

## CHAPTER III. BEVERAGES

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### ARTICLE 1. GENERAL PROVISIONS

3-101. DEFINITIONS. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section.

(a) Alcohol - means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) Alcoholic Liquor - means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

(c) Caterer - means an individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit selling alcoholic liquor in accordance with the terms of such permit.

(d) Cereal Malt Beverage - means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

(e) Class A Club - means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the State of Kansas, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests accompanying them.

(f) Class B Club - means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(g) Club - means a Class A or Class B club.

(h) Drinking Establishment - means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

(i) General Retailer - means a person who has a license to sell cereal malt beverages at retail.

(j) Limited Retailer - means a person who has a license to sell cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

(k) Place of Business. - Any place at which cereal malt beverages or alcoholic beverages or both are sold.

(l) Temporary Permit - means a permit, issued in accordance with the laws of the State of Kansas, which allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, open to the public.

(m) Wholesaler or distributor. - Any individuals, firms, co-partnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, co-partnerships, corporations and associations authorized by this chapter to sell cereal malt beverages at retail.

(Code 2015)

3-102. RESTRICTION ON LOCATION. (a) No alcoholic liquor shall be sold or served by a person holding a license or permit from the city whose place of business or other premises are located within 200 feet of any (church, school, nursing home, library, hospital, said distance to be measured from the nearest property line of such (church, school, nursing home, library, hospital), to the nearest portion of the building occupied by the premises.

(b) The distance location of subsection (a) above shall not apply to a club, drinking establishment, caterer or temporary permit holder when the license or permit applicant petitions for and receives a waiver of the distance limitation from the governing body. The governing body shall grant such a waiver only following public notice and hearing and a finding by the governing body that the proximity of the establishment is not adverse to the public welfare or safety.

(c) No license or permit shall be issued for the sale of alcoholic liquor if the building or use does not meet the zoning ordinance requirements of the city or conflicts with other city laws, including building and health codes.

(Code 2015)

3-103. MINORS ON PREMISES. (a) It shall be unlawful for any person under the age of 21 years to remain on any premises where the sale of alcoholic liquor is licensed for on-premises consumption, or where a caterer or temporary permit holder is serving alcoholic liquor.

(b) It shall be unlawful for the operator, person in charge or licensee of any premises licensed for on-premises consumption of alcoholic liquor or a caterer or temporary permit holder who is serving alcoholic liquor to permit any person under the age of 21 years to remain on the premises.

(c) This section shall not apply if the person under the age of 21 years is accompanied by his or her parent or guardian, or if the licensed or permitted premises derive not more than 30 percent of its gross receipts in each calendar year from the sale of alcoholic liquor for on-premises consumption.

(Code 2015)

3-104. CONSUMPTION ON PUBLIC PROPERTY. No person shall drink or consume any alcoholic liquor on city owned public property.

(K.S.A. Supp. 41-719; Code 2015)

- 3-105. PUBLIC SALE; CONSUMPTION. (a) It shall be unlawful for any person to sell, serve or dispense any cereal malt beverage or alcoholic beverage in any public place not licensed to sell, serve or dispense such beverage at such public place within or under the jurisdiction of the city.
- (b) It shall be unlawful for any person to drink or consume any cereal malt beverage or alcoholic beverage in any public place not licensed to sell and serve such beverage for public consumption at such public place within or under the jurisdiction of the city.
- (c) For purposes of this section, the term "public place" shall include upon any street, public thoroughfare, public parking lot or any privately owned parking area made available to the public generally, within any parked or driven motor vehicle situated in any of the aforesaid places or upon any property owned by the state or any governmental subdivision thereof unless such property is leased to others under K.S.A. 12-1740 et seq. if the property is being used for hotel or motel purposes or purposes incidental thereto or is owned or operated by an airport authority created pursuant to Chapter 27 of the Kansas Statutes Annotated. (K.S.A. 41-719; Code 2015)
- 3-106. CONSUMPTION WHILE DRIVING. It shall be unlawful for any person to consume any cereal malt beverage or alcoholic beverage while operating any vehicle upon any street or highway. (K.S.A. 8-1599, K.S.A. 41-719; Code 2015)
- 3-107. IDENTIFICATION CARD. (a) It shall be unlawful for any person to:
- (1) Display, cause or permit to be displayed, or have in possession, any fictitious, fraudulently altered, or fraudulently obtained identification card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
- (2) Display or represent any identification card not issued to such person as being his or her card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
- (3) Permit any unlawful use of an identification card issued to a person for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
- (4) Photograph, Photostat, duplicate or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card or display or have in possession any such photograph, Photostat, duplicate, reproduction or facsimile for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
- (b) It shall be unlawful for any person to:
- (1) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the sale, purchase or consumption of any alcoholic liquor.
- (2) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the sale, purchase or consumption of any cereal malt beverage. (Code 2015)
- 3-108. EXPOSURE BY WAITERS, WAITRESSES, AND ENTERTAINERS; PROHIBITED. It shall be unlawful for any person, while acting as a waiter, waitress or entertainer in establishments which are licensed either for the consumption of

alcoholic liquor pursuant to K.S.A. 41-2601 et seq. or the sale or consumption of cereal malt beverages pursuant to K.S.A. 41-2701 et seq. to do the following:

