

# CITY COUNCIL STUDY SESSION

**TO:** Mayor and City Council  
**FROM:** Mari E. Macomber, City Manager <sup>MSM</sup>  
**SESSION DATE:** July 20, 2009  
**TIME:** 5:00 p.m.  
**PLACE:** Second Floor Conference Room

We will be in the Second Floor Conference Room on Monday for the Study Session and will need to adjourn by 5:50 p.m.

## **AGENDA:**

- **Online Utility Exchange**
- **Employee Handbook**
- **Liquor License Information**
- **Newsletter Review – July 17, 2009**

## **ONLINE UTILITY EXCHANGE**

The City has been given an opportunity to consider adding an online utility exchange package that would allow us to access customer history information from other participating utility companies. At present, we do not run history checks or background checks on new customer sign ups.

There are advantages and disadvantages to a system like this. We would have the ability to check utility payment histories where we are not able to do so today. We could also consider modifying our deposit requirements to allow for the use of the information we obtain. Some concerns would include the time it takes to access the information. We are very responsive when it comes to signing people up for water service, we would not want to delay the delivery of this service too much. We would also be relying on utility records from other entities and hope that the information is accurate.

This is something that we have been presented with and want to discuss in more detail with the City Council. The cost of the service is \$30 per month plus \$2.70 per utility account screened. Our peak sign up period can include approximately 1500 account changes. I would not expect that we would run that many account histories. One advantage that we could see from a system like this is the ability to gain information on past due or old delinquent accounts from other participating utility companies.

### Recommended Action:

We want to discuss this service with the Council to determine if there is any interest.

## **EMPLOYEE HANDBOOK**

The Employee Handbook is the document that is given out to new hires and current employees outlining the policies, procedures and benefits offered by the City of Kirksville. The document is updated on a regular basis to stay current with changes in federal and state laws, and changes made at the city level.

Typically, the Human Resources Director will review the document making changes where necessary and then shares the changes with the department managers. This year, we took a different approach. We combined a supervisory training on the policies and procedures with a comprehensive review of the document to get input and feedback from the supervisors.

The resulting document is one that includes changes in law and input from supervisors. We also addressed a couple of liability issues for the City. The first is payout of sick leave when an employee retires from the City of Kirksville. Depending upon the sick leave usage of an employee, this payout could be significant and an unexpected budget expense. The revised policy does not affect current employees, but eliminates this benefit starting with new hires. Another liability of the City is providing health insurance coverage to retirees whether they are eligible to receive coverage elsewhere. We have not had many retirees choose to participate and are now required to complete an actuary specifically for this coverage.

Council should be aware that this document and all of the policies and benefits does not affect all City workers. We have union contracts with the fire personnel and maintenance employees. This means that some of the changes we are proposing will not go into effect for those employees covered by a union contract.

### Recommended Action:

We have included the document in your packet for review and will post it to the website. We will spend time on Monday covering the major changes to the document. It is our plan to present it to the City Council for formal approval in August.

## **LIQUOR LICENSE INFORMATION**

At a previous City Council meeting the Council was asking questions about the issuance of liquor licenses. After this meeting, I met with Ron Jones, who is an Agent for the Missouri State Alcohol and Tobacco Control Division of the Department of Public Safety. As an Agent, Mr. Jones is for the enforcement of state liquor control laws and regulations in an assigned geographical territory within a district of the Division of Liquor Control. Adair County is in District II which is Jefferson City, Missouri and Mr. Jones is the Agent assigned to our area. Some of the work he does includes processing applications for new licenses and annual renewals, conducting periodic inspections of licensed establishments, investigating and documenting alleged liquor law violations, collecting and preserving evidence, and testifying in criminal cases. Agents also respond to inquiries from the public; making presentations to law enforcement agencies,

schools and civic groups; and conducting training seminars for licensees and their employees.

Mr. Jones explained the two violations that occurred around the time the Council was considering the annual liquor license renewals. Both violations were for selling to a minor and both establishments were cited. In both instances, it was an employee of the business that sold the alcohol to a minor. He explained that corporate businesses and larger operations have very specific policies whereby an employee who is found violating a liquor law is immediately terminated. He discussed some of the programs offered through the Division to educate the businesses and about a new program, "Badges in Business."

The Division of Alcohol and Tobacco Control, in partnership with the Division of Highway Safety, has successfully introduced an innovative enforcement program called, "Badges in Business". "Badges in Business" allows State Alcohol and Tobacco Control Agents to periodically be present on a licensed premise at the request of the retailer. Agents assist store employees in the detection of underage patrons and false identifications. As minors enter the licensed premises and attempt to purchase alcoholic beverages, they are detained and taken into custody. The Division has found that a vast majority of underage youth who drink use fake IDs. The success of this project is largely attributable to the assistance and cooperative efforts of the Division of Highway Safety, local prosecutors, licensed retailers, and local law enforcement agencies.

Mr. Jones cited the use of false identification and the purchasing of alcohol for minors by others as the two most significant problems. The businesses are selling the alcohol as part of their effort to run their business, losing that opportunity decreases their revenues. Mr. Jones shared two fake Missouri driver's licenses used by two separate individuals. It was difficult to see why they were not valid, until he showed me.

Mr. Jones did agree to provide reports of violations to the Kirksville Police Department. When we receive these, we will share them with the City Council. Mr. Jones also stated that if there were specific questions of the Division, they would be happy to respond.

