

## Chapter 14

### ALCOHOLIC BEVERAGES AND PROHIBITED SUBSTANCES

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COMMUNITY CODE OF ORDINANCES

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## ARTICLE I. IN GENERAL

### Sec. 14-1. Sovereign immunity.

Nothing in this chapter is intended to be or shall be construed as a waiver of the sovereign immunity of the Community.

(Code 1981, § 14-1; Code 2012, § 14-1; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-1, 5-30-2012)

### Secs. 14-2—14-20. Reserved.

## ARTICLE II. ALCOHOLIC BEVERAGE CONTROL

### DIVISION 1. GENERALLY

#### Sec. 14-21. Title; authority; purpose; etc.

(a) *Title.* This article shall be known as the Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance.

(b) *Authority.* This article is enacted pursuant to the Act of August 15, 1953, (Public Law 83-277, 67 stat. 588, 18 USC 1161) and article VII of the Community Constitution.

(c) *Purpose.* The purpose of this article and article III of this chapter is to regulate and control the possession, consumption, and sale of liquor or alcoholic beverages within the boundary of the Community. The enactment of an ordinance governing liquor or alcoholic beverage possession and sale on the reservation will increase the ability of the Community government to control alcoholic beverage sale, distribution, and possession while at the same time providing an important source of revenue for the continued operation and strengthening of the Community government and its delivery of Community government services.

(d) *Application of 18 USC 1161.* All acts and transactions under this article shall be in conformity with this article and in conformity with the laws of the State of Arizona, to the extent required by 18 USC 1161.

(e) *Effective date.* This article shall be effective as a matter of Community law upon approval by the Community Council and effective as a matter

of federal law when the Assistant Secretary of Indian Affairs certifies and publishes this article in the federal register.

(Code 1981, § 14-2; Code 2012, § 14-2; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-2, 5-30-2012)

#### Sec. 14-22. Scope.

This chapter constitutes the entire statutory law of the Community in regard to the sale, possession and/or distribution of alcoholic beverages within the Community.

(Code 1981, § 14-3; Code 2012, § 14-3; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-3, 5-30-2012)

#### Sec. 14-23. 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:

*Aggrieved party* means a person, an applicant, a Community member or the Community.

*Alcoholic beverage* means beer, wine or other spirituous liquor (including but not limited to brandy, whiskey, rum, tequila, mescal, gin, porter, ale any malt liquor beverage, absinthe, a compound mixture of these or a compound mixture of these with any other substance which produces intoxication, fruits preserved in ardent spirits and beverages containing more than one-half of one percent of alcohol by volume).

*Applicant* means any partnership, corporation, limited liability company or Community enterprise as well as any natural person that is or are requesting approval of a Community liquor license.

*Broken package* means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork or seal placed thereupon by the manufacturer has been removed, except that "broken package" does not include when a person removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from a

licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.

*Community* means the Salt River Pima-Maricopa Indian Community, a federally recognized Indian tribe.

*Controlling person* means a person directly or indirectly possessing control of an applicant or licensee. Control is presumed to exist if a person has the direct or indirect ownership of or power to vote ten percent or more of the outstanding voting securities of the applicant, licensee or controlling person or to control in any manner the election of one or more of the directors of the applicant, licensee or controlling person. In the case of a partnership, control is presumed to mean the general partner or a limited partner who holds ten percent or more of the voting rights of the partnership. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, there shall be aggregated with the voting securities attributed to the person the voting securities of any other person directly or indirectly controlling, controlled by or under common control with the other person, or by an officer, partner, employee or agent of the person or by a spouse, parent or child of the person. Control is also presumed to exist if a creditor of the applicant, licensee or controlling person holds a beneficial interest in ten percent or more of the liabilities of the licensee or controlling person.

*Director* means director of the Community regulatory agency who is also the director.

*Gross revenue* means the revenue derived from all the sales of food and alcoholic beverages on the licensed premises, regardless of whether the sales of alcoholic beverages are made under a restaurant license issued pursuant to this article.

*Hearing officer* means a person designated by the Community manager to hear an appeal of a decision made by the director.

*License* means a license issued pursuant to the provisions of this article by the Community.

*Licensed premises* or *premises* means a place from which a licensee is authorized to sell alcoholic beverages under the provisions of this article.

*Licensee* means any partnership, corporation, limited liability company or Community enterprise, as well as any natural person who has been authorized to sell alcoholic beverages for consumption at a particular premises by the Community.

*Minibar* means a closed container, either refrigerated in whole or in part or nonrefrigerated, where access to the interior is restricted by means of a locking device which requires the use of a key, magnetic card or similar device.

*Office* means the alcohol beverage control office or persons within the Community regulatory agency that regulate alcoholic beverage and/or liquor sales and distribution transactions within the Community as created in section 14-24.

*Off-sale retailer* means any person operating a bona fide regularly established retail liquor store selling alcoholic beverages and any established retail store selling commodities other than alcoholic beverages that is engaged in the sale of alcoholic beverages only in the original unbroken package, to be taken away from the premises of the retailer and to be consumed off the premises.

*On-sale retailer* means any person operating an establishment where spirituous liquors are sold in the original container for consumption on or off the premises or in individual portions for consumption on the premises.

*Person* means any partnership, corporation, limited liability company, or Community enterprise, as well as any natural person.

*Possess* means to have any item or substance within the control of a person or to have any alcoholic beverage within a person's body, regardless of where the consumption may have taken place.

*Private residence* means a place where an individual or a family maintains a habitation.

*Public patio enclosure* means a contiguous patio or a patio that is not contiguous to the remainder of the licensed premises if the noncontiguous

patio is separated from the remainder of the premises or licensed premises by a public or private walkway or driveway not to exceed 30 feet, subject to the rules that the office may adopt to establish criteria for a noncontiguous premises.

*Public place* means any place that is not a private residence, including within operational motor vehicles or nonresidential structures, and not licensed, pursuant to this article, for the possession of alcoholic beverages.

*Restaurant* (excluding the provisions in this article that govern casino or golf course licenses) means an establishment that derives at least 40 percent of its gross revenue from the sale of food, including sales of food for consumption off the licensed premises if the amount of these sales included in the calculation of gross revenue from the sale of food does not exceed 15 percent of all gross revenue of the restaurant.

(Code 1981, § 14-4; Code 2012, § 14-4; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-4, 5-30-2012; Ord. No. SRO-451-2015, § 14-23, 10-1-2014)

**Sec. 14-24. Office of alcohol beverage control; director.**

(a) *Office.* The office of alcohol beverage control (office) is hereby established within the Community's regulatory agency. The director of the Community regulatory agency is hereby designated as the alcohol beverage control officer (director) who will be responsible to the Community manager and whose duties may be delegated from time to time to other employees of the office. All of the positions of the office will be filled and conducted in accordance with the Community's established policies and procedures.

