and consumption of alcoholic beverages by private parties which are closed to the general public, or

b. allowing the services of a caterer serving alcoholic beverages provided by a private party.

This exception shall in no way limit the licensee's concurrent responsibility for any violations of the Oklahoma Alcoholic Beverage Control Act occurring on the licensed premises;

44. "Private event" means a social gathering or event attended by invited guests who share a common cause, membership, business or task and have a prior established relationship. For purposes of this definition, advertisement for general public attendance or sales of tickets to the general public shall not constitute a private event;

45. "Public event" means any event that can be attended by the general public;

46. "Rectifier" means any person who rectifies, purifies or refines spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash or other substance, through continuous closed vessels and pipes, until the production thereof is complete), and any person who, without rectifying, purifying or refining spirits, shall by mixing (except for immediate consumption on the premises where mixed) such spirits, wine or other liquor with any material, manufactures any spurious, imitation or compound liquors for sale, under the name of whiskey, brandy, rum, gin, wine, spirits, cordials or any other name;

47. "Regulation" or "rule" means a formal rule of general application promulgated by the ABLE Commission as herein required;

48. "Restaurant" means an establishment that is licensed to sell alcoholic beverages by the individual drink for on-premises consumption and where food is prepared and sold for immediate consumption on the premises;

49. "Retail container for spirits and wines" means an original package of any capacity approved by the United States Bureau of Alcohol, Tobacco and Firearms;

50. "Retailer" means a package store, grocery store, convenience store or drug store licensed to sell alcoholic beverages for off-premise consumption pursuant to a Retail Spirits License, Retail Wine License or Retail Beer License;

51. "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever, and includes and means all sales made by any person, whether as principal, proprietor or as an agent,

servant or employee. The term "sale" is also declared to be and include the use or consumption in this state of any alcoholic beverage obtained within or imported from without this state, upon which the excise tax levied by the Oklahoma Alcoholic Beverage Control Act has not been paid or exempted;

52. "Short-order food" means food other than full meals including but not limited to sandwiches, soups and salads. Provided that popcorn, chips and other similar snack food shall not be considered "short-order food";

53. "Small brewer" means a brewer who manufactures less than twenty-five thousand (25,000) barrels of beer annually pursuant to a validly issued Small Brewer License hereunder;

54. "Small farm wine" means a wine that is produced by a small farm winery with seventy-five percent (75%) or more Oklahoma-grown grapes, berries, other fruits, honey or vegetables;

55. "Small farm winery" means a wine-making establishment that does not annually produce for sale more than fifteen thousand (15,000) gallons of wine as reported on the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of Wine Premises Operations (TTB Form 5120.17);

56. "Sparkling wine" means champagne or any artificially carbonated wine;

57. "Special event" means an entertainment, recreation or marketing event that occurs at a single location on an irregular basis and at which alcoholic beverages are sold;

58. "Spirits" means any beverage other than wine or beer, which contains more than one-half of one percent (1/2 of 1%) alcohol measured by volume, and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds, but shall not include any alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto;

59. "Strong beer" means beer which, prior to the effective date of this act, was distributed pursuant to the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of Title 37 of the Oklahoma Statutes;

60. "Successor manufacturer" means a primary source of supply, a brewer or an importer that acquires rights to a beer brand from a predecessor manufacturer;

61. "Tax Commission" means the Oklahoma Tax Commission;

62. "Territory" means a geographic region with a specified boundary;

63. "Wine and spirits wholesaler" or "wine and spirits distributor" means and includes any sole proprietorship or partnership licensed to distribute wine and spirits in the state. The term "wholesaler", as used in this act, shall be construed to refer to a wine and spirits wholesaler; and

64. "Wine" means and includes any beverage containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than twenty-four percent (24%) alcohol by volume at sixty (60) degrees Fahrenheit obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine.

Words in the plural include the singular, and vice versa, and words imparting the masculine gender include the feminine, as well as persons and licensees as defined in this section.

**Section 2:** That Title 4, Chapter 2, §4-2-3(B)(1)(b) be amended to read as follows:

4-2-3(B)(1)(b):

b. In addition to any other penalty provided by law, a person convicted of a violation of the provisions of this section shall be required to complete a substance abuse prevention program conducted by the Department of Mental Health and Substance Abuse Services or a private entity approved by the Department. Such program shall include at least two sessions, each of which shall not be less than two (2) hours in length. The cost of the program shall be paid by the person required to complete the program.

