

## Chapter 10

### ALCOHOLIC BEVERAGES\*

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\* **Cross References:** Amusements and entertainments, ch. 14; businesses, ch. 30; charter ordinances relating to alcoholic beverages, app. A, § A3-1 et seq.

**State Law References:** Intoxicating liquors and beverages, K.S.A. ch. 41.

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## ARTICLE I.

### IN GENERAL

#### Sec. 10-1. Definitions.

Unless otherwise defined in this chapter, the terms used in this chapter shall have the same meaning and definitions as defined in K.S.A. ch. 41 and amendments thereto. As used in this chapter:

*Limited retailer* means a licensee who is licensed to sell cereal malt beverage at retail only in original and unopened containers and not for consumption on the premises.

*Premises* means a self-contained area under the exclusive control or dominion of a licensee. "Premises" shall not include common areas over which a licensee exercises joint control or dominion with other businesses. The requirement of exclusive control or domain of a licensee in this definition shall not apply to Heartland Park, Topeka.

*Retailer* means a licensee who is licensed to sell cereal malt beverage at retail for consumption on the licensed premises.

(Code 1981, § 5-3)

**Cross References:** Definitions generally, § 1-2.

**State Law References:** Similar definitions, K.S.A. 41-2701.

**Sec. 10-2. Unlawful possession or consumption of alcoholic liquor or cereal malt beverages.**

(a) *On public roads or unenclosed private property accessible to public.* No person shall drink, or have in his possession in an open container, any alcoholic liquor or cereal malt beverage on public streets, alleys, roads, highways or unenclosed private property that is accessible to the general public, including but not limited to parking lots, within the city or inside vehicles while on such places within the city.

(b) *Private property; exceptions.* No person shall drink or consume, or have in his possession in an open container, any alcoholic liquor or cereal malt beverage on private property, except:

- (1) On premises where the sale of liquor by the individual drink is authorized by the state club and drinking establishment act by issuance of a license by the state director of alcoholic beverage control;
- (2) Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drinks containing alcoholic liquor nor for any substance mixed with any alcoholic liquor, and if no sale of alcoholic liquor takes place in violation of K.S.A. 41-803 and amendments thereto;
- (3) In a lodging room of any hotel, motel or boardinghouse by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of drinks containing alcoholic liquor nor for any substance mixed with any alcoholic liquor, and if no sale of alcoholic liquor takes place in violation of K.S.A. 41-803 and amendments thereto;
- (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 takes place in violation of K.S.A. 41-803 and amendments thereto; or
- (5) On the premises of a microbrewery or farm winery, if authorized by the Kansas liquor control act (K.S.A. 41-101 et seq.) by issuance of a license by the state director of alcoholic beverage control.

(c) *In a private room of a place of business; exception.* No person shall consume cereal malt beverages in any private room or closed booth in a place of business operating pursuant to K.S.A. ch. 41, art. 27 (K.S.A. 41-2701 et seq.) unless the licensed premises are also currently licensed as a club pursuant to K.S.A. ch. 41, art. 26 (K.S.A. 41-2601 et seq.).

(d) *On public or municipal property; exceptions.* No person shall drink or consume, or have in his possession in an open container, any alcoholic liquor or cereal malt beverage on public or municipal property, except:

- (1) Those premises owned by the city and under the control of the airport authority which have been properly leased to private persons, and properly licensed under applicable state and local laws for

the sale and dispensing of alcoholic liquor and cereal malt beverages;

- (2) Real property leased by the city to others under the provisions of K.S.A. 12-1740--12-1749 inclusive, and amendments thereto, the industrial revenue bond law, if such property is actually being used for hotel or motel purposes or purposes incidental thereto;
- (3) Any state-owned or state-operated building or structure and upon the surrounding premises which are furnished to and occupied by any state officer or employee as a residence;
- (4) Cereal malt beverages or alcoholic liquor at the Performing Arts Center of Topeka, Topeka Zoological Park, Ward Meade Home and Gardens, Helen Hocker Performing Arts Center, Heartland Park Topeka, Topeka Public Golf Course and Stormont-Vail Regional Medical Center, property leased to the Kansas International Museum as per City of Topeka Contract No. 26119, provided prior written authorization for such possession or consumption is obtained from the director of parks and recreation;
- (5) Specified property designated as authorized by K.S.A. 41-719(d); or

(6) The National Guard Armory.

(Code 1981, § 5-1; Ord. No. 16840, § 1, 6-27-95)

**Cross References:** Parks and recreation, ch. 102; streets, sidewalks and other public places, ch. 130; consumption of alcohol authorized on certain public property, app. A, § A3-1.

**State Law References:** Consumption of alcoholic liquor in public places, K.S.A. 41-719; transportation of liquor in open containers, K.S.A. 41-804; transportation of cereal malt beverages in opened containers, K.S.A. 41-2719; consumption of cereal malt beverages while operating vehicle, K.S.A. 41-2720.