(b) *Authority of the office.* The office shall have the following authority:

- (1) Grant and deny applications in accordance with this article;
- (2) Adopt rules and regulations to implement this article;
- (3) Hold hearings and make determinations on whether to grant or deny licenses;
- (4) Employ necessary personnel;

- (5) Maintain a public record open to the public containing the names and addresses of each licensee and any person who is a controlling person;
- (6) Liaison between the office and the Community police department to ensure enforcement of this article and article III of this chapter and any relevant regulations issued pursuant to this chapter;
- (7) Investigate and enforce compliance of this article and article III of this chapter and any relevant regulations that also pertain to the selling of alcoholic beverages within the Community; and
- (8) Inspect, during the hours in which a premises is occupied, the premises of a licensee.
- (9) To conduct a state and federal criminal history check pursuant to Arizona Revised Statute 41-1750 and Public Law 92-544 on all applicants for a license under this chapter; and that all applicants must submit a full set of fingerprints to the office who shall submit the fingerprints to the Arizona Department of Public Safety, who may then exchange the fingerprint data with the Federal Bureau of Investigation.

(c) *Inspection of premises, enforcement and investigations.* The office shall receive complaints of alleged violations of this article and article III of this chapter and is also responsible for the investigation of allegations of violations of, or noncompliance with, the selling of alcoholic beverages pursuant to this article and article III of this chapter or any relevant regulations issued pursuant to this chapter.

- (1) The office shall establish a separate investigation unit which has as its responsibility the investigation of compliance within this article.
- (2) A complete record of all applications, actions taken thereon, and any licenses issued shall be maintained by the office and shall be open for public inspection at the office.

- (3) Office staff that are authorized to investigate pursuant to this article shall have the authority to investigate and issue a notice of a violation of noncompliance with this chapter.
- (4) The office or the Community police department may cite a licensee to appear before the office or the hearing officer for a hearing upon allegations of violations of this article and article III of this chapter or any relevant law or regulation issued pursuant to this chapter.
- (5) The office or the director may take evidence, administer oaths or affirmations, issue subpoenas requiring attendance and testimony of witnesses, cause depositions to be taken and require by subpoena duces tecum for the production of books, papers and other documents which are necessary for the enforcement of this article and article III of this chapter.
- (6) The office, including the director, may, in enforcing the provisions of this article, inspect the premises.

(Code 1981, § 14-5; Code 2012, § 14-5; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-5, 5-30-2012; Ord. No. SRO-410-2013, § 14-5, 12-5-2012; Ord. No. SRO-439-2014, § 14-5(b)(9), 3-5-2014)

**Sec. 14-25. Lawful commerce, possession or consumption.**

(a) Alcoholic beverages may be possessed and consumed only at private residences, and licensed premises pursuant to this chapter, and may be transported in unbroken containers to such places. For purposes of this provision, "unbroken container" includes when a person removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from a licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.

(b) Wine may be purchased, stored, distributed and consumed in connection with the bona fide practice of a religious belief or as an integral

part of a religious exercise of an organized church and in a manner not dangerous to public health or safety.

(c) The purchase, storage and use of alcoholic beverages solely for the purpose of cooking or preparing food and in a manner not dangerous to public health and safety are authorized.

(d) Alcoholic beverages may also be served and consumed at a premises licensed pursuant to a business ancillary license if the following conditions have been met; a business serves alcoholic beverages as part of a cooking demonstration or cooking class; or is an accredited school offering degree programs in the culinary arts.

(e) Alcoholic beverages may be sold at licensed premises only under the conditions under which the license is issued.

(Code 1981, § 14-6; Code 2012, § 14-6; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-6, 5-30-2012; Ord. No. SRO-451-2015, § 14-25, 10-1-2014)

**Secs. 14-26—14-53. Reserved.**

**DIVISION 2. LICENSES**

**Sec. 14-54. Designated area.**

The director may issue a license for premises located within the designated area identified in the December 9, 2009, approved Community liquor licensing area corridor (attached to the ordinance from which this article is derived, and incorporated herein by reference).

- (1) The December 9, 2009, approved Community liquor licensing area corridor shall be kept with the official records of the Community in the office of the council secretary.
- (2) Upon majority vote by the Community Council and publication in the Community's newspaper, the Community Council may amend the December 9, 2009,

approved Community liquor licensing area corridor and any future amendments thereof.

(Code 1981, § 14-7(a); Code 2012, § 14-7(b); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-366-2010, § 14-7(b), 7-14-2010; Ord. No. SRO-402-2012, § 14-7(b), 5-30-2012)

**Sec. 14-55. Premises that may be licensed.**

Licenses may only be issued for premises listed and defined as follows:

- (1) *Hotel-motel license.*
  - a. The director may issue a hotel-motel license to any hotel or motel that operates either a restaurant or a bar in the hotel or motel, provided that the applicant is otherwise qualified to hold a license.
  - b. The holder of a hotel-motel license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this section, the term "licensed premises" includes all minibars located within guestrooms, accommodations, public bar rooms, outdoor patio enclosures, outdoor pool areas, public restaurant rooms, facilities, areas, and private banquet or meeting rooms located within the hotel-motel premises or connected to the hotel-motel premises.



(2) *Casino license.*

- a. The director may issue a casino license to any casino authorized to operate as a casino by the Community.
- b. The holder of a casino license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this section, the term "licensed premises" includes all public bar rooms, gaming areas, private banquet or meeting rooms, restaurants, other food service facilities, outdoor patio enclosures, and land contiguous to the casino facility.

(3) *Golf course clubhouse license.*

- a. The director may issue a golf course clubhouse license to any golf course clubhouse.
- b. The holder of a golf course clubhouse license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises and only to patrons of the golf course facility. For the purpose of this section, the term "licensed premises" includes all restaurants and other food service facilities, private banquet or meeting rooms, bar rooms, outdoor patio enclosures, lounge facilities within the golf course clubhouse, and golf course enclosure. For purposes of this section, the term "golf course clubhouse" means a clubhouse located on a golf course. For purposes of this section, the term "golf course enclosure" means substantially undeveloped land, including amenities such as landscaping, irrigation systems, paths and golf greens and tees, that may be used for golfing or golfing practice by the public or by members and guests of a private club.

(4) *Restaurant license.*

- a. The director may issue a restaurant license to any restaurant that is reg-

ularly open for the serving of food to guests for compensation and that has suitable kitchen facilities connected with the restaurant for keeping, cooking and preparing foods required for ordinary meals.

- b. The restaurant shall be regularly open for the serving of food to guests for compensation and is an establishment which derives at least 40 percent of its gross revenue from the sale of food (which includes nonalcoholic beverages), including sales of food for consumption off the licensed premises if the amount of these sales included in the calculation of gross revenue from the sale of food does not exceed 15 percent of all gross revenue for the restaurant. For purposes of meeting the gross revenue requirements, a restaurant license applicant may request that the license premises include less than the entire establishment in which the applicant operates its business; provided that alcoholic beverages are restricted to the licensed premises.
- c. The holder of a restaurant license may sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this subsection, the term "licensed premises" may include rooms, areas or locations in which the restaurant normally sells or serves alcoholic beverages or spirituous liquors pursuant to regular operating procedures and practices and that are contiguous to the restaurant or a public patio enclosure. For the purposes of this subsection, a restaurant licensee must submit proof of tenancy or permission from the landlord for all property to be included in the licensed premises.
- d. The holder of a restaurant license shall be required upon request of the office to submit an audit of the records for the premises to demon-

strate compliance with subsection (4)b of this section. An establishment that averages at least 40 percent of its gross revenue from the sale of food during a 12-month audit period shall be deemed to comply with the gross revenue requirements of subsection (4)b of this section. The 12-month audit period shall fall within the 16 months immediately preceding the beginning of the audit. The office shall not require an establishment to submit to such an audit more than once a year after the initial 12 months of operation. When conducting an audit, the office shall use generally accepted auditing standards.