(a) Expose his or her genitals, pubic hair, buttocks, anal region, natal cleft, perineum or pubic hair region; or,

(b) Expose any devise, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, natal cleft, perineum, anal region or pubic hair region; or,

(c) Expose any portion of the female breasts at or below the areola thereof. It is the purpose of this section to promote and secure the general welfare, health and safety of the citizens of the city.

(Ord. 1000, Sec. 1:2, Code 1998, 3-106)

3-109. SAME; COUNSELING OR ASSISTING. It shall be unlawful for any person to cause, permit, procure, counsel or assist any person to expose or simulate exposure as prohibited in this section. (Ord. 1000, Sec. 3; Code 1998, 3-107)

3-110. EMPLOYMENT OR PAYMENT NOT NECESSARY TO CONSTITUTE OFFENSE. A person shall be deemed to be a waiter, waitress or entertainer if such person acts in that capacity without regard to whether such person is paid any compensation by the management of the establishment in which the activity is performed. (Ord. 1000, Sec. 4; Code 1998, 3-108)

3-111. EXPOSURE BY PERFORMERS IN PUBLIC; PROHIBITED. It shall be unlawful for any person who, while participating in any live act, demonstration or exhibition in any public place, place open to the public, or place open to public view, to:

(a) Expose his or her genitals, pubic hair, buttocks, natal cleft, perineum, anal region or pubic hair region; or

(b) Expose any devise, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, natal cleft, perineum, anal region or pubic hair region; or

(c) Expose any portion of the female breasts at or below the areola.

(Ord. 1000, Sec. 5; Code 1998, 3-109)

3-112. PENALTY. Any person in violation of sections 3-107 or 3-110 is guilty of a violation of this code and upon conviction shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment for not more than six months, or shall be both so fined and imprisoned. (Ord. 1000, Sec. 7; Code 1998, 3-111)

## ARTICLE 2. CEREAL MALT BEVERAGES

- 3-201. LICENSE REQUIRED OF RETAILERS. (a) It shall be unlawful for any person to sell any cereal malt beverage at retail without a license for each place of business where cereal malt beverages are to be sold at retail.
- (b) It shall be unlawful for any person, having a license to sell cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any cereal malt beverage in any other manner.
- (K.S.A. 41-2702; Code 1988)
- 3-202. APPLICATION. Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the attorney general of the State of Kansas, and shall contain:
- (a) The name and residence of the applicant and how long he or she has resided within the State of Kansas;
- (b) The particular place for which a license is desired;
- (c) The name of the owner of the premises upon which the place of business is located;
- (d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired.
- (e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States;
- (f) Each application for a general retailer's license shall be accompanied by a certificate from the city health officer certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of chapter 8 of this code.
- (g) Each application for a general retailer's license must be accompanied by a certificate from the city fire chief certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of chapter 7 of this code.
- The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One copy of such application shall immediately be transmitted to the chief of police of the city for investigation of the applicant. It shall be the duty of the chief of police to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The chief shall report to the mayor not later than five working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements.
- (Code 2015)

- 3-202A. LICENSE APPLICATION PROCEDURES. (a) All applications for a new and renewed cereal malt beverage license shall be submitted to the city clerk 10 days in advance of the governing body meeting at which they will be considered.
- (b) The city clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.
- (c) The clerk's office shall provide copies of all applications to the police department, to the fire department, and to the city-county health department, when they are received. The police department will run a records check on all applicants and the fire department and health department will inspect the premises in accord with chapters 7 and 8 of this code. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.
- (d) The governing body will not consider any application for a new or renewed license that has not been submitted 10 days in advance and been reviewed by the above city departments.
- (e) An applicant who has not had a cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.
- (Code 1988)
- 3-203. LICENSE GRANTED; DENIED. (a) The journal of the governing body shall show the action taken on the application.
- (b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.
- (c) No license shall be transferred to another licensee.
- (d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.
- (Code 1988)
- 3-204. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued. (Code 1988)
- 3-205. LICENSE, DISQUALIFICATION. No license shall be issued to:
- (a) A person who has not been a resident in good faith of the state of Kansas for at least one year immediately preceding application and a resident of Cherokee County for at least six months prior to filing of such application.
- (b) A person who is not a citizen of the United States.
- (c) A person who is not of good character and reputation in the community in which he or she resides.
- (d) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.
- (e) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.
- (f) A corporation if any manager, officer or director thereof or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than non-residence within the city or county.