### **Sec. 10-3. Furnishing alcoholic liquors or cereal malt beverage to minors, incapacitated persons or intoxicated persons.**

(a) No person shall knowingly or unknowingly, directly or indirectly, sell to, buy for, give or furnish any alcoholic liquor or cereal malt beverage to any person under 21 years of age. It shall be a defense to a prosecution under this subsection if:

- (1) The defendant is a licensed alcoholic liquor or cereal malt beverage retailer, club, drinking establishment or caterer or holds a temporary permit, or is an employee of any such establishment;
- (2) The defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe the minor was 21 or more years of age; and
- (3) To purchase the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 21 or more years of age.

(b) No person shall, knowingly or unknowingly, directly or indirectly, sell to, buy for, give or furnish alcoholic liquor or cereal malt beverage to any person who is an incapacitated person.

(c) No person shall, knowingly or unknowingly, directly or indirectly, sell to, buy for, give or furnish any alcoholic liquor or cereal malt beverage to any person while that person is physically or mentally incapacitated by the reason of consumption of alcoholic liquor, cereal malt beverages or drugs.

(Code 1981, § 5-2)

**State Law References:** Furnishing liquor to a minor, K.S.A. 41-3610; furnishing cereal malt beverages to a minor, K.S.A. 41-3610a; sale of liquor to incapacitated or intoxicated person, K.S.A. 41-715.

**Sec. 10-4. Prohibited zones established.**

(a) No person or business entity shall sell or serve alcoholic liquor to be consumed on any premises located within the following described zones unless the premises was licensed and in operation on or before the effective date of this section:

(1) Within 300 feet of any church building.

(2) Within 300 feet of any school building or schoolyard.

(b) The limitations set forth in subsection (a) shall not apply to a restaurant as defined by K.S.A. 41-2601.

(c) The distances listed in subsection (a) shall be measured in a straight line from the closest point of the premises sought to be licensed or operated to the closest point of the building housing the church building, school building or schoolyard.

(Ord. No. 17807, § 1, 3-19-02)

**Secs. 10-5--10-25. Reserved.**

**ARTICLE II.**

**CEREAL MALT  
BEVERAGES\***

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\* **State Law References:** Cereal malt beverages, K.S.A. 41-2701 et seq.

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**DIVISION 1.**

**GENERALLY**

**Sec. 10-26. Possession of alcoholic liquor on premises licensed to sell cereal malt beverage.**

It shall be unlawful for any person to have any alcoholic liquor in his possession while in a licensed premises selling cereal malt beverages, unless the premises is also currently licensed by the state director of alcoholic beverage control.

(Code 1981, § 5-24)

**State Law References:** Similar provisions, K.S.A. 41-2704.

**Secs. 10-27--10-35. Reserved.**

## **DIVISION 2.**

### **WHOLESALEERS AND DISTRIBUTORS\***

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\* **State Law References:** Restrictions on wholesalers and distributors, K.S.A. 41-2705.

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#### **Sec. 10-36. Sales to licensed retailers only.**

It shall be unlawful for any wholesaler or distributor, their agents or employees to sell or deliver any cereal malt beverages within the city to persons authorized under this article to sell cereal malt beverages at retail within the city unless such wholesaler or distributor shall first have secured from the director of revenue of the state director of alcoholic beverage control a license authorizing such sales and deliveries.

(Code 1981, § 5-38(a))

**State Law References:** Similar provisions, K.S.A. 41-2705.

#### **Sec. 10-37. Hours of delivery.**

It shall be unlawful for any wholesaler or distributor to sell or deliver any cereal malt beverages to any licensee within the city:

(1) Before 6:00 a.m. or after 12:00 midnight Monday through Saturday.

(2) Before 12:00 noon or after 8:00 p.m. on Sunday.

(3) On any election day during the hours the polls are open; or

(4) On Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day.

(Code 1981, § 5-38(b); Ord. No. 18523, § 1, 10-11-05; Ord. No. 18642, § 1, 5-16-06)

#### **Sec. 10-38. Unlawful beverages.**

No wholesaler or distributor shall sell or deliver to any cereal malt beverage licensee within the city any beverage containing more than 3.2 percent of alcohol by weight unless such licensee is also currently licensed by the state director of alcoholic beverage control.

(Code 1981, § 5-38(c))

#### **Sec. 10-39. Samples.**

All wholesalers and distributors selling or delivering any cereal malt beverages with the city shall, upon demand of the city attorney, an assistant city attorney, or any law enforcement officer, turn over to the city attorney or assistant city attorney or law enforcement officer samples of any cereal malt beverages in their possession for the purpose of testing the alcoholic content of such beverages.

(Code 1981, § 5-38(d))

**Secs. 10-40--10-50. Reserved.**

**DIVISION 3.**

**RETAILERS**

**Subdivision I.**

**General Provisions**

**Sec. 10-51. Hours of sale of cereal malt beverages.**

(a) It shall be unlawful for a retailer or limited retailer to sell cereal malt beverages or to allow the same to be consumed:

- (1) Before 6:00 a.m. or after 12:00 midnight Monday through Saturday.
- (2) Before 12:00 noon or after 8:00 p.m. on Sunday, except in a place of business which is licensed to sell cereal malt beverages for consumption on the premises, which place of business derives not less than thirty (30) percent of its gross receipts from the sale of food for consumption on the business premises.
- (3) On Easter.