1. If the audit reveals that the licensee did not meet the definition of a restaurant as prescribed in subsection (4)b of this section and the percentage of food sales was less than 37 percent, then the office shall deem the license to have been revoked or the office may recommend that the licensee be granted an additional 12-month period to attempt to increase their food percentage to at least 37 percent.
2. If the audit reveals that the licensee did not meet the definition of a restaurant as prescribed in subsection (4)b of this section and the percentage of food sales was more than 37 percent and less than 40 percent, then the office shall allow the licensee to continue to operate under the restaurant license for a period of one year, during which the licensee shall attempt to increase the food percentage to at least 40 percent. If the licensee does not increase the percentage of food sales to at least 40 percent,

then the license issued pursuant to this article shall be revoked or the office may recommend that the licensee be granted an additional 12-month period to attempt to increase their food percentage to at least 40 percent.

(5) *Government license.*

- a. The director may issue a government license to any Community governmental entity or commercial enterprise upon application by the governing board of that Community governmental or commercial enterprise entity for the sales of alcoholic beverages for consumption.
- b. The holder of a government license may sell and serve alcoholic beverages solely for consumption on the licensed premises. The holder of the government license may sell and serve alcoholic beverages for consumption on the premises for which the license is issued, including a stadium.
- c. Any agreement entered into by a Community governmental entity to a concessionaire to sell or serve alcoholic beverages pursuant to this subsection shall contain the following provisions:
  1. A provision that fully indemnifies and holds harmless the Community and any of its agencies, boards, commissions, officers, and employees against any liability for loss or damage incurred either on or off Community property and resulting from the negligent serving of alcoholic beverages by the concessionaire or the concessionaire's agents or employees.
  2. A provision that either posts a surety bond in favor of the Community in an amount determined by the Community to be sufficient to indemnify the Com-

munity against the potential liability or that names the Community as an additional insured in a liability policy that provides sufficient coverage to indemnify the Community as determined by the Community.

(6) *Business ancillary license and/or special event license.*

a. The director may issue a business ancillary license to a business that serves alcoholic beverages as part of a cooking demonstration or cooking class; or a school offering degree programs in the culinary arts.

1. A business ancillary license shall be issued pursuant to the process prescribed in sections 14-56 through 14-68; provided that certain provisions, as determined by the director (in a written form), may not be applicable as a business ancillary licensee is generally considered a social host and not engaged in the selling of alcoholic beverages.
2. A business ancillary license shall only be available to a business that is not in the primary business of selling food or alcohol.
3. The holder of a business ancillary license is authorized to serve alcoholic beverages solely for consumption on the licensed premises and only to guests of the business or in the case of a school, to students enrolled at the school.
4. The holder of a business ancillary license shall not be authorized to sell alcoholic beverages separately or by the drink.

b. The director may issue a special event license for a business for the purpose of holding a bona fide business-related networking function for its customers, clients, employees or busi-

ness partners; or for the purpose of a bona fide charitable, civic, or religious organization to hold a special fundraising event; provided that any license issued as a special event license meets the following conditions:

1. A special event license is only issued for one day for a duration that shall not exceed eight hours;
  2. A special event license may only be issued no more than once a year and shall only be issued to an applicant that has obtained a special event license pursuant to the requirements of the State of Arizona; and
  3. A special event license shall only be available to a business that is not in the primary business of selling food or alcohol.
- c. A person applying for a special event license must make application to the office at least 45 days prior to the special event. The director in his or her administrative discretion, without a public hearing, shall consider the following factors in determining whether to approve or disapprove the special event license:
1. Whether the event will be open to the public;
  2. The criminal history of the applicant;
  3. The nature of the event;
  4. The security measures taken by the applicant;
  5. The type of alcoholic beverages to be sold at the event;
  6. How the alcoholic beverages will be served at the event;
  7. Whether the applicant, within the past three years, has held an event that created a Community disturbance or whether

the event site has generated Community disturbance complaints;

8. The potential for noise, traffic, lack of parking, and other related concerns;
9. The length of the event;
10. The sanitary facilities available to the participants;
11. The anticipated number of participants at the event;
12. The availability of the Community's police and fire departments to provide coverage at the event (if deemed reasonably necessary by the Community);
13. Proof of adequate insurance (as deemed reasonably necessary by the director) by the applicant for this event; and
14. The nature of the sound amplification of the event.

d. In addition to the special event license issued pursuant to this article, the applicant must obtain a special use permit from the Community, and pay for any associated costs, including any overtime costs, for police, fire, or other Community departments whose presence is determined necessary, by the Community, for the special event.

(Code 1981, § 14-7(b); Code 2012, § 14-7(b); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-366-2010, § 14-7(b), 7-14-2010; Ord. No. SRO-402-2012, § 14-7(b), 5-30-2012)

**Sec. 14-56. Applicant and licensee qualifications.**

(a) Every alcoholic beverage licensee shall be a citizen of the United States.

(b) The office shall require an applicant and may require any controlling person to furnish background information and to submit a full set of fingerprints to the office.

(c) Each applicant or licensee shall designate a person who shall be responsible for managing the premises. The manager shall be a natural person and shall meet all the requirements for licensure pursuant to this article.

(d) No license shall be issued to any person who, within one year before application, has had a license revoked in any jurisdiction.

(e) No license shall be issued to or renewed for any person who, within five years before the application, has been convicted of a felony in any jurisdiction; provided that for a conviction of a corporation, LLC or partnership to serve as a reason for denial, conduct which constitutes the offense and was the basis for a felony conviction must have been engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the corporation, LLC or partnership or by a high managerial agent acting within the scope of employment. For purposes of this subsection, the term "high managerial agent" means an officer, partner or member of a corporation, LLC or partnership in a position of comparable authority with respect to the formulation of company policy.

(f) No corporation shall be issued a license or a renewal of that license unless on file with the office is a list of all of the corporation's officers and directors and any stockholders who owns ten percent or more of the corporation. The office shall not issue or renew a license for any person who at the request of the director fails to provide the office with complete financial disclosure statements indicating all financial holdings of any controlling person. Provided that, publicly traded companies are exempt from the requirements set forth in this subsection.

(g) An alcoholic beverage license shall be issued only after a satisfactory showing of the capability, qualifications and reliability of the applicant; and that the public convenience requires and that the best interest of the Community will be substantially served by the issuance of the license.

(h) The license shall be to sell or deal in alcoholic beverages only at the place and in the manner provided in the license. A separate license shall be issued for each specific premises.

(i) All applications for an original license, the renewal of a license or the transfer of a license pursuant to this article shall be filed with and determined by the director, unless an appeal is filed and then the hearing officer will approve or disapprove of such license.

(j) A person who assigns, surrenders, transfers or sells control of a business which has an alcoholic beverage license shall notify the office within 15 business days after the assignment, surrender, transfer or sale. An alcoholic beverage license shall not be leased or subleased. A concessional agreement is not considered a lease or a sublease in violation of this article.

(k) If a person other than those persons originally licensed acquires control of a license or licensee, the person shall file notice of the acquisition with the office within 15 business days after such acquisition of control. All officers, directors or other controlling persons shall meet the qualifications for licensure as prescribed in this article. On the request of the licensee, the director shall conduct a preinvestigation prior to the assignment, sale or transfer of control of a license or licensee; the reasonable costs of such investigation shall be borne by the applicant. The preinvestigation shall determine whether the qualifications for licensure as prescribed by this article are met.