(g) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25 percent of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.

(h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.

(i) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, retailer residency requirements or age, except that this subsection (i) shall not apply in determining eligibility for a renewal license.

(j) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under the Cereal Malt Beverage Act.

(K.S.A. 41-2703; Code 1988)

3-206. RESTRICTION UPON LOCATION. (a) No license shall be issued for the sale at retail of any cereal malt beverage on premises which are located in areas not zoned for such purpose.

(b) It shall be unlawful to sell or dispense at retail any cereal malt beverage at any place within the city limits that is within a 200-foot radius of any church, school or library.

(c) Provisions of this section shall not apply to any establishment holding a private club license issued by the State of Kansas.

(d) The distance limitation of subsection (b) above shall not apply to any establishment holding a cereal malt beverage license issued by the city when the licensee has petitioned for and received a waiver of the distance limitation. The governing body shall grant such a waiver only following public notice and hearing.

(K.S.A. 41-2704; Ord. 948; Code 1988)

3-207. LICENSE FEE. The rules and regulations regarding license fees shall be as follows:

(a) General Retailer - for each place of business selling cereal malt beverages at retail, \$100 per calendar year.

(b) Limited Retailer - for each place of business selling only at retail cereal malt beverages in original and unopened containers and not for consumption on the premises, \$50 per calendar year.

Full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued. (K.S.A. 41-2702; Code 1988)

3-208. SUSPENSION OF LICENSE. The chief of police, upon five days' written notice, shall have the authority to suspend such license for a period not to exceed 30 days, for any violation of the provisions of this chapter or other laws pertaining to cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven days from the date of such order. (Code 1988)

- 3-209. LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY. (a) The governing body of the city, upon five days' written notice, to a person holding a license to sell cereal malt beverages may permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:
- (1) The licensee has violated any provisions of K.S.A. 41-2701, et seq., and amendments thereto, or any rules or regulations of the city;
  - (2) Drunkenness of the licensee or permitting any intoxicated person to remain in or upon the licensee's place of business;
  - (3) The sale of cereal malt beverages to any person under 21 years of age;
  - (4) For permitting any person to mix drinks with materials purchased in any premises licensed under this article or brought into the premises for this purpose;
  - (5) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed under this article;
  - (6) The licensee has been convicted of a violation of the beer and cereal malt beverage keg registration act.
- The provisions of subsections (a)(4) and (5) shall not apply if the place of business or premises also are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.
- (b) The city, upon five days' notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:
- (1) The licensee has fraudulently obtained the license by giving false information in the application therefor;
  - (2) The licensee has become ineligible to obtain a license under this chapter;
  - (3) The nonpayment of any license fees;
  - (4) Permitting any gambling in or upon the licensee's place of business;
  - (5) The employment of persons under 18 years of age in dispensing or selling cereal malt beverage;
  - (6) The employment or continuation in employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person has been, within the preceding two years, adjudged guilty of a felony or any violation of the intoxicating liquor laws of this state, another state or the United States; or
  - (7) There has been a violation of K.S.A. 21-4106 or K.S.A. 21-4107, prior to their repeal or K.S.A. 2013 Supp. 21-6204, and amendments thereto, (public nuisance) in or upon the licensee's place of business.
- (K.S.A. 41-2708; Ord. 85-9; Code 2015)

- 3-210. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Cherokee County and the district court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken under this section shall not suspend the order of revocation or suspension during the pendency of such appeal. In case of the revocation of the license of any licensee, no new license shall be



issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter. (K.S.A. 41-2708; Ord. 85-9; Code 1988)

