

CHAPTER IV. BEVERAGES

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ARTICLE 1. ALCOHOLIC LIQUOR

4-101

DEFINITIONS.

- (A) **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.
- (B) **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.
- (C) **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 that is more than 3.2 percent alcohol by weight.
- (D) **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 bonafide nonprofit, fraternal or war veteran's 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.
- (E) **Class B Club** means a premises operated for a 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.
- (F) **Club** means a Class A or Class B club.
- (G) **Drinking Establishment** means premises that may be open to the general public, where alcoholic liquor by the individual drink is sold.
- (H) **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 or serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public.
- (I) **Retailer** means any person who sells at retail, or offers for sale at retail, alcoholic liquors in the original package for consumption off of and away from the premises.
- (J) **Licensee** means the person who has been properly issued a license, including a temporary permit, to sell alcoholic liquor within the corporate limits of the City.
- (K) **Person** means any natural person, corporation, partnership or association.

- (L) **School** means any public or parochial school containing any of the grades from kindergarten through twelfth grade. (Ord. 5828; Ord. 6002)

4-102

PENALTY PROVISION.

Unless otherwise provided, the penalty provided for violations of this article shall be a misdemeanor punishable by a fine of not less than \$50.00 nor more than \$500.00, or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

4-103

POSSESSION, PURCHASE OR CONSUMPTION OF ALCOHOLIC BEVERAGE BY UNDERAGE PERSONS; PENALTY IMMUNITY FROM PROSECUTION IN CERTAIN CIRCUMSTANCES.

(Ord. 7363, Ord. 7888, Ord. 9258).

- (A) Except with regard to serving alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704 and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, no person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law. (Ord. 7363, Ord. 7888).
- (B) Violation of this section by a person 18 or more years of age but less than 21 years of age is a public offense for which the minimum fine is \$300.00 and the maximum fine is \$500.00. The Municipal Judge may also sentence the offender to no more than thirty (30) days in jail. The Municipal Judge shall have no authority to suspend any portion of the minimum fine. (Ord. 7363).
- (C) In addition to any other penalty authorized by law, (Ord. 7363, Ord. 7888).
- (1) The Municipal Judge may order the offender to do either or both of the following:
- (A) Perform 40 hours of public service; or
- (B) Attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans; and
- (2) Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 30 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 30 days whether or not that person has a driver's license.
- (3) Upon a second conviction of a violation of this section, the court, shall order the division of vehicles to suspend the driving privilege of such offender for 90 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 90 days whether or not that person has a driver's license.
- (4) Upon a third or subsequent conviction of a violation of this section,

the court shall order the division of vehicles to suspend the driving privilege of such offender for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not that person has a driver's license.

- (D) This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.
- (E) A person and, if applicable, one or two other persons acting in concert with such person are immune from criminal prosecution for a violation of this section if such person:
 - (1)
 - (a) Initiated contact with law enforcement or emergency medical services and requested medical assistance on such person's behalf because such person reasonably believed such person was in need of medical assistance; and
 - (b) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance;
 - (2)
 - (a) Initiated contact with law enforcement or emergency medical services, or was one of one or two other persons who acted in concert with such person, and requested medical assistance for another person who reasonably appeared to be in need of medical assistance;
 - (b) Provided their full name, the name of one or two other persons acting in concert with such person, if applicable, and any other relevant information requested by law enforcement or emergency medical services;
 - (c) Remained at the scene with the person who reasonably appeared to be in need of medical assistance until emergency medical services personnel and law enforcement officers arrived; and
 - (d) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance; or
 - (3)
 - (a) was the person who reasonably appeared to be in need of medical assistance as described in subsection (E)(2) but did not initiate contact with law enforcement or emergency medical services; and
 - (b) cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance.

A person shall not be allowed to initiate or maintain an action against a law enforcement officer, or such officer's employer, based on the officer's

compliance or failure to comply with this subsection.

4-103.1

UNLAWFUL HOSTING OF MINORS AND CONSUMPTION OF ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE.

