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Chapter Three

Alcoholic Beverages



Article One

In General

The Town of Sutton is authorized by West Virginia Code 8-12- 5(20) to prevent the illegal sale of intoxicating liquors, drinks, mixtures, and preparations; and by 8-13-7 to tax any such activity within the Town.

3-101. Definitions to apply.

Words and phrases defined in the applicable sections of the Nonintoxicating Beer Act and the Alcohol Beverage Control Act of the Code of West Virginia shall have the same meanings as therein defined wherever such words and phrases are used in this chapter.

(See West Virginia Code 60-1-5)

3-102. Tax imposed on purchase prices.

Pursuant to the provisions of Section 8-13-7 of the Code of West Virginia, there is hereby imposed a tax of three percent on the purchase price of any and all intoxicating liquors sold within the town; provided, that such tax shall not apply to intoxicating liquors sold by or purchased from holders of private club licenses issued under the provisions of Article 7, Chapter 60 of the Code of West Virginia.

3-103. Intoxication in public palaces; illegal possession of alcoholic liquors.

It shall be unlawful for any person within the Town of Sutton to:

- (a) Appear in public in an intoxicated condition;
- (b) Drink alcoholic liquor, including so-called nonintoxicating beer, in public;
- (c) Drink alcoholic liquor, including so-called nonintoxicating beer, in a motor vehicle on any street or alley or in a public garage;
- (d) Tender a drink of alcoholic liquor, including so- called nonintoxicating beer, to another person in public;
- (e) Possess alcoholic liquor in the amount in excess of one gallon in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commission, without first having obtained written authority from the commission therefor;

(f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of Chapter 60 of the Code of West Virginia.

(g) Possess an open container containing an alcoholic beverage, wine, or nonintoxicating beer in a public place, unless such place has been licensed for consumption on the premises.

(Section amended 1989)

3-104. Penalties for violation of above sections.

A violation of any of the preceding sections of this article shall be punishable by a fine of not more than fifty dollars, or confinement in jail not to exceed five days, or both, in the discretion of the court, for each separate offense.

3-105. Tendering alcoholic liquor to certain persons, penalties.

It shall be unlawful for any person to buy for, or give to, any person under the age of twenty-one years, habitual drunkard, intoxicated, or under the influence of intoxicating liquor including so-called nonintoxicating beer, addicted to the use of narcotic drugs, or mentally incompetent, any alcoholic liquors, ale, beer, or drink of like nature, or to carry the same to such person from any place where the same may be served or sold, privately or to the public, and for any violation of this section the offender shall, upon conviction, be fined not less than ten nor more than five hundred dollars or be confined in jail not less than five days nor more than thirty days, or both such fine and imprisonment, in the discretion of the court.

Article Two

"Nonintoxicating" Beer

3-201. Acts prohibited without city license.

No person with the city shall manufacture for sale, sell, or possess for sale, any "nonintoxicating" beer without a city license to do so as provided in this article: provided, that nothing contained in this chapter, and no license or payment under the provisions thereof, shall be taken to legalize any act which otherwise may be in violation of law, or exempt any person from any penalty prescribed for such violation.

(See West Virginia Code 8-13-4)

3-202. Annual license required; issuance; display and transferability of license.

Every person licensed by the state pursuant to the provisions of the Nonintoxicating Beer Act of the Code of West Virginia, whether as a retailer, private club, wholesale#r OE brewer of "nonintoxicating" beer and who does business as such within this city shall pay to the city an annual license tax as provided in this article. Upon the payment of each such annual license tax to the town the licensee shall be issued a city license corresponding to the state license, which shall be displayed at all times in a conspicuous place upon the premises thereby licensed. City licenses under this article shall not be transferable.

3-203. License tax imposed; license year; classes of dealers and amount of tax.

(a) Retail dealers shall be divided into three classes, Class A, Class B, and Class C.

Class A licenses shall authorize the licensee to sell "nonintoxicating" beer at retail for consumption on or off the licensed premises. The license fee for such Class A license shall be set by proper order of council, not to exceed one hundred dollars.