(Code 1981, § 14-8(a); Code 2012, § 14-8(a); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-8(a), 5-30-2012)

#### **Sec. 14-57. Application.**

A person desiring a license to sell or deal alcoholic beverages shall make application to the office on a form prescribed by the office.

(Code 1981, § 14-8(b); Code 2012, § 14-8(b); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-8(b), 5-30-2012)

#### **Sec. 14-58. Notice.**

Within 30 days of receipt of the license application, the office shall hold a hearing on such application. Upon receipt of such application, the office shall post a copy of the completed application in a conspicuous place on the front of the

premises where the business is proposed to be conducted and in this posting, the notice shall contain the following provisions:

"A hearing on a liquor license application shall be held at the following date, time and location \_\_\_\_\_ [insert date, time and address]. Any person owning or leasing property within a one-mile radius may contact the office in writing to register as a protestor. To request information regarding procedures before the office and notice of any office hearings regarding this application, contact the office at \_\_\_\_\_ [insert office contact information]."

(Code 1981, § 14-8(c); Code 2012, § 14-8(c); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-8(c), 5-30-2012)

#### **Sec. 14-59. Applicant's burden.**

Licenses will be issued by the director after a hearing and upon a determination by the director that the following criteria have been met by a satisfactory showing by the applicant that:

- (1) The public convenience requires the issuance of the license; and
- (2) The best interests of the Community will be substantially served by the issuance of the license.

(Code 1981, § 14-8(d); Code 2012, § 14-8(d); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-8(d), 5-30-2012)

#### **Sec. 14-60. Evidence.**

Evidence that may be considered when determining whether the public convenience requires and the best interest of the Community is substantially served by the issuance of a license are the following:

- (1) Petitions and testimony from persons in favor of or opposed to the issuance of a license who reside in the Community, or own or lease property located within the Community that is in close proximity to the proposed premises.
- (2) The number and series of licenses in close proximity.

- (3) Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.
- (4) The residential and commercial population of the Community and its likelihood of increasing, decreasing or remaining static.
- (5) The Community's residential and commercial population density in close proximity.
- (6) Evidence concerning the nature of the proposed business, its potential market, and its likely customers.
- (7) Effect on vehicular traffic in close proximity.
- (8) The compatibility of the proposed business with other activity in close proximity.
- (9) The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.
- (10) The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity at least 20 days before the hearing.
- (11) Comparison of the hours of operation of the proposed premises to the existing businesses in close proximity.
- (12) Proximity to licensed child care facilities and K through 12 schools.

(Code 1981, § 14-8(e); Code 2012, § 14-8(e); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-8(e), 5-30-2012)

**Sec. 14-61. Inappropriate purpose.**

In order to prevent the proliferation of licenses, the office may deny a license to an applicant after determining that the applicant's business is inappropriate for the sale of spirituous liquor. An inappropriate applicant or business is one that cannot clearly demonstrate that the sale of spiri-

tuous liquor is directly connected to its primary purpose and that the sale of liquor is not merely incidental to its primary purpose.

(Code 1981, § 14-8(f); Code 2012, § 14-8(f); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-8(f), 5-30-2012)

**Sec. 14-62. Public hearing.**

The director shall determine after a hearing has been held whether and under what conditions a license shall be issued.

- (1) The hearing shall be announced by notice in the Community newspaper.
- (2) Notice shall be given no less than ten business days prior to such hearing.
- (3) The hearing shall be conducted by the director in an informal manner with rules adopted pursuant to this article calculated to ensure full disclosure of all relevant information.
- (4) Professional attorneys may be permitted to represent parties at any administrative hearing before the office, the director or the hearing officer pursuant to this article.
- (5) The director shall hear all relevant issues and, within 30 days after the hearing is concluded, shall issue a written decision.
- (6) The decision will contain the findings of fact relied on by the director for the decision as well as the decision.
- (7) The applicant shall be provided notice of the hearing via standard and certified mail.
- (8) The director shall enter an order recommending approval or disapproval of the license within 60 days after the filing of the application.

(Code 1981, § 14-8(g); Code 2012, § 14-8(g); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-8(g), 5-30-2012)

**Sec. 14-63. Appeals.**

A decision of the director may be appealed by any aggrieved party to the Community manager. The Community manager shall appoint a hearing

officer to hear the appeal. The hearing officer shall be a member in good standing of the Arizona state bar and shall have previous experience serving in a judicial capacity.

(1) *Appeal process.* Appeals of any decision of the director shall follow this process:

- a. A notice of appeal shall be filed with the Community manager within 15 business days after notice of the decision by the director.
- b. The notice of appeal shall state all the grounds for appeal relied on by the appellant.
- c. The appellee may file a short written response to the grounds for appeal within 15 business days after the notice of appeal is filed.
- d. The notice of appeal and response shall be mailed to the opposing party within two business days after it was filed.
- e. If the appellant is the applicant for the license, the appellee shall in all cases be the director. If the appellant is a person who filed a notice of appearance or the Community, the appellee shall in all cases be the applicant.
- f. In the event there is more than one notice of appeal filed, the appeals shall be consolidated and only one response shall be filed to the consolidated appeals.

(2) *Status of initial determination.* The decision of the director shall be suspended until a final determination of the appeal is issued by the hearing officer.

(3) *Grounds for appeal.*

- a. An aggrieved party may appeal any final decision of the director regarding applications or licenses based on a contention that the decision was any of the following:
  1. Founded on or contained errors of law;

2. Unsupported by any competent evidence as disclosed by the record;
3. Materially affected by unlawful procedures;
4. Based on a violation of any Community constitutional provision; or
5. Arbitrary or capricious.

b. The hearing officer shall conduct a hearing and may accept any relevant and material evidence and testimony.

c. An official record of the hearing shall be prepared. Persons, at their own costs, may request that the hearing record be transcribed and may be provided a copy of the transcribed record.

d. The hearing officer shall determine whether the decision is supported by the findings of fact and the law.

e. The hearing officer may affirm, reverse or modify any decision issued by the director.

f. The hearing officer's decision shall be final and not subject to rehearing, review or appeal.

(Code 1981, § 14-8(h); Code 2012, § 14-8(h); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-8(h), 5-30-2012)

#### **Sec. 14-64. Terms; fees.**

Licenses shall be issued for a period of one year and are renewable on application to the office which will renew upon payment of the appropriate fee.

- (1) A licensee who fails to renew the license on or before the due date shall pay a penalty of \$500.00.
- (2) If the due date falls on a Saturday, Sunday or a legal holiday, the renewal shall be considered timely if it is received by the office on the next business day.

- (3) A licensee who fails to renew the license on or before the due date may not sell, purchase, or otherwise deal in alcoholic beverages until the license is renewed.
- (4) A license that is not renewed within 60 days after its due date is deemed terminated. The director may renew the terminated license if good cause is shown by the licensee as to why the license was not renewed on its due date or the 60 days following the due date.