- (A) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is intentionally or recklessly permitting a person's residence or any land, building, structure or room owned, occupied or procured by such person to be used by an invitee of such person or an invitee of such person's child or ward, in a manner that results in the unlawful possession or consumption therein of alcoholic liquor or cereal malt beverages by a minor. "Minor" shall be defined as any individual less than 21 years of age. There shall be a rebuttable presumption that all persons present at and participating in social activities are invitees of the person or persons organizing the social activities, or if persons organizing the activities cannot be identified, by the persons who owned, occupied, or procured the land, building, structure or room used for the social activities at the time of those activities. A person shall be deemed to have acted recklessly per se under this section if he or she knowingly hosts, permits, or allows a social activity on any property covered by this section and fails to take reasonable steps to prevent the consumption of alcoholic liquor or cereal malt beverage by any minor at the social activity. Reasonable steps include, but are not limited to: (Ord. 7888, Ord. 8111, Ord. 8397)
1. Making all reasonable efforts to control the quantity of and the access to alcoholic liquor or cereal malt beverage at the social activity, including lawful efforts aimed at removing from the social activity individuals who are not invited to the social activity, so that only the person or his or her invitees who are of legal age to possess or consume such alcoholic liquor or cereal malt beverage have access to them;
 2. Verifying the age of all persons attending the social activity by inspecting drivers licenses or other government-issued identification cards to ensure that people under the legal age to consume alcoholic liquor or cereal malt beverage do not have access to alcoholic liquor or cereal malt beverage while at the social activity.
- (B) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a misdemeanor, for which the minimum fine is \$1000. If the court sentences the offender to perform community or public service work as a condition of probation, the court shall consider ordering the offender to serve the community or public service at an alcohol treatment facility. (Ord. 7888, Ord. 8111, Ord. 8397)
- (C) As used in this section, terms have the meaning provided by K.S.A. 41-102, and amendments thereto. (Ord. 7888, Ord. 8111, Ord. 8397)
- (D) Social activity shall mean any gathering of three or more people when any primary purpose of the gathering is socializing or recreation and at which alcoholic liquor or cereal malt beverage is served or permitted to be consumed. This term shall not include circumstances where the only alcoholic liquor or cereal malt beverage that is served is done so by a business licensed for the service of alcoholic liquor or cereal malt beverage under this code or the Kansas Statutes, and amendments thereto. (Ord. 7888, Ord. 8111, Ord. 8397)

- (E) The provisions of this section shall not be deemed to create any civil liability for any lodging establishment, as defined in K.S.A. 36-501, and amendments thereto. (Ord. 7888, Ord. 8111, Ord. 8397)

4-104

REMOVAL FROM PREMISES PROHIBITED.

No person shall remove any drink of alcoholic liquor or any open container of cereal malt beverage from a premises licensed as a private club, drinking establishment or cereal malt beverage retailer. Violation of this Section by a person is a misdemeanor punishable by a fine not to exceed \$500.00. (Ord. 6296)

4-105

CONSUMPTION OF ALCOHOLIC LIQUOR IN PUBLIC PLACES PROHIBITED; EXCEPTIONS.

- (A) No person shall drink or consume alcoholic liquor or possess an open container of alcoholic liquor on the public streets, alleys, sidewalks, roads, highways, or public parking lots.
- (B) No person shall drink or consume alcoholic liquor or possess an open container of alcoholic liquor inside vehicles while upon the public streets, alleys, roads, highways, or public parking lots, except when permitted by K.S.A. 8-1599, as amended.
- (C) No person shall drink or consume alcoholic liquor on private property except:
 - (1) On premises where the sale of liquor by the individual drink is authorized by the Club and Drinking Establishment Act, K.S.A. 41-2601 et seq., and amendments thereto, and by the City licensing requirements, Sections 4-101 et seq., and amendments thereto;
 - (2) Upon private property by a person occupying such property as an owner or lessee of an owner and the guests of such person (and only with such person's permission), if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, or Section 4-101 et seq., and amendments thereto, takes place; or
 - (3) In a lodging room of any hotel, motel, or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, or Section 4-101 et seq., and amendments thereto, takes place; or
 - (4) In a private dining room of a hotel, motel, or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, or Section 4-101 et seq., and amendments thereto, takes place; or
 - (5) On the premises of a micro brewery or farm winery, if authorized by K.S.A. 41-308a or K.S.A. 41-308b, and amendments thereto.
- (D) No person shall drink or consume alcoholic liquor on public property except:

