

**ORDINANCE NO: 753**

AN ORDINANCE AMENDING PART 3, CHAPTER 1 ALCOHOLIC BEVERAGES AND TAX OF THE CITY OF GROVE CODE OF ORDINANCES, TO BE CONSISTENT WITH STATE LAWS AND REGULATIONS EFFECTIVE OCTOBER 1, 2018; AND PROVIDING FOR SEVERABILITY AND THE REPEAL OF CONFLICTING ORDINANCES; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GROVE, OKLAHOMA:

SECTION ONE:

Part 3, Chapter 1, of the City of Grove Code of Ordinances shall be amended to read as follows:

ALCOHOLIC BEVERAGES AND TAX

SECTION:

- 3-101: Definitions and Interpretations
- 3-102: Occupation Tax for every businesses or occupation related to Alcoholic Beverages
- 3-103: City Clerk to Make Annual Report
- 3-104: Certificate of Compliance
- 3-105: Wine, Beer and Mixed Beverage Sales for ON PREMISE CONSUMPTION
- 3-106: Retail Package Stores, Retail Stores Selling Wine and/or Beer for OFF PREMISE CONSUMPTION
- 3-107: Regulations Applicable to Alcoholic Beverages
- 3-108: Penalty
- 3-109: Revocation of License

3-101: DEFINITIONS AND INTERPRETATIONS:

Word, phrases, and terms used in this chapter shall have the meanings prescribed by, and be construed in conformity with, the definitions of the section 506 of title 37 of the Oklahoma Alcoholic Beverage Control Act of 1959, force and effect as if the definitions were set forth in full in this chapter, unless the context clearly indicates a different meaning or construction.

ABLE COMMISSION: The Alcoholic Beverage Laws Enforcement Commission.

ALCOHOLIC BEVERAGE: Alcohol, spirits, beer and wine and includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer capable of being consumed as a beverage by human beings, but does not include low-point beer.

APPLICANT: Any individual, legal or commercial business entity, or any individual involved in any legal or commercial business entity allowed to hold any license in accordance with the Oklahoma Alcoholic Beverage Control Act.

BEER: Any beverage containing more than three and two-tenths percent (3.2%) of alcohol by weight 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, and includes ale, stout, lager beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice wine.

BREWER: Any person who produces beer in the state of Oklahoma.

BREWERY: 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.

CLASS B WHOLESALER: Any person doing any such acts or carrying on any such business that would require such person to obtain a Class B Wholesaler license.

DISTILLER: 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, makes or keeps mash, wort, or wash, has also in his or her possession or use a still.

**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.

**MANUFACTURER:** A brewer, distiller, winemaker, rectifier or bottler of any alcoholic beverage.

**MIXED BEVERAGE:** 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.

**MIXED BEVERAGE COOLER:** 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 terms shall include, but not be limited to, the beverage popularly known as a "wine cooler".

**OCCUPATION:** Used in connection with 'Occupation Tax' means the sites occupied as the places of business of the manufacturers, wholesalers, Class B wholesalers, retailers, mixed beverage licensees, beer and wine licensees, bottle clubs, caterers, public event and special event licensees.

**ORIGINAL PACKAGE:** Any container of alcoholic beverage filled and stamped or sealed by the manufacturer.

**PATRON:** Any person, customer or visitor who is not employed by a licensee or who is not a licensee.

**PERSON:** An individual, any type of partnership, corporation, association, limited liability company or any individual involved in the legal structure of any such business entity.

**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. Provide that the ALBE Commission shall have the authority to designate areas to be excluded from the licensed premises solely for the purpose of 1) allowing the presence and consumption of alcoholic beverages, by private parties which are closed to the general public or 2) 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.

**PRIVATE EVENT:** A social gathering or event attended by invited guest 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.

**PUBLIC EVENT:** Any event that can be attended by the general public.

**RECTIFIER:** 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, manufacturers any spurious, imitation, or compound liquors for sale, under the name of whiskey, brandy, rum, gin, wine, spirits, cordials, or any other name.

