

CITY OF CUSHING  
ORDINANCE NO. 8-20-18-05

AN ORDINANCE AMENDING CHAPTER 3 OF THE CUSHING CITY CODE REGULATING ALCOHOLIC BEVERAGES; PROVIDING FOR OCCUPATION TAXES; LEVYING CERTAIN FEES; PROVIDING FOR MISCELLANEOUS PROVISIONS; PROVIDING FOR SEVERABILITY; AND, DECLARING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF CUSHING AS FOLLOWS:

Section 1. Cushing City Code Chapter 3 Amended. That the Cushing City Code is hereby amended as follows:

**CHAPTER 3 ALCOHOLIC BEVERAGES**

**Article 1 In General**

**§ 3-1 State law adopted by reference.**

The provisions of the Oklahoma Alcoholic Beverage Control Act (37A O.S. § 1-101 *et seq.*), as now or hereafter amended, that can be applicable to the city are adopted as a part of this section as if set out at length in this section.

*[Code 2005 §10-1]*

**§ 3-2 Definitions.**

- A. All words, terms and phrases used in this chapter shall have the meanings assigned to them in the Oklahoma Alcoholic Beverage Control Act (37A O.S. § 1-101 *et seq.*).
- B. All words, terms and phrases used in this chapter which are not defined in the Oklahoma Alcoholic Beverage Control Act shall have the meanings assigned to them in §1-2 of this Code.  
State licensee means any person who holds a license issued under the authority of the Oklahoma Alcoholic Beverage Control Act or other related alcohol statutes.

Package store means a retail alcoholic beverage store.

*[Code 1974 §2-1; Code 1985 §§4-16, 4-81; Code 2005 §10-2]*

*State Law reference— Similar provisions, 37A O.S. §§ 1-103*

**Article 2 Certificate of Compliance; Certificate of Zoning**

**§ 3-3 Application for certificate of compliance; investigations.**

- A. Every applicant for a certificate of compliance with zoning, fire, health and safety codes of the city required by 37A O.S. shall apply at the office of the city clerk by:
  - (1) Filing a written application on forms prescribed by that office; and
  - (2) Paying a verification and certification fee established by resolution the time of filing.
- B. Upon receipt of an application for a certificate of compliance, the city manager 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.
- C. The city manager shall act on all such applications within 20 days of receipt thereof.

*[Code 1985 §4-1; Code 2005 §10-31]*

**§ 3-4 Issuance of certificate of zoning and certificate of compliance.**

- A. Upon finding that the premises of an applicant for a certificate is in compliance with all applicable zoning ordinances, a certificate of zoning shall be issued to the ABLE (Alcoholic Beverage Laws Enforcement) 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 chairman, board of commissioners or by the city manager.

[Code 1985 §4-2; Code 2005 §10-32]

### Article 3 Occupation Tax

#### § 3-5 Levied; amount.

A. There is hereby levied and assessed an annual occupation tax on every business or occupation relating to alcoholic beverages as specifically enumerated in this section and in the dollar amount stated as follows:

(1) Brewer license	1,250.00
(2) Small brewer license	125.00
(3) Distiller license	3,125.00
(4) Winemaker license	625.00
(5) Small farm winemaker license	75.00
(6) Rectifier license	3,125.00
(7) Wine and spirits Wholesaler license	3,000.00
(8) Beer distributor license	750.00
(9) Retail spirits license	905.00
(10) Retail wine license	1,000.00
(11) Retail beer license	500.00
(12) Mixed beverage license	
(initial)	1,005.00
(renewal)	905.00
(13) Mixed beverage/caterer combo license	1,250.00
(14) On-Premises Beer and wine license	
(initial)	500.00
(renewal)	450.00
(15) Caterer license	
(initial)	1,005.00
(renewal)	905.00
(16) Annual special event license	55.00
(17) Quarterly special event license	55.00
(18) Hotel beverage license	
(initial)	1,005.00
(renewal)	905.00
(19) Airline/Railroad beverage license	
(initial)	1,005.00
(renewal)	905.00
(20) Agent license	55.00
(21) Employee license	30.00
(22) Industrial license	23.00
(23) Carrier license	23.00
(24) Private carrier license	23.00
(25) Bonded warehouse license	190.00
(26) Storage license	23.00
(27) Nonresident seller license	750.00
(28) Manufacturers agent license	55.00
(29) Sacramental wine supplier license	100.00
(30) Charitable auction license	1.00
(31) Charitable alcoholic beverage license	55.00
(32) Winemaker self-distribution	750.00
(33) Annual public event license	1,005.00
(34) One-time public event license	255.00
(35) Small brewer self-distribution license	750.00
(36) Brewpub license	1,005.00
(37) Brewpub self-distribution license	750.00

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 the amount of \$500.00, which shall be paid at the same time and in the same manner as the license fees prescribed by paragraph (10) of this subsection A; 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. 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 the amount of \$250.00, which shall be paid at the same time and in the same manner as the license fee prescribed by paragraph (11) of this subsection A.

