

CHAPTER 3

Alcoholic Beverages

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ARTICLE I

In General

Sec. 3-1. Definitions.

As used in this chapter, the following words or phrases shall have the following meanings, respectively:

(1) *Fermented malt beverage* or *3.2 beer* means any beverages obtained by the fermentation of any infusion or decoction of barely, malt, hops or any similar product or any combination thereof in water containing not more than three and two-tenths percent (3.2%) alcohol by weight.

(2) *Malt liquor* means beer and any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product or any combination thereof in water containing more than three and two-tenths percent (3.2%) of alcohol by weight.

(3) *Medicinal liquor* means any alcoholic beverage excepting beer and wine which has been aged in wood for four (4) years, bonded by the United States government and at least one hundred (100) proof.

(4) *Operator* means a person licensed by law to sell fermented malt beverages, malt, vinous and spirituous liquors, other than medicinal liquors, for beverage purposes at retail and who is engaged at any time during the calendar year in such operation within the City.

(5) *Spirituos liquor* means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes, among other things, brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing alcohol and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except as above provided shall not be construed to be malt or vinous liquor but shall be construed to be spirituous liquor.

(6) *Vinous liquor* means wine and fortified wines, not exceeding twenty-one percent (21%) of alcohol by volume, and shall be construed to mean alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural produce containing sugar. (Ord. 423)

Sec. 3-2. Sale or consumption in public or unlicensed premises.

Except for the sale of medicinal liquors as hereinafter provided in Article II of this Chapter, it shall be unlawful for any person to sell, give away or consume any beverage having any alcoholic content whatever upon any street, avenue, alley, park or other public place within the City or at, in or upon the premises of any place of public resort within the City not licensed by the City and State to sell fermented malt beverages, malt, vinous or spirituous liquors. (Ord. 423; Ord. 827)

Sec. 3-3. Licensee and premises defined.

(a) For the purpose of Sections 3-4 through 3-19, the term *licensee* shall include any person duly licensed to sell fermented malt beverages, malt, vinous or spirituous liquors under the provisions of this Chapter or, except as provided in Section 3-8, any agent, servant or employee of such licensee.

(b) For the purpose of Sections 3-4 through 3-19, the term *premises* shall include all or any part of the physical boundaries of any establishment duly licensed for the sale of fermented malt beverages, malt, vinous or spirituous liquors under the provisions of this Chapter. (Ord. 423)

Sec. 3-4. Disorderly conduct in licensed premises prohibited.

It shall be unlawful for any licensee to permit any disturbance or unlawful or disorderly act or conduct to be committed by any person or group of persons upon the premises. (Ord. 423)

Sec. 3-5. Encouragement of disorderly conduct prohibited, exception.

It shall be unlawful for a licensee in any manner to encourage or participate in any disturbance or unlawful or disorderly act or conduct upon the premises; provided, however, that such licensee may use such lawful means as may be proper to protect his or her person or property from damage or injury. (Ord. 423)

Sec. 3-6. Report to police.

Any licensee shall immediately report to the Police Department any unlawful or disorderly act or conduct or any disturbance committed on the premises. (Ord. 423)

Sec. 3-7. Prosecution for violations.

Prosecution or conviction under this Article shall not prohibit prosecution or conviction under any other applicable law or ordinance, and the penalties provided hereunder shall be cumulative and in addition to all other penalties incurred under such other applicable law or ordinance. (Ord. 423)

Sec. 3-8. Absence of licensee not defense against prosecution.

It shall not be a defense that the licensee was not personally present on the premises at the time such unlawful or disorderly act, conduct or disturbance took place. However, an agent, servant or employee of the licensee shall not be liable hereunder when absent from the premises while not on duty. (Ord. 423)

Sec. 3-9. Personal property not to be pledged for credit.

It shall be unlawful for any licensee in the City engaged in the sale and dispensation of malt, vinous or spirituous liquors to, in any manner, accept any personal property as a pledge, pawn or loan for any sum of money advanced by such licensee or for any credit extended by such licensee. (Ord. 423)

Sec. 3-10--3-14. Reserved.

Sec. 3-15. Hours of sale and consumption; malt, vinous or spirituous liquors.

The days and hours during which malt, vinous or spirituous liquors are permitted to be sold, served or distributed shall be those days and hours from time to time specified for such purpose by the state statutes. (Ord. 715, §1)

Sec. 3-16. Hours of sale and consumption; fermented malt beverages.

The days and hours during which fermented malt beverages are permitted to be sold, served or distributed shall be those days and hours from time to time specified for such purpose by the state statutes. (Ord. 423; Ord. 554, §2; Ord. 726, §1)

Sec. 3-17. Inspection of licensed premises.

All premises licensed to sell fermented malt beverages, malt, vinous or spirituous liquors shall be open to inspection by police or the Health Office of the City or of the County or State at all times when the same shall be occupied by the licensee, his or her employees or by members of the public. (Ord. 423)

Sec. 3-18. Sacramental wines exempt.

The provisions of this Article shall not apply to the sale or distribution of sacramental wines sold and used for religious purposes. (Ord. 423)

Sec. 3-19. Penalty for violation.