**RESTAURANT:** 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.

RETAIL BEER AND/OR WINE: Establishments that sell beer and/or wine for consumption off the premises. Beer and/or wine may be sold refrigerated or non-refrigerated.

RETAIL CONTAINER FOR SPIRITS AND WINES: An original package of any capacity approved by the United States Bureau of Alcohol, Tobacco and Firearms.

RETAIL SALESPERSON: A salesperson soliciting orders from and calling upon retail alcoholic beverage stores with regard to his or her product.

RETAILER: The holder of a Package Store License. Products are sold for consumption off the premises.

SALE: 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.

SPIRITS: Beverage other than wine, beer or light 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.

WHOLESALE: Includes any person doing any such acts or carrying on any such business or businesses that would require such person to obtain a wholesaler's license or licenses.

WINE: 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, vegetable, honey, milk or other products containing sugar, whether or not other ingredients are added, and include vermouth and sake, known as Japanese rice wine.

WINEMAKER: Any person who produces wine.

WINEMAKER, OKLAHOMA: A business premises in Oklahoma licensed pursuant to the Oklahoma Alcoholic Beverage Control Act wherein wine is produced by the licensee who must be a resident of the state. The wine product fermented in said licensed premises shall be of grapes, berries, and other fruits and vegetables imported into this state and processed herein or shall be of grapes, berries and other fruits and vegetables grown in Oklahoma.

3-102: OCCUPATION TAX LEVIED; LICENSE TO BE ISSUED

A. There is hereby levied and assessed an annual occupational tax on every business or occupation relating to alcoholic beverages. The occupational tax at the time this Ordinance was approved is \$50.00. Beginning July 1, 2019 the occupational tax will increase as indicated on the Tax Table below, and will continue to increase on an annual basis until the tax reaches the maximum amount.

City of Grove Occupational Tax Table – Alcoholic Beverages					
	7/1/2019	7/1/2020	7/1/2021	7/1/2022	7/1/2023
Brewer	\$200.00	\$300.00	\$400.00	\$500.00	\$600.00 Maximum
Caterer	\$200.00	\$300.00	\$400.00	\$500.00	\$600.00 Maximum
Distiller	\$200.00	\$300.00	\$400.00	\$500.00	\$600.00 Maximum
On-Premise Mixed Beverages, Beer and/or Wine	\$200.00	\$300.00	\$400.00	\$500.00	\$600.00 Maximum
Rectifier	\$200.00	\$300.00	\$400.00	\$500.00	\$600.00 Maximum
Retail Package Store	\$200.00	\$300.00	\$400.00	\$500.00	\$600.00 Maximum
Retail Beer and/or Wine Store	\$200.00	\$300.00	\$400.00	\$500.00	\$600.00 Maximum
Winemaker	\$200.00	\$300.00	\$400.00	\$500.00	\$600.00 Maximum
Oklahoma Winemaker	\$50.00 Maximum				
Wholesaler – Beer, Wine & Spirits	\$200.00	\$300.00	\$400.00	\$500.00	\$600.00 Maximum
Exempt Organizations under IRS 501 (c) (19)	\$200.00	\$300.00	\$400.00	\$500.00 Maximum	
Special Event	\$50.00 Per Day Maximum				