- 3-211.           LAPSE OF LICENSE. The license of any corporation shall lapse and become void within 72 hours after the manager listed on the corporation's application is no longer actively associated with the corporation, unless the corporation shall have filed an amended application showing a new manager who meets all legal requirements for acting as manager. (Ord. 85-9, Sec. 2; Code 1988)
- 3-212.           CHANGE OF LOCATION. If a licensee desires to change the location of his or her place of business, he or she shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. Such application shall be accompanied by a fee of \$20. If the application is in proper form and the location is not in a prohibited zone and all other requirements relating to such place of business are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee. (Code 2015)
- 3-213.           WHOLESALE AND/OR DISTRIBUTORS. It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver cereal malt beverages within the city, to persons authorized under this article to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the director of revenue, state commission of revenue and taxation of the State of Kansas authorizing such sales.  
(K.S.A. 41-307:307a; Code 2015)
- 3-214.           BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations.
- (a) The place of business licensed and operating under this article shall at all times have a front and rear exit unlocked when open for business.
- (b) The premises and all equipment used in connection with such business shall be kept clean and in a sanitary condition and shall at all times be open to the inspection of the police and health officers of the city, county and state.
- (c) Except as provided by subsection (d), no cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., or consumed between the hours of 12:30 a.m. and 6:00 a.m., or on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30 percent of its gross receipts from the sale of food for consumption on the licensed premises; closing hours for clubs shall conform to K.S.A. 41-2614 and any amendments thereto.
- (d) Cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2601 et seq., and licensed as a club by the State Director of Alcoholic Beverage Control.
- (e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State Director of Alcoholic Beverage Control shall be open to the police and not to the public.
- (f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.

(g) No licensee or agent or employee of the licensee shall permit any intoxicated person to remain in the place of business for which such license has been issued.

(h) No licensee or agent or employee of the licensee shall sell or permit the sale of cereal malt beverage to any person under 21 years of age.

(i) No licensee or agent or employee of the licensee shall permit any gambling in the place of business for which such license has been issued.

(j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in said place of business or brought in for such purpose.

(k) No licensee or agent or employee of the licensee shall employ any person under 21 years of age in dispensing cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

(Code 2015)

3-215.

PROHIBITED CONDUCT ON PREMISES. The following conduct by a cereal malt beverage licensee, manager or employee of any licensed cereal malt beverage establishment is deemed contrary to public welfare and is prohibited:

(a) Remaining or permitting any person to remain in or upon the premises who exposes to view any portion of the female breasts below the top of the areola or any portion of males/females pubic hair, anus, buttocks or genitals;

(b) Permitting any employee on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva or genitals of any other employee or any patron;

(c) Encouraging or permitting any patron on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva, or genitals of any employee;

(d) Performing or permitting any person to perform on the licensed premises acts of or acts which simulate:

(1) Sexual intercourse, masturbation, sodomy, or any other sexual act which is prohibited by law; or

(2) Touching, caressing or fondling such persons' breasts, buttocks, anus or genitals.

(e) Using or permitting any person to use on the licensed premises, any artificial devices or inanimate objects to depict any of the acts prohibited by paragraph (d) of this section.

(f) Showing or permitting any person to show on the licensed premises any motion picture, film, photograph, electronic reproduction, or other visual reproduction depicting:

(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, or any sexual act which is prohibited by law;

(2) The touching, caressing or fondling of the buttocks, anus, genitals or the female breasts;

(3) Scenes in which a person displays the buttocks, anus, genitals or the female breasts.

(g) As used in this section, the term premises means the premises licensed by the city as a cereal malt beverage establishment and such other areas, under the control of the licensee or his or her employee or employees, that are in such close proximity to the licensed premises that activities and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.

(Code 1988, 3-214)

3-216. SANITARY CONDITIONS REQUIRED. All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee. (Code 1988, 3-215)

3-217. MINORS ON PREMISES. (a) It shall be unlawful for the owner of premises wherein cereal malt beverage or alcoholic liquor is sold and consumed to knowingly allow any person under the age of 21 years to enter and remain on the premises unless the person's parent or court-appointed guardian is also physically present on the premises and aware of the person's presence.

(b) In determining whether the owner in subsection (a) has knowingly violated this section, the knowledge of agents and employees of the owner shall be attributed to the owner.

(c) It shall be a completed defense to a violation of subsection (a) of this section if the owner or his or her agent or employee; upon learning that a prohibited person is upon the premises, immediately demand that the prohibited person leave and immediately report the incident to the police department.

(d) It shall be unlawful for any person under the age of 21 years to knowingly enter or remain on the premises wherein cereal malt beverages are sold and consumed unless the person's parent or court-appointed guardian is also physically present on the premises and aware of the person's presence.

(e) Any person attempting to enter or remain upon the premises wherein cereal malt beverages are sold and consumed shall carry upon his or her person proof of age as shown by a photo type identification card and shall present the card to the owner, his or her agent, or any law enforcement officer upon demand. Any person failing to present the identification upon demand shall be ordered to leave the premises at once. Failure to leave shall be a violation of this section.

(f) This section shall not apply to premises wherein more than 50 percent of the gross annual receipts are from the sale of tangible products other than intoxicating liquors and cereal malt beverages.

(g) An owner convicted of violating subsection (a) of this section shall, upon first conviction, be fined not more than \$500 and sentenced to 10 days in jail, or both, and upon a second conviction within a 12 month period, be fined not more than \$1000 and sentenced to 20 days in jail, or both, and all licenses issued to him or her for the premises by the city shall immediately become void and of no effect.