(b) No person shall be permitted to consume or drink any cereal malt beverage in or about a premises licensed to sell cereal malt beverages during the times that sale is prohibited under subsection (a); provided however, that this provision shall not apply if the licensed premises are also currently licensed by the state director of alcoholic beverage control.

(Code 1981, § 5-20; Ord. No. 16712, § 1, 5-24-94; Ord. No. 16753, § 1, 9-13-94; Ord. No. 18523, § 2, 10-11-05; Ord. No. 18642, § 2, 5-16-06)

**State Law References:** Hours of closing, K.S.A. 41-2704.

**Sec. 10-52. Private room prohibited; exception.**

It shall be unlawful for any person to operate a private room in a premises licensed to sell cereal malt beverages; provided, that this section shall not apply if the licensed premises are also currently licensed by the state director of alcoholic beverage control.

(Code 1981, § 5-21)

**State Law References:** Similar provisions, K.S.A. 41-2704.

**Sec. 10-53. Premises to be open to public and police.**

The premises of a licensee shall be open to the public at all times during business hours and to the police at all times when the operator of the business or his agent is on the premises, except that a premises licensed as a club by the state director of alcoholic beverage control shall be open to the police and not to the public.

(Code 1981, § 5-22)

**State Law References:** Similar provisions, K.S.A. 41-2704.

**Sec. 10-54. Unlawful sales of beer or alcoholic liquor by a cereal malt beverage licensee.**

It shall be unlawful for any cereal malt beverage licensee to sell or dispense within the city any beverages containing more than 3.2 percent of alcohol by weight or any alcoholic liquor; provided, that this section shall not apply if the licensee is also operating under a license issued by the state director of alcoholic beverage control.

(Code 1981, § 5-25)

**Sec. 10-55. Legal age to possess, purchase and consume.**

(a) No licensee shall knowingly or unknowingly permit a person under 21 years of age to consume or purchase any cereal malt beverage in or about a licensed premises, and no licensee shall permit a person under 21 years of age to possess cereal malt beverage in or about a licensed premises, except that a licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverages if:

- (1) The licensee's premises is licensed only to sell cereal malt beverage at retail in the original and unopened containers and not for consumption on the premises; or
- (2) The licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50 percent of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

(b) It shall be a defense to a prosecution under this section if:

- (1) The defendant is a licensed retailer, or an employee thereof;
- (2) The defendant sold the cereal malt beverage to the person with reasonable cause to believe such person was 21 or more years of age; and
- (3) To purchase the cereal malt beverage, the person exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such person was 21 or more years of age.

(c) Except as provided in subsection (a), no person under 21 years of age shall possess in an open or unopened container, consume, obtain, purchase or attempt to obtain or purchase any alcoholic liquor or cereal malt beverage. A person under 21 years of age but at least 18 years of age may serve alcoholic liquor without being in violation of this section provided such person is employed in connection with the serving of alcoholic liquor by a licensee licensed by the state director of alcoholic beverage control. In no instance shall a person less than 21 years of age mix or dispense drinks containing alcoholic liquor.

(d) Any person found violating subsection (c) of this section shall be fined not less than \$250.00. In lieu of or in addition to such fine, the court may order such offender to do either or both of the following:

- (1) Perform 40 hours of community service work.

- (2) Attend and satisfactorily complete a suitable alcohol education or treatment program and pay for the costs thereof.

(Code 1981, § 5-23)

**State Law References:** Similar provisions, K.S.A. 41-2704.

**Sec. 10-56. Condition of sales by limited and general retailers.**

- (a) A limited retailer shall sell cereal malt beverages:

- (1) Only at the premises listed on the license.

- (2) Only at retail.

- (3) Only in original and unopened containers.

- (b) A limited retailer shall not:

- (1) Sell cereal malt beverages for consumption at the licensed premises.

- (2) Permit cereal malt beverages to be consumed at the licensed premises.

- (3) Sell cereal malt beverages through curb service or drive-up service.

- (c) A general retailer shall sell cereal malt beverages:

- (1) Only at the premises listed on the license.

- (2) Only at retail.

- (d) A general retailer shall not sell cereal malt beverages through curb service or drive-up service.

(Code 1981, § 5-26)

**Sec. 10-57. Restrictions on salespersons.**

No licensee shall employ any person who has been refused a license to sell any cereal malt beverages, nor shall any licensee employ any person whose license to sell cereal malt beverages has been revoked within a period of six months of such refusal or revocation, nor shall any person have any interest during such period in any premises selling cereal malt beverages.

(Code 1981, § 5-28)

**Sec. 10-58. Mixing drinks prohibited; exception.**

No licensee shall engage in or permit the mixing of any drinks containing alcoholic liquor on the premises; provided, that this section shall not apply if the licensed premises are also currently licensed by the state director of alcoholic beverage control.

(Code 1981, § 5-29)

**Sec. 10-59. Purchase from licensed wholesalers or distributors.**

No licensee shall buy any cereal malt beverages from any wholesaler, distributor, their agents or employees unless such wholesaler or distributor shall have first secured from the state alcoholic beverage control director a license authorizing such sales.