- (1) Upon real property leased by the City to others, under the provisions of K.S.A. 12-1740 to 12-1749, inclusive, and any amendments thereto, if such real property is actually being used for hotel or motel purpose or purposes incidental thereto;
 - (2) In any state-owned or operated building or structure, and upon the surrounding premises, which is furnished to and occupied by any state officer or employee as a residence;
 - (3) Upon property owned or controlled by the University of Kansas exempted from the provisions of K.S.A. 41-719(c), as amended, by the State Board of Regents pursuant to K.S.A. 1991 Supp. 41-719(f), as amended;
 - (4) In the Lawrence Arts Center, located at 940 New Hampshire, during such hours and such locations as authorized by the Board of Directors of the Lawrence Arts Center; (Ord. 7489)
 - (5) In the Lawrence Riverfront Plaza and the Barbed Wire Building; or
 - (6) During approved events at parks and facilities owned by the City of Lawrence and operated by the Department of Parks and Recreation, provided that the sponsor or organizer has obtained a permit issued pursuant to the rules and regulations of the Department of Parks and Recreation and that the drinking or consumption of alcoholic liquor is conducted in accord with the reasonable conditions established by the permit. (Ord. 8515)
 - (7) Upon property exempted from the provisions of subsection (D) pursuant to subsection (E). (Ord. 8515)
 - (8) During events at the Lawrence Public Library, pursuant to the rules and regulations of the Lawrence Public Library. (Ord. 8515)
 - (9) Pursuant to a license granted by the City Commission under 6-1201, et seq. (Sidewalk Dining License); (Ord. 8515)
- (E) The City may exempt, by ordinance, specified property, title of which is vested in the City, from the provisions of Subsection (D).
- (F) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than \$50 nor more than \$200 or by imprisonment for not more than six months, or both.

4-106

LICENSES REQUIRED.

It shall be unlawful for any person sell or serve any alcoholic liquor within the City without first obtaining a local license from the City Clerk in addition to a license granted by the State of Kansas. (Ord. 5828)

4-107

LICENSES REQUIRED; FEES.

- (A) There is hereby levied a biennial license fee in the amount fixed by Section 6-108.1 of this Code on each Caterer, Class A Club, Class B Club, Drinking Establishment, and Alcoholic Liquor Retailer; and a license fee in the amount fixed by Section 6-108.1 of this Code on each Temporary Liquor Permit Holder and Temporary Cereal Malt Beverage Permit Holder. Such fee shall be paid before business is begun under an original state license

and within five (5) days after any renewal of a state license and thereafter in accordance with the provisions of Section 6-108.1. The completed and executed written application for such license shall be filed with the City Clerk at the time such fee is paid. (Ord. 8634)

- (B) All applicants for new or renewal city licenses shall be submitted to the City Clerk. Upon presentation of a state license, issued by the State Director of Alcoholic Beverage Control, payment of the city license fee and filing the completed license application, the City Commission shall issue a city license if the applicant complies with all applicable provisions of this Article, the City Zoning Ordinance and other applicable ordinances of the City.
- (C) Every licensee shall cause the city license to be placed in plain view next to or below the state license, in a conspicuous place on a licensed premises. (Ord. 6296)
- (D) When the licensee pays the full amount of the license fee upon application and surrenders such license to the City Clerk before the beginning of the second year of the license term, a refund shall be made of one-half of the license fee paid by such licensee. No other refund or proration of the license fee shall be issued. (Ord. 8634)

4-108

QUALIFICATION FOR PRIVATE CLUB OR DRINKING ESTABLISHMENT CITY LICENSE.

- (A) The Governing Body of the City shall, if the applicant is qualified by law, issue a license to the applicant.
- (B) A city license shall not be issued to an applicant unless such applicant is in compliance with the provisions of K.S.A. 41-2601 et seq.
- (C) A city license shall not be issued to an applicant unless such applicant is in compliance with the provisions of Section 4-112. (Ord. 6296)

4-109

BUSINESS REGULATIONS; ALCOHOLIC LIQUOR.

- (A) No person shall have any alcoholic liquor in his or her possession while in the place of business, unless the premises are currently licensed under a license issued by the State Director of Alcoholic Beverage Control;
- (B) No one under twenty-one (21) years of age shall consume or be served alcoholic liquor and a sign so stating shall be prominently posted in all such places;
- (C) No licensee, or his or her agent or employee, shall allow the serving, mixing or consumption of alcoholic liquor on his or her premises between the hours of 2:00 a.m. and 9:00 a.m. on any day; except as established by Section 4-114.
- (D) Cereal malt beverage may be sold on the premises licensed for 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.
- (E) No licensee, or his or her agent or employee, shall sell, give, trade, or permit the sale, give or trade of any alcoholic liquor to any person under twenty-one (21) years of age. (Ord. 6296)

4-110

CATERERS; NOTICE TO CHIEF OF POLICE.

Prior to any event at which a caterer shall sell or serve alcoholic liquor by the individual drink, a caterer shall provide written notice to the Chief of Police at least seven (7) days 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 time the caterer will be serving. (Ord. 5828)

4-111

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 seven (7) days before the event. Written application for the local temporary permit shall be made to the City Clerk and shall clearly state:
 - (1) 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. (Ord. 5828)

4-112

PENALTY.