(h) Any person convicted of violating subsections (d) or (e) of this section shall be fined not more than \$500.00 for each offense and sentenced to not more than 20 days in jail.

(Ord. 93-12, Sec. 1:8; Code 1998)

3-218. NUMBER OF LICENSES RESTRICTED. (a) The governing body of the city shall issue no more than 10 cereal malt beverage licenses for carry-out purposes and no more than eight cereal malt beverage licenses for consumption on-premises purposes to be in force and effect at the same time.

(b) Any entity holding a cereal malt beverage license from the city on December 9, 1987, shall be entitled to a renewal of its license so long as it continues to be in full compliance with the laws of the State of Kansas and the ordinances of the city and makes timely application for the renewal.

(c) Any entity acquiring a cereal malt beverage license from the city after December 9, 1987, shall be entitled to a renewal of its license so long as it continues to be in full compliance with the laws of the State of Kansas and the ordinances of the city and makes timely application for the renewal.

(d) Any entity applying for a new cereal malt beverage license, as opposed to a renewal of an existing license, shall be considered on a first-come first-serve basis, provided the entity otherwise qualifies for a license under the laws of the State of Kansas and the ordinances of the city.

(Ord. 87-16, Sec. 1:4; Code 1988)

### ARTICLE 3. ALCOHOLIC LIQUOR

- 3-301. STATE LICENSE REQUIRED. (a) It shall be unlawful for any person to keep for sale, offer for sale, or expose for sale or sell any alcoholic liquor as defined by the "Kansas liquor control act" without first having obtained a state license to do so.  
(b) The holder of a license for the retail sale in the city of alcoholic liquors by the package issued by the state director of alcoholic beverage control shall present such license to the city clerk when applying to pay the occupation tax levied in section 3-302 and the tax shall be received and a receipt shall be issued for the period covered by the state license.  
(Rev. Ord. 1951, 6-201; Code 1988)
- 3-302. OCCUPATIONAL TAX. There is hereby levied a biennial occupation tax of \$600 on any person holding a license issued by the state director of alcoholic beverage control for the retail sale within the city of alcoholic liquors for consumption off the premises. Such tax shall be paid by the retailer to the city clerk before business is begun under an original state license and shall be paid within five days after any renewal of a state license. (K.S.A. 41-310; Code 2015)
- 3-303. POSTING OF RECEIPT. Every licensee under this article shall cause the city alcoholic liquor retailer's occupation tax receipt to be placed in plain view, next to or below the state license in a conspicuous place on the licensed premises.  
(Rev. Ord. 1951, 6-201; Code 1988)
- 3-304. HOURS OF SALE. No person shall sell at retail any alcoholic liquor:  
(a) On the day of any national, state, county or city election, including primary elections, during the hours the polls are open within the political area in which such election is being held;  
(b) On any Sunday;  
(c) On Decoration Day or Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day;  
(d) Before 9:00 a.m. or after 11:00 p.m. on any day when the sale thereof is permitted. (K.S.A. 41-712; Code 1988)
- 3-305. BUSINESS REGULATIONS. It shall be unlawful for a retailer of alcoholic liquor to:  
(a) Permit any person to mix drinks in or on the licensed premises unless the person is preparing or mixing samples for the purposes of conducting wine, beer, or distilled spirit tastings, or any combination thereof, as authorized by K.S.A. 2012 Supp. 41-308d, and amendments thereto;  
(b) Employ any person under the age of 21 years in connection with the operation of the retail establishment;  
(c) Employ any person in connection with the operation of the retail establishment who has been adjudged guilty of a felony;  
(d) Furnish any entertainment in his or her premises or permit any pinball machine or game of skill or chance to be located in or on the premises; or  
(e) Have in his or her possession for sale at retail any bottles, cask, or other containers containing alcoholic liquor, except in the original package.  
(f) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person under 21 years of age.  
(K.S.A. 41-713; Code 2015)

3-306. MINORS, INCAPACITATED PERSONS. (a) It shall be unlawful for any person under the age of 21 to represent that he or she is of age for the purpose of purchasing or attempting to purchase any alcoholic liquor, or to attempt to purchase any alcoholic liquor from any person. No person under the age of 21 shall have alcoholic liquor in his or her possession.

(b) No person shall knowingly sell, give away, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated be the consumption of such liquor.

(K.S.A. 41-715; Code 1988)

3-307. RESTRICTIONS ON LOCATION. No person shall knowingly or unknowingly sell, give away, furnish, dispose of, procure, exchange or deliver, or permit the selling, giving away, furnishing, disposing of, procuring, exchanging or delivering of any alcoholic beverage in any building, structure or premises, for consumption in such building or upon such premises if such consumption is within 200 feet from the nearest property line of any existing hospital, school, church or library.