B. Notwithstanding the provisions of subsection A of this section:

- (1) The license fee for a mixed beverage 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 \$500.00 per year;
- (2) The fees provided for in subsection A of this section for a brewer license and for a class B wholesaler license shall be reduced by seventy-five percent (75%) if the applicant therefore is also the holder of a license to manufacture or wholesale any beer or wine as provided for in this title; and,
- (3) The renewal fee for an airline/railroad beverage license held by a railroad described in 49 U.S.C., Section 24301, shall be \$100.00.

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

D. All licenses, except as otherwise provided, shall be valid for one year from date of issuance unless revoked or surrendered. Provided, all employee licenses issued on or after September 1, 1993, shall be valid for two years.

*[Code 1974 §2-2; Code 1985 §4-17; Code 2005 §10-61; Ord. No. 01-16-07-02, § 1, 1-16-2007]*  
*State Law reference— Similar provisions, 37A O.S. § 2-101.*

### **§ 3-6 Payment required; penalty.**

- A. Any state licensee originally entering upon any occupation listed in §3-5 A shall pay the tax therefor at the office of the city clerk 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. Thereafter, the licensee shall pay the tax annually on or before July 1.
- B. The occupation tax subject to this chapter shall be prorated on a monthly basis for the year in which an occupation begins operations.
- C. Upon payment of the occupation tax, the city clerk shall issue a receipt to the state licensee, which the licensee shall post in a conspicuous place on the premises wherein he carries on his occupation.
- D. Any person who engages in any of the occupations taxed by this article without 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 §1-8.

*[Code 1974 §2-5; Code 1985 § 4-18; Code 2005 §10-62]*

### **§ 3-7 Annual report.**

The city clerk shall make an annual report to the ABLE Commission, covering the fiscal year, showing the number and class of licensees subject to the occupation tax and the amount of money received from such tax.

*[Code 1985 §4-19; Code 2005 §10-63]*

## **Article 4 Beer or wine or Wine**

### **Division 1. Generally**

#### **§ 3-8 Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. "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 or related products.

- B. "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.

Beer or wine retail dealer means and includes any person who sells any beer or wine or wine, as defined in this chapter, at retail for consumption or use, and such definitions include state and county fair associations, and special licenses may be issued for the sale of beer or wine, by such associations, and to other persons for the sale of such beer or wine at rodeos, picnics, or other organized temporary assemblages of people. The term "retail dealer" also includes railways for the sale of such beverages, and licenses may be issued for each dining car or railway train, which railways and dining cars shall pay the same license fees as regular retail dealers.

[Code 1985 §4-81; Code 2005 §10-91]

State Law reference— Similar provisions, 37A O.S. § 1-103.

### **§ 3-9 Enforcement.**

The police department shall make frequent inspections of all places of business where beer or wine is sold, distributed or dispensed at retail, for the purpose of enforcing the laws of the city, and for the purpose of ascertaining whether the operators thereof are complying with the requirements of the law relating to the handling of beer or wine.

[Code 1985 §4-82; Code 2005 §10-92]

### **§ 3-10 Violations declared nuisances.**

In addition to any other penalty that may be imposed for a violation of this article, all violations of this article are hereby declared to be public nuisances.

[Code 1985 §4-82; Code 2005 §10-93]

## **Division 2. Retail Establishments**

### **Subdivision I. In General**

#### **§ 3-11 Violations of state law.**

It shall be unlawful for any person to operate any place where any beer or wine is sold if the establishment is permitted to remain open contrary to the provisions of state law.

[Code 1985 §4-105; Code 2005 §10-111]

#### **§ 3-12 Sale of intoxicating liquors.**

It shall be unlawful for any person to operate any establishment where any beer or wine is sold if:

- (1) Any intoxicating liquors are bartered, sold or given away or otherwise furnished, or the bartering, sale, giving away or furnishing of such intoxicating liquors is permitted to be done, in the establishment.
- (2) The operator of such place has in his possession or on the premises in which such business is being operated a federal excise or occupational tax stamp or receipt designating such person or premises as the person or place for dealing in liquor or evidencing the payment of a tax for being a dealer in such liquor.