(Code 1981, § 5-30)

**Sec. 10-60. Lighting.**

Any place selling or dispensing cereal malt beverages shall at all times be kept well lighted, and if at any time the chief of police shall determine any such place is not lighted to his entire satisfaction, the chief of police shall notify the owner or proprietor thereof to supply such additional light as he shall deem necessary, and if the owner or proprietor of any such place fails to comply with any order of the chief of police relative to the lighting thereof within a reasonable time, such time to be fixed by the chief of police, then and in that event the license of any such establishment shall be subject to immediate cancellation.

(Code 1981, § 5-32)

**Sec. 10-61. Gambling prohibited.**

No licensee shall permit illegal gambling in any form in or about the licensee's premises.

(Code 1981, § 5-33)

**State Law References:** Gambling, K.S.A. 21-4302 et seq.

**Sec. 10-62. Sanitary condition of premises.**

All places where cereal malt beverages or alcoholic beverages are sold or dispensed shall at all times be kept in a clean and sanitary condition.

(Code 1981, § 5-34)

**Sec. 10-63. Cleansing of utensils.**

All utensils used for serving cereal malt beverages or alcoholic beverages shall be thoroughly cleaned and effectively sanitized following each usage. Such cleansing and sanitizing process, together with the equipment used in such process, shall be approved by the plumbing inspector, division of building inspection.

(Code 1981, § 5-36; Ord. No. 17070, § 1, 1-28-97)

**Sec. 10-64. Water closets.**

All places where cereal malt beverages or alcoholic beverages are sold or dispensed for consumption on the premises shall have a building or place equipped with two water closets and two lavatories. One water closet and one lavatory shall be appropriately designated for use of each sex and so located as to be convenient for the use of the customers of such premises.

(Code 1981, § 5-35)

**Secs. 10-65--10-75. Reserved.**

## **Subdivision II.**

### **License\***

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\* **Cross References:** Fees for retail cereal malt beverage licensing, § 30-53; charter ordinance pertaining to cereal malt beverages, app. A, § A3-2.

**State Law References:** Licensing of retailers, K.S.A. 41-2702 et seq.

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#### **Sec. 10-76. Required.**

No person shall sell or dispense any cereal malt beverages at retail to the public without first having secured a license for each premises such person desires to operate within the corporate limits of the city as provided in this subdivision, and a person having a license to sell cereal malt beverages at retail in original and unopened containers only, and not for consumption on the premises, shall not sell such beverages in any other manner.

(Code 1981, § 5-50)

**State Law References:** License required, K.S.A. 41-2702.

#### **Sec. 10-77. Initial application.**

Any person desiring a license under this division for a premises not currently licensed shall make application at the office of the city clerk and accompany the application by the license fee required by section 10-81, for each premises for which a license is desired. The application shall be verified and upon a form prepared by the attorney general of the state, and shall contain:

- (1) The name and address of the applicant and the length of time that the applicant has resided in the state.
- (2) The particular premises for which a license is desired.
- (3) The name of the owner of the property upon which the premises is located.
- (4) A sworn statement that the applicant is a citizen of the United States and not less than 21 years of age, and that he has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or alcoholic liquor or intoxicating liquor law of any city, state or of the United States, including laws pertaining to the operation or attempted operation of a motor vehicle while under the influence of intoxicating liquor or drugs.

(Code 1981, § 5-51)

#### **Sec. 10-78. Determination if license holder is restaurant.**

(a) Any person holding a license to sell or serve cereal malt beverages to be consumed on the premises shall open his books and records to the city, or its authorized agents, for the purpose of determining whether such establishment is, in fact, a restaurant as defined by K.S.A. 41-2601.

(b) Every business that falls under the provisions of section 10-83(3) shall keep, and provide to the city upon request, gross receipts which reflect the amount and cost of cereal malt beverages purchased from any distributor and the amount and cost of foodstuffs bought from vendors. The business shall also keep records of the amount and cost of cereal malt beverages sold at retail and the amount and cost of food sold at retail by the business to consumers.

(c) To determine whether a business is a restaurant, such determination shall be based upon the most recent calendar year such business operated, except if such business has not been in operation for one calendar year, then the period the business has been operated shall be used for such determination. At no time should an examination of the records and receipts of a business be conducted under this section until three months have elapsed since such business received its cereal malt beverage license.

(d) Every business that is governed by the provisions of section 10-83(3) is prohibited from conducting promotional activities wherein free cereal malt beverages would be furnished with food purchases.

(e) Any business under this section that knowingly or willfully fails to maintain receipts and records as set forth in subsection (b) shall be subject to revocation of its license for failure to comply.

(f) Any business currently operating is required to comply with the provisions of this section regardless if it began operations prior to the effective date of the ordinance from which this section derives. (Code 1981, § 5-51.5)

**State Law References:** License application, K.S.A. 41-2702.

#### **Sec. 10-79. Application for each location and manager or agent.**

A separate application shall be made for each premises for which a license is desired. All managers or agents of any place of business shall make application and secure approval of the city council prior to assuming any duties as such, and if there is any change in managers or agents, the new manager or agent shall likewise make application and secure the approval thereof.