Class B license shall authorize the licensee to sell "nonintoxicating" beer at retail for consumption off the licensed premises. The license fee for such Class B license shall be set by proper order of council, not to exceed fifteen dollars for each place of business. Such Class B license may be issued only to the proprietor or owner of a grocery store, and sales under this license to any person at any one time must be in less quantities than five gallons. For the purpose of this section the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen, where food or food products are sold for consumption off the premises.

Class C license shall be issued for social, fraternal or private clubs not operating for profit and having been in continuous operation for two years or more immediately preceding the date of application and shall authorize the licensee to sell "nonintoxicating" beer at retail for consumption only on the licensed premises where sold. The license fee for such Class C license shall be set by proper order of council, not to exceed one hundred dollars for each place of business.

(b) In the case of a wholesaler the license fee shall be set by proper order of council, not to exceed two hundred fifty dollars.

(c) In the case of a brewer with its principal place of business located in this town, the license fee shall be set by proper order of council, not to exceed five hundred dollars for each place of manufacture.

3-204. Application for and issuance of license; false swearing; display of corresponding state license.

All licenses under the provisions of this article shall be issued by the Town Recorder upon a showing of proper entitlement thereto, upon written application therefore verified by the applicant under oath.

Application forms shall be furnished by the town, designed to elicit all information necessary for the Recorder to determine the eligibility of the applicant for the license applied for; the amount of the license fee; the location within the town of the premises to be licensed and whether or not such premises and structures comply with all applicable provisions of state law this code and other ordinances; and it shall be unlawful and shall constitute false swearing for any applicant to knowingly make any false statement in any application for license under this article. Before issuing any license hereunder, the Recorder may require the applicant to display his corresponding state license.

3-205. Unlawful acts of licenses; penalties.

It shall be unlawful:

(a) for any licensee, his servants, agents, or employees, to sell, give, or dispense, or for any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, "nonintoxicating" beer where the hours do not conform with the hours for dispensing alcoholic liquors under the provisions of the Code of West Virginia,

(b) for any licensee, his servants, agents, or employees, to sell, furnish, or give any "nonintoxicating" beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of twenty-one years;

- (c) for any brewer or distributor to transport or deliver "nonintoxicating" beer to any retail licensee on Sunday;
- (d) for any licensee to permit in his premises any lewd, immoral, or improper entertainment, conduct, or practice;
- (e) for any licensee to manufacture, import, sell, trade, barter, assess, or acquiesce in the sale, possession, or consumption of, any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith; provided that the prohibitions contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a Class C license;
- (f) for any Class A or Class B licensee to possess a federal license, tax receipt, or other permit entitling, authorizing, or allowing such licensee to sell liquor or alcoholic drinks,
- (g) for any licensee to print, paint, or place upon the door, window, or in any other public place in or about the premises the word "saloon" or similar words to be used in any advertisement by the licensee;
- (h) for any retail licensee to permit loud, boisterous, or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either or any thereof may disturb the peace and quietude of the community wherein such business is located; provided that no licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises;
- (i) for any person whose state license has been revoked, as provided in the applicable section of the Code of West Virginia TO Obtain employment with any retailer with the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;
- (j) for any distributor to sell, possess for sale, transport, or distribute "nonintoxicating" beer except in the original container;
- (k) for any licensee to permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;
- (l) for any Class B retailer to permit the consumption of "nonintoxicating" beer upon his licensed premises;
- (m) for any licensee, his servants, agents, or employees, or for any licensee by or through such servants, agents, or employees, to allow, suffer, or permit any person under the age of twenty-one years to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of twenty-one years is in, on, or upon such premises in the immediate

company of his parent, or where and while such person under the age of twenty- one years is in, on, or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink, or soft drink therein lawfully prepared and served or sold for consumption on such premises.

Any person who violates any provision of this section, upon conviction, shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars, or imprisoned for not more than thirty days, Or by both such fine and imprisonment, in the discretion of the court.

(Section amended 2022)

3-206. Revocation of license.