[Code 1985 §4-98; Code 2005 §10-112]

#### **§ 3-13 Lighting and ventilation.**

It shall be unlawful for any person to operate any establishment where any beer or wine is sold if the establishment is not provided with adequate lighting and ventilation.

[Code 1985 §4-104; Code 2005 §10-113]

#### **§ 3-14 Sanitation.**

It shall be unlawful for any person to operate any establishment where any beer or wine is sold if the establishment is kept in an unclean and unsanitary condition.

[Code 1985 §4-103; Code 2005 §10-114]

**§ 3-15 Hours of sale and operation.**

A. It shall be unlawful for any place licensed to sell beer or wine to sell, dispense, or serve such beverages for consumption on the premises between the hours of 2:00 a.m. and 8:00 a.m. or allow such beverages to be consumed on the premises between the hours of 2:00 a.m. and 8:00 a.m. B.

It shall be unlawful for customers or other persons to remain on the premises where such beverages are sold for consumption on the premises during the hours that sales are prohibited as set forth in subsection A of this section; provided, however, that any employees engaged in cleaning or other management operations may remain on the premises during such hours.

*[Code 1985 §4-106; Code 2005 §10-115]*

*State Law reference— Similar provisions, 37A O.S. § 3-125.*

**§ 3-16 Drinking mixed beverages.**

It shall be unlawful for any person to operate any establishment where any beer or wine is sold if any drinking of mixed beverage is permitted in the establishment, unless said establishment is duly licensed for mixed beverages.

*[Code 1985 §4-100; Code 2005 §10-116]*

**§ 3-17 Permitting gambling, drugs, prostitution, intoxication.**

No licensee under this article or any employee, manager, operator or agent thereof shall:

- A. Permit any illegal gambling activity, violations of the state narcotic and dangerous drug laws or prostitution activity or other criminal conduct to occur on the licensed premises; or
- B. Permit any person who is intoxicated by alcohol or any other substance, or both, to remain on the licensed premises.

*[Code 1985 §§4-96, 4-102; Code 2005 §10-117]*

**§ 3-18 Noise, profanity.**

It shall be unlawful for any person to operate any establishment where any beer or wine is sold if any loud, boisterous, unusual, noisy, profane or vulgar language is habitually or continuously permitted or tolerated in such room or establishment.

*[Code 1985 §4-101; Code 2005 §3-118]*

**§ 3-19 Disorderly conduct.**

It shall be unlawful for any person to operate any establishment where any beer or wine is sold if any disorderly conduct is permitted in such establishment.

*[Code 1985 §4-97; Code 2005 §10-119]*

**Subdivision II. License**

**§ 3-20. Required.**

No person shall sell, distribute or dispense within the city any beer or wine at retail to the public for consumption or use without first obtaining an annual license from the city clerk.

*[Code 1985 §4-121; Code 2005 §10-136]*

**§ 3-21 Application.**

Every person desiring to engage in business of retailing beer or wine within the city shall make application for a license to the city clerk, on forms to be provided, setting forth the location of the business, the names of all persons interested in such business, together with their addresses and if a corporation, the name of the president and the managing officer. The application shall show the date and number of permits issued by the district court clerk of the county, and the state tax commission, as required by law.

*[Code 1985 §4-122; Code 2005 §10-137]*

**§ 3-22 Fees.**

A. There is hereby levied on each retail dealer of beer or wine selling such beverages for consumption on or off the premises where sold, an annual license fee established by resolution and on retail dealers selling such beverages in original packages and not for consumption on the premises where sold an annual license fee established by resolution. Such license fees shall be payable to the city clerk at the time and in the manner stated in this division.

- B. All license fees provided for in this section shall be for the license year beginning July 1 of each year. Each license fee paid shall cover a period and entitle the applicant to a license to the next June 30. All license fees shall expire on June 30 next after the license is issued, and no license shall be issued for less than the annual fee.
- C. All current and valid low-point beer licenses as of October 1, 2018 shall automatically convert to beer and wine licenses; said licenses shall expire on June 30 of 2019.

[Code 1985 §4-123; Code 2005 §10-138]

*State Law reference— Municipal license fees, 37A O.S. § 2-101.*

### **§ 3-23 Prerequisites to issuance; transferability.**

No license under this article shall be issued without a satisfactory showing that the applicant has obtained his state and county permits, and has in all other respects complied with the law. No such license shall be transferable.

[Code 1985 §4-124; Code 2005 §10-139]

### **Subdivision III. Underage Persons**

#### **§ 3-24. Employment.**

- A. It shall be unlawful for any person under 18 years of age to be employed or permitted to work, in any capacity whatsoever, in a place where beer or wine is sold or dispensed for consumption on the premises.
- B. It shall be unlawful for any person under the age of majority 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 beer or wine. 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 beer or wine, in which sales or serving of such 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 beer or wine 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 excepted 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 such beverages do not exceed 25 percent of the gross sales of the business or establishment.