(K.S.A. 41-710; Code 2015)

#### ARTICLE 4. PRIVATE CLUBS

- 3-401. LICENSE REQUIRED. It shall be unlawful for any person granted a private club license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a local license from the city clerk. (Ord. 83-21, Sec. 1; Code 1988)
- 3-402. LICENSE FEE. (a) There is hereby levied a biennial license fee on each private club located in the city which has a private club license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days before the license expires. The city license fee for a Class A club shall be \$500 and the city license fee for a Class B club shall be \$500.
- (b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage laws, building construction laws, and the police chief signs a consent thereto.
- (c) The police chief shall not sign a consent to the issuance of such license until he or she shall first perform a visual inspection of the premises and obtains a check of the applicant's history of criminal and traffic record of arrests and convictions and performs any investigation reasonably required therefrom to determine the applicant's suitability to be issued a license.
- (c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.
- (d) Every licensee shall cause the city club license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises. (Code 2015)
- 3-403. CONTENTS OF LICENSE. Every license issued by the city shall be dated on the date of its issue and shall show the name of the licensee and designate that the licensee is authorized to engage in the operation of a private club, including its classification. It shall also contain the statement required in 3-405. (Ord. 83-21, Sec. 6; Code 1988)
- 3-404. DURATION OF LICENSE. A license issued under this article shall expire on December 31st next following its issuance and shall be renewed by payment of the fee prescribed in section 3-402 herein. (Code 2015)
- 3-405. NONTRANSFERABLE. (a) A license issued under this article shall not be transferred to any person or entity. The license shall so state and the licensee shall keep the license posted in a conspicuous place in the licensee's place of business.
- (b) No club membership shall be sold to any person under 21 years of age, nor shall alcoholic beverages or cereal malt beverages be given, sold or traded to any person under 21 years of age. (K.S.A. Supp. 41-2614; Code 2015)
- 3-406. BUSINESS REGULATIONS. (a) No club licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

(b) Cereal malt beverages may be sold on premises licensed for the retail sale of cereal malt beverages for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.

(c) No club membership shall be sold to any person under 21 years of age, nor shall alcoholic beverages or cereal malt beverages be given, sold or traded to any person under 21 years of age.

(K.S.A. Supp. 41-2614; Code 2015)



## **ARTICLE 5. DRINKING ESTABLISHMENTS**

- 3-501.           **LICENSE REQUIRED.** It shall be unlawful for any person granted a drinking establishment license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a city license from the city clerk. (Code 2015)
- 3-502.           **LICENSE FEE.** (a) There is hereby levied a biennial license fee in the amount of \$500 on each drinking establishment located in the city which has a drinking establishment license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license.
- (b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.
- (c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.
- (d) Every licensee shall cause the city drinking establishment license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.  
(Code 2015)
- 3-503.           **BUSINESS REGULATIONS.** (a) No drinking establishment licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.
- (b) Cereal malt beverages may be sold on premises licensed for the retail sale of cereal malt beverage for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.
- (c) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under 21 years of age.  
(K.S.A. Supp. 41-2614; Code 2015)

## ARTICLE 6. CATERERS

- 3-601. LICENSE REQUIRED. It shall be unlawful for any person licensed by the State of Kansas as a caterer to sell alcoholic liquor by the drink, to sell or serve any liquor by the drink within the city without obtaining a local caterer's license from the city clerk. (Code 2015)
- 3-602. LICENSE FEE. (a) There is hereby levied an annual license fee in the amount of \$250 on each caterer doing business in the city who has a caterer's license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license.
- (b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.
- (c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.
- (d) Every licensee shall cause the caterer license to be placed in plain view on any premises within the city where the caterer is serving or mixing alcoholic liquor for consumption on the premises.  
(Code 2015)
- 3-603. BUSINESS REGULATIONS. (a) No caterer licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 9:00 a.m. on any day.
- (b) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under 21 years of age.  
(K.S.A. Supp. 41-2614; Code 2015)
- 3-604. NOTICE TO CHIEF OF POLICE. Prior to any event at which a caterer will sell or serve alcoholic liquor by the individual drink, the caterer shall provide written notice to the chief of police at least 48 hours prior to the event if the event will take place within the city. The notice shall contain the location, name of the group sponsoring the event, and the exact date and times the caterer will be serving.  
(Code 2015)