The Common Council shall revoke the license granted to any licensee under this article, subject to an appeal of any licensee to a court of competent jurisdiction as is provided for by section 3-207, whenever such licensee has his, her or its license revoked by the West Virginia Nonintoxicating Beer Commissioner pursuant to the provisions of Chapter 11, Article 16 of the West Virginia Code of 1931, as last amended.

(Section amended 1989)

3-207. Suspension of license.

For the violation of any of the provisions of this article the council may suspend the city license of such offender for the residue of the term of said license, or for any portion of time thereof, or may in its discretion revoke such license; provided, however, such licensee shall be first given notice in writing stating therein the alleged grounds for suspension or revocation, to be served in person upon said licensee, fixing the time for such licensee to appear before the council to be heard on such charge, and which shall be served not less than ten days prior to the day of said hearing. Continuance may be granted upon motion of the offender as justice and the circumstances of the case would indicate. In the event of suspension or revocation, the licensee shall have the right to appeal such suspension or revocation to the Circuit Court of Braxton County. During the pendency of any such appeal, the suspension or revocation order shall only be stayed upon a vote of two-thirds of the council members.

(Section amended 1989.)

Article Three

Private Clubs

3-301. License fee imposed amounts.

All private clubs, as defined in Section 60-7-2 of the code of West Virginia, the premises of which are situated within the corporate limits of the Town of Sutton, Shall pay to the city an annual license fee for a license issued under the provisions of Article 7, Chapter 60 of the Code of West Virginia, as follows:

- (a) The annual license fee for a license issued to a fraternal or Veterans' organization or a nonprofit social club shall be fifteen dollars.
- (b) The annual license fee for a license issued to a private club other than a private club of the type specified in subsection (a) of this section shall be five hundred dollars.
- (c) The fee for any such license issued following the first day of January of any year and to expire on the thirtieth day of June of such year shall be one-half of the annual license fee prescribed by subsections (a) and (b) of this section.

3-302. Duty of local holders of state licenses; sales prohibited if city fee not paid.

Each licensee holding a state license issued under the provisions of Article 7, Chapter 60 of the Code of West Virginia Or a private club the premises of which are situated within the corporate limits of the Town of Sutton, shall, upon first obtaining such license and at the time of each renewal thereof, report to the Town Recorder and display such state license to him and pay the city license fee which is imposed upon him by this article, and it shall be unlawful for any such licensee or any officer, member, or employee of any private club so licensed, the premises of which being situated within the city limits of this city, to sell intoxicating liquor upon such premises unless all fees due to the city, as provided in this chapter have been paid.

All such fees shall be due on the first day of July of each year and shall be paid in the Town Recorder's office not later than the fifteenth day of July for the ensuing fiscal year, whereupon a license shall be issued by the Town Recorder, which shall be on such form or forms as prescribed by him.

3-303. City records of state licenses; receipts issued for fees; licensees to display receipts.

The Town Recorder, upon display to him of a state private club license, shall make a record thereof and reserve such record in his office and, upon payment to him of the city license fee as prescribed in this article, he shall issue to the licensee a receipt for

such payment which shall indicate the amount paid, the type of private club and its address within the city, and the expiration date of the license for which such city license fee has been paid. It shall be the duty of each such licensee to maintain such city receipt on display in a conspicuous place on the premises of the private club to which it relates.

3-304. Automatic revocation of city license when state license revoked.

In the event that any private club license issued by the State of West Virginia, or any agency thereof is revoked, then in such event, any license issued under this article shall be likewise revoked and shall be null and void, without the necessity of further proceedings hereunder, and the Town Recorder shall note the fact in his records.

Nothing within this section shall be construed so as to restrict the town council from voting to suspend or revoke a license issued by the town. In the event the council votes to suspend or revoke such license, the licensee shall have the right to appeal such revocation or suspension to the Circuit Court of Braxton County. In the event of such appeal, the period of such suspension or revocation shall not be stayed except upon a vote of two thirds of the members of the town council.

(Section amended 1989)