**Section 3:** That Title 4, Chapter 2, §4-2-4 be amended to read as follows:

4-2-4: **Consumption in Public:**

A. **Prohibition:** Except as otherwise provided by law, any person who shall, in any public place or building, or upon any public or private road or alley, or upon any parking or vacant lot, drink or otherwise consume any intoxicating beverage or liquor of any kind or beer, including low point beer, or, who shall be intoxicated in any public place or building or public or private road, street or alley, or any public gathering, or who shall be drunk or intoxicated and shall disturb the peace of any person, shall be guilty of an offense.

B. **Public Place Defined:** "Public place" shall mean any place other than the premises of a licensee of the ABLE commission who is authorized to sell or serve alcoholic beverages by the individual drink or on the premises of any place for which any person has received a special event or caterer's license from the ABLE commission. (1991 Code § 3-5; amd. 2007 Code)

**Section 4:** That Title 4, Chapter 2, Article A, §4-2A-1(A) be amended to read as follows:

4-2A-1: **Location, Zoning Restrictions:**

A. It shall be unlawful for any Beer Distributor, Bottle Club, Brewery, Brew Pub or Winery, which has been licensed by the ABLE Commission and which has as its main purpose the selling or serving of alcoholic beverages for consumption on the premises, or package store, to be located within three hundred (300) feet of any public or private school or church property primarily and regularly used for worship services and religious activities;

however, a college or university located within an improvement district created pursuant to Section 39-103.1 of Title 11 of the Oklahoma Statutes may waive the three-hundred-foot requirement by providing written notice to the establishment seeking the license and to the ABLE Commission. Provided, a college or university prior to waiving the three-hundred-foot requirement found in this subsection shall publish a notice of its intention to waive such requirement in a legal newspaper of general circulation within the state at least thirty (30) days but not more than forty (40) days prior to providing any written notice, waiving the three-hundred-foot requirement, to the establishment seeking the license or to the ABLE Commission. As used in this subsection "legal newspaper of general circulation in this state" means a newspaper meeting the requisites of a newspaper for publication of legal notices as prescribed in Section 106 of Title 25 of the Oklahoma Statutes in a majority of the counties in this state. The distance indicated in this section shall be measured from the nearest property line of such public or private school or church to the nearest perimeter wall of the premises of any such mixed beverage establishment, beer and wine establishment, bottle club or package store which has been licensed to sell alcoholic beverages. The provisions of this section shall not apply to mixed beverage establishments, beer and wine establishments, or bottle clubs, which have been licensed to sell alcoholic beverages for on-premises consumption or retail package stores prior to November 1, 2000; provided, if at the time of application for license renewal the licensed location has not been in actual operation for a continuous period more than sixty (60) days, the license shall not be renewed. If any school or church shall be established within three hundred (300) feet of any package store, mixed beverage establishment, beer and wine establishment or bottle club subject to the provisions of this section after such package store, mixed beverage establishment, beer and wine establishment or bottle club has been licensed, the provisions of this section shall not be a deterrent to the renewal of such license if there has not been a lapse of more than sixty (60) days. When any mixed beverage establishment, beer and wine establishment or bottle club subject to the provisions of this section which has a license to sell alcoholic beverages for on-premises consumption, or package store, changes ownership or the operator thereof is changed and such change of ownership results in the same type of business being conducted on the premises, the provisions of this section shall not be a deterrent to the issuance of a license to the new owner or operator if he or she is otherwise qualified.

**Section 5:** That Title 4, Chapter 2, Article A, § 4-2A-2 be amended to read as follows:

**4-2A-2: Hours of Operation.**

No establishment to which the mixed beverage or on premises beer and wine occupational tax is applicable, nor any agent, servant or employee of such establishment shall sell, dispense, serve or allow to be consumed any mixed beverages, beer or wine on the premises between the hours of 2:00 a.m. and 8:00 a.m.

**Section 6:** That Title 4, Chapter 2, Article A, § 4-2A-3(E) be amended to read as follows:

4-2A-3:

- E. Use any of the following means or inducements to stimulate the consumption of alcoholic beverages, including but not limited to:
- a. deliver more than two 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 that is less than six percent (6%) below the markup of the cost to the mixed beverage licensee; provided, a mixed beverage licensee shall be permitted to offer these drink special on any particular hour of any particular day and shall not be required to offer these drink specials for an entire calendar week or from open to close,
  - 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 or portion thereof 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 involved drinking or the awarding of drinks as prizes.

Provided, that the provisions of this paragraph shall not prohibit the advertising or offering of food or entertainment in licensed establishments.