If any licensee violates any of the provisions of this Article, the Governing Body of the City, upon ten (10) days written notice to the licensee, may, upon hearing, permanently revoke or cause to be suspended for a period of not more than six (6) months the license; or, in the alternative, the individual holding the license may be charged in the municipal court with a violation of the alcoholic liquor laws of the City and upon conviction shall be found guilty of a misdemeanor. (Ord. 5828)

4-113

RESTRICTIONS ON LOCATION.

- (A) No alcoholic liquor shall be sold or served by a person holding a license or permit from the City, at a place of business or other premises located within 400 feet of any school or church. The distance to be measured along the public rights of way, by the shortest route by which a pedestrian would normally walk, from the nearest property line of the school or church, to the primary public entrance to the building, or part thereof, occupied by the place of business or other premises.
- (B) The distance limitation of Subsection (A) above shall not apply to a place of business or premises for which a license had been issued by the City prior to the publication of this Article, and for which a license has been in effect at all times since the publication of this Article. Any temporary lapse of the license not exceeding sixty (60) days in length shall be disregarded in

applying this paragraph.

- (C) The distance limitation of Subsection (A) shall not apply when the licensee or license applicant petitions for and receives a waiver of the distance limitation from the Governing Body of the City. The Governing Body shall grant such 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. At least thirty (30) days prior to such hearing, the City Clerk shall give notice of such hearing by first class mail to all churches and schools located within 400 foot of the place of business or premises for which a waiver is sought.
- (D) No license 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, fire or health codes.
- (E) In no event shall a retailer's license be issued for a premises which is located within 200 feet of any school or college or church, except that if any such school, college or church is established within 200 feet of any licensed premises after the premises have been licensed, the limitation imposed by this Subparagraph (E) shall not apply to such premises. (Ord. 5828; Ord. 6002)

4-114

ADDITIONAL REQUIREMENTS FOR CITY LICENSURE FOR PRIVATE CLUBS AND DRINKING ESTABLISHMENTS.

- (A) The City Commission may require additional conditions for the issuance of a city license or continued retention of existing city license for a private club or drinking establishment, upon a finding that the public health, safety, or welfare require such conditions. The City Manager shall recommend conditions for licensure, as appropriate. Such conditions of licensure may include, but are not limited to the following:
 - (1) Exterior lighting requirements;
 - (2) Exterior fencing requirements;
 - (3) Appropriate structural additions, deletions or changes to the premises to: reduce loitering by patrons outside the premises, reduce noise from the premises, reduce littering by employees and patrons, or such other structural changes that may be necessitated in the interest of public health, safety or welfare.
 - (4) Posting in the premises or outside the premises appropriate notices or signs advising patrons to leave the area after closing, respect property rights of neighbors and other appropriate notices and signs which the City Commission may require.
 - (5) Reduced hours of operation from those provided in Section 4-109.
 - (6) Such other conditions as may be appropriate for the protection and preservation of public health, safety or welfare.
- (B) Additional requirements for City licensure of a private club or drinking establishment as set out in Subsection (A) shall only be imposed after the license holder or applicant has been mailed, to the address on the license or application, by certified mail, return-receipt requested, notice of the

proposed conditions. After the posting of the certified mail, the license holder or applicant shall have ten (10) days to submit a written request to the City Clerk for a hearing before the City Commission on the proposed conditions.

- (C) The City Commission may issue a city license conditioned upon the licensee complying with all requirements within thirty (30) days after license issuance of such time as established by the City Commission.
- (D) During the duration of a city license, the City Commission may require additional conditions on a city license, under procedures and requirements set forth under this Section. (Ord. 6296)

4-115

REVOCAION OR SUSPENSION OF CITY LICENSE FOR PRIVATE CLUB OR DRINKING ESTABLISHMENT.

The City Commission may revoke or suspend the license of a private club or drinking establishment under this chapter for any one or more of the following reasons:

- (A) Suspension or revocation of State license.
- (B) Violation of any provisions of K.S.A. 41-2601 et seq.
- (C) Violation of any provisions of this Article.
- (D) Habitual violations of occupancy limits established by the City, which shall be defined as three (3) or more violations within a twelve (12) consecutive month period. Revocation or suspension of a license for habitual violations of occupancy limits shall require a finding by the City Commission that the occupancy limit violations represented a substantial threat, in either the number of violations or the excess above the occupancy limit, to the safety of club or establishment employees and patrons.
- (E) Determination that private club or drinking establishment is a habitual public nuisance as defined by Section 4-116. (Ord. 7068)

4-116

HABITUAL PUBLIC NUISANCE PROHIBITED.