- B. Any state licensee originally entering upon any business or occupation herein listed shall pay the tax at the office of the City Clerk on or before the date upon which he enters upon such business or occupation. The licensee shall provide a copy of his current state license before payment of an Occupation License will be accepted. Thereafter, the licensee shall pay the tax annually on or before July 1. The fee is non-refundable; and shall be used to offset municipal expenses covering the costs related to licensing, inspection, administration and enforcement relating to alcoholic beverage establishments.
- C. If a brewer or a Class B wholesaler also holds a license from the state to manufacture or wholesale malt beverage, then the Occupation Tax for such brewer or Class B wholesaler shall be reduced by seventy five percent (75%).
- D. The Occupation Tax subject to this chapter shall be prorated on a monthly basis for the year in which an occupation or business begins operations.
- E. Upon payment of the Occupation Tax, the city 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 business or occupation.
- F. Except for the sale of wine or beer to the public, an Interim Occupational Tax shall allow all qualified retail wine and retail beer, beer distributors and wine and spirits wholesaler state licensees to perform all activities permissible under a full license including but not limited to purchasing, stocking and storing wine and/or beer on the premises prior to October 1, 2018. In order to qualify for an Interim Occupational Tax, the state licensee must satisfy all the requirements set forth in Article XXVIII A of the Oklahoma Tax Commission and state law. After October 1, 2018, the Interim Occupational Tax shall convert to a full Occupational Tax and shall be renewed prior to July 1 of each year.

3-103: CITY CLERK TO SUBMIT ANNUAL REPORT:

The City Clerk shall submit an annual report to the ABLE commission, covering the fiscal year, showing the number and class of license subject to the Occupation Tax and the amount of money received therefrom.

3-104: CERTIFICATE OF COMPLIANCE:

- A. Every applicant that is applying for an original first-time license, except applicants for an employee, charitable event, special event or airline/railroad beverage license shall obtain a Certificate of Compliance from the city by:
  1. Filing a written application on forms prescribed by the city; and
  2. Paying one-hundred dollar (\$100.00) Certificate of Compliance fee; such fee may be amended per action of the City Council.
- B. Upon receipt of an application for a Certificate of Compliance, the following city departments shall review and verify compliance:
  1. The proposed location and use thereof must comply with all municipal zoning ordinances, verified by the Planning and Zoning Administrator.
  2. The proposed site and structure must comply with all building codes, verified by the Building Inspector.
  3. The proposed site, structure and location must comply with all Fire Code requirements, verified by the Fire Chief or his designee.
  4. The proposed location and use must comply with provisions regarding food services, verified by the Delaware County Health Department.
- C. The city shall act on all such applications within twenty (20) days of receipt thereof.
- D. Upon finding that the premises of an applicant for a Certificate of Compliance is in compliance with all applicable zoning ordinances, building, fire, safety and health codes, a Certificate of Compliance shall be issued. The applicant is responsible for submitting the Certificate of Compliance to ABLE with their license application
- E. The above Certificate of Compliance shall be signed by the City Manager or his designee.

3-105: WINE, BEER AND MIXED BEVERAGE SALES FOR ON PREMISES CONSUMPTION: No person shall operate or maintain any business serving mixed beverages or beer or wine without having previously paid the occupational tax as provided in this chapter.

A. Hours of Operation.

Establishment to which the on premises mixed beverage, beer and wine, caterer, public event, charitable event, or special event Occupational Tax is applicable may sell, dispense, serve or allow to be consumed any mixed beverages, beer or wine on the premises Monday through Sunday 10 a.m. to 2 a.m.

B. Location.

It shall be unlawful for any establishment to which mixed beverages, beer or wine is served to be consumed on-premises be located within three hundred feet (300') of any public or private school or church property primarily and regularly used for worship services and religious activities.

The distance indicated in this section shall be measured from the nearest property line of the public or private school or church to the nearest perimeter wall of the premises of the place which has received a permit or which has been licensed to sell alcoholic beverages.

EXCEPTIONS:

1. When any establishment licensed to serve mixed beverages, beer or wine to be consumed on-premises prior to November 1, 2000; provided, if at the time of application for license renewal the licensed location has been in actual operation for a continuous period of more than sixty (60) days, the license shall be renewed.
2. Establishments licensed prior to October 1, 2018, to sell low-point beer which were permitted 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, pursuant to the provisions of Title 37 of the Oklahoma Statutes. Such establishment shall be permitted to have any license in effect on October 1, 2018, transferred to a mixed beverage license; provided, if such an establishment ceases to regularly be open to the public or changes ownership, the provisions of this paragraph shall cease to apply.
3. When any establishment licensed to serve mixed beverages, beer or wine to be consumed on-premises subject to the provisions of this section 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.
4. If any school or church shall be established within three hundred feet (300') of any establishment licensed to serve mixed beverages, beer or wine to be consumed on-premises subject to the provisions of this section *after* such establishment 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 operations for more than sixty (60) days.

A college or university may waive the three hundred feet (300') requirement by providing written notice to the establishment seeking the license and to the district court of the county in which the establishment is located during the county beverage permit application process. Provided, the college or university prior to waiving the three hundred feet (300') requirement found in this section shall publish a notice of its intention to waive such requirement in a legal newspaper of general circulation at least thirty (30) days but no more than forty (40) days prior to providing written notice to any establishment seeking the license or to the district court of the county. As used in the section "legal newspaper of general circulation" means a newspaper meeting the requisites of a newspaper for publication of legal notices as prescribed in 25 Oklahoma Statutes Section 106 in a majority of the counties in the state.

C. Employment.

No person shall employ any person under eighteen (18) years of age in the selling of beer or wine or employ any person under twenty-one (21) years of age in the selling of mixed beverages. Provided:

1. A mixed beverage, beer and wine, caterer, public event, special event, bottle club, 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 or bottle club 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.

3-106: RETAIL PACKAGE STORES AND RETAIL STORES SELLING WINE OR BEER FOR OFF PREMISE CONSUMPTION:

No person shall operate, manage or work in any retail establishment that sells, for off premise consumption only, any type of alcoholic beverage without having previously obtained an Occupational License for that store as provided in this chapter.

A. Hours of Operation.

Retail Package Stores will be permitted to remain open and operational on Monday through Saturday from 10:00 a.m. through 9:00 p.m. Further, no person shall open or operate a retail package store at any time on the following days:

1. Sunday
2. Day of any general, primary, runoff primary or special election;
3. New Year's Day
4. Memorial Day
5. 4<sup>th</sup> of July
6. Labor Day
7. Thanksgiving Day
8. Christmas Day

No wholesale dealer shall sell or deliver to any Retail Package Store on any of the days listed above.

Retail establishments selling Beer and/or Wine may offer for retail sale on Monday through Sunday between the hours of 6:00 a.m. and 2:00 a.m. the following day.

B. Location.

It shall be unlawful for any Retail Package Store and Retail Stores selling Beer and/or Wine to be located within three hundred feet (300') of any public or private school or church property primarily and regularly used for worship services and religious activities.

The distance indicated in this section shall be measured from the nearest property line of the public or private school or church to the nearest perimeter wall of the premises of the place which has received a permit or which has been licensed to sell alcoholic beverages.

EXCEPTIONS:

1. Retail Package Stores and Retail Stores selling Beer and/or Wine 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 of more than sixty (60) days, the license shall not be renewed.
2. When any Retail Package Store and Retail Stores selling Beer and/or Wine subject to the provisions of this section 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.
3. If any school or church shall be established within three hundred feet (300') of any Retail Package Store and Retail Stores selling Beer and/or Wine subject to the provisions of this section *after* such establishment 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 operations for more than sixty (60) days.

A college or university may waive the three hundred feet (300') requirement by providing written notice to the establishment seeking the license and to the district court of the county in which the establishment is located during the county beverage permit application process. Provided, the college or university prior to waiving the three hundred feet (300') requirement found in this section shall publish a notice of its intention to waive such requirement in a legal newspaper of general circulation at least thirty (30) days but no more than forty (40) days prior to providing written notice to any establishment seeking the license or to the district court of the county. As used in the section "legal newspaper of general circulation" means a newspaper meeting the requisites of a newspaper for

publication of legal notices as prescribed in 25 Oklahoma Statutes Section 106 in a majority of the counties in the state.