(Code 1981, § 5-52)

#### **Sec. 10-80. Reapplication.**

(a) Any person desiring a general retailer's license for a place of business which is currently licensed by the city shall make reapplication at the office of the city clerk on or before October 5 of each calendar year and shall accompany the reapplication with the license fee required by section 10-81 for each premises for which a license is desired. No reapplications shall be accepted after October 5 without prior consent of the city council. The reapplication shall be verified and upon the same form as an application, and shall contain all the requirements of section 10-77.

(b) Any person desiring a limited retailer's license for a premises which is currently licensed by the city shall make reapplication at the office of the city clerk on or before May 5 of each calendar year and shall accompany the reapplication with the license fee required by section 10-81 for each premises for which a license is desired. No reapplication shall be accepted after May 5 without prior consent of the city council. The reapplication shall be certified and upon the same form as an application, and shall contain all the requirements of section 10-77.

(Code 1981, § 5-53)

**Sec. 10-81. Fees; term.**

(a) The license fees under this subdivision shall be as prescribed in section 30-53.

(b) The term of each general retailer's license shall be the calendar year. The term of each limited retailer's license shall be the 12-month period beginning July 1 and ending June 30 of each calendar year.

(c) 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 under such license for the remainder of the period for which the license is issued.

(Code 1981, § 5-54)

**State Law References:** License fees, K.S.A. 41-2702; term of license, K.S.A. 41-2703.

**Sec. 10-82. Examination; approval or disapproval.**

If the application or reapplication is in proper form and accompanied by cash or certified check in the amount of the license fee, the city council shall examine the application or reapplication, and after examination of the application or reapplication and certification as provided in section 10-85 the city council shall, if the applicant is qualified as provided by law, direct the proper officers of the city to issue a license to the applicant; provided, that no license shall be issued to:

- (1) *Residency.* A person who has not been a resident in good faith of the state for at least one year prior to the date of making application, and who has not been a resident of the county for six months prior to the date of making application.
- (2) *Character.* A person who is not of good character and reputation in the county.
- (3) *Citizenship.* A person who is not a citizen of the United States.
- (4) *Violations.* A person who within two years immediately preceding the date of making application or reapplication has been convicted of a felony or any crime involving moral turpitude, or the violation of any alcoholic liquor or intoxicating liquor law of any city, state or of the United States, including laws pertaining to the operation or attempted operation of a motor vehicle while under the influence of intoxicating liquor or drugs.
- (5) *Partnership.* A partnership, unless one of the partners is a resident of the city and unless all members of such partnership shall otherwise be qualified to obtain a license.
- (6) *Corporation.* A corporation, if:
  - a. 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 under this subdivision for any reason other than citizenship or nonresidence; or
  - b. 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:

1. Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or
  2. Has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.
- (7) *Ineligible spouse.* A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license.
- (8) *Manager or agent.* A person whose premises is to be conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of a licensee.
- (9) *Limited retailer.* A person applying for a license as a limited retailer if not engaged in business in the city.

(Code 1981, § 5-55)

**State Law References:** Similar provisions, K.S.A. 41-2703.

#### **Sec. 10-83. Prohibited zones established.**

No license to sell or serve cereal malt beverages to be consumed on the premises shall be issued to any premises to be located within the following described zones unless the premises was so licensed or had a license application or renewal pending on March 8, 1983:

- (1) Within 300 feet of any church building.
- (2) Within 300 feet of any school building or schoolyard.
- (3) Within 200 feet of any establishment licensed by the city to sell or serve cereal malt beverages; provided, that the 200-foot limitation shall not apply to a restaurant as defined by K.S.A. 41-2601.

The distances listed in this section should be measured in a straight line from the closest point of the premises sought to be licensed to the closest point of the building housing the cereal malt beverage establishment, church building, school building or schoolyard.

(Code 1981, § 5-56)

#### **Sec. 10-84. Renewal of general retailer's license in prohibited zones.**

Any person holding a general retailer's license to sell or serve cereal malt beverages at a location within a prohibited zone established by section 10-83 shall be permitted to renew such license for the same location, provided that such license is and has been continuously maintained by the licensee from and after March 8, 1983, and so long as the licensee is otherwise qualified under the ordinances of the city and laws of the state.

(Code 1981, § 5-66)

**Sec. 10-85. Inspection approval--Initial.**

(a) Before an initial general or limited retailer's license shall be issued for any premises to retail cereal malt beverages, the premises shall be inspected by the building, electrical, sanitary, plumbing and fire inspectors of the city, and no application shall be approved by the city council unless such premises shall conform to the provisions of this division and all laws, building, fire, sanitary and plumbing regulations of the city and the state.

(b) If the premises sought to be licensed under this division conform to the laws and regulations referred to in subsection (a), the building, electrical, sanitary, plumbing and fire inspectors shall so certify on the application of the applicant, and such inspectors shall thereafter make inspections at any time deemed necessary for the enforcement of the provisions of this division, as provided elsewhere. If the premises does not conform to such laws and regulations, the appropriate inspector shall deliver written notification specifying the reasons for such nonconformity to the applicant or an agent at his premises.