## ARTICLE 7. TEMPORARY PERMITS

- 3-701. PERMIT REQUIRED. It shall be unlawful for any person granted a temporary permit by the State of Kansas to sell or serve any alcoholic liquor within the city without first obtaining a local temporary permit from the city clerk. (Code 2015)
- 3-702. PERMIT FEE. (a) There is hereby levied a temporary permit fee in the amount of \$50 per day on each group or individual holding a temporary permit issued by the state director of alcoholic beverage control authorizing sales within the city, which fee shall be paid before the event is begun under the state permit.  
(b) Every temporary permit holder shall cause the temporary permit receipt to be placed in plain view on any premises within the city where the holder of the temporary permit is serving or mixing alcoholic liquor for consumption on the premises.  
(Code 2015)
- 3-703. CITY TEMPORARY PERMIT. (a) It shall be unlawful for any person to conduct an event under a state issued temporary permit without first applying for a local temporary permit at least 7 days before the event. Written application for the local temporary permit shall be made to the city clerk and shall clearly state:  
(1) The name of the applicant;  
(2) The group for which the event is planned;  
(3) The location of the event;  
(4) The date and time of the event;  
(5) Any anticipated need for police, fire or other municipal services.  
(b) Upon presentation of a state temporary permit, payment of the city's temporary permit fee and a written application as provided for in subsection (a), the city clerk shall issue a local temporary permit to the applicant if there are no conflicts with any zoning or other ordinances of the city.  
(c) The city clerk shall notify the chief of police whenever a temporary permit has been issued and forward a copy of the permit and application to the chief of police.  
(Code 2015)
- 3-704. PERMIT REGULATIONS. (a) No temporary permit holder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 9:00 a.m. at any event for which a temporary permit has been issued.  
(b) No alcoholic beverages shall be given, sold or traded to any person under 21 years of age.  
(Code 2015)

## ARTICLE 8. SPECIAL EVENT CMB PERMITS

- 3-801. SPECIAL EVENT CMB PERMITS; PERMIT REQUIRED. It shall be unlawful for any person to sell or serve any CMB at any special event within the city without first obtaining a local special event permit from the city clerk.  
(K.S.A. 41-2703; Code 2015)
- 3-802. SAME; PERMIT FEE. (a) There is hereby levied a special event permit fee in the amount of \$100 on each group or individual, which fee shall be paid before the event begins. Such fee shall be in addition to the \$25 fee to be remitted to the Division of Alcohol Beverage Control.  
(b) Every special event permit holder shall cause the permit receipt to be placed in plain view on any premises within the city where the holder of the special event permit is serving CMB for consumption on the premises.  
(K.S.A. 41-2702; Code 2015)
- 3-803. SAME; CITY SPECIAL EVENT PERMIT. (a) It shall be unlawful for any person to sell or serve CMB at a special event without first applying for a local special event permit at least 3 days before the event. Written application for the local special event permit shall be made to the city clerk on the form used for annual cereal malt beverage sales or, when available, the special event CMB permit application approved by the Attorney General, as directed by the city clerk. In addition to any other information required, the applicant shall provide the following:  
(1) The name of the applicant;  
(2) The group for which the event is planned;  
(3) The location of the event;  
(4) The date and time of the event; and  
(5) Any anticipated need for police, fire, or other municipal services.  
(b) Upon meeting the requirements to obtain a special event permit, the city clerk shall issue a local special event permit to the applicant if there are no conflicts with any zoning or other ordinances of the city.  
(c) The city clerk shall notify the chief of police whenever a special event permit has been issued and forward a copy of the permit and application to the chief of police.  
(Code 2015)
- 3-804. SAME; PERMIT REGULATIONS. (a) No special event permit holder shall allow the serving of CMB between the hours of 12:00 a.m. and 6:00 a.m. at any event for which a special event permit has been issued.  
(b) No CMB shall be given, sold or traded to any person under 21 years of age.  
(c) No more than four special event permits may be issued in a calendar year to the same applicant.  
(d) No special event permit issued hereunder may be transferred or assigned to any other vendor.  
(e) All local ordinances and state statutes for the sale and consumption of CMB apply to holders of special event permits.  
(K.S.A. 41-2703; Code 2015)