Any person violating any of the provisions of this Article shall, upon conviction thereof, be fined in a sum not exceeding three hundred dollars (\$300.00) or shall be imprisoned in jail not exceeding ninety (90) days. (Ord. 423)

ARTICLE II

Sale for Medicinal Purposes

Sec. 3-20. Written prescription required for sale; penalty for violation.

(a) The sale of alcoholic liquor for medicinal purposes shall be only upon the prescription of a physician of good repute, authorized by law to practice medicine in the State and actually residing and practicing medicine in the county. No person shall sell, by virtue of a permit to sell, alcoholic liquor for medicinal purposes unless such prescription shall be in writing and shall designate by name the person for whose use such liquor is prescribed and the kind of liquor prescribed, whether in compound or otherwise, by its ordinary name in the English language.

(b) Any person violating the provisions of this Section shall, upon conviction thereof, be fined in a sum not exceeding three hundred dollars (\$300.00) or shall be imprisoned in jail not exceeding ninety (90) days. (Ord. 423)

ARTICLE III

Occupation Tax on Retail Businesses

Sec. 3-21. Declaration of policy.

The City Council of the City hereby finds, determines and declares that, considering the nature of the business of selling at retail 3.2 beer, malt, vinous and spirituous liquors for beverage purposes and the relation of such business to the municipal welfare as well as the relation thereof to the expenditures required of the City and a proper, just and equitable distribution of tax burdens within the City and all other matters proper to be considered a relation thereto, the classification of such business as a separate occupation is reasonable, proper, uniform and nondiscriminatory and that the amount of tax hereby imposed by this Article is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of tax burdens within the City. (Ord. 423)

Sec. 3-22. Classification of retail businesses.

The business of selling at retail any 3.2 beer, malt, vinous or spirituous liquor, other than medicinal liquors, for beverage purposes is hereby defined and separately classified as such occupation for the purposes of this Article as follows:

(1) Class "A" operators. All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises either as hotels or restaurants shall be class "A" operators.

(2) Class "B" operators. All operators licensed to sell malt or vinous liquors only by the drink for consumption on the premises are class "B" operators.

(3) Class "C" operators. All operators licensed as retail liquor stores to sell malt, vinous or spirituous liquors in original containers for consumption off the premises are class "D" operators.

(4) Class "D" operators. All operators licensed as drugstores to sell malt, vinous or spirituous liquors in original containers of consumption off the premises are class "D" operators.

(5) Class "E" operators. All operators licensed to sell malt, vinous or spirituous liquors as clubs are class "E" operators.

(6) Class "F" operators. All operators licensed to sell only 3.2 beer either for consumption on the premises or solely in the original package or container for consumption off the premises are class "F" operators. (Ord. 423)

Sec. 3-23. Levy and amount of tax.

There is hereby levied and assessed an annual occupation tax upon the business of selling 3.2 beer, malt, vinous or spirituous liquors, except medicinal liquors, in the City, as such occupation has been herein classified, as follows: All classes of operators (classes A through F, inclusive), the sum of fifty dollars (\$50.00). (Ord. 712, §1)

Sec. 3-24. When tax payable; proration; delinquency; revenue receipt.

(a) On June 1, 1965, the tax hereby levied and assessed shall become due and payable to the City Treasurer and shall be prorated from such date for the remaining portion of such year on those occupations now licensed and in business in the City. Thereafter, such tax shall be due and payable to the City Treasurer on the first day of January of each year and shall be delinquent on the first day of February of the same year. Prepayment of such tax may be made preceding the due date.

(b) If any operator begins business subsequent to the first day of January of any year hereafter, the tax required shall be prorated on a monthly basis from the first day of the month in which the license is issued for the remaining portion of the year, but no refund shall be made to any person who discontinues such business during the year. All prorated taxes provided for in this Section shall be due and payable on the date specified and shall be delinquent ten (10) days thereafter. Interest shall accrue on all delinquent taxes from the day of delinquency until paid or collected at the rate of one percent (1%) per month.

(c) Upon receipt of such tax, it shall be the duty of the City Clerk to execute and deliver to the operator paying the tax a revenue receipt showing the name of the operator paying the tax, the date of payment, the annual period for which such tax is paid and the place at which such operator conducts the business.

(d) The operator shall at all times during the year keep the receipt posted in a conspicuous place in his or her place of business. (Ord. 423)

Sec. 3-25. Delinquency in payment not grounds for suspension or revocation.

No delinquency in payment of the tax herein provided for shall be grounds for suspension or revocation of any license granted to any such operator by any licensing authority pursuant to the state statutes. In performance of any duties imposed upon the City Council as a licensing authority by such statutes, the City Council shall exclude from consideration any delinquency in payment of the tax herein provided. (Ord. 423)

Sec. 3-26. Civil remedies.

The City shall have the right to remove all sums due by the terms of this Article by judgment and execution thereon in a civil action in any court of competent jurisdiction. Such remedy shall be cumulative with all other remedies provided therein for the enforcement of this Chapter. (Ord. 423)