(Code 1981, § 5-62; Ord. No. 17070, § 2, 1-28-97)

**Sec. 10-86. Same--Subsequent.**

(a) *General retailers.* Before a general retailer's license shall be reconsidered for approval, the premises shall be inspected by the plumbing and fire inspectors of the city, and no reapplication shall be approved by the city council unless the premises shall be certified by the inspectors as conforming to the provisions of this division, all laws and regulations of the city that were in effect at the time of the initial certification for such general retailer's license, and all contemporary plumbing and fire regulations of the city and the state. If the plumbing or fire inspectors determine that a premises inspected pursuant to this subsection contains any dangerous or unsanitary conditions which constitute a hazard to safety or health, a written report of such conditions shall be prepared and transmitted to the chief building inspector. The code enforcement director or his authorized representatives shall require corrective measures and compliance with applicable building, plumbing and electrical codes as a condition for reapproval of the general retailer's license.

If the premises conforms to the applicable laws and regulations on reapplication for general retailer's license, the sanitary and fire inspectors shall so certify on the reapplication of the applicant. If the premises does not conform to the laws and regulations, the appropriate inspector shall deliver written notification to the applicant or an agent at his premises specifying the reasons for noncertification. Such notification of nonconformity shall be delivered at least 30 days prior to the expiration of an existing license.

(b) *Limited retailers.* A premises licensed as a limited retailer for cereal malt beverages shall not be inspected for compliance with building, electrical, plumbing, or fire regulations of the city and the state as a condition to consideration for approval of a reapplication for a limited retailer's license at such premises. It shall not be necessary for any inspector to certify on a reapplication for limited retailer's license that such premises conforms to building, electrical, plumbing, sanitary or fire regulations of the city and the state. This section shall not be interpreted as exempting such premises from compliance with building, electrical, plumbing, sanitary or fire regulations of the city and the state.

(Code 1981, § 5-63; Ord. No. 17070, § 3, 1-28-97)

**Sec. 10-87. Same--Appeals.**

If an application or reapplication for a general retailer's license is not certified as provided in sections 10-85 and 10-86, the applicant may appeal the decision of the inspector to the city council by filing a written notice of appeal with the office of the city clerk within ten days after receiving written notification of nonconformity with the applicable laws and regulations. Such notice of appeal shall be insufficient unless it states the grounds for such appeal. The city council shall hear such appeal at a regular meeting thereof within ten days following receipt of the notice of appeal. All interested parties shall have an opportunity to present evidence and argument. The appellant shall have the burden of proof. Following presentation of evidence and comment by all interested parties, the city council shall make a determination as to whether the applicant has violated the applicable laws and regulations as stated in the written notification of nonconformance. If the city council decides that the applicant is in violation of such laws and regulations, the application or reapplication for a license shall be denied.  
(Code 1981, § 5-64)

**Sec. 10-88. Same--Extension.**

In cases of extreme hardship and upon the showing of good faith and the payment of an extension fee of \$25.00, the city council may grant an existing licensee one 30-day extension within which to correct any nonconformity with applicable laws and regulations. No more than one such extension shall be granted.  
(Code 1981, § 5-65)

**Sec. 10-89. Action taken.**

The minutes of the city council shall show the action taken and if the license is granted, shall direct the proper officers charged by law to issue licenses for the city to execute the license by order of the city council.  
(Code 1981, § 5-57)

**Sec. 10-90. Transfer.**

The license shall not be transferable to any other person and it shall so state that it is not transferable in addition to showing the dates for which it is issued. Licenses may be transferable from one premises to another upon reapplication and the approval of the city council; provided, that in the case of transfer of the license to a new premises, the licensee shall not be required to pay another cereal malt beverage license fee, but shall pay a transfer fee of \$25.00.  
(Code 1981, § 5-59)

**Sec. 10-91. Board of cereal malt beverage license review; revocation, suspension procedure; initial appeal.**

(a) There is hereby created a board of cereal malt beverage license review consisting of three members appointed by the mayor for terms of three years. The board of cereal malt beverage license review shall, upon five days' notice to a retailer of cereal malt beverages licensed under this division, conduct a hearing of record to determine whether to revoke or suspend such license for any one of the following reasons:

- (1) If a licensee has fraudulently obtained a license by giving false information in the application or reapplication therefor.