Chapter 311 of the Revised Statutes of the State of Missouri is the Liquor Control Law. Included with this Study Session packet are a few pages from the law. Page 3 outlines the qualifications for licenses. The section that is highlighted with an asterisks \*states that a person can not get a license if he has had their license revoked or been convicted of violating the provisions of any law applicable to the manufacture or sale of intoxicating liquor. Page 60 provides a Retailer's Code of Business.

In reviewing the State's website, there was a case where the Salamander Grill was denied a license by a local community. As a result, the State Agent (referred to as Supervisor) denied the state license. The following is the language taken directly from the website of the State.

“The Supervisor cites to no statute, regulation, or court decision that prohibits the issuance of a state liquor license for the sole reason that a municipality has previously denied the applicant a local license. The Supervisor misreads Casey’s, which merely held that a local government may enact licensing requirements beyond, but not inconsistent with, state requirements. Casey’s does not in any way authorize the Supervisor to deny a license on the grounds that a local license has been denied. The parties stipulated that Salamander complied with all the requirements for the renewal of its state liquor licenses, except for the Supervisor’s request to provide evidence of city approval to provide liquor by-the-drink. We conclude that Salamander’s renewal applications should be granted for a state retail liquor by-the-drink resort license and a state restaurant-bar resort liquor license. Therefore, we order the Supervisor to take all steps necessary to renew Salamander’s licenses.”

The following web address will take you to this case.

<http://oa.mo.gov/ahc/case/SalamanderGrillInc00-1692LC.SMB.doc>

Recommended Action:

The City Council should discuss it there are any questions or information needed from this State Division. Should the City Council wish to take a different position on liquor license renewals, it would be important that we have the City Attorney advise the Council of any legal concerns.

**NEWSLETTER REVIEW – July 17, 2009**

Attachments

Staff Report Online Utility Exchange

Staff Report Employee Handbook

Excerpts from State of Missouri Alcohol & Tobacco Laws & Regulations

Enclosure

Employee Handbook - use link below

[http://www.kirksvillegcity.com/filestorage/767/779/781/791/1768/Employee\\_Handbook\\_2009.pdf](http://www.kirksvillegcity.com/filestorage/767/779/781/791/1768/Employee_Handbook_2009.pdf)

# KIRKSVILLE CITY COUNCIL STUDY SESSION ATTACHMENT

**SUBJECT:** ONLINE Utility Exchange

**STUDY SESSION MEETING DATE:** July 20, 2009

**CITY DEPARTMENT:** Finance

**PREPARED BY:** Laura Guy, Finance Director

The City has been contacted by a vendor that offers a tool to assess the credit worthiness or risk associated with each utility service applicant. The premise is to base the amount of the initial deposit on credit risk at the time of application, which then can reduce or eliminate the potential for bad debt.

The following screen shot is generated when accessing an applicant's name based on their history with other participating utilities. This report offers the City's customer service clerks a tool to: prevent application fraud by identifying the misuse of social security numbers; access aliases on file; know who has a history of not paying other utilities; and determine the amount of deposit that accurately reflects the risk associated with the applicant. Also, participating utilities are notified of new contact addresses of any customers that have left unpaid accounts.

YOUR COMPANY NAME : USER NAME : 10/14/2004 4:39:40 PM Report # 9999999

<p><b>TESTFILE, JOSEPH</b>  <b>987654321</b> <input type="text" value="SSN Search"/>                  1700 COBB XING SE                  SMYRNA, GA 30080                  PHONE: 7705551212                  Reported DOB: 1/14/1963</p> <p><a href="#">Print Report</a>  <a href="#">Print Adverse Letter</a></p>		<p><b>TESTFILE, AMY</b>  <b>912345678</b> <input type="text" value="SSN Search"/>                  1700 COBB XING SE                  SMYRNA, GA 30080                  PHONE: 7705551212                  Reported DOB: 6/30/1967</p>
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<p style="text-align: center; background-color: #4a7ebb; color: white; padding: 2px;"><b>SSN Verification</b></p> <div style="display: flex; align-items: center;">  <div> <p><b>Match to Other Name</b>  <input type="text" value="JOSEPH B BILLINGS"/></p> </div> </div>	<p style="text-align: center; background-color: #4a7ebb; color: white; padding: 2px;"><b>SSN Verification</b></p> <div style="display: flex; align-items: center;">  <div> <p><b>Good Match</b></p> </div> </div>
<p style="text-align: center; background-color: #4a7ebb; color: white; padding: 2px;"><b>Deposit Decision</b></p> <div style="text-align: center;">  <p style="font-size: large; font-weight: bold; margin: 5px 0;">23.7%</p> <p>Potential Delinquency Risk</p> <p style="font-weight: bold; margin-top: 5px;">Maximum Deposit: Exchange</p> </div>	<p style="text-align: center; background-color: #4a7ebb; color: white; padding: 2px;"><b>Deposit Decision</b></p> <div style="text-align: center;">  <p style="font-size: large; font-weight: bold; margin: 5px 0;">8.6%</p> <p>Potential Delinquency Risk</p> <p style="font-weight: bold; margin-top: 5px;">Minimum/Waive Deposit</p> </div>
<p style="text-align: center; background-color: #800000; color: white; padding: 2px;"><b>Exchange Results</b></p> <p><b>X JOSEPH B TESTFILE</b>                  104-F MARINER POINTE                  MONROE, GA 30655                  ACCT #: 123456789                  Company: WALTON EMC                  Amount Owed: \$376.31                  Service Ended: 10/4/2004</p>	<p style="text-align: center; background-color: #800000; color: white; padding: 2px;"><b>Exchange Results</b></p> <p><b>✓ No Negative Data Available</b></p>
<p style="text-align: center; background-color: #800000; color: white; padding: 2px;"><b>Other Unpaid Utilities</b></p> <p><b>X GEORGIA POWER</b>                  Amount Owed: \$342.00 as of 01/04</p> <p><b>X ALABAMA POWER</b>                  Amount Owed: \$314.00 as of 02/03</p> <p><b>X VERIZON</b>                  Amount Owed: \$272.00 as of 02/04</p>	<p style="text-align: center; background-color: #800000; color: white; padding: 2px;"><b>Other Unpaid Utilities</b></p>

