

Chapter 4
ALCOHOLIC BEVERAGES

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Chapter 4 ALCOHOLIC BEVERAGES

Sec. 4-1. Definitions.

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

(Ord. 2018-474, eff. 2018-Jun-20; Code 2007, 4-1)

Alcoholic beverages

Any and all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters bearing federal internal revenue strip stamps or any similar alcoholic beverages, including all blended or fermented beverages, dilutions or mixtures of one (1) or more of the foregoing, containing more than one-half of one (1) percent alcohol, but excluding medicinal bitters.

Beer

Any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops, and/or other cereals in water, and shall be construed to include such liquors as beer, porter, ale and stout.

Business License Officer

The Business License Officer will administer and oversee the business and liquor licensing for the City of Aztec. The Business License Officer will be appointed by the City Manager. The Business License Officer is responsible for the regulations, licensing and supervision of all operations pertaining to liquor licensing within the city limits of Aztec. The Business License officer will have the authority to grant approval for the issuance of public celebration and special dispenser permits on behalf of the local governing body.

Club

Any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of this state, with a membership of not less than fifty (50) members who pay membership dues at the rate of not less than five dollars (\$5.00) per year and who under the constitution and bylaws of the club have all voting rights and full membership privileges, and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the director of the state department of alcoholic beverage control finds:

1. Is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes; and
2. The proposed licensee has been granted an exemption by the United States from the payment of the federal income tax as a club under the provisions of Section 501(a) of the Internal Revenue Code, as amended, or, if the applicant has not operated as a club for a sufficient time to be eligible for the income tax exemption, it must execute and file with the director a sworn letter of intent declaring that it will, in good faith, apply for such exemption as soon as it is eligible.

The term "club" shall also mean an airline passenger membership club operated by an air common carrier which maintains or operates a clubroom at an international airport terminal. The term "air common carrier" means a person engaged in regularly scheduled air transportation between fixed terminal under a certificate of public convenience and necessity issued by the civil aeronautics board.

Dispenser

Any person licensed under the provisions of the Liquor Control Act [NMSA 1978, 60-7 A-1 et seq.] selling, offering for sale or having in his possession with intent to sell alcoholic liquors both by the drink or in packages containing less than five (5) gallons, for consumption on the premises and in unbroken packages for consumption and not for resale on the licensed premises.

Hotel

Any establishment or complex having a resident of the state as a proprietor or manager and where, in consideration of payment, meals and lodging are regularly furnished to the general public. The establishment or complex must maintain for the use of its guests a minimum of twenty-five (25) sleeping rooms.

Package

Any immediate container of alcoholic beverages which is filled or packed by a manufacturer or wine bottler for sale by the manufacturer or wine bottler to wholesalers.

Public celebration permit

Any person licensed under the Liquor Control Act [NSMA 1978, 60-6A-II/60-6A-23] selling, offering for sale or having in his/her possession with intent to sell wine or beer by the drink or in package.

Restaurant

Any establishment having a resident of this state as a proprietor or manager which is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and which has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. The term "restaurant" does not include establishments as defined in regulations promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods.

Retailer

Any person selling or offering for sale, or having in his possession with intent to sell, any alcoholic beverages for consumption off-the-premises of the licensee and in unbroken packages.

Spirituous liquors

All alcoholic beverages as defined above, except fermented beverages such as wine, beer and ale.

Wine

Includes the words "fruit juices," and means any alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, and which does not contain less than

one-half of one (1) percent nor more than twenty-one (21) percent alcohol by volume.
(Ord. 2011-403, eff. 2011-Oct-19; Code 2007, 4-1)

Sec. 4-2. Penalty.

Violations of this chapter are punishable as provided in Section 1-8.
(Code 2007, 4-2)

Sec. 4.3. Money Placed in General Fund.

All moneys derived from license fees under this chapter, together with all moneys received from the state department of alcoholic beverage control, shall be placed in the general fund of the city.
(Code 2007, 4-3)

Sec. 4-4. Conformity with Chapter.