- (A) A drinking establishment or private club is a habitual public nuisance when it operates in a manner that habitually harms the public health, safety or welfare of the general public, neighboring properties or occupants of neighboring properties, or patrons. Habitual public nuisances are hereby prohibited.
- (B) A habitual public nuisance as defined by Subsection (A) shall only be determined to exist if the City Commission makes the following findings:
 - (1) The harm to the public health, safety or welfare can be fairly attributed to the operation of the private club or drinking establishment. The proximity of other licensed premises or similar facilities shall be considered by the Commission in making this finding.
 - (2) The harm to the public health, safety or welfare is of a habitual nature, and not limited to isolated incidents of an infrequent occurrence.
- (C) In determining the penalty for a drinking establishment or private club that is

a habitual public nuisance, the City Commission shall consider:

- (1) Whether the owners and operators of the drinking establishment or private club have taken actions to mitigate or eliminate the harm to public health, safety or welfare; and
 - (2) Whether the harm to public health, safety or welfare includes violations of law on the part of the private club or drinking establishment owners, operators, employees, or patrons.
- (D) Nothing in this ordinance shall be interpreted as penalizing a drinking establishment or private club, or the owner or employees of such drinking establishment or private club, solely for requesting assistance or reporting an incident to the police department. The City encourages drinking establishments and private club owners and employees to promptly report to the police department harmful or potentially harmful acts or conduct on the part of patrons. (Ord. 6296)

4-117

RETAIL LIQUOR ESTABLISHMENTS: HOURS OF SALE.

- (A) The sale at retail liquor establishments of alcoholic liquor on Sundays shall only occur between the hours of 12:00 p.m. and 8:00 p.m. (Ord. 7899)
- (B) The sale at retail of alcoholic liquor shall not occur on Easter, Thanksgiving and Christmas. (Ord. 7899)
- (C) On all other days except Sunday, the sale at retail liquor establishments of alcoholic liquor shall only occur between the hours of 9:00 a.m. and 11:00 p.m. (Ord. 7667)
- (D) The sale at retail of alcoholic liquor at a farmers' market pursuant to the authority of a valid Farmers' Market Sales Permit issued by the State of Kansas may occur only during the hours specified by that permit unless otherwise authorized by Kansas law. (Ord. 8436)

ARTICLE 2. CEREAL MALT BEVERAGES

4-201

DEFINITIONS.

The definitions of words defined in Section 4-101 of this Code shall apply to this Chapter unless a contrary definition is provided herein. In addition thereto, the following definitions shall apply in this Article:

- (A) **Licensee** means the person who has been properly issued a license to sell cereal malt beverage within the corporate limits of the City.
- (B) **Place of Business** shall mean any place where cereal malt beverages are sold.
- (C) **Retailer** means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form. (Ord. 5828; Ord. 6002)

4-202

CEREAL MALT BEVERAGE RETAILERS – FOR OFF PREMISES CONSUMPTION: HOURS OF SALE.

- (A) Pursuant to K.S.A. 41-2704, and Ordinance 7899, the sale at retail of cereal malt beverage in the original package for off premises consumption, is allowed within the City on any Sunday, except Easter, between the hours of 12:00 noon and 8:00 p.m. (Ord. 7899)
- (B) Pursuant to K.S.A. 41-2704, on all other days except Sunday, the sale at retail of licensed cereal malt beverage in the original package for off premises consumption, shall only occur between the hours of 6:00 a.m. and 12:00 midnight.

4-203

CONSUMPTION OF CEREAL MALT BEVERAGE IN PUBLIC PLACES PROHIBITED; EXCEPTIONS.

- (A) No person shall drink or consume cereal malt beverage or possess an open container of cereal malt beverage on the public streets, alleys, sidewalks, roads, highways, or public parking lots. (Ord. 7068)
- (B) No person shall drink or consume cereal malt beverage or possess an open container of cereal malt beverage inside vehicles while upon the public streets, alleys, roads, highways, or public parking lots, except when permitted by K.S.A. 8-1599, as amended. (Ord. 7068)
- (C) No person shall drink or consume cereal malt beverage on public property except: (Ord. 8515)
 - (1) pursuant to a license granted by the City Commission under 6-1201, et seq. (Sidewalk Dining License);
 - (2) at Eagle Bend Golf Course, pursuant to the rules and regulations of the Department of Parks and Recreation;
 - (3) During approved events at parks and facilities owned by the City of Lawrence and operated by the Department of Parks and Recreation, provided that the sponsor or organizer has obtained a permit issued pursuant to the rules and regulations of the Department of Parks and Recreation and that the drinking or consumption of cereal malt beverage is conducted in accord with the reasonable conditions established by the permit.
 - (4) Upon property owned or controlled by the University of Kansas exempted from the provisions of K.S.A. 41-719(c), as amended, by the State Board of Regents pursuant to K.S.A. 1991 Supp. 41-719(f), as amended;
 - (5) During events at the Lawrence Public Library, pursuant to the rules and regulations of the Lawrence Public Library.
 - (6) Upon property exempted from the provisions of subsection (C) pursuant to subsection (D).
- (D) The City may exempt, by ordinance, specified property, title of which is vested in the City, from the provisions of Subsection (C).
- (E) No person shall drink or consume cereal malt beverage on private property without the consent of the property owner.

