

ORDINANCE NO. 3538

An ordinance amending Chapter 4, ALCOHOLIC BEVERAGES, Article I, GENERAL PROVISIONS, Section 4-1, Definitions; Section 4-13, Transporting alcoholic beverages in opened containers; possession in public places; Section 4-22, Employment of minors selling or handling; and Section 4-25, Operation of retailers prohibited during certain hours and on certain days; Section 4-33, Occupation tax-Levied; amount; of the Broken Arrow Code; repealing all ordinances to the contrary; and declaring an effective date of October 1, 2018

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROKEN ARROW:

SECTION I. That Chapter 4, ALCOHOLIC BEVERAGES, Article I, GENERAL PROVISIONS, Section 4-1, Definitions, is hereby amended to read as follows:

Sec. 4-1. - Definitions.

(a) All words, terms, and phrases used in this chapter shall be interpreted and construed in conformity with the definitions as defined in subsection (b) of this section and of the same set forth in the Oklahoma Alcoholic Beverage Control Act and all amendments thereto, with the same force and effect as if set out in length herein; and such definitions are hereby made part hereof by reference.

(b) Definitions:

(1) *ABLE commission.* The Alcoholic Beverage Laws Enforcement Commission.

(2) *Alcohol* means and includes hydrated oxide of ethyl, ethyl alcohol, ethanol or spirits of wine, from whatever source or by whatever process produced. It does not include wood alcohol or alcohol which has been denatured or produced as denatured in accordance with Acts of Congress and regulations promulgated thereunder;

(3) *Alcoholic beverage* means alcohol, spirits, beer and wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human beings;

(4) *Applicant* means any individual, legal or commercial business entity, or any individual involved in any legal or commercial business entity allowed to hold any license issued in accordance with the Oklahoma Alcoholic Beverage Control Act;

(5) *Beer* means any beverage of alcohol by volume and obtained by the alcoholic fermentation of an infusion or decoction of barley, or other grain, malt or similar products. "Beer" may or may not contain hops or other vegetable products. "Beer" includes, among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice wine;

(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) *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;

(9) *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;

(10) *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;

(11) "*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;

(12) *Convicted* and *conviction*. Any 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.

(13) *Licensee*. 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.

(14) *Mixed beverages*. One (1) 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. Such beverages are typically served or sold by the holder of a mixed beverage, caterer or special event license.

(15) *Premises*. 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;

(16) "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;

(17) *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; (18) "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;

(19) "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;

(20) "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);

(21) "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;

(22) "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;

(23) "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;

(24) "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;

SECTION II. That Chapter 4, ALCOHOLIC BEVERAGES, Article II, OFFENSES BY MEMEBERS OF THE GENERAL PUBLIC, Section 4-13, Transporting alcoholic beverages in opened containers; possession in public places, is hereby amended to read as follows:

Sec. 4-13.- Transporting alcoholic beverages in opened containers; possession of spirits in public places.

(a) It shall be unlawful for any person to knowingly transport or for any passenger to possess in any vehicle upon a public highway, street or alley any intoxicating beverage, except in the original container which shall not have been opened and the seal upon which shall not have been broken, and from which the original cap or cork shall not have been removed; provided, however, an opened container of an intoxicating beverage may be transported in such vehicle if stored in the rear trunk or compartment, which shall include the spare tire compartment in a vehicle commonly known as a station wagon or panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while the vehicle is in motion.

(b) It shall be unlawful to consume spirits in public except on the premises of a licensee of the ABLE Commission who is authorized to sell or serve spirits by the individual drink

(c) Any person who violates the above sections shall be punished by a fine not more than \$100.00 or by imprisonment of not more than 30 days or by both such fine and imprisonment.

SECTION III. That Chapter 4, ALCOHOLIC BEVERAGES, Article III, OFFENSES BY LICENSEES OR BY EMPLOYEES OF ABLE COMMISSION LICENSEES, Section 4-22, Employment of minors in selling or handling; possession in public places, is hereby amended to read as follows:

Sec. 4-22. - Employment of minors in selling or handling.