The sale or possession for the purpose of sale or offering for sale of alcoholic beverages is hereby prohibited in the city except upon the terms and conditions specified in this chapter.
(Code 2007, 4-4)

Sec. 4-5. Sale or Possession.

The sale or possession of alcoholic beverages in the city which are not sold, possessed or kept in accordance with the provisions of this chapter, is hereby prohibited. The possession, manufacture or sale for any and all purposes of corn liquor, sugar liquor or home brew in the city is prohibited.
(Code 2007, 4-5)

Sec. 4-6. Licenses; Fees.

Every applicant for a license for the sale of alcoholic beverages in the city for each period beginning July first of each year, and ending June thirtieth of each year, shall pay to the city the applicable liquor license fee to the city as provided in Chapter 16 Fee Schedule, Article IX, Liquor License Fees.

If the commission desires to change the amount of the license taxes established in this section, such amount shall be changed by ordinance effective on or before the first day of June preceding the first year period for which such change is to be effective.
(Ord. 2011-403, eff. 2011-Oct-19; Code 2007, 4-8)

Sec. 4-7. Activities by Licensee Restricted.

No person licensed as retailer of alcoholic beverages shall permit any alcoholic beverages to be drunk or consumed upon his premises, nor shall he sell at any other place than his regular place of business, and all such alcoholic beverages so sold shall be sold at the retail store in the original packages or other containers of less than five (5) gallons, in which they are received from the wholesaler, and upon which the United States tax has been paid and upon which the state stamp is affixed.
(Code 2007, 4-7)

Sec. 4-8. Commercial Gambling on Licensed Premises.

1. It is unlawful for a licensee under the Liquor Control Act [NMSA 1978, 60-7A-I et seq.] to knowingly allow commercial gambling on the licensed premises.
2. For purposes of this section, "commercial gambling" means:
 - (1) Participating in the earnings of or operating a gambling place;
 - (2) Receiving, recording or forwarding bets or offers to bet;
 - (3) Possessing facilities with the intent to receive, record or forward bets or offers to bet;
 - (4) For gain, becoming a custodian of anything of value bet or offered to be bet;
 - (5) Conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery possesses facilities to do so; or
 - (6) Setting up for use for the purpose of gambling, or collecting the proceeds of, any gambling device or game.
(Code 2007, 4-8)

Sec. 4-9. Persons Unlawful to Serve.

It shall be unlawful for any person to serve or sell to persons under the age of twenty-one (21) years, or to persons of unsound mind, or to habitual drunkards, any alcoholic beverages, including beer or wine. It shall be unlawful for any person to permit any person under the age of twenty-one (21) years to sell or serve alcoholic liquors, including wines and beer for such person.

(Code 2007, 4-9)

Sec. 4-10. Minors in Licensed Premises.

1. Any retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee or its lessee under the Liquor Control Act [NMSA 1978, ~ 60-7A-I et seq.] who permits a minor to enter and remain in the licensed premises without lawful business is guilty of a misdemeanor.
2. Any minor who enters and remains in the licensed premises without lawful business is guilty of a misdemeanor.
(Code 2007, 4-10)

Sec. 4-11. Purchases by Minors.

It is unlawful for any person under twenty-one (21) years of age to buy, attempt to buy, receive, possess or permit himself to be served with any alcoholic beverages except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by a court, who is present at the time the alcoholic beverages are bought, received by him or possessed by him or served or delivered to him.

(Code 2007, 4-11)

Sec. 4-12. False Identification by a Minor.

Any person under the age of twenty-one (21) years who presents, displays or offers to any retailer, dispenser or club licensee, his agent or employee, any written, printed or photo static evidence of age or identity, which is forged, false, fraudulent or not actually his own, for the purpose of ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving of any alcoholic beverage or liquor is guilty of a misdemeanor.

(Code 2007, 4-12)

Sec. 4-13. Outdoor Public Places; Permit Required for Consumption of Alcoholic Beverages.