4-204

LICENSE APPLICATION; FEE.

No person shall sell any cereal malt beverages at retail without having first secured a

license for each place of business as herein provided. In case such place of business is located within the corporate limits of the City, then the application for a license shall be made to the City. The application shall be verified and upon a form prepared by the Attorney General of the State and shall contain: (Ord. 8634)

- (A) The name and residence of the applicant and how long he or she resided within the State of Kansas, County of Douglas, City of Lawrence;
- (B) The particular place for which the license is desired;
- (C) The name of the owner of the premises upon which the place of business is located;
- (D) A statement that the applicant is a citizen of the United States and not less than twenty-one (21) years of age, and that he or she has not within two (2) years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude or being adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or alcohol; or, the violation of any other intoxicating liquor law of any state or of the United States.
- (E) All applications shall indicate whether the applicant will sell or offer for sale cereal malt beverages in original and unopened containers and not for consumption on the premises, or primarily for sale, use and consumption on the licensed premises. All applications shall be verified and be accompanied by a fee of \$200 plus any applicable state stamp fee to allow consumption on the premises, or by a fee of \$50 plus any applicable state stamp fee for the sale of cereal malt beverages in original and unopened containers and not for consumption on a licensed premises. The 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 a license for the remainder of the calendar year in which the license is issued. No license issued under this Article shall be transferable. The license shall be kept posted in a conspicuous place in the place of business.
- (F) All applications for renewal of licenses shall be submitted to the City Clerk on or before November 15, preceding the calendar year for which the renewal of license is sought. All new or change of ownership applications must be submitted to the City Clerk fifteen (15) days in advance of the date sought for such issuance.
- (G) The licensee shall submit any state licenses as required under K.S.A. 41-2702, prior to any city license being issued. (Charter Ord. 20; Ord. 5828)

4-205

CEREAL MALT BEVERAGE LICENSE APPROVAL; DISQUALIFICATION
(Ord. 5828; Ord. 6002; Ord. 8940)

- (A) The Governing Body shall, if the applicant is qualified as provided by law, approve the application and issue to the applicant a Cereal Malt Beverage License.
- (B) No Cereal Malt Beverage shall be issued to:
 - (1) Any person who is not a resident of Douglas County, Kansas, has not been a resident of Douglas County, Kansas, for at least six (6) months, or is not a resident in good faith of the State of Kansas;

- (2) Any person who has not been a resident of the State of Kansas for at least one year immediately preceding the date of the application for a Cereal Malt Beverage License;
- (3) Any person who is not a citizen of the United States;
- (4) Any person who, within two (2) years immediately preceding the date of the application, has been convicted of a felony or of any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquors, or any other liquor law of the State of Kansas, any other state, or the United States;
- (5) Any partnership, unless all members of the partnership are eligible and otherwise qualified to obtain and hold a Cereal Malt Beverage License;
- (6) Any corporation, if any manager, officer, or director thereof, or any shareholder owning, in the aggregate, more than twenty-five percent (25%) of such corporation, is ineligible to receive a license hereunder for any reason other than the citizenship and residency requirements of subsections (A)-(C) hereof;
- (7) Any corporation, if any manager, officer, or director thereof, or any shareholder owning, in the aggregate, more than twenty-five percent (25%) of such corporation, has been an officer, manager, or director, or a shareholder owning, in the aggregate, more than twenty-five percent (25%) of any corporation that: (1) had a license revoked under K.S.A. 41-2708, or any amendment thereto; or (2) was convicted of a violation of the Club and Drinking Establishment Act of 1965, codified as amended at K.S.A. 41-2601 *et seq.* or the Cereal Malt Beverage Act of 1937, codified as amended at K.S.A. 41-2701 *et seq.*;
- (8) Any person whose place of business is overseen by a manager or agent, unless the manager or agent is eligible and otherwise qualified to obtain and hold a Cereal Malt Beverage License;
- (9) Any person whose spouse would be ineligible to receive a Cereal Malt Beverage License for any reason other than citizenship, residency, or age requirements, except that this subsection shall not apply in determining eligibility for a renewal license under Section 4-204 of this Article;
- (10) Any person, partnership, or corporation, until the application has been reviewed and approved by the Chief of Police or his or authorized representative;
- (11) Any person, partnership, or corporation, until the applicant's premises has been inspected by the County Health Officer and is found to be in compliance with all laws, regulations, and ordinances applicable thereto; and
- (12) Any person, partnership, or corporation who has not presented, at the time of making the application, a *bona fide* deed, lease, or other satisfactory written evidence that the applicant is the owner of the place for which a license is desired or is the person or entity to

whom the owner of such place has given, in good faith, the possession and control of such premises.