(5) Issuance fees for an original license and the renewal thereof shall be the following (excluding applicable surcharges):

	<i>Licenses</i>	<i>Original</i>	<i>Renewal</i>
a.	Hotel-motel	\$2,000.00	\$500.00
b.	Golf course	2,000.00	500.00
c.	Casino	2,500.00	750.00
d.	Restaurant	2,000.00	500.00
e.	Government	200.00	100.00
f.	Business ancillary	200.00	100.00
g.	Special event	200.00	

- (6) The office may assess a surcharge on the annual renewals of licenses to be used to help defray the costs of an auditor and support staff to review compliance of the requirements of the licensees.
- (7) The office may assess a surcharge to assist in the costs of enforcement programs that respond to complaints filed under this article.
- (8) For purposes of this article only, licensee shall keep records of licensee's business activity and all persons employed at the licensed premises in a manner and location and for such duration as prescribed by the director for a period of at least two years. Business activity shall include invoices, records, bills or other papers and/or documents relating to the purchase, sale and delivery of alcoholic beverages, and in the case of a restaurant or hotel-motel licensee, such documentation shall also be kept for the purchase, sale and delivery of food.
- (9) Licenses issued under this article are non-transferable without the prior written approval of the director after the application process has been completed.
  - a. The transfer fee of a license from one person to another person is \$300.00 (excluding an application fee).
  - b. The transfer fee of license from one location to another location shall be \$100.00 (excluding an application fee).
  - c. The office may issue an interim permit to the transferee of a transferable license pursuant to regulations established by the office.

(Code 1981, § 14-9(a); Code 2012, § 14-9(a); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-9(a), 5-30-2012; Ord. No. SRO-410-2013, § 14-9(a), 12-5-2012)

**Sec. 14-65. Beverage restrictions.**

(a) Licenses may only be issued for premises operated under the following classifications as defined herein; and such licenses may be restricted to the sale of:

- (1) All alcoholic beverages;

- (2) Only beer;
- (3) Only wine; or
- (4) Only beer and wine.

(b) Licenses may be restricted based on the type of license sought by the applicant. (Code 1981, § 14-9(b); Code 2012, § 14-9(b); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-9(b), 5-30-2012; Ord. No. SRO-410-2013, § 14-9(b), 12-5-2012)

**Sec. 14-66. Reasons for revocation, suspension; grounds not to renew.**

After notice and a hearing, the director may revoke, suspend or refuse to renew any license issued pursuant to this article for the following reasons:

- (1) There occurs on the licensed premises repeated acts of violence or disorderly conduct.
- (2) The licensee fails to satisfactorily maintain the capability, qualifications and reliability requirements of an applicant for a license prescribed pursuant to this article.
- (3) The licensee or controlling person knowingly files with the office an application or other document which contains material information which is false or misleading or while under oath knowingly gives testimony in an investigation or other proceeding under this article which is false or misleading.
- (4) The licensee or the controlling person is habitually intoxicated while on the premises.
- (5) The licensed business is delinquent for more than 90 days in the payment of taxes, penalties or interest to the Community.
- (6) The licensee or the controlling person obtains, assigns, transfers or sells an alcoholic beverage license in a manner that is not compliant with this article and article III of this chapter.
- (7) The licensee fails to keep for two years and make available to the office upon reasonable request all invoices, records, bills or other papers and/or documents relating to the purchase, sale and delivery of alcoholic beverages, and in the case of a restaurant or hotel-motel license, all invoices, records, bills or other papers and/or documents relating to the purchase, sale and delivery of food.
- (8) The licensee or controlling person violates or fails to comply with this article and article III of this chapter, any rule or regulation adopted pursuant to this chapter or any alcoholic beverage law of the Community.
- (9) The licensee or an employee of a licensee fails to take reasonable steps to protect the safety of a customer of the licensee entering, leaving or remaining on the licensed premises when the licensee knew or reasonably should have known of the danger to such person, or the licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise prevent or break up an act of violence or an altercation occurring on the licensed premises or immediately adjacent to the premises when the licensee knew or reasonably should have known of such acts of violence or altercations.
- (10) The licensee or controlling person lacks good moral character.
- (11) The licensee or controlling person knowingly associates with a person who has engaged in racketeering or has been convicted of a felony, and the association is of such a nature as to create a reasonable risk that the licensee will fail to conform to the requirements of this article or of any Community law.
- (12) The licensee or controlling person is convicted of a felony provided that for a conviction of a corporation, LLC or partnership to serve as a reason for any action by the office, conduct which constitutes the offense and was the basis for the felony conviction must have been engaged

in, authorized, solicited, commanded or recklessly tolerated by the directors of the corporation, LLC or partnership or by a high managerial agent acting within the scope of employment. For purposes of this subsection, the term "high managerial agent" means an officer, partner or member of a corporation, LLC or partnership or any other agent of the corporation, LLC or partnership in a position of comparable authority with respect to the formulation of company policy.

(Code 1981, § 14-9(c); Code 2012, § 14-9(c); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-9(c), 5-30-2012; Ord. No. SRO-410-2013, § 14-9(c), 12-5-2012)

**Sec. 14-67. Suspension; revocation; refusal to renew; sanctions.**

(a) The director may suspend, revoke or refuse to issue, transfer or renew a license based solely on the unrelated conduct or fitness of any officer, director, managing agent or other controlling person if that officer, director, managing agent or controlling person retains any interest in or control of the license after 60 days following a written notice to the licensee.

(b) The director may refuse to transfer any license or issue a new license at the same location if the director has filed a complaint against a licensee or the location which has not been resolved that alleges a violation of any of the grounds identified in this article and article III of this chapter until such time as the complaint has been finally adjudicated.

(c) The director may cause a complaint and notice of hearing to be directed to the licensee setting forth the violations alleged against the licensee.

(Code 1981, § 14-9(d); Code 2012, § 14-9(d); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-9(d), 5-30-2012; Ord. No. SRO-410-2013, § 14-9(d), 12-5-2012)

**Sec. 14-68. Response; appeal.**

(a) Upon receipt of a complaint, the licensee shall have ten business days to respond to the allegations by filing a written response to the director.

(b) Failure by the licensee to respond to the complaint within ten business days shall be considered an admission by the licensee of the allegations. The director may then vacate a hearing and impose appropriate sanctions on the licensee.

(c) In lieu of or in addition to any suspension, revocation or refusal to renew a license, the director may impose a civil penalty of not less than \$200.00 and no more than \$3,000.00 for each violation and/or require the licensee and its employees to attend certain training.

(d) The licensee may appeal the decision by the director to fine, revoke or not renew their license to the Community manager who will appoint a hearing officer pursuant to the requirements of this article. The hearing officer may affirm, modify or reverse the decision of the director to impose the civil penalty.

(Code 1981, § 14-9(e)—(h); Code 2012, § 14-9(e)—(h); Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-9(e)—(h), 5-30-2012; Ord. No. SRO-410-2013, § 14-9(e)—(h), 12-5-2012)

**Sec. 14-69. Injunction.**

If the office or the director has reasonable grounds to believe that a person owns, operates, leases, manages or is controlling a business establishment or business premises that is not properly licensed pursuant to this article, then the office or the director may apply to the Community court for a temporary restraining order or other injunctive relief prohibiting the specific acts complained of by the office or the director.

(Code 1981, § 14-10; Code 2012, § 14-10; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-10, 5-30-2012)

**Sec. 14-70. Amendment.**

This chapter may be amended by a majority vote of the Community Council or by the Community initiative or referendum process.