This service is in the process of being integrated with Springbrook, the City's financial and utility billing software provider. It offers a one-step solution through credit assessment and collection capability; human resource background and criminal history check; and business license applicant background and criminal history check.

The basic pricing is \$30 monthly access fee and \$2.70 per utility applicant screened. Additional fees are assessed for employment and business license screening reports based on extent of search.

If the City Council is interested in pursuing this service, participating utilities can be contacted. Local utilities using this service include: Boone County, Chariton Valley, Macon Electric, City of Trenton and Tri-County Electric. Also, the Council will need to decide on the method of setting deposits – to either continue with a fixed two-tier initial amount or to use a sliding scale dependent upon the credit risk.

## KIRKSVILLE CITY COUNCIL STUDY SESSION ATTACHMENT

**SUBJECT:** Employee Handbook - update

**STUDY SESSION MEETING DATE:** July 20, 2009

**CITY DEPARTMENT:** Administration

**PREPARED BY:** Pat Meredith, Human Resource Director

An Employee Handbook is prepared by Human Resources periodically to keep employees informed of policies and applicable laws regarding their employment.

The last Employee Handbook was adopted by the City Council in February 2007. Recent changes in the American's with Disability Act, Family and Medical Leave Act, Discrimination and Harassment, Uniform Services and Reemployment Rights Act alone have resulted in an outdated manual. With the enactment of Collective Bargaining in the state of Missouri, we have been advised that simplifying our handbooks and agreements would be prudent before laws are enacted.

The following policies have been adopted since the last publication of the Employee Handbook (2007); Employee Death Benefits, Political Activity, Fitness for Duty, and Unfit for Duty.

In addition, to legislative changes, city staff strives to improve internal policies and procedures. The proposed Employee Handbook reflects changes in the following policies:

- Vacation and sick leave accrual, currently employees may use up to 24 hours per year of accrued sick leave for personal leave. The proposed policy eliminates the personal leave use of sick leave and moves the twenty-four hours from sick leave to vacation leave. Supervisors approve vacation leave in advance. This change allows supervisors to better plan the workweek and eliminates the need to track personal days.

Change the maximum vacation accrual from 336 hours to 300 (*employees with less than 15 years of services*) or 400 (*employees with 15 or more years of service*). Current policy allows employees to accrue up to an amount equal to twice their annual accrual.

In addition, the new policy phases out the 50% payout of sick leave upon retirement. Employees hired after passage of the agreement would not be eligible for this benefit.

- Worker's compensation, under current policy when an employee is injured on the job, the City has paid the first three days of their workers' compensation leave

when benefits are not payable under workers compensation insurance. The proposed policy will charge employee sick leave or vacation leave accruals to pay for the first three days of WC leave. When leave extends beyond two weeks, WC will pay the first three days.

- Transporting passengers in City vehicles is a policy that continues to be questioned by employees. In the revised policy, we provide more clarification of who is authorized to ride in City vehicles and when a liability waiver must be signed before non-employees are permitted to ride in a City vehicle.
- Retiree medical and dental benefits, currently the City offers retirees insurance benefits (premiums are payable by the retiree at 100%). The new language will provide retiree benefits only until the retiree is eligible for Medicare. One current retiree will have to be grandfathered in under the new policy.
- Workplace Violence has become the number one cause of death in the workplace. We added this policy to make employees aware of the risk signs to watch for and requires they report this behavior to their supervisor.
- Customer Service has always been a priority, however some employees do not understand words and actions sometimes escalates confrontations. The new policy expands on the appropriate responses to resolve citizen complaints and defusing confrontations.

Additionally, non-substantive changes are proposed to provide for the standards, terms, and conditions of employment with the City in a clear and comprehensive fashion to maximize the efficiency and orderliness of operations.

The changes to the Employee Handbook will result in a reduction in payable sick leave benefits at retirement (in future years). In addition, changes to retiree insurance benefits will reduce liability to the insurance fund.

***STATE OF MISSOURI***  
**ALCOHOL & TOBACCO**  
**LAWS & REGULATIONS**



INCLUDES  
**2008**  
LEGISLATIVE &  
REGULATION  
UPDATES

*DISTRIBUTED BY:*  
**MISSOURI STATE**  
**ALCOHOL & TOBACCO CONTROL**  
*IN PARTNERSHIP WITH:*  
**MoDOT – HIGHWAY SAFETY DIVISION**

**LIQUOR CONTROL  
LAW**

*Chapter 311, RSMo*

**STATE OF MISSOURI**

**MO STATE ALCOHOL AND TOBACCO CONTROL OFFICES**

**District I (Kansas City): 816-889-2574**

**District II (Jefferson City) & Headquarters: 573-751-2333**

**District III (St. Louis): 314-340-6835**

**Website: [www.atc.dps.mo.gov](http://www.atc.dps.mo.gov)**

*The website provides links to Chapters 311, 312, and 407 Missouri Revised Statutes, and the Code of State Regulations.*

General Provisions

311.010. Title of law. This law may be cited as the "Liquor Control Law".

(RSMo 1939 § 4874)

(1911) Right to traffic in intoxicating liquor is not a "natural right", such business not being lawful except as authorized by law. Therefore it may be fully regulated by law and such regulation does not violate natural rights of citizens. State ex rel. Klein v. Baliger (A.), 151 S.W.2d 521.