4-206

RESTRICTIONS ON LOCATION.

- (A) No cereal malt beverage shall be sold or served by a person holding a license or permit from the City, at a place of business or other premises located within 400 feet of any school or church. The distance shall be measured along the public rights of way, by the shortest route by which a pedestrian would normally walk, from the nearest property line of the school or church, to the primary public entrance to the building, or part thereof, occupied by the place of business or other premises.
- (B) The business limitation of Subsection (A) shall not apply to a place of business or premises for which a license had been issued by the City prior to the publication of this Article, and for which a license has been in effect at all times since the publication of this Article. Any temporary lapse of the license not exceeding sixty (60) days in length shall be disregarded in applying this paragraph.
- (C) The distance limitation of Subsection (A) shall not apply when the licensee or license applicant petitions for and receives a waiver of the distance limitation from the Governing Body of the City. The Governing Body shall grant such 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. At least thirty (30) days prior to such hearing, the City Clerk shall give notice of such hearing by first class mail to all churches and schools located within 400 feet of the place of business or premises for which a waiver is sought. (Ord. 5828; Ord. 6002)

4-207

BUSINESS REGULATIONS; CEREAL MALT BEVERAGE – ON PREMISES CONSUMPTION.

It shall be the duty of every licensee to observe the following regulations. Noncompliance shall constitute a misdemeanor:

- (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 12:00 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 thirty percent (30%) 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. 41-2701 et seq., and licensed 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 pursuant to the Kansas Club and Drinking Establishment Act shall be open to the police at any time;
- (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 person shall remove or carry out from the licensee's place of business, any open container of cereal malt beverage, and a sign so stating shall be prominently posted in all such places of business;
- (I) No licensee or agent or employee of the licensee shall sell, give, trade or permit the sale, give or trade of any cereal malt beverage to any person under twenty-one (21) years of age;
- (J) 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. This provision shall not apply to the State Lottery.
- (K) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in the place of business or brought in for such purpose unless such licensee also holds a license for such place of business pursuant to Article 1 of this Chapter;
- (L) No licensee shall employ any person who has been adjudged guilty of a felony;
- (M) No licensee or agent or employee of the licensee shall employ any person under the legal age established by the State of Kansas for employment involving dispensing cereal malt beverages; and
- (N) In a place of business which derives more than twenty percent (20%) of gross sales from the sale of cereal malt beverages, no person, except the licensee and his or her employees for that establishment or independent contractors hired by the licensee, shall remain or be found in such premises between the hours of 2:00 a.m. and 6:00 a.m. The licensee may request special permission from the City Commission to extend the 2:00 a.m. closing;
- (O) Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than \$500, or by imprisonment for not more than one year, or both such fine and imprisonment. (Ord. 5828; Ord. 6002)

4-208

REVOCATION AND SUSPENSION OF LICENSES.

- (A) The Governing Body of the City shall revoke or suspend the license for any of the following reasons: (Ord. 7980)

- (1) The licensee has fraudulently obtained the license by giving false information in the application therefore;
 - (2) The licensee has violated any of the provisions of this Article or of K.S.A. 41-2701 et. seq., and amendments thereto;
 - (3) The licensee has become ineligible to obtain a cereal malt beverage license;
 - (4) Drunkenness of the licensee or permitting any intoxicated person to remain in or upon the licensee's place of business;
 - (5) The sale of cereal malt beverages to any person under the legal age for consumption of cereal malt beverage;
 - (6) The nonpayment of any license fees;
 - (7) Permitting any gambling in or upon the licensee's place of business;
 - (8) Permitting any person to mix drinks with material purchased in the place of business or brought in for that purpose;
 - (9) The employment of persons under 18 years of age in dispensing or selling cereal malt beverages;
 - (10) 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 of any violation of the intoxicating liquor laws of the State of Kansas, another state or the United States;
 - (11) The sale or possession of, or permitting any person to use or consume on the licensed premises, any alcoholic liquor;
 - (12) The licensee has been convicted of a violation of the Beer and Cereal Malt Beverage Keg Registration Act; or
 - (13) There has been a violation of K.S.A. 21-6204, and amendments thereto, in or upon the licensee's place of business.
- (B) The provisions of Subsections (A) (8) and (11) shall not apply if the place of business or premises is also currently licensed as a club or drinking establishment pursuant to the Club and Drinking Establishment Act. (Ord. 5114; Ord. 6002, Ord. 7980)

4-209

SAME; PROCEDURE.