(a) It shall be unlawful for any retailer to employ any person under eighteen (18) years of age in the selling of beer or wine or employ any person under the age of twenty-one (21) years of age in the selling of spirits within the City. Provided:

1. a mixed beverage, beer and wine, caterer, public event, special event, retail wine or retail beer licensee may employ servers or sales clerks who are at least eighteen (18) years of age, except persons under twenty-one (21) years of age may not serve in designated bar or lounge areas, and

2. a mixed beverage, beer and wine, caterer, public event, special event licensee may employ or hire musical bands who have musicians who are under eighteen (18) years of age if each such musician is either accompanied by a parent or legal guardian or has on their person, to be made available for inspection upon demand by any employee of the ABLE Commission or law enforcement officer, a written, notarized affidavit from the

parent or legal guardian giving the underage musician permission to perform in designated bar or lounge areas;

(b) Violation of this section shall be punishable by a fine of not more than \$750.00, or imprisonment of not more than 30 days, or both such fines and imprisonment for any person.

SECTION IV. That Chapter 4, ALCOHOLIC BEVERAGES, Article III, OFFENSES BY LICENSEES OR BY EMPLOYEES OF ABLE COMMISSION LICENSEES, Section 4-25, Operation of retailers prohibited during certain hours and on certain days, is hereby amended to read as follows:

Sec. 4-25. - Operation of retailers prohibited during certain hours and on certain days.

1. Retail Spirits Hours of Operation

No retail spirits licensee shall 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, a county may 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;

2. Retail Wine or Retail Beer Hours of Operation

No retail wine or retail beer licensee shall sell any beer or wine at any hour other than between the hours of 6:00 a.m. and 2:00 a.m. the following day, Monday through Sunday. Retail wine and retail beer licensees shall be permitted to sell beer and wine on the day of any General, Primary, Runoff Primary or Special Election whether on a national, state, county or city election.

SECTION V. That Chapter 4, ALCOHOLIC BEVERAGES, Article IV, TAXES AND ENFORCEMENT OF LICENSING PROVISIONS, Section 4-43, Occupation tax—Levied; amount, is hereby amended to read as follows:

Sec. 4-43. - Occupation tax—L(a)

There is hereby levied and assessed an annual occupation tax on every business or occupation relating to alcoholic beverages as specifically provided for in the Manual of Fees

(a). 1. There shall be added to the initial or renewal fees for a Mixed Beverage License an administrative fee, which shall not be deemed to be a license fee, in an amount provided for in the Manual of Fees, which shall be paid at the same time and in the same manner as the license fees prescribed by paragraph 10 of subsection A of this section; provided, this fee shall not be assessed against service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue Code.

2. There shall be added to the fee for a Mixed Beverage/Caterer Combination License an administrative fee, which shall not be deemed to be a license fee, in an amount provided for in the Manual of Fees, which shall be paid at the same time and in the same manner as the license fee prescribed by paragraph 11 of subsection A of this section.

(a). Notwithstanding the provisions of subsection A of this section:

1. The license fee for a mixed beverage or bottle club license for those service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per year; and

(a) An applicant may apply for and receive both an on-premises beer and wine license and a caterer license.

(b) All licenses, except as otherwise provided, shall be valid for one (1) year from date of issuance unless revoked or surrendered.

(c) For those service organizations which are exempt under section 501(c)(19) of the Internal Revenue Code, the occupation tax for mixed beverage or bottle club license shall be \$500.00 per year.

(d) If a brewer or a class B wholesaler also holds a license from the state to manufacture or wholesale any nonintoxicating malt beverage then the occupation tax for such brewer or class B wholesaler shall be reduced by 75 percent.

SECTION II. Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

PASSED AND APPROVED with an effective date of October 1, 2018.

ATTEST:

s/ Scott Eudey
VICE-MAYOR

s/ Lisa Blackford
(Seal) CITY CLERK, DEPUTY

APPROVED:

s/ Trevor Dennis
ACTING CITY ATTORNEY