(1950) State ex rel. Hospital v. Nangle (A.), 230 S.W.2d 128.

311.015. Purpose clause. Alcohol is, by law, an age-restricted product that is regulated differently than other products. The provisions of this chapter establish vital state regulation of the sale and distribution of alcohol beverages in order to promote responsible consumption, combat illegal underage drinking, and achieve other important state policy goals such as maintaining an orderly marketplace composed of state-licensed alcohol producers, importers, distributors, and retailers.

(L. 2007 S.B. 299 & S.B. 616)

311.020. Definition of intoxicating liquor. The term "intoxicating liquor" as used in this chapter, shall mean and include alcohol for beverage purposes, alcoholic, spirituous, vinous, fermented, malt, or other liquors, or combination of liquors, a part of which is spirituous, vinous, or fermented, and all preparations or mixtures for beverage purposes, containing in excess of one-half of one percent by volume except for nonintoxicating beer as defined in section 312.010, RSMo. All beverages having an alcoholic content of less than one-half of one percent by volume shall be exempt from the provisions of this chapter, but subject to inspection as provided by sections 196.365 to 196.445, RSMo.

(RSMo 1939 § 4894, A.L. 1990 H.B. 1180)

311.030. Definition of person. The term "person" as used in this chapter shall mean and include any individual, association, joint stock company, syndicate, copartnership, corporation, receiver, trustee, conservator, or other officer appointed by any state or federal court.

(RSMo 1939 § 4934)

311.040. Application of law. The provisions of this law shall be in force in and apply to every incorporated city, town or village in this state, whether same be organized under the general law relating to cities, towns and villages, or by special charter under the state constitution, any ordinance or charter provision of any city, town or village to the contrary notwithstanding.

(RSMo 1939 § 4908)

(1957) City ordinance prohibiting sales by any wholesaler to retailers who are delinquent in payment of accounts to any wholesaler held valid and not in conflict with either the liquor control law or the nonintoxicating beer law. Passler v. Johnson (Mo.), 304 S.W.2d 903.

Licenses and Regulations

311.050. License required. It shall be unlawful for any person, firm, partnership or corporation to manufacture, sell or expose for sale in this state intoxicating liquor, as defined in section 311.020, in any quantity, without taking out a license.

(RSMo 1939 § 4895)

(1943) Objection to use of word "spirituous" in information charging sale of "spirituous intoxicating liquor" held without merit. State v. Varmon (Mo.), 174 S.W.2d 146.

(1955) Where evidence showed that whiskey purchased was poured from "shot" glass into Coca-Cola bottle, that such bottle may have contained some other liquid, it was not error to admit it in evidence, in prosecution for sale without license, even though alcoholic content of liquor therein was less than that in bottle from which testimony showed it was poured. State v. Krout (Mo.), 282 S.W.2d 529.

311.055. License to manufacture not required, personal or family use—limitation. No person at least twenty-one years of age shall be required to obtain a license to manufacture nonintoxicating beer, as defined in section 312.010, RSMo, or intoxicating liquor, as defined in section 311.020, for personal or family use. The aggregate amount of nonintoxicating beer or intoxicating liquor manufactured per household shall not exceed two hundred gallons per calendar year if there are two or more persons over the age of twenty-one years in such household, or one hundred gallons per calendar year if there is only one person over the age of twenty-one years in such household.

(L. 1993 S.B. 468)

311.060. Qualifications for licenses—resident corporation and financial interest defined.

1. No person shall be granted a license hereunder unless such person is of good moral character and a qualified legal voter and a taxpaying citizen of the county, town, city or village, nor shall any corporation be granted a license hereunder unless the managing officer of such corporation is of good moral character and a qualified legal voter and taxpaying citizen of the county, town, city or village; and no person shall be granted a license or permit hereunder whose license as such dealer has been revoked, or who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor, or who employs in his business as such dealer, any person whose license has been revoked or who has been convicted of violating such law since the date aforesaid; provided, that nothing in this section contained shall prevent the issuance of licenses to nonresidents of Missouri or foreign corporations for the privilege of selling to duly licensed wholesalers and soliciting orders for the sale of intoxicating liquors to, by or through a duly licensed wholesaler, within this state.

\* 2. (1) No person, partnership or corporation shall be qualified for a license under this law if such person, any member of such partnership, or such corporation, or any officer, director, or any stockholder owning, legally or beneficially, directly or indirectly, ten percent or more of the stock of such corporation, or other financial interest therein, or ten percent or more of the interest in the business for which the person, partnership or corporation is licensed, or any person employed in the business licensed under this law shall have had a license revoked under this law or shall have been convicted of violating the provisions of any law applicable to the manufacture or sale of intoxicating liquor since the ratification of the twenty-first amendment to the Constitution of the United States, or shall not be a person of good moral character.