[Code 1985 §4-108; Code 2005 §10-156]

#### **§ 3-25 Presence.**

Except as otherwise provided by law, it shall be unlawful for any owner, operator, manager or any person in charge of any place where beer or wine are sold for consumption on the premises to permit any person under 21 years of age to enter into or loiter in or on such premises unless such person be accompanied by one of his parents or legal guardian.

[Code 1985 §4-109; Code 2005 §10-157]

*State Law reference— Consumption of beer or wine or entry into bar area by person under 21 years of age, 37A O.S. §6-114.*

#### **§ 3-26 Sale, barter or gift.**

- A. It shall be unlawful for any person to sell, barter, or give to any person under 21 years of age any beer or wine.
- B. It shall be unlawful for any person who holds a license to sell and dispense beer or wine for consumption on the premises, or any agent, servant, or employee of such license holder, to permit any person under 21 years of age to be admitted to or remain in a separate or enclosed bar area of the licensed premises unless such person's parent or legal guardian is present, which has as its main purpose the selling or serving of beer or wine for consumption on the premises. The provisions of this section shall not prohibit persons under 21 years of age from being admitted to an area which has as its main purpose some objective other than the sale or serving of beer or wine, in which sales or serving of such beverages are incidental to the main purpose, as long as persons under 21 years of age are not sold or served such beverages; however, the incidental service of food in the bar area shall not exempt a licensee, agent, servant, or employee from the provisions of this section.

C. It shall be unlawful for any person who holds a license to sell and dispense beer or wine, for consumption on the premises, or any agent, servant or employee of such license holder to permit any person under 21 years of age to consume any beer or wine on the licensed premises.

[Code 1985 §4-107; Code 2005 §10-158]

*State Law reference— Similar provisions, 37A O.S. § 6-101; sales to persons under 21 as grounds for revocation of permit, 37A O.S. § 2-148; sale of alcoholic beverages to persons under 21, 37A O.S. §6-120.*

#### **Article 5 Possession; Consumption**

##### **§ 3-27 Consumption or inhaling of intoxicants in public places.**

Any person who shall, in any public place, or in or upon any passenger coach, streetcar, or in or upon any other vehicle commonly used for the transportation of passengers, or in or about any depot, platform, waiting station or room, drink or otherwise consume any intoxicating liquor unless authorized by the Oklahoma Alcoholic Beverage Control Act (37A O.S. § 1-101 et seq.), beer or wine, intoxicating substance, or intoxicating compound of any kind, or inhale glue, paint or other intoxicating substance, or if any person shall be drunk or intoxicated in any public or private road, or in any passenger coach, streetcar, or any public place or building, or at any public gathering, from drinking or consuming such intoxicating liquor, beer or wine, intoxicating substance or intoxicating compound or from inhalation of glue, paint or other intoxicating substance, or if any person shall be drunk or intoxicated from any cause and shall disturb the peace of any person, he shall be punished as provided in §1-8.

[Code 1985 §4-84; Code 2005 §10-181]

*State Law reference— "alcoholic beverages" defined, 37A O.S. § 1-103.*

##### **§ 3-28 Possession by persons under age 21 years.**

It shall be unlawful for any person under the age of 21 years to be in the possession of any intoxicating beverage containing more than 3.2 percent alcohol by weight, or any beer or wine, while such person is upon any public street, road, or highway or in any public building or place.

[Code 1985 §4-85; Code 2005 §10-182]

*State Law reference— Similar provisions, 10A O.S. § 2-8-222*

##### **§ 3-29 Penalties.**

Any person violating the provisions of §3-28 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by payment of a fine not to exceed \$100.00.

[Code 2005 §10-183]

*State Law reference— Similar provisions, 10A O.S. § 2-8-223.*

Section 2. Severability. Severability is intended throughout and within the provisions of this ordinance. If any provision, including any exception, part, phrase, or term, or the application thereof to any persons or circumstances is held invalid, the application to other persons or circumstances shall not be affected thereby and the validity of the ordinance in any and all other respects shall not be affected thereby.

Section 3. Effective Date. The provisions of this ordinance shall become effective on October 1, 2018.

PASSED, APPROVED AND ADOPTED this 20<sup>th</sup> day of August, 2018.

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Don Amon, Chairman  
Board of Commissioners

ATTEST:

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Jerrica A. Worthy  
City Clerk

Approved as to Form:

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Jonathan Huseman  
City Attorney