1. It shall be unlawful for any person to consume alcoholic liquors, or to manage or conduct a meeting, assembly, rally, gathering, concert, contest, celebration or other event where alcoholic liquors are provided on the public parks, squares, streets or other outdoor public places for which a written permit has not been issued in accordance with the provisions of this section. The purpose of this section is to allow organized private groups, companies and organizations to consume alcoholic beverages as a part of that group's social or business gathering. Therefore, no permit will be issued for an assembly or other gathering where alcoholic beverages are sold rather than furnished, or where the event is open to the public, regardless of whether the alcoholic beverages are to be sold or furnished unless permitted by a dispenser's permit or public celebration permit approved by the alcoholic beverage control division of the state.
2. An application for a permit shall be in writing and directed to the police chief and/or the city manager. The application shall state:
 - (1) The name, address and telephone number of responsible persons of the organization or group sponsoring the function, festival or celebration;
 - (2) The name of the park, and the area of the park or outdoor public place which is to be used for the event;
 - (3) The beginning and ending times of the event, and if it continues for more than one (1) day, the hours of each day that it is to be conducted;
 - (4) The number of people reasonably expected to be in attendance at the event; and
 - (5) The applicant shall be in compliance with all state rules and regulations. The applicant shall further submit such other information as the police chief and/or the city manager may deem necessary in order to provide for traffic and crowd control, administrative arrangements, police protection, and for the protection of the public health, safety and welfare.
3. The police chief and/or the city manager shall issue a permit for alcoholic liquor consumption for each vendor at the proposed event if, in their judgment, the event will not endanger the public health, safety and welfare. If at any time during the event, the police chief or designee determines that the event is a threat to the public health, safety and welfare of the community or city property, the police chief or

- designee shall cause to cease the activities of the event or the operations of vendor. The city police chief and/or city manager shall make its decision based on the following criteria:
- (1) Whether the required information on the application has been provided at least ten (10) days prior to the event, allowing ample consideration time by the police chief and/or city manager;
 - (2) Whether the time, duration and number of people attending the event will unreasonably disrupt the peace, quiet, health or safety of nearby residents or business establishments;
 - (3) Whether the applicant has guaranteed and made necessary assurances that it will provide for adequate cleanup of litter and/or debris resulting from the event;
 - (4) Whether a cash deposit has been posted with the city as provided in Chapter 16, Fee Schedule, Article II., Parks & Recreation Fees.
 - (5) Whether the applicant has provided tangible assurances that the necessary traffic and crowd control persons will be available and provide the necessary traffic and crowd control as is required during a proposed event;
 - (6) Whether the names and addresses of all traffic and crowd control personnel have been provided to the police chief and/or city manager; and
 - (7) Whether the event will interfere with another event for which a permit has been granted.
 - (8) Any person holding a dispenser's license may dispense alcoholic beverages at the public celebration upon receiving written approval from the governing body in charge of the public celebration and upon the payment for a special dispenser's permit as provided in Chapter 16, Fee Schedule.
 - (9) An additional fee may be charged per day for each day the permittee dispenses alcoholic beverages. The permittee shall be subject to all state laws and regulations and all local regulations regulating dispenser's privileges and disabilities.
4. The application shall be filed with the city clerk at least ten (10) days before the first day of the event, and the permit shall be issued or denied in writing at least four (4) calendar days before the first day of the event. Nothing in this section shall permit the police chief and/or city manager to deny a permit based on race, color, creed, national origin, or the religious or political affiliations of the applicant.
 5. The police chief and/or the city manager shall revoke any permit issued pursuant to this section if any term, condition or limitation of said permit has been violated or is being violated, or any provision in this section has been violated, or if any section of this Code is being violated.
 6. Any person found guilty of violating the provisions of this section by the municipal court shall be sentenced pursuant to Section 1-12 of this Code.

(Ord. 2011-403, eff. 2011-Oct-19; Code 2007, 4-13)