(2) No license issued under this chapter or chapter 312, RSMo, shall be denied, suspended, revoked or otherwise affected based solely on the fact that an employee of the licensee has been convicted of a felony unrelated to the manufacture or sale of intoxicating liquor so long as any such employee does not directly participate in retail sales of intoxicating liquor. Each employer shall report the identity of any employee convicted of a felony to the division of liquor control. The division of liquor control shall promulgate rules to enforce the provisions of this subdivision.

(3) No wholesaler license shall be issued to a corporation for the sale of intoxicating liquor containing alcohol in excess of five percent by weight, except to a resident corporation as defined in this section.

3. A "resident corporation" is defined to be a corporation incorporated under the laws of this state, all the officers and directors of which, and all the stockholders, who legally and beneficially own or control sixty percent or more of the stock in amount and in voting rights, shall be qualified legal voters and taxpaying citizens of the county and municipality in which they reside and who shall have been bona fide residents of the state for a period of three years continuously immediately prior to the date of filing of application for a license, provided that a stockholder need not be a voter or a taxpayer, and all the resident stockholders of which shall own, legally and beneficially, at least sixty percent of all the financial interest in the business to be licensed under this law; provided, that no corporation, licensed under the provisions of this law on January 1, 1947, nor any corporation succeeding to the business of a corporation licensed on January 1, 1947, as a result of a tax-free reorganization coming within the provisions of Section 112, United States Internal Revenue Code, shall be disqualified by reason of the new requirements herein, except corporations engaged in the manufacture of alcoholic beverages containing alcohol in excess of five percent by weight, or owned or controlled, directly or indirectly, by nonresident persons, partnerships or corporations engaged in the manufacture of alcoholic beverages containing alcohol in excess of five percent by weight.

4. The term "financial interest" as used in this chapter is defined to mean all interest, legal or beneficial, direct or indirect, in the capital devoted to the licensed enterprise and all such interest in the net profits of the enterprise, after the payment of reasonable and necessary operating business expenses and taxes, including interest in dividends, preferred dividends, interest and profits, directly or indirectly paid as

(A) Desire to employ persons under the age of twenty-one (21) as authorized by section (7) shall make application to supervisor using forms provided for that purpose; and

(B) Employ persons under the age of twenty-one (21) years as authorized by section (7) who do not have at least fifty percent (50%) of the gross sales consisting of nonalcoholic sales shall have an employee twenty-one (21) years of age or older on the licensed premises during all hours of operation.

(9) No person licensed by the supervisor of liquor control shall use or permit to be used upon his/her licensed premises any self-service, coin-operated, mechanical devices or automatic dispensers for the purpose of selling or dispensing intoxicating liquor or nonintoxicating beer.

(10) No licensee shall permit, upon or about his/her licensed premises, any gambling of any kind or character whatsoever in which the one who plays stands to win or lose money, trade checks, prizes, merchandise or any other consideration whatsoever. No licensee shall have any gambling devices upon his/her licensed premises where money, trade checks, prizes, merchandise or property or any other consideration whatsoever may be won or lost. Notwithstanding the previously mentioned, any licensee may sponsor or allow promotional games or contests of chance to be conducted upon his/her licensed premises, provided that

(A) For purposes of this section, the phrase something of value means any money or property, any token, object or article exchangeable for money or property or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest in them or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge;

(B) Money or something of value is not required to be given directly or indirectly for the privilege or opportunity of participating in games or contests or for receiving the award or prize from participation;

(C) Intoxicating liquor, five percent (5%) beer or nonintoxicating beer is not related to or an element of a game or contest either directly or indirectly;

(D) The conduct or playing of games of bingo on licensed premises by organizations licensed by the Missouri Gaming Commission to conduct bingo in accordance with Chapter 313, RSMo, shall not constitute gambling or gambling activities when the games are conducted in accordance with Chapter 313, RSMo and the activity, by itself, shall not constitute a violation of this regulation;

(E) The sale of state lottery tickets or shares on licensed premises licensed by the lottery commission to sell lottery tickets or shares to the public shall not be deemed to constitute gambling or gambling devices when conducted in accordance with Chapter 313, RSMo and the activity, by itself, shall not constitute a violation of this regulation;

(F) Pari-mutual wagering on horses at licensed tracks licensed by the Missouri Horse Racing Commission shall not be deemed to constitute gambling or gambling devices when conducted in accordance with Chapter 313, RSMo and this activity on licensed premises, by itself, shall not constitute a violation of this regulation; and

(G) The giving of door prizes or other gifts by lot or drawing after payment of a price by members or guests of a charitable organization which has obtained an exemption from payment of federal income taxes as provided in Section 501(C)(3) of the Internal Revenue Code of 1954, shall not constitute gambling or gambling devices when conducted on licensed premises by the charitable organization and that activity, by itself, shall not constitute a violation of this regulation.

(11) No licensee shall employ on or about the licensed premises any person who has been convicted since the ratification of the twenty-first amendment of the Constitution of the United States of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor; nor shall any licensee employ on or about the licensed premises any person who shall have had a license revoked under Chapter 311 or 312, RSMo.

(A) No retail licensee shall employ a prohibited felon to any position that involves the direct participation in retail sales of intoxicating liquor.

The phrase "direct participation in retail sales" includes the duties of accepting payment, taking orders, delivering, mixing or assisting in mixing or serving intoxicating liquor in the capacity of, but not limited to, bar manager, bartender, waiter, waitress, cashier and sales clerk.

(B) A "prohibited felon" is one who has been convicted of a crime under the laws of any state or the United States, where the possible penalty at the time of the offense exceeded one (1) year confinement and the crime involves homicide, assault involving a threat of death or serious injury or actual physical injury, assault upon a law enforcement officer, kidnapping or false imprisonment, any action that would constitute a sexual offense under Chapter 566, RSMo, prostitution, pornography, robbery, arson, stealing, burglary, forgery, counterfeiting, identity theft or false identification, bribery, unlawful use of a weapon, gambling, driving or boating while intoxicated, perjury, fake reports or declarations, the possession, purchase, sale or manufacture of drugs, tax fraud, mail fraud, food stamp fraud, or welfare fraud.

(C) Each retail licensee shall report the identity of any employee with a felony conviction to the supervisor of alcohol and tobacco control within ten (10) days of his/her employment and each retail licensee shall notify the supervisor of alcohol and tobacco control within ten (10) days of the employee leaving the licensee's employment, using forms provided by the division for that purpose.

(D) If the employee is hired in a position that involves the direct participation in retail sales and is a prohibited felon, the division shall notify the licensee that the employee may not serve in the position involving the direct participation in retail sales upon receipt of notice from the licensee. The licensee will either dismiss the employee or reassign the employee to a position not involving the direct participation in retail sales within ten (10) days of the date notice is received by licensee from the division by regular mail service.

(E) If the division determines that an employee involved in the direct participation of retail sales has a felony conviction not listed in subsection (11)(B), above, but believes that the felon's conviction should disqualify the employee from the direct participation in retail sales, the division will notify the licensee within ten (10) days. The licensee will either dismiss the employee, reassign the employee to a position not directly involving the retail sale of intoxicating liquor, or file a written appeal with the division within ten (10) days of receiving notice from the division by regular mail service.

(F) If a licensee, or any employee of the licensee acting through the licensee, wishes to appeal a determination by the division that the employee is disqualified from the direct participation in the retail sale of intoxicating liquor as set forth in subsection (11)(E), above, the appeal will be heard by the supervisor or his/her designee within thirty (30) days of the division receiving written notice of the appeal. At the appeal, the division will determine whether the employee's conviction is reasonably related to the competency of the employee to be involved in the direct participation of retail sales. A written determination will be sent to the licensee and employee, if an address is supplied by the employee, within ten (10) days of the appeal.

(12) No licensee, his/her agent or employee shall sell intoxicating liquor or nonintoxicating beer in any place other than that designated on the license or at any other time or in any other manner except as authorized by the license.

\* (13) No licensee shall permit anyone under the age of twenty-one (21) years of age to consume intoxicating liquor or three and two-tenths percent (3.2%) nonintoxicating beer upon or about his/her licensed premises.

(14) No licensee or employee shall allow upon or about the licensed premises solicitation for the purposes of prostitution or other immoral activities by any person.

(15) No licensee or employee shall possess, store, sell or offer for sale, give away or otherwise dispose of upon or about the licensed premises or permit any person upon or about the licensed premises to possess, store, sell or offer for sale, give away or otherwise dispose of any controlled substance as defined in Chapter 195, RSMo.

(16) Except as otherwise provided in any provision of Chapter 311 or 312 relating to Sunday licenses, no holder of a license to sell intoxicating

year immediately preceding the date of the application or past calendar year immediately preceding the date of the application was derived from the sale of prepared meals or food consumed on premises where sold or which has an annual gross income of at least two hundred thousand dollars (\$200,000) from the sale of prepared meals or food consumed on premises where sold. Applicants who have not been in the restaurant-bar business one (1) year shall have been in business at least ninety (90) days immediately preceding application for the license and shall furnish a certified statement signed by the applicant showing that at least fifty percent (50%) of the gross income of the restaurant-bar for which exemption is sought, during the ninety (90)-day period was derived from the sale of prepared meals or food consumed on premises where sold or which has an annual gross income of at least two hundred thousand dollars (\$200,000) from the sale of prepared meals or food consumed on premises where sold; and

(C) Furnish with each application for renewal of any license which has been exempted from the limitation, a certified statement signed by the licensee showing that at least fifty percent (50%) of the gross income of the business for the past one (1) year immediately preceding the date of renewal application or past calendar year immediately preceding the date of the renewal application was derived from the sale of prepared meals or food consumed on the premises where sold or which has an annual gross income of at least two hundred thousand dollars (\$200,000) from the sale of prepared meals or food consumed on premises where sold.

(10) Resorts. Licenses authorizing the retail sale of liquor by the drink may be issued to qualified applicants for resorts as defined in section 311.095, RSMo.

(A) An applicant qualifying as a resort shall furnish with the application, a certified statement signed by the applicant showing that the establishment has at least thirty (30) rooms for the overnight accommodation of transient guests, having a restaurant or similar facility on the premises at least sixty percent (60%) of the gross income of which is derived from the sale of prepared meals or food.

(B) Each application for renewal of a resort license shall be accompanied by a certified statement signed by the applicant showing that at least sixty percent (60%) of the gross income from restaurant or similar facility for the past year immediately preceding the date of the renewal application or past calendar year immediately preceding the date of the renewal application was derived from the sale of prepared meals or food.

(C) Applicants qualifying for a resort license as a restaurant shall furnish with the application a certified statement signed by the applicant showing that the restaurant establishment's annual gross receipts immediately preceding its application for a license shall not have been less than seventy-five thousand dollars (\$75,000) per year with at least fifty thousand dollars (\$50,000) of such gross receipts from nonalcoholic sales. Applicants who have not been in business one (1) year shall have been in business at least ninety (90) days immediately preceding the application for a license and shall furnish a certified statement signed by the applicant, showing that a projected annual experience based upon its gross receipts during the ninety (90)-day period immediately preceding the date of application would exceed not less than seventy-five thousand dollars (\$75,000) per year with at least fifty thousand dollars (\$50,000) of such gross receipts from nonalcoholic sales.

(D) Each application for renewal of a resort license as a restaurant shall be accompanied by a certified statement signed by the applicant showing that the restaurant establishment's annual gross receipts immediately preceding the date of the renewal application shall not have been less than seventy-five thousand dollars (\$75,000) per year with at least fifty thousand dollars (\$50,000) of such gross receipts from nonalcoholic sales. Applicants for renewal who have not been in business one (1) year immediately preceding application for renewal shall furnish a certified statement signed by the applicant showing that a projected annual experience, based upon its gross receipts during the ninety (90)-day period immediately preceding the date of application, would exceed not less than seventy-five thousand dollars (\$75,000) per year with at least fifty thousand dollars (\$50,000) of such receipts from nonalcoholic sales.

(E) Applicants for a resort license shall prepare and maintain the following records in order to substantiate the sales figures as presented in

the certified statement, including, but not limited to: prenumbered guest checks, cash register tapes, bank statements and cancelled checks, and invoices for food and intoxicating liquor purchases.

#### Regulation No. 70-2.130 Retailer's Conduct of Business

*PURPOSE: This rule establishes general rules of conducting retail establishments.*

(1) No licensee who shall have had his/her license suspended by order of the supervisor of liquor control shall sell, give away or permit the consumption of any intoxicating liquor or nonintoxicating beer, nor shall s/he order or accept delivery of any intoxicating liquor or nonintoxicating beer during the period of time the order of suspension is in effect. Any licensee desiring to keep his/her premises open for the sale of food or merchandise during the period of suspension shall display the order of suspension issued by the supervisor of liquor control in a conspicuous place on the premises so that all persons visiting the premises may readily see the order of suspension.

(2) No person holding a license for the retail sale of malt liquor by the drink or for the sale of nonintoxicating beer by the drink knowingly shall sell, give away or serve upon the premises described in the license any glass, ice, water, soda water, phosphates or any other kind of liquids to be used for the purpose of mixing intoxicating drinks and commonly referred to as set-ups; nor shall any licensee allow any person while in or upon the premises covered by the license to possess or consume any intoxicating liquor other than malt liquor, if the license is to sell malt liquor containing more than three and two-tenths percent (3.2%) alcohol by weight or any kind of intoxicating liquor if the license is to sell nonintoxicating beer or to pour into, mix with or add intoxicating liquor to water, soda water, ginger ale, seltzer or other liquid.

(3) The holder of a license authorizing the retail sale of intoxicating liquor by the drink may sell liquor in any quantity, not for resale, but shall not possess any spirituous liquor in any container having a capacity of more than one (1) gallon or any wine in any container having a capacity of more than fifteen and one-half (15 1/2) gallons.

(4) No person holding a license authorizing the retail sale of intoxicating liquor or nonintoxicating beer shall sell or deliver any liquor to any person with knowledge or with reasonable cause to believe, that the person to whom the liquor is sold or delivered has acquired the liquor for the purpose of peddling or reselling it.

(5) No licensee shall sell, give away or possess any spirituous liquor from or in any container when the intoxicating liquor is not that set out on the manufacturer's label on the container or does not have alcoholic content shown on the manufacturer's label.

(6) No retail licensee may bottle any intoxicating liquor from any barrel or other container nor may s/he refill any bottle or add to the contents of the bottle from any barrel or other container.

(7) A licensee selling intoxicating liquor by the drink, when requested to serve a particular brand or type of spirituous liquor or beer, shall not substitute another brand or type of spirituous liquor or beer.

(8) No person holding a license authorizing the sale of intoxicating liquor in the original package shall have the trade name using the words liquor store nor shall s/he advertise his/her place of business as or doing business as a liquor store.

(9) No retail licensee shall allow or cause any sign or advertisement pertaining to intoxicating liquor or malt beverages to be carried or transported upon any sidewalk or street of any municipality or upon any highway of the state. This provision shall not apply to any legal sign or advertisement placed on a vehicle being used to deliver intoxicating liquor or malt beverages.

(10) Whenever hours of time are set forth in the Liquor Control Act, they shall be interpreted to mean clock time which shall be either Central Standard Time or Central Daylight Time, whichever one is then being observed.

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(11) No person holding a license authorizing the retail sale of intoxicating liquor or nonintoxicating beer shall possess any intoxicating liquor or nonintoxicating beer which has not been purchased from, by or through duly licensed wholesalers.

(12) No holder of a license to sell intoxicating liquor, five percent (5%) beer or nonintoxicating beer by the drink shall give to, sell or permit to be given to or sold to any on duty employee of the establishment operated by the licensee any intoxicating liquor or nonintoxicating beer, in any quantity, nor shall s/he permit any patron of the establishment operated by him/her to give to any on duty employee any intoxicating liquor or nonintoxicating beer, in any quantity, or to purchase it for or drink it with any on duty employee, in the establishment or on premises of the licensee. This provision shall not apply when the establishment is closed to the public, so long as the licensee is allowed to be open at that time pursuant to section 311.290, RSMo, or any other provisions of Chapters 311 or 312 relating to opening and closing.