C. Employment.

Retail Package Stores shall not employ any person under the age of twenty-one (21) years of age in the selling of spirits.

Retail Stores selling Beer and/or Wine shall not employ any person under the age of eighteen (18) years of age in the selling of beer or wine.

D. Sale Only in Original Package.

Retail Package Stores and Retail Stores selling Beer and/or Wine may sell alcoholic beverages only in retail containers for consumption off the premises.

Retail Package Stores and Retail Stores selling Beer and/or Wine may sell Beer and Wine at refrigerated temperatures.

E. Sale of other goods allowed.

Retail Package Stores may sell anything sold in a grocery or convenience store including items such as lottery tickets, tobacco, Tylenol, etc. Sell of other goods shall not exceed twenty percent (20%) of their gross monthly sales.

F. Alcohol by Volume

Retail Beer License Holders may sell beer up to 8.99% Alcohol by Volume (ABV)

Retail Wine License Holders may sell wine up to 15% Alcohol by Volume (ABV)

3-107. REGULATIONS APPLICABLE TO ALCOHOLIC BEVERAGES:

A. It is unlawful for any person:

1. Knowingly to sell, deliver, or furnish alcoholic beverages to any person under twenty-one (21) years of age;
2. Who is under the age of twenty-one (21), to misrepresent his age in writing or by presenting documentation of age for the purpose of including any person to sell him alcoholic beverages;
3. To employ any person under the age of twenty-one (21) years in the selling or handling of alcoholic beverages;
4. Who is a licensee or an agent or employee thereof to permit any person under twenty-one (21) years of age to enter into, remain within, or loiter about a license premises;
5. Knowingly sell, deliver or furnish alcoholic beverages to an intoxicated person or to any person who has been adjudged insane or mentally deficient;
6. To open a retail container or consume alcoholic beverages on the premises of a Retail Package Store; or for any operator of a retail package store or any person in charge thereof, to permit any person to open a retail container therein or consume alcoholic beverages therein;
7. To transport in any vehicle upon any street, alley, or other public way within the city any alcoholic beverage except in the original container, which shall not have been opened and the seal of which shall not have been broken, and from which the original cap or cork shall not have removed, unless the opened container be in the truck or any closed compartment of other container out of public view and out of reach of the driver or any occupant of the vehicle;
8. To drink intoxicating liquor in public or to be intoxicated in a public place; and
9. Who is the operator of a café, restaurant, club or any place of recreation, to permit any person to be drunk or intoxicated in such a place of business.

3-108. PENALTY:

A. Failure to Comply.

Any person, firm or corporation who engages in any business, profession, trade or occupation, or exercises any privilege, for which a license or permit is required by this Ordinance without a valid license or permit as hereby required, or who otherwise violates any provisions of this Ordinance, shall be guilty of a misdemeanor and upon conviction, punished by a fines not to exceed five-hundred dollars (\$500.00), plus court costs and penalties, if any. Each day of such violation shall constitute a separate offense.

3-109. REVOCATION OF LICENSE:

The City Council shall have the power, after public hearing, to revoke any license granted hereunder for violation of law or ordinance by the license holder.

SECTION TWO: If any section, paragraph, sentence, cause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION THREE: All Ordinances in conflict shall hereby be repealed and replaced.

SECTION FOUR: An immediate necessity existing for the preservation of the public peace, health and safety an emergency is hereby declared to exist by reason of which this ordinance shall be in full force and effect from and after its passage, approval and publication or posting.

**PASSED AND ADOPTED** by the City Council of the City of Grove, Oklahoma on the 4<sup>th</sup> day of September, 2018.

**EMERGENCY CLAUSE** passed and approved by separate action on the 4<sup>th</sup> day of September, 2018.

CITY OF GROVE, OKLAHOMA

By: \_\_\_\_\_  
Ed Trumbull, Mayor

SEAL

ATTEST:

\_\_\_\_\_  
Ivonne Buzzard, City Clerk