## ARTICLE 9. KEG REGISTRATION

- 3-901. DEFINITIONS. As used in this article, the words and phrases herein defined shall have the following meaning, unless the context otherwise requires:
- (a) Beer means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.
  - (b) Cereal malt beverage means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2% alcohol by weight.
  - (c) Keg means a reusable container of beer or cereal malt beverage having a liquid capacity of four or more gallons.
  - (d) Legal age for consumption means 21 years of age.
  - (e) Person means any natural person, corporation, partnership, limited liability company, trust or association.
  - (f) Retailer means a person who sells at retail, or offers for sale at retail, beer or cereal malt beverage for use or consumption and not for resale in any form, and includes sales of beer or cereal malt beverage in a keg returnable to the seller. Such terms shall not refer to or mean sales by a distributor or sales by one retailer to another.
  - (g) Sell or sell at retail refers to and means sales of beer or cereal malt beverage for use or consumption and not for resale in any form, and includes sales of beer or cereal malt beverage in a keg returnable to the seller. Such terms shall not refer to or mean sales by a distributor or sales by one retailer to another.
  - (h) Proper proof of identification means a photographic motor vehicle operator's license, a valid passport, a United States military identification card, a Kansas photographic non-driver's identification card or other official or apparently official document, containing a photograph, signature and birth date of the person. (Code 2015)
- 3-902. RETAILER DUTIES. A retailer, or retailer's employee or agent, prior to or at the time of any sale at retail of a keg, shall:
- (a) Affix or cause to be affixed to the keg a keg identification tag, in accordance with the provisions of section 3-904;
  - (b) Require the purchaser to exhibit proper proof of identification. If the purchaser fails to provide such proof of identification, the retailer shall refuse to sell the keg to such person;
  - (c) Require the purchaser to sign a Declaration and Receipt for the keg in the form provided for in section 3-904;
  - (d) Record on the declaration the keg identification tag number, the date of sale, the purchaser's name and address, and the type, number and expiration date of the purchaser's identification;
  - (e) Inform the purchaser, that any deposit paid by the purchaser for the keg, if required, shall be forfeited if the keg is returned without the original keg identification tag intact and readable;
  - (f) Require each purchaser of any such keg to acknowledge as part of the declaration that persons under 21 are not of legal age for consumption of beer or cereal malt beverage and that the declaration is subject to inspection by law enforcement personnel; and

(g) Provide a copy of the Declaration and Receipt to the purchaser.  
(Code 2015)

3-903. PURCHASER REQUIREMENTS. Any person who purchases a keg or the contents thereof shall:

- (a) Be of legal age to purchase, possess, or use beer and cereal malt beverage;
- (b) Provide proof of identification and such other information as the retailer may require in accordance with 3-902.
- (c) Sign a Declaration and Receipt in the form required by section 3-902;
- (d) Not allow any person under the age of 21 to consume the keg contents except as allowed by law;
- (e) Not remove, obliterate, or allow to be removed or obliterated, the keg identification tag required by section 3-902; and
- (f) Maintain a copy of the Declaration and Receipt with the keg during the time the keg is in the purchaser's possession or control.

(Code 2015)

3-904. IDENTIFICATION REQUIREMENTS. (a) The keg identification tag required under this article shall be in the form of a uniquely numbered and coded tag or label, prescribed and furnished by the city clerk. Such tag or label is used for a single sale of the marked keg and is to be removed from the keg by the retailer upon return of the keg to the retail seller and maintained with the records of the sale. Such tags shall be fabricated and made attachable in such a manner as to make the tag removable for the purpose of the cleaning and reusing the keg by a manufacturer.

(b) The Declaration and Receipt required shall be on a form prescribed and furnished by the city clerk and shall include the information as required by sections 3-902 and 3-903 thereof, and may include such other identifying information as the city clerk may deem necessary and appropriate.

(c) Retailers may apply for and receive keg identification tags and Declaration and Receipt forms from the city clerk upon submittal of an application on a form as prescribed by the city clerk and such proof as may be required by the city clerk that the applicant is duly licensed to sell beer or cereal malt beverages in a keg. The city clerk may charge a reasonable fee for furnishing the tags and forms required by this article not to exceed the actual cost of furnishing such tags and forms.

(d) The retailer shall retain a copy of all such Declarations and Receipts required on the retailer's licensed premises for a period of six months. Such Declarations and Receipts shall be available for inspection and copying by any law enforcement officer during normal business hours for the purpose of identifying persons suspected of a violation of law.

(e) Falsifying any information on a Declaration and Receipt shall be a violation of this section.

(Code 2015)

3-905. DEPOSIT REFUND. No retailer may refund any deposit upon return of a keg that:

- (a) Does not have the required identification tag; or
- (b) Has an identification tag that has been defaced to the extent that the information contained on the tag cannot be read. (Code 2015)

3-906.

VIOLATIONS. It shall be unlawful for any person to:

(a) Remove from a keg all or part of a keg identification tag required pursuant to this article;

(b) Deface a keg identification tag to the extent the information contained on the tag cannot be read;

(c) Fail to return a keg within 10 days of the due date; or

(d) Possess a keg that does not have the keg identification tag.

Provided that the provisions of this section shall not apply to a manufacturer, distributor, or retailer, and subsection (d) shall not apply to any person who finds a discarded keg on such person's property.

(Code 2015)