(13) Improper Acts.

(A) At no time, under any circumstances, shall any licensee or his/her employees immediately fail to prevent or suppress any violent quarrel, disorder, brawl, fight or other improper or unlawful conduct of any person upon the licensed premises, nor shall any licensee or his/her employees allow any indecent, profane or obscene language, song, entertainment, literature or advertising material upon the licensed premises.

(B) In the event that a licensee or his/her employee knows or should have known, that an illegal or violent act has been committed on or about the licensed premises, they immediately shall report the occurrence to law enforcement authorities and shall cooperate with law enforcement authorities and agents of the Division of Liquor Control during the course of any investigation into an occurrence.

(14) Lewdness. No retail licensee or his/her employee shall permit in or upon his/her licensed premises -

(A) The performance of acts, or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(B) The displaying of any portion of the areola of the female breast;

(C) The actual or simulated touching, caressing or fondling of the breast, buttocks, anus or genitals;

(D) The actual or simulated displaying of the pubic hair, anus, vulva or genitals;

(E) The permitting by a licensee of any person to remain in or upon the licensed premises who exposes to public view any portion of his/her genitals or anus; and

(F) The displaying of films, video programs or pictures depicting acts, the live performances of which are prohibited by this regulation or by any other law.

(15) In the event the premises of any licensee is declared to be off-limits by the military authorities, the licensee shall not permit any member of the armed forces to be in or upon the premises covered by his/her license. Provided, this shall not apply unless the licensee is notified of the order by the supervisor of liquor control nor shall it apply to members of the Military Police or Shore Patrol.

**Regulation No. 70-2.140  
All Licensees**

*PURPOSE: This rule establishes additional rules for the conduct of business in both retail and wholesale establishments regarding inspection, recordkeeping, storage, employment, sales, gambling and consumption by minors.*

(1) Licensees at all times are responsible for the conduct of their business and at all times are directly responsible for any act or conduct of any employee on the premises which is in violation of the Intoxicating

Liquor Laws or the Nonintoxicating Beer Laws or the regulations of the supervisor of liquor control.

(2) All licensees shall allow the licensed premises and all portions of the buildings of the premises, including all rooms, cellars, outbuildings, passageways, closets, vaults, yards, attics and all buildings used in connection with the operations carried on under the license and which are in their possession or under their control, and all places where they keep or have liquor stored, to be inspected by the supervisor of liquor control and their agents. Licensees shall cooperate fully with the agents during the inspections.

(3) All licensees are required to keep complete and accurate records pertaining to their businesses. These records shall include a complete and accurate record of all purchases and of all sales of intoxicating liquor and nonintoxicating beer made by them. These records must include the names and addresses of all persons from whom the liquor is purchased, the dates, kinds and quantities of the purchases and the dates and amounts of payments on account. They also should include the daily gross returns from sales.

(4) All licensees shall keep all files, books, records, papers, state, county and city licenses, federal tax stamps and accounts and memoranda pertaining to the business conducted by them, on the licensed premises and they, upon request of the supervisor of liquor control or his/her duly authorized agents and auditors, promptly shall allow an inspection and audit to be made by the supervisor or his/her agents, of files, books, records, papers, state, county and city licenses, federal tax stamps, accounts and memoranda and shall permit copies to be made and taken of them.

(5) All records required to be kept by law or rule of the supervisor must be kept and preserved for a period of two (2) years from the date the record was made.

(6) No licensee shall buy or accept any warehouse receipt unless the seller or donor of the receipt first shall acquire the written permission of the supervisor of liquor control to sell or give away the receipt.

(7) No licensee shall have consigned to him/her, receive or accept the delivery of, or keep in storage any intoxicating liquors or nonintoxicating beer upon any premises other than those described in his/her license without first having obtained the written permission of the supervisor of liquor control.

(8) No wholesale or retail licensee shall sell or possess any spirituous liquor in any package or container holding less than fifty (50) milliliters (1.7 ounces) or more than one (1) gallon. No wholesale or retail licensee shall sell or possess any wine in any package or container holding less than one hundred (100) milliliters (3.4 ounces) or more than fifteen and one-half (15 1/2) gallons.

(9) Sale by Minor Prohibited-Exceptions. No person licensed by the supervisor of liquor control to sell intoxicating liquor or nonintoxicating beer in the original package shall employ any person under the age of twenty-one (21) years to sell or assist in the sale or dispensing of intoxicating liquor or nonintoxicating beer except that any business so licensed may employ persons at least eighteen (18) years of age to stock, arrange displays, operate the cash register or scanner connected to a cash register, accept payment and sack for carrying out intoxicating liquor or nonintoxicating beer. Employees under the age of twenty-one (21) years may not deliver intoxicating liquor, nor take nonintoxicating beer away from the licensed premises. No person licensed by the supervisor of liquor control to sell intoxicating liquor, or nonintoxicating beer by the drink shall employ any person under the age of twenty-one (21) years to sell or assist in the sale or dispensing of intoxicating liquor, or nonintoxicating beer except that any business so licensed, persons eighteen (18) years of age or older, when acting in the capacity as a waiter or waitress, may accept payment for or serve intoxicating liquor, or nonintoxicating beer in places of business which sell food for consumption on the premises if at least fifty percent (50%) of all sales in those places consist of food. Employees under twenty-one (21) years of age shall not mix or serve across the bar intoxicating beverages or nonintoxicating beer.

(10) Licensees who-