- (2) If the licensee has violated any provisions of the laws of the state relating to cereal malt beverages or alcoholic liquors and licenses therefor; or any rule or regulation made pursuant thereto or any ordinance relating to cereal malt beverages adopted by the city.
  - (3) If the licensee has become ineligible to obtain a license under the provisions of this division.
  - (4) Drunkenness of the person holding such license while on the licensed premises or the permitting of any intoxicated person to remain in such place.
  - (5) The sale of cereal malt beverages or alcoholic liquors to any persons under the age of 21 years, or the permitting of such persons to consume any such beverages or liquors on the premises.
  - (6) The nonpayment of any license fee.
  - (7) For permitting any illegal gambling in or upon such premises.
  - (8) For permitting any person to mix drinks containing alcoholic liquors in the licensed premises unless otherwise permitted under this division.
  - (9) For the employment of persons under 21 years of age in dispensing any cereal malt beverages except as authorized by section 10-55(a).
  - (10) For employing any person who has been convicted of a felony or of any alcoholic liquor or intoxicating liquor laws of the city, state or of the United States, including laws pertaining to the operation or attempted operation of a motor vehicle while under the influence of intoxicating liquor or drugs.
  - (11) For employing any person who has been refused a license to sell cereal malt beverages or alcoholic liquors or any person whose license to sell cereal malt beverages or alcoholic liquors has been revoked within six months of such refusal or revocation.
  - (12) For purchasing or displaying a federal retail liquor stamp expiring after June 30, 1937, issued by the United States Treasury Department, except where issued for industrial, mechanical, scientific and medicinal purposes.
  - (13) For the sale or possession of alcoholic liquors on the licensed premises or for permitting, knowingly or unknowingly, any person to use or consume upon or in such premises alcoholic liquor.
- (b) The provisions of subsections (a)(8) and (a)(13) shall not apply if such place of business or premises are also currently licensed by the state director of alcoholic beverage control.
- (c) A licensee shall be deemed to be responsible for any act or conduct of any employee on the premises that is in violation of state law or of the ordinances or rules and regulations of the city, if such licensee knew or should have known or had actual or constructive knowledge of such unlawful act or conduct of such

employee, and as such the unlawful act of conduct of such employee can be attributed to the licensee for purposes of considering whether to revoke or suspend a license issued under this division.

(d) The determination of any of the acts listed in subsections (a)(1) through (13) of this section shall be made by the cereal malt beverage review board. The board shall consider the facts as presented to them, together with any matters of mitigation, in making its decision to revoke or suspend the license. The board shall render its decision in writing, citing the reasons for such decision, within 30 days of the hearing.

(e) Within 20 days after any order of the board revoking or suspending any license, the licensee may appeal in writing to the city council, which shall review the findings and reasons for the decision of the board and conduct further hearings if it deems necessary. Within 60 days of receipt of the written notice of appeal, the city council shall issue an order either upholding the decision of the board or reversing it. Any appeal taken from an order of the board suspending or revoking any such license shall not suspend such order or suspension or revocation during the pendency of the appeal to the city council.

(Ord. No. 16411, § 1(5-60), 2-4-92; Ord. No. 16713, § 1, 5-24-94)

**Cross References:** Boards, commissions and committees, § 2-181 et seq.

**State Law References:** License revocation or suspension, K.S.A. 41-2708.

### **Sec. 10-92. Appeal to district court.**

Within 20 days after any order of the city council regarding any license, the licensee or the police department on behalf of the licenser 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 suspending or revoking any such license shall not suspend the order of suspension or revocation during the pendency of any such appeal. In the 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 behalf for a period of six months thereafter.

(Code 1981, § 5-61)

**State Law References:** Similar provisions, K.S.A. 41-2708.

### **Secs. 10-93--10-115. Reserved.**

## **ARTICLE III.**

### **ALCOHOLIC LIQUOR\***

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\* **State Law References:** Kansas liquor control act, K.S.A. 41-101 et seq.

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## **DIVISION 1.**

### **GENERALLY**

### **Sec. 10-116. Enforcement of state liquor control act.**

The chief of police and each and every member of the police department shall hereby be ordered and

directed to assist the state director of alcoholic beverage control in the enforcement of the Kansas liquor control act (K.S.A. 41-101 et seq.), and the chief of police shall make available to the director upon the director's request necessary personnel to ensure the enforcement of such act in the city.  
(Code 1981, § 5-88)

**Sec. 10-117. Days and hours for retail sale.**

It shall be unlawful to sell at retail any alcoholic liquor:

- (1) Before 9:00 a.m. or after 11:00 p.m. Monday through Saturday;
- (2) Before 12:00 noon or after 8:00 p.m. on Sunday; or
- (3) On Easter, Thanksgiving Day, or Christmas Day.

(Code 1981, § 5-83; Ord. No. 16753, § 2, 9-13-94; Ord. No. 18264, § 1, 6-8-04; Ord. No. 18523, § 3, 10-11-05)  
**State Law References:** Similar provisions, K.S.A. 41-712.

**Sec. 10-118. Sale for consumption on premises or in small quantities prohibited.**

It shall be unlawful for any person to own, maintain, operate or conduct, either directly or indirectly, premises, public or private, where alcoholic liquor is sold, offered for sale, or kept for sale by the drink or in any quantity of less than 100 milliliters (3.4 fluid ounces); provided, however, that this section shall not apply to any premises licensed by the state director of alcoholic beverage control.

(Code 1981, § 5-84)

**State Law References:** Similar provisions, K.S.A. 41-803.

**Sec. 10-119. Employment of certain persons prohibited.**

It shall be unlawful for a retailer of alcoholic liquor to employ any person:

- (1) Under the age of 21 years in connection with the operation of such retail establishment; or
- (2) In connection with the operation of such retail establishment who has been adjudged guilty of a felony.