(Code 1981, § 14-11; Code 2012, § 14-11; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-11, 5-30-2012)

**Sec. 14-71. Coordination with the Community police department.**

In order to effectively enforce the regulatory and law enforcement provisions of this chapter, any report of violence or disorderly conduct occurring at a licensed premises that is received by either the office or the Community police department shall be immediately reported by the receiving department to the other department. In addition to the reporting of the incident, the department receiving the report of violence or disorderly conduct shall also share any relevant information with the other department unless the sharing of such information is prohibited by Community law or policy.

(Ord. No. SRO-410-2013, § 14-12, 12-5-2012)

**Secs. 14-72—14-100. Reserved.**

**ARTICLE III. UNLAWFUL ACTS**

**Sec. 14-101. Chapter violations.**

(a) *Civil sanctions and penalties.* A person who violates any provision of this chapter may have their license revoked, suspended or may be assessed other civil sanctions.

(b) *Criminal penalties.* Persons who come within the criminal jurisdiction of the Community, and are guilty of violations of this chapter, are subject to criminal penalties and upon conviction shall be sentenced to imprisonment for a period not to exceed six months or to a fine not to exceed \$5,000.00 or both such imprisonment and fine, with costs.

(Code 1981, § 14-17; Code 2012, § 14-17; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-402-2012, § 14-17, 5-30-2012)

**Sec. 14-102. Unlawful acts.**

(a) It shall be unlawful for any person to buy, sell or distribute alcoholic beverages in any manner not allowed by this chapter.

(b) It shall be unlawful to employ a person under the age of 19 years in any capacity connected with the handling of alcoholic beverages.

(c) It shall be unlawful for a licensee or other person to give, sell or cause to be sold or otherwise distribute alcoholic beverages to a person under the age of 21 years.

(1) If a licensee, an employee of a licensee or any other person questions or has reason to question that a person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of spirituous liquor is under the legal drinking age, the licensee, employee of the licensee or other person shall do the following:

- a. Demand identification from the person.
- b. Examine the identification to determine that the identification reasonably appears to be a valid, unaltered identification that has not been defaced.
- c. Examine the photograph in the identification and determine that the person reasonably appears to be the same person in the identification.
- d. Determine that the date of birth in the identification indicates the person is not under the legal drinking age.

(2) If a licensee or an employee of a licensee who follows the procedures prescribed above in subsections (c)(1)a through d of this section, records and retains a record of the person's identification on this particular visit, the licensee or employee of the licensee shall not be in violation of subsections (c) through (e) of this section.

(3) Proof that a licensee or employee followed the entire procedure proscribed above in subsections (c)(1)a through d of this section, but did not record and retain a record of the identification is an affirmative defense to a violation of this subsections (c) through (e) of this section.

(4) A licensee or employee of a licensee who has not recorded and retained a record of the identification prescribed by subsections (c)(1)a through d of this section, is

presumed not to have followed any of the elements of subsections (c)(1)a through d of this section.

(d) It shall be unlawful for a person under the age of 21 years to buy, possess, or consume alcoholic beverages.

(e) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit any person on or about the licensed premises to give or furnish alcoholic beverages to any person under the age of 21 or knowingly permit any person under the age of 21 to have in the person's possession alcoholic beverages on the licensed premises.

(f) It shall be unlawful for a licensee or an employee of the licensee to consume alcoholic beverages on or about the licensed premises during such periods as when such person is working at the licensed premises, except that:

- (1) An employee of an on-sale retailer, during the employee's working hours in connection with the employment, while the employee is not engaged in waiting on or serving customers, may taste samples of beer or wine not to exceed four ounces per day or distilled spirits not to exceed two ounces per day provided by an employee of a wholesaler or distributor who is present at the time of sampling.
- (2) An employee of an on-sale retailer, under the supervision of a manager as part of the employee's training and education, while not engaged in waiting on or serving customers may taste samples of distilled spirits not to exceed two ounces per educational session or beer/wine not to exceed four ounces per educational session, and provided that a licensee shall not have more than two educational sessions in any 30-day period.
- (3) An unpaid volunteer of a special event may purchase and consume alcoholic beverages while not engaged in waiting on or serving alcoholic beverages to customers at the special event. This subsection does not apply to unpaid volunteers whose responsibilities include verification of a

person's legal drinking age, security or the operation of any vehicle or heavy machinery.

(4) A licensee or employee of a licensee of a business ancillary licensee may consume alcoholic beverages as part of a meal prepared in connection with a cooking demonstration.

(g) It shall be unlawful for a licensee or an employee of the licensee to sell alcoholic beverages to a disorderly or obviously intoxicated person, or for a licensee or employee of a licensee to allow or permit a disorderly or obviously intoxicated person to remain on the premises except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for period of time of not to exceed 30 minutes after the state of obvious intoxication is known or should have been known to the licensee in order that a nonintoxicated person may transport the obviously intoxicated person from the premises. For purposes of this article, the term "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significant uncoordinated physical action or physical dysfunction that would have been obvious to a reasonable person.

(h) It shall be unlawful for a licensee or an employee of the licensee to sell alcoholic beverages that are in a broken package (all wine and alcoholic beverages shall have their seal broken by the licensee or their employee before serving such alcoholic beverage to the customer).

(i) It shall be unlawful for a licensee or an employee of the licensee to sell alcoholic beverages as an off-sale retailer.

(j) It shall be unlawful for a licensee or an employee of the licensee to sell alcoholic beverages within the Community without being also licensed by the State of Arizona to sell alcoholic beverages.

(k) It shall be unlawful for a licensee or an employee of the licensee to sell, dispose of, deliver or give alcoholic beverages to a person between the hours of 2:00 a.m. and 6:00 a.m.

(l) It shall be unlawful for a licensee or an employee of the licensee to allow a person to consume or possess alcoholic beverages on the premises between the hours of 2:30 a.m. and 6:00 a.m.

(m) It shall be unlawful for a person to consume alcoholic beverages in a public place, thoroughfare or gathering. Any licensee or employee of the licensee permitting violations of this section shall be subject to license revocation. This subsection does not apply to the sale of alcoholic beverages on the premises of and by an on-sale retailer.

(n) It shall be unlawful for an on-sale retailer or an employee of the licensee to allow a person under the age of 21 years to remain in an area on the licensed premises during those hours in which the primary use is the sale, dispensing or consumption of alcoholic beverages after the licensee, or the licensee's employees know or should have known that the person is under the age of 21 years. This subsection does not apply if the person under the legal drinking age is accompanied by a spouse, parent or legal guardian who is of legal drinking age, is an on-duty employee of the licensee, or to the area of the premises used primarily for the serving of food when food is being served.

(o) It shall be unlawful for an on-sale retailer or employee of the licensee to conduct drinking contests, to sell or deliver to a person an unlimited number of alcoholic beverages during any set period of time for a fixed price, to deliver more than 40 ounces of beer, one liter of wine or four ounces of distilled spirits in any alcoholic beverage drink to one person at one time for that person's consumption or to advertise any practice prohibited by this subsection.

(p) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises.

(q) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit prostitution or the solicitation of prostitution on the premises.

(r) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit unlawful gambling on the premises.

(s) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit trafficking or attempted trafficking in stolen property on the premises.

(t) It shall be unlawful for a licensee or an employee of the licensee to fail or refuse to make the licensed premises or records available for inspection and examination or so to comply with a lawful subpoena issued under this chapter.

(u) It shall be unlawful for any person other than a law enforcement officer, the licensee or an employee of the licensee acting with the permission of the licensee to be in the possession of a firearm while on the licensed premises of an on-sale retailer.