- (A) Whenever any law enforcement officer has reason to believe that a licensee has violated the provisions of Section 4-208(A) or (B), that officer shall cause a written complaint to be filed with the Commission. Such complaint shall sufficiently define the charges against the licensee and the grounds

upon which his or her license is sought to be suspended or revoked.

- (B) On receipt of such complaint, the Commission shall set a hearing upon the complaint and shall give written notice of such hearing to the licensee. A copy of the complaint shall accompany the notice. The hearing shall be initially scheduled during a regular meeting of the Commission and shall be at least ten (10) days from the date the notice is sent.
- (C) At the hearing, evidence shall be presented in support of the complaint by the City Prosecutor and the licensee shall have the right to be present and represented by counsel, the right to cross-examine witnesses, and the right to present witnesses and evidence on his or her own behalf. A continuance of such hearing may be granted by the Commission for good cause shown.
- (D) The Commission shall decide whether or not the allegations in the complaint are true by a majority vote of those members present at the meeting. If they find any allegations to be true, such finding shall constitute one violation and the Commission shall proceed to determine the disposition of the matter. (Ord. 5114; Code 1985)

4-210

SAME; AUTHORIZED DISPOSITION.

- (A) The Commission, upon finding that an allegation based upon 4-208(A)(1), (3) or (6) is true shall revoke the licensee's license.
- (B) The Commission, upon a finding that an allegation based upon any other subsection of 4-208(A) is true shall make the following dispositions:
 - (1) Upon a licensee's first violation within a three (3) year period, suspend his or her license for not less than one day nor more than ten (10) days;
 - (2) Upon a licensee's second violation within a three (3) year period, suspend his or her license for not less than five (5) days nor more than two (2) months;
 - (3) Upon a licensee's third or subsequent violation within a three (3) year period, suspend his or her license for not less than thirty (30) days nor more than six (6) months or may revoke the licensee's license.
- (C) The decision and disposition of the Commission shall be reduced to writing and the dates of any suspension shall be stated therein. A copy of such decision shall be forthwith sent to the licensee and any such suspension or revocation may begin immediately. (Ord. 5114; Ord. 6002)

4-211

SAME; APPEALS.

Within twenty (20) days after the order of the Board revoking or suspending any license, the licensee may appeal to the District Court and the District Court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal. In case of the revocation of the license of any licensee, no new license shall be issued to the former licensee, or to any person acting for or on the former licensee's behalf, for a period of six (6) months thereafter. (Ord. 5114; Ord. 6002)

4-212

WHOLESALE/DISTRIBUTORS.

No wholesaler or distributor shall sell any cereal malt beverage to any retailer within the City, who has not secured a license as provided for in this Article. (Ord. 5114; Ord. 6002)

4-213

SAMPLES FOR TESTING.

Any person engaged in retailing cereal malt beverages under the terms of this Article shall upon demand by the Chief of Police or the Chief's agent or any police officer, furnish samples of any cereal malt beverages in their possession for the purpose of testing the alcoholic content thereof. (Ord. 5114)

ARTICLE 3. ADDITIONAL REGULATIONS ON ESTABLISHMENTS

4-301

DEFINITIONS. As used in this Article:

- (A) **Licensed Premises** shall mean a Class A Club, Class B Club, Drinking Establishment, Caterer or an establishment licensed to sell cereal malt beverages, as defined in Articles 1 and 2 of this Chapter.
- (B) **Licensee** shall mean a person who has been properly issued a license to operate a licensed premises within the corporate limits of the City.
- (C) **Nude or Partially Nude** shall mean less than completely or opaquely covering and exposing to view any portion of the human pubic area, anus, vulva or genitals, or any simulation thereof, or any female breast area below a point immediately above the top of the areola. (Ord. 6401)

4-302

NUDITY PROHIBITED IN LICENSED PREMISES.

No licensee shall engage, permit, or allow an employee, agent, or independent contractor, of the licensee to be nude or partially nude in the licensed premises. No licensee shall allow or permit any nude or partially nude person to remain in the licensed premises. (Ord. 6401)

4-303

PENALTY AND REVOCATION OF LICENSE.

If any licensee violates any of the provisions of this Article, the governing Body of the City, upon ten (10) days written notice to the licensee, may, upon hearing, permanently revoke or cause to be suspended for a period of not more than six (6) months the license; and the individual holding the license may be charged in municipal court with a violation of the alcoholic liquor laws of the City and upon conviction shall be found guilty of a misdemeanor. (Ord. 6401)