(Code 1981, § 5-85)

**State Law References:** Similar provisions, K.S.A. 41-713.

**Sec. 10-120. Mixing drinks on licensed premises prohibited.**

No retailer of alcoholic liquor shall engage in or permit any person to mix drinks containing alcoholic liquor in or on the licensed premises.

(Code 1981, § 5-86)

**State Law References:** Similar provisions, K.S.A. 41-713.

**Secs. 10-121--10-130. Reserved.**

**DIVISION 2.**

## OCCUPATION TAX\*

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\* **Cross References:** Fees for alcoholic liquor sales, § 30-52.

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### **Sec. 10-131. State license, city tax required.**

It shall be unlawful for any person to sell alcoholic liquor in the city without first having obtained from the state director of alcoholic beverage control a license to so engage in such enterprise and without having paid to the city the occupation tax, as set forth in section 10-132.

(Code 1981, § 5-100)

**State Law References:** State licensing of package sales, K.S.A. 41-301 et seq.

### **Sec. 10-132. Amount of tax; when due.**

Occupation taxes under this division shall be as set forth in section 30-52. All occupation taxes shall be paid annually on the renewal date of the licensee's state license.

(Code 1981, § 5-101)

**State Law References:** Permitted fees, K.S.A. 41-310.

### **Sec. 10-133. Receipt, issuance; display.**

Upon the exhibition to the city clerk of a certified copy of the applicant's license from the state director of alcoholic beverage control and the payment of the occupation taxes set forth in section 10-132, the city clerk shall issue to the license holder a receipt showing that the occupation taxes as levied have been paid and that such payment shall be the payment in full for the term of the license as shown by the certified copy of the license as presented to the city clerk. The receipt shall show the expiration date of the license and shall recite that the occupation taxes as levied by the city have been paid. Such receipt shall be prominently displayed at the licensee's premises in the same manner as the state license is required to be displayed.

(Code 1981, § 5-102)

### **Secs. 10-134--10-155. Reserved.**

## ARTICLE IV.

### PRIVATE CLUBS\*

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\* **State Law References:** Licensing and regulation of clubs, K.S.A. 41-2601 et seq.

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### **Sec. 10-156. Responsibility for violations on property; abatement.**

(a) It shall be unlawful for any person to allow consumption of alcoholic liquor in violation of this article on any property owned, leased or otherwise under his control.

(b) The property on which the violation of this article takes place shall be deemed to be a common

nuisance and as such is subject to abatement as provided for any other common nuisance in section 54-132. (Code 1981, § 5-126)

**State Law References:** Similar provisions, K.S.A. 41-2604.

### **Sec. 10-157. Regulations governing state licensee.**

It shall be unlawful for the licensee of a license issued under the state club and drinking establishment act to:

- (1) Employ any person under the age of 21 years in connection with the mixing or dispensing of drinks containing alcoholic liquor; or any person under the age of 18 years in connection with the serving of alcoholic liquor.
- (2) Knowingly employ or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been convicted of a felony or of any crime involving a morals charge in this or any other state, or of the United States.
- (3) Knowingly employ or continue in employment any person in connection with the serving of alcoholic liquor or the mixing or dispensing of drinks containing alcoholic liquor who has been convicted of a violation of any intoxicating liquor law of any city, state or of the United States, or any law of any city, state or the United States pertaining to the operation or attempted operation of a vehicle while under the influence of intoxicating liquor or drugs, during a two-year period immediately following such conviction. For purposes of this section, participation by a person in a diversionary program involving any such charge described in this section shall not be considered a conviction of such charge.
- (4) In the case of a club, failure to maintain at the licensed premises a current list of all club members and their residence addresses, or the refusal to allow the city police to inspect the current list of the members of the club.
- (5) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder.
- (6) Permit any employee of the licensee who is under the age of 21 years to work on premises where alcoholic liquor is sold by such licensee or temporary permit holder at any time when not under the on-premises supervision of either the licensee or temporary permit holder, or any employee who is 21 years of age or over.

(Code 1981, § 5-127)

**State Law References:** Similar provisions, K.S.A. 41-2610.

### **Sec. 10-158. Hours of operation.**

No licensee of a club or drinking establishment licensed by the state director of alcoholic beverage control shall allow the serving, mixing or consumption of alcoholic liquor on his premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

(Code 1981, § 5-129)

**State Law References:** Similar provisions, K.S.A. 41-2614.

**Sec. 10-159. Consumption by minors prohibited.**

(a) No licensee of a club or drinking establishment licensed by the state director of alcoholic beverage control, nor any owner, officer or employee thereof, shall knowingly or unknowingly permit the consumption of alcoholic liquor or cereal malt beverages by a person under 21 years of age on premises where alcoholic beverages are sold by such licensee.

(b) No person under 21 years of age shall consume or attempt to consume any alcoholic liquor or cereal malt beverage while in or upon the premises of a club or drinking establishment licensed by the state director of alcoholic beverage control.

(Code 1981, § 5-130)

**State Law References:** Similar provisions, K.S.A. 41-2615.