(v) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit a person in possession of a firearm, other than a law enforcement officer, the licensee or the employee of the licensee (acting with the permission of the licensee) to remain on the licensed premises or to serve, sell or furnish spirituous liquor to a person in possession of a firearm while on the licensed premises of an on-sale retailer.

(w) It shall be unlawful for a person under the age of 21 to drive or be in physical control of a motor vehicle while there is any alcoholic beverage in the person's body.

(x) It shall be unlawful for a licensee or employee of the licensee to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on election day.

(y) It shall be unlawful for a licensee to fail to report an occurrence of an act of violence, within three business days, to either the office or the Community police department.

(z) It shall be unlawful for any person to consume or be in the possession of any open container of alcoholic beverages while operating or while within the passenger compartment of a motor vehicle that is located on any roadways or public parking lots within the Community. This

subsection does not apply to a passenger on any bus, limousine or a passenger in the living quarters of a mobile home.

- (1) *Motor vehicle* means any vehicle that is driven or drawn by mechanical power and that is designated for primary use on public roadways.
- (2) *Open container* means any bottle, can, jar or other receptacle that contains alcoholic beverages and that has been opened, has had its seal broken or that the contents of which have been partially removed, except that it does not mean when a person removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from a licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.
- (3) *Passenger compartment* means the area of a motor vehicle designed for seating of the driver and other passengers of the vehicle. Passenger compartments include any unlocked glove compartment and any unlocked portable devices within the immediate reach of the driver or any passengers.

(aa) It shall be unlawful for any person over the age of 18 who lawfully exercises dominion and control within any private residence or the surrounding premises to knowingly permit any person under the age of 21 to possess or consume alcoholic beverages within the private residence or within the immediate surrounding premises.

(bb) It shall be unlawful for a licensee to sell alcoholic beverages in any manner not provided for by this chapter or any regulations issued pursuant to this chapter.  
(Code 1981, § 14-18; Code 2012, § 14-18; Ord. No. SRO-355-2010, 9-12-2009; Ord. No. SRO-366-2010, § 14-18, 7-14-2010; Ord. No. SRO-402-2012, § 14-18, 5-30-2012; Ord. No. SRO-410-2013, § 14-18, 12-5-2012; Ord. No. SRO-451-2015, § 14-102, 10-1-2014)

**Secs. 14-103—14-132. Reserved.**

**ARTICLE IV. POSSESSION IN A PUBLIC PLACE**

**Sec. 14-133. 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:

*Alcoholic beverages* means beer, wine or other spirituous liquor.

*Contraband* means:

- (1) Marijuana, alcoholic beverages, and other drugs, possession of which is in violation of the ordinances of the Community;
- (2) Implements used for the smoking or administration of marijuana or other drugs, possession of which is in violation of the ordinances of the Community; and
- (3) All deadly weapons and dangerous instruments, including firearms.

*Public place* means any place not a private residence and any place not licensed for the possession of alcoholic beverages.

(Code 1976, § 11-21; Code 1981, § 14-21; Code 2012, § 14-21; Ord. No. SRO-31-74, 5-29-1974; SRO-184-95, 10-12-1994; Ord. No. SRO-255-99, 9-1-1999; Ord. No. SRO-402-2012, § 14-21, 5-30-2012)

**Sec. 14-134. Illegality of possession, confiscation.**

(a) It shall be illegal for any person to possess alcoholic beverages in any public place within the exterior boundaries of the Community unless that person is acting pursuant to this article in the confiscation of such alcoholic beverages.

(b) It shall be illegal for any person to possess contraband within the exterior boundaries of the Community unless that person is acting pursuant to this article in the confiscation of such contraband.

(c) The Community police department shall be charged with the responsibility of confiscating any contraband or alcoholic beverages within the perimeter of the Community.

(Code 1976, § 11.22; Code 1981, § 14-22; Code 2012, § 14-22; Ord. No. SRO-31-74, 5-29-1974; Ord. No. SRO-402-2012, § 14-22, 5-30-2012)

**Sec. 14-135. Application for return of confiscated material.**

(a) At the time any contraband or alcoholic beverages are confiscated from any person within the exterior boundaries of the Community, the law officer confiscating such contraband or alcoholic beverages shall give written notice to the person from whom the contraband or alcoholic beverages have been confiscated. That person may within ten days of the time of confiscation apply to the Community court for an order requiring the Community police department to release the items and things confiscated.

(b) Upon application from any person from whom contraband or alcoholic beverages have been confiscated, the Community court shall set a date for a hearing and shall give notice of such hearing to the Community police department as well as the person making application therefor. Such hearing shall be set no later than ten calendar days from receipt of the application. If it has been determined after a hearing by the judge of the Community court that the items and things confiscated did not constitute contraband or alcoholic beverages within the meaning of this article, or if the items and things confiscated were alcoholic beverages but were confiscated in a place other than a public place, the court shall within five days from the date of the hearing order the Community police department to return such items or things no later than one day after entry of the court's order.

(c) If no application for hearing is made within ten days of the date of confiscation, or if upon hearing it is the judgment of the court that the items or things confiscated are contraband or alcoholic beverages, then the Community police department shall dispose of the contraband or alcoholic beverages by any legal means.

(Code 1976, § 11.24(a)—(c); Code 1981, § 14-23; Code 2012, § 14-23; Ord. No. SRO-31-74, 5-29-1974; Ord. No. SRO-184-95, 10-12-1994; Ord. No. SRO-402-2012, § 14-23, 5-30-2012)

**Sec. 14-136. Civil action for wrongful confiscations; time and monetary limitations.**

Any person from whom contraband or alcoholic beverages have been confiscated, who after application for return of the same, receives a court order allowing for return of the items or things confiscated, may bring a civil action against the officers confiscating such items or things only in the event that the confiscation was done maliciously and with prior intent to injure the person from whom the items or things were confiscated. No such action may be brought more than one year after the date of the alleged act. No judgment awarded by the Community court in such a civil action shall exceed the sum of \$20.00.

(Code 1976, § 11.24; Code 1981, § 14-24; Code 2012, § 14-24; Ord. No. SRO-31-74, 5-29-1974; Ord. No. SRO-402-2012, § 14-24, 5-30-2012)

**Secs. 14-137—14-155. Reserved.**

**ARTICLE V. POSSESSION AND USE OF NARCOTICS, HALLUCINOGENS OR DANGEROUS DRUGS; SEIZURE OF VEHICLES**

**Sec. 14-156. Possession or use of narcotics, hallucinogens, and other dangerous drugs.**

(a) *Prohibited generally.* It shall be unlawful for any person to possess, have under his or her control, dispense, use, transport, carry, sell, give away, prepare for sale, furnish, administer, or offer to sell, furnish, administer or give away any narcotic, hallucinatory or other dangerous drug except as pursuant to this section.

(b) *Inhalation prohibited.* It shall be unlawful for any person to inhale or sniff any substance for the purpose of becoming intoxicated.

(c) *Prescription drugs exempt.* This section shall not apply to persons who possess, have under their control, use, transport or carry narcotics, hallucinogens and other dangerous drugs pursuant to a valid prescription issued to that person by a licensed physician, osteopath, dentist or veterinarian.

(d) *Certain professionals exempt.* This section shall not apply to manufacturers, wholesalers, apothecaries, physicians, osteopaths, dentists or veterinarians who have under their control, dispense, use, transport, sell, prepare for sale, furnish, administer, or offer to do the same any drug regulated by this section, so long as such acts are done without violation of any law of the United States.

(e) *Narcotics.* Narcotics regulated by this section include but are not limited to opium and opiates, including but not limited to heroin, methadone, morphine and codeine; coca leaves and their derivatives, including but not limited to cocaine; and those narcotics listed in schedules I, II, III, IV and V of 21 USCA 812.

(f) *Hallucinogens.* Hallucinogens regulated by this section include but are not limited to mescal buttons, peyote buttons, marijuana, dimethyltryptamine (DMT) lysergic acid diethylamide (LSD), 4-methyl-2, 5-dimethoxyamphetamine (STP), and those hallucinogens listed in Schedules I, II, III, IV and V of 21 USCA 812.

(g) *Dangerous drugs.* Dangerous drugs regulated by this section include the drugs prohibited in 21 USCA 812, not included within subsections (e) and (f) of this section.

(h) *Certain religious ceremonies exempt.* This section does not apply to peyote used in bona fide Native American Church religious ceremonies, provided that such acts are done without violation of any law of the United States.

(i) *Penalties.* Any person who violates any subsection of this section within the boundaries of the Salt River Pima-Maricopa Reservation shall be subject to forfeiture of the vehicle or ordered to pay a civil fine of not more than \$5,000.00, or both.

(Code 1981, § 14-31; Code 2012, § 14-31; Ord. No. SRO-330-08, 4-23-2008; Ord. No. SRO-402-2012, § 14-31, 5-30-2012)

#### **Sec. 14-157. Seizure of vehicles used in drug violations.**

(a) *Forfeiture of interest.* The interest of the legal owner or owners of record of any vehicle used to transport unlawfully a narcotic drug,

hallucinogen, or dangerous drug as defined by sections 14-156(e), (f) and (g), or in which a narcotic drug, hallucinogen, or dangerous drug is unlawfully kept, deposited or concealed, or in which a narcotic drug, hallucinogen, or dangerous drug is unlawfully possessed by an occupant, shall be forfeited to the Community.

(b) *Police officer to seize vehicle.* Any Community peace officer making or attempting to make an arrest, or to issue a citation, shall seize any vehicle used to transport unlawfully a narcotic drug, hallucinogen, or dangerous drug as defined by sections 14-156(e), (f) and (g), or in which such drugs are unlawfully kept, deposited or concealed, or unlawfully possessed by an occupant and shall immediately deliver the vehicle to the Community police chief, to be held as evidence until forfeiture is declared or a release ordered.

(c) *Notice of seizure.* A police officer who seizes a vehicle under the provisions of this section shall notify the office of the general counsel of the vehicle seizure and the office of the general counsel shall file a notice within five business days of seizure and intention to institute forfeiture proceedings with the clerk of the Community court and the clerk shall forthwith serve notice thereof on all owners of the vehicle by one of the following methods:

- (1) Upon an owner or claimant whose right, title or interest is of record in the division of motor vehicles of the state in which the automobile is licensed, by mailing a copy of the notice by registered mail to the address on the records of the division of motor vehicles of said state.
- (2) Upon an owner or claimant whose name and address are known, by mailing a copy of the notice by registered mail to his or her last known address.
- (3) Upon an owner or claimant, whose address is unknown but who is believed to have an interest in the vehicle, by publication in one issue of a newspaper of general circulation in Maricopa County, Arizona.

(d) *Owner's or claimant's answer to notice.* Within 20 days after the mailing or publication of a notice of seizure, as provided by subsection (c) of this section, the owner of the seized vehicle may file a verified answer to the allegations of the use of the vehicle contained in the notice of seizure and of the intended forfeiture proceedings. No extension of time shall be granted for the purpose of filing the answer.

(e) *Authority to compromise.*

- (1) The Community shall make due provisions and take necessary action to protect the rights of innocent or nonliable persons, as is consistent with this article.
- (2) At any time, the Community is authorized to grant requests for mitigation or remission of forfeiture and restore forfeited property to innocent or guiltless parties.
- (3) If the Community grants such a request, it shall inform the court of the settlement and the court shall issue an order consistent with the action taken by the Community.

(f) *Procedure for hearing.*

- (1) If a verified answer to the notice given as prescribed by this section is not filed within 20 days after the mailing or publication thereof, the court shall hold an evidentiary hearing no later than 30 days after the answer is due to hear evidence upon the claim of unlawful use of the vehicle, and upon motion, shall order the vehicle forfeited to the Community. This hearing may be continued once for not more than 30 days.
- (2) If a verified answer is filed, the forfeiture hearing shall be set for a day not less than 15 days or more than 30 days after the answer is filed and the proceedings shall have priority over other civil cases. Upon the request of the owner or claimant, the court shall continue the time for trial for the period of time requested by the owner or claimant, but not to exceed 30 days unless justice requires a longer continuance. The Community may request a con-

tinuance of a trial date which may be granted by the court only if justice requires and such continuance shall not exceed 15 days. Notice of the hearing shall be given by regular mail to the address provided in the answer.

- (3) At the hearing, any owner or claimant who has a verified answer on file may show by competent evidence that the vehicle was not used to transport a narcotic drug, hallucinogen, or dangerous drug illegally, or that a narcotic drug, hallucinogen, or dangerous drug was not unlawfully possessed by an occupant of the vehicle, nor the vehicle used as a depository or place of concealment for such drugs.
- (4) If an owner or claimant does not show by competent evidence that he or she had no knowledge of, and should not have known that the vehicle would be used in the manner claimed, the court shall upon motion order the vehicle forfeited to the Community.
- (5) A claimant of any right, title or interest in the vehicle may prove his or her lien, mortgage or conditional sales contract to be bona fide, and that his or her right, title or interest was created after a reasonable investigation of the moral responsibility, character and reputation of the purchaser, and without knowledge that the vehicle was being, or was to be used for the purpose claimed; but no person who has the lien dependent upon possession for the compensation to which he or she is legally entitled for making repairs or performing labor upon and furnishing supplies and materials for, and for the storage, repairs, safekeeping of any vehicle, and no person doing business under any law of any state or the United States relating to banks, trust companies, building and loan associations, and loan companies, credit unions or licensed pawnbrokers or money lenders or regularly engaged in the business of selling vehicles or purchasing conditional sales contracts on vehicles shall be required to prove that his or her right, title or interest was created

after a reasonable investigation of the moral responsibility, character and reputation of the owner, purchaser, or person in possession of the vehicle when it was brought to the claimant.

(g) *Judgment.*

- (1) The court shall issue the written judgment no later than ten business days after the hearing.
- (2) After a hearing held pursuant to subsection (f)(1) of this section and upon a showing of competent evidence, the court shall order the vehicle forfeited to the Community.
- (3) If proper proof is not presented at a hearing held pursuant to subsection (f)(3) of this section, the court shall order the vehicle forfeited to the Community.
- (4) If proper proof is presented by the owner or claimant pursuant to subsection (f)(4) or (f)(5) of this section, the court shall order the vehicle released to the bona fide owner, lien holder, mortgagee or vendor.

(Code 1981, § 14-32; Code 2012, § 14-32; Ord. No. SRO-330-08, 4-23-2008; Ord. No. SRO-402-2012, § 14-32, 5-30-2012)