**Section 7:** That Title 4, Chapter 2, Article A, § 4-2A-4(B) be amended to read as follows:

4-2A-4:

- B. Sell any alcoholic beverages at any hour other than between the hours of 8:00 a.m. and midnight Monday through Saturday, and shall not be permitted to be open on Thanksgiving Day or Christmas Day; provided, if Custer County, pursuant to the provisions of subsections B and C of § 3-124, Title 37A of the Oklahoma Statutes, elect to allow such sales between the hours of noon and midnight on Sunday. Retail spirits licensees shall be permitted to sell alcoholic beverages on the day of any General, Primary, Runoff Primary or Special Election whether on a national, state, county, or city election, provided that the election day does not occur on any day on which such sales are otherwise prohibited by law.

**Section 8:** That Title 4, Chapter 2, Article B, § 4-2B-2(B) be amended to read as follows:

C. Taxes Enumerated; Exemption:

1. There is hereby levied an annual tax upon the following occupations hereinafter named, and in the sum set opposite the names of such occupation:

|                                     |            |
|-------------------------------------|------------|
| Brewer License                      | \$1,250.00 |
| Small Brewer License                | \$125.00   |
| Distiller License                   | \$3,125.00 |
| Winemaker License                   | \$625.00   |
| Small Farm Winery License           | \$75.00    |
| Rectifier License                   | \$3,125.00 |
| Wine and Spirits Wholesaler License | \$3,000.00 |
| Beer Distributor License            | \$750.00   |

The following retail spirits license fees shall be determined by the latest Federal Decennial Census:

|  |  |
|--|--|
| Retail Spirits License for cities and towns from 200 to 2,500 population   | \$305.00   |
| Retail Spirits License for cities and towns from 2,501 to 5,000 population | \$605.00   |
| Retail Spirits License for cities and towns over 5,000 population          | \$905.00   |
| Retail Wine License  | \$1,000.00   |
| Retail Beer License  | \$500.00   |
| Mixed Beverage License   | \$1,005.00<br>(initial license)<br>\$905.00<br>(renewal) |
| Mixed Beverage/Caterer Combination License                                 | \$1,250.00   |

|  |  |
|--|--|
| On-Premises Beer and Wine License                    | \$500.00<br>(initial license)<br>\$450.00<br>(renewal)   |
| Bottle Club License                                  | \$1,000.00<br>(initial license)<br>\$900.00<br>(renewal) |
| Caterer License                                      | \$1,005.00<br>(initial license)<br>\$905.00<br>(renewal) |
| Annual Special Event License                         | \$55.00  |
| Quarterly Special Event License                      | \$55.00  |
| Hotel Beverage License                               | \$1,005.00<br>(initial license)<br>\$905.00<br>(renewal) |
| Airline/Railroad Beverage License                    | \$1,005.00<br>(initial license)<br>\$905.00<br>(renewal) |
| Agent License  | \$55.00  |
| Employee License                                     | \$30.00  |
| Industrial License                                   | \$23.00  |
| Carrier License                                      | \$23.00  |
| Private Carrier License                              | \$23.00  |
| Bonded Warehouse License                             | \$190.00   |
| Storage License                                      | \$23.00  |
| Nonresident Seller License or Manufacturer's License | \$750.00   |

|  |            |
|--|------------|
| Manufacturer's Agent License           | \$55.00    |
| Sacramental Wine Supplier License      | \$100.00   |
| Charitable Auction License             | \$1.00     |
| Charitable Alcoholic Beverage License  | \$55.00    |
| Winemaker Self-Distribution License    | \$750.00   |
| Annual Public Event License            | \$1,005.00 |
| One-Time Public Event License          | \$255.00   |
| Small Brewer Self-Distribution License | \$750.00   |
| Brewpub License                        | \$1,005.00 |
| Brewpub Self-Distribution License      | \$750.00   |

**Section 9:** That Title 4, Chapter 2, Article C, §§ 4-2C-1 – 4-2C-5 be repealed.

**Section 10:** That Title 4, Chapter 2, Article C be renamed “**Violations and Penalties.**”

**Section 11:** That Title 4, Chapter 2, Article C, § 4-2C-6(A)(1) be amended to read as follows:

1. Violated 37A Oklahoma Statutes § 1-101, *et seq.*, or any provision of Title 4, Chapter 2 of this Code.

**Section 12:** That the remaining sections of Title 4, Chapter 2, Article C be renumbered.

**Section 13:**

All Ordinances, or parts of Ordinances, in conflict with the provisions of this Ordinance are hereby repealed and replaced.

**Section 14:**

If any one or more of the sections, sentences, clauses or parts of this ordinance, chapter, or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance.

**Section 15:**

**Effective Date:**

This Ordinance shall be effective October 1, 2018, from and after its passing, approval and publication.

PASSED, APPROVED and ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK