

CHAPTER III. BEVERAGES

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ARTICLE 1. CEREAL MALT BEVERAGES

Section 1. DEFINITION. “Enhanced Cereal Malt Beverage” or “Cereal Malt Beverage” means cereal malt beverage as that term is defined in K.S.A. 41-2701, and amendments thereto, and such term shall include beer containing not more than 6% alcohol by volume when such beer is sold by a retailer licensed under the Kansas cereal malt beverage act.

Section 2. LICENSE ISSUED BY CITY. The “Cereal Malt Beverage License” issued by the city of Haysville pursuant to this ordinance, authorizes the sale of enhanced cereal malt beverage as defined in section 1, by those retailers in compliance with this ordinance and other laws and regulations that may apply.

Section 3. LICENSE REQUIRED OF RETAILER.

(a) It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail without a license for each place of business where enhanced cereal malt beverages are to be sold at retail.

(b) It shall be unlawful for any person, having a license to sell enhanced cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any enhanced cereal malt beverage in any other manner.

(c) It shall be unlawful to sell Enhanced Cereal Malt Beverage for consumption at a special event located upon unpermitted premises within the City (Special Event site) without obtaining both a Special Event Retailers’ Permit and a General Retailers’ License. Individuals are encouraged to apply for a Special Event Retailers’ Permit at least thirty (30) days prior to applying for the associated General Retailers’ License to complete the approval processes of both the proposed special event and special event site. (1) A special event retailers’ permit shall specify the premises, including outdoor area, for which the permit is issued, and may be held on public property with approval of the Governing Body; (2) a special event retailers’ permit shall be issued for the duration of the identified special event, the dates and

hours of which shall be specified in the permit; (3) no more than four special event retailers' permits may be issued to any one applicant in a calendar year; (4) a special event retailers' permit shall not be transferable or assignable, to either another person, another location, or another date; (5) if a premises waiver, as described in Section 9, is required, such waiver must be obtained as part of the Special Event Retailers' permitting process; (6) a Special Event Retailers' Permit must be posted at the Special Event site during all hours of operation of the Special Event site; and (7) a special event retailers' permit holder shall not be subject to the provisions of the beer and cereal malt beverage keg registration act.

Section 4. APPLICATION. Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the attorney general of the State of Kansas, and shall contain:

(a) The name and residence of the applicant and how long he or she has resided within the State of Kansas;

(b) The particular place for which a license is desired;

(c) The name of the owner of the premises upon which the place of business is located;

(d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired.

(e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States;

(f) Each application for a general retailer's license shall be accompanied by a certificate from the city health officer certifying that he or she has inspected the premises to be licensed.

(g) Each application for a general retailer's license must be accompanied by a certificate from the county fire marshal certifying that he or she has inspected the premises to be licensed.

The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. Upon receipt of all information required by this article, verification by the city inspector that the premises for which a license is sought meets all zoning regulations and that such premises has passed inspection by the health department and county fire department, and after the city inspector, chief of police and city attorney review such application, the application shall then be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements.

Section 5. LICENSE APPLICATION PROCEDURES.

(a) All applications for a new and renewed enhanced cereal malt beverage license shall be submitted to the city clerk.

(b) The city clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.

(c) The clerk's office shall provide copies of all applications to the police department, to the fire department, and to the county health department, when they are received. The police department will run a record check on all applicants and the fire department and health department will inspect the premises. The departments will then recommend approval, or disapproval, of applications within 15 working days of the department's receipt of the application.

(d) The governing body will not consider any application for a new or renewed license that has not been submitted 15 days in advance and been reviewed by the above city departments.

(e) An applicant who has not had an enhanced cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.

Section 6. LICENSE GRANTED; DENIED.

(a) The minutes of the governing body shall show the action taken on the application.

(b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.

(c) No license shall be transferred to another licensee.

(d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

Section 7. LICENSE TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

Section 8. LICENSE, DISQUALIFICATION. No license shall be issued to:

(a) A person who has not been a resident in good faith of the state of Kansas for at least one year immediately preceding application and a resident of Sedgwick county for at least six months prior to filing of such application.

(b) A person who is not a citizen of the United States.

(c) A person who is not of good character and reputation in the community in which he or she resides.

(d) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.

(e) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.

(f) A corporation if any manager, officer or director thereof or any

stockholder owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than non-residence within the city or county.

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

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

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

Section 9. RESTRICTION UPON LOCATION.

(a) No license shall be issued for the sale at retail of any enhanced cereal malt beverage on premises which are located in areas not zoned for such purpose except for waivers associated with a Special Event Retailer's License or as otherwise provided for within this section.

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

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

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

Section 10. SPECIAL EVENT LOCATION. Special Event Retailers' Licenses may be issued for an identifiable outdoor location including public sites (Special Event permitted site), but shall not be located within a public roadway unless such roadway shall have been closed to traffic by action of the Governing Body. (1) A Special Event Retailers' License shall in no manner be construed to allow Enhanced Cereal Malt Beverages to be consumed inside vehicles while on public streets, alleys, roads or highways regardless of the boundaries of any such Special Event permitted site. (2) No person shall remove any Enhanced Cereal Malt Beverage from inside the boundaries of a Special Event permitted site as such area is described within the approved Special Event Permit. (3) The boundaries of such Special Event permitted site shall be clearly marked by signs, a posted map, fence or other means which reasonably identify the area in which cereal malt beverage may be possessed or consumed at such Special Event, as approved through the special event permit

application process. (4) No person shall possess or consume either Enhanced Cereal Malt Beverage or alcoholic liquor inside the premises licensed as a Special Event that was not sold or provided by the licensee holding the associated State and/or City issued permits and licenses. (5) The Governing Body shall require the holder of the Special Event Retailers' License to provide adequate insurance, naming the City as an additional insured, if such Special Event is to take place on any public property or roadway. (6) Special Event means a picnic, bazaar, festival or other similar community gathering.

Section 11. LICENSE FEE. The rules and regulations regarding license fees shall be as follows:

(a) General Retailer -- for each place of business selling enhanced cereal malt beverages at retail, as set forth in Chapter 17.

(b) Limited Retailer -- for each place of business selling only at retail enhanced cereal malt beverages in original and unopened containers and not for consumption on the premises, as set forth in Chapter 17.

(c) Special Event Retailer - In addition to the fees charged for General Retailers Licenses, there shall be a daily fee assessed for a Special Event Retailers' Permit based upon the number of days requested to operate the Special Event site, payable upon approval of the Special Event Retailers' Permit, such fees as set forth in Chapter 17 of this municipal code.

Full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued. There shall be no refunds in cases where the licensee quits business prior to the end of the calendar year.

Section 12. SUSPENSION OF LICENSE. The chief of police, upon five days' written notice, shall have the authority to suspend such license for a period not to exceed 30 days, for any violation of the provisions of this ordinance or other laws pertaining to enhanced cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven days from the date of such order.

Section 13. LICENSE SUSPENSION/REVOCAION BY GOVERNING BODY. The governing body of the city, upon five days' written notice, to a person holding a license to sell enhanced cereal malt beverages shall permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:

(a) If a licensee has fraudulently obtained the license by giving false information in the application therefor;

(b) If the licensee has violated any of the provisions of this section or has become ineligible to obtain a license under this section;

(c) Drunkenness of a person holding such license, drunkenness of a

licensee's manager or employee while on duty and while on the premises for which the license is issued, or for a licensee, his or her manager or employee permitting any intoxicated person to remain in such place selling enhanced cereal malt beverages;

(d) The sale of enhanced cereal malt beverages to any person under 21 years of age;

(e) For permitting any gambling in or upon any premises licensed;

(f) For permitting any person to mix drinks with materials purchased in any premises licensed or brought into the premises for this purpose;

(g) For the employment of any person under the age established by the State of Kansas for employment involving dispensing enhanced cereal malt beverages;

(h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;

(i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premise licensed;

(j) The nonpayment of any license fees;

(k) If the licensee has become ineligible to obtain a license;

(l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club or drinking establishment.

Section 14. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Sedgwick county and the district court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken shall not suspend the order of revocation of the license of any licensee, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

Section 15. CHANGE OF LOCATION. If a licensee desires to change the location of his or her place of business, he or she shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. Such application shall be accompanied by a fee as provided in Chapter 17 of the City Code. If the application is in proper form and the location is not in a prohibited zone and all other requirements relating to such place of business are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee.

Section 16. WHOLESALERS AND/OR DISTRIBUTORS. It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver enhanced cereal malt beverages within the city, to persons authorized to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the director of revenue, state commission of revenue and taxation of the State of Kansas authorizing such sales.

Section 17. BUSINESS REGULATIONS. It shall be the duty of every licensee to observe the following regulations.

(a) The place of business licensed, and operating 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 enhanced cereal malt beverages may be sold or dispensed; (1) Between the hours of 12:00 midnight and 6:00 a.m.; (2) in the original package before 12:00 noon or after 8:00 p.m. on Sunday; (3) on Easter Sunday; or (4) for consumption on the licensed premises on Sunday, except in a place of business which is licensed to sell enhanced cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises.

(d) Enhanced cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2601, et seq. and amendments thereto, and licensed as a club by the State Director of Alcoholic Beverage Control.

(e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State Director of Alcoholic Beverage Control shall be open to the police and not to the public.

(f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.

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

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

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

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

(k) No licensee or agent or employee of the licensee shall employ any person under 18 years of age in dispensing enhanced cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

Section 18. PROHIBITED CONDUCT ON PREMISES. The following conduct by an enhanced cereal malt beverage licensee, manager or employee of any licensed enhanced cereal malt beverage establishment is deemed contrary to public welfare and is prohibited:

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

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

patron;

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

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

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

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

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

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

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

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

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

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

Section 19. SANITARY CONDITIONS REQUIRED. All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self-closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee.

Section 20. UNDERAGE VIOLATIONS.

(a) No person under legal age for consumption of Enhanced Cereal Malt Beverage shall obtain or purchase, or attempt to obtain or purchase, cereal malt beverage from any person except as authorized by law. Violation of this subsection by a person

eighteen (18) or more years of age but less than the legal age for consumption of cereal malt beverage is a misdemeanor punishable by a fine of not less than \$100 and not more than \$250 or by forty (40) hours of public service, or by both.

(b) No person under the legal age for consumption of Enhanced Cereal Malt Beverage shall possess or consume Enhanced Cereal Malt Beverage except as authorized by law. Violation of this subsection by a person eighteen (18) or more years of age but less than the legal age for consumption of cereal malt beverage is a misdemeanor punishable: (1) By a fine of not less than \$100 and not more than \$250 or by forty (40) hours of public service, or by both, if committed on licensed premises; or (2) By a fine of not less than \$25 and not more than \$250 or by ten (10) hours of public service, or by both, if committed on any other premises.

(c) Any person less than eighteen (18) years of age who violates this section is a juvenile offender under the Kansas Juvenile Justice Code and, upon adjudication thereof, shall be required as a condition of disposition to pay for the fine or perform the public service, or both, specified as punishment for the offense under subsection (a) or (b).

(d) This section shall not apply to the possession and consumption of Enhanced Cereal Malt Beverage by a person under the legal age for consumption of Enhanced 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.

Section 21. FURNISHING CEREAL MALT BEVERAGES TO MINORS.

(a) Furnishing Enhanced Cereal Malt Beverage to a minor is buying for or selling, giving or furnishing, whether directly or indirectly, any Enhanced Cereal Malt Beverage to any person under the legal age for consumption.

(b) Furnishing Enhanced Cereal Malt Beverage to a minor is a Class B Misdemeanor.

(c) This section shall not apply to the furnishing of Enhanced Cereal Malt Beverage by a parent or legal guardian to such parent's child or such guardian's ward.

Section 22. UNLAWFUL MARKETING.

(a) No retailer, or employee or agent of a retailer, licensed to sell Enhanced Cereal Malt Beverage for consumption on the licensed premises shall: (1) Offer or serve any free drink to any person; (2) Serve more than two (2) drinks to one person at one time; (3) Sell, offer to sell or serve to any one person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public; (4) Sell, offer to sell or serve any drink to any person or anyone at a price less than that charged the general public on that day, except at private functions not open to the general public; (5) Increase the size of a drink of Enhanced Cereal Malt Beverage without increasing proportionately the price regularly charged for the drink on that day; (6) Encourage or permit, on the licensed premises, any game or contest which involves drinking Enhanced Cereal Malt Beverage or the awarding of drinks as prizes; or (7) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a) (1) through (6).

(b) Nothing in subsection (a) shall be construed to prohibit a retailer from: (1)

Offering free food or entertainment at any time; or (2) Including a drink as part of a meal package.

(c) Violation of any provisions of this section is a Class C misdemeanor punishable as provided by sections 11-1201. (d) Violation of any provisions of this article shall be grounds for suspension or revocation of the retailer's license as provided by Section 13.

(d) As used in this section, "drink" means an individual serving of Enhanced Cereal Malt Beverage.

Section 23. POSSESSION; ALCOHOLIC LIQUOR, TAVERN.

No person, while in a tavern or place of business, shall have in his or her possession any alcoholic liquor on the premises where Enhanced Cereal Malt Beverages are sold, other than a club licensed by the Alcoholic Beverage Commission. Any person violating the provisions of this section shall be deemed guilty of a violation of this code and upon conviction thereof, shall be punished by a fine of not more than one-hundred dollars (\$100) and by imprisonment for not more than thirty (30) days.

Section 24. POSSESSION; ENHANCED CEREAL MALT BEVERAGE. It shall be unlawful for any person to have Enhanced Cereal Malt Beverage in an open container in their possession, upon any public street, public right-of-way, public owned property or parking lot open to the public within the corporate city limits. Any person violating this section shall on conviction thereof be fined not less than twenty-five dollars (\$25) nor more than five-hundred dollars (\$500) or imprisoned not more than six (6) months or both fined and imprisoned.

Section 25. DISORDERLY CONDUCT PROHIBITED. It shall be unlawful for the owner, manager, operator, proprietor, employees or person in charge of any place of business wherein Enhanced Cereal Malt Beverages are sold, within the corporate limits of the city, to allow, permit or suffer to knowingly fail to report to the police, any person or persons to indulge in or practice any disorderly conduct. For purposes of this section, disorderly conduct is defined as: with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or breach of the peace: (a) Engaging in brawling or fighting; (b) Disturbing an assembly, meeting, or processing, not unlawful in its character; (c) Addressing abusive language to any person present, which is likely to provoke a violent response; (d) Doing of any act with knowledge or probable cause to believe that such act will alarm, anger or disturb others or provoke an assault or any other breach of the peace.

Section 26. PENALTY. Any person violating any of the provisions of this article where the penalty has not otherwise been fixed, shall upon conviction thereof, be fined in accordance with the general penalty provisions of this code as set out in section 1-121.

(Ord. 1059)

ARTICLE 2.
ENTERTAINERS

- 3-201. ENTERTAINER REGISTRATION. Owners or operators of establishments that have a cereal malt beverage license shall register all entertainers performing for compensation in those establishments with the police department and a license fee shall be charged as set out in Chapter 17. Each license issued shall expire on December 31st of each year, regardless of when license was issued..
(Code 1984, Code 2004)
- 3-202. SITTING WITH CUSTOMERS. It shall be unlawful for any entertainer or performer licensed hereunder employed in any room, place or space in the city in which any musical entertainment, singing or dancing, or discotheque dancing, or similar entertainment is permitted and which is required to be licensed under article 1 of this chapter and in which cereal malt beverages are sold to sit at or occupy any table or counter when any patron or spectator of said establishment is also sitting or occupying said table or counter.
(Code 1971, Sec. 3-204)
- 3-203. SOCIALIZING WITH CUSTOMERS. No entertainer or performer licensed hereunder employed in any establishment licensed under Article 1 of this chapter, shall mix socially therein with any patron or spectator for any purpose. Normal duties as a waitress or other regular employee shall not constitute mixing socially.
(Code 1971, Sec. 3-205)
- 3-204. SAME. It shall be unlawful to permit any entertainer or performer licensed hereunder to sit at or occupy any table or counter of the establishment wherein they are employed, when the same is occupied by any patron or spectator, or to mix socially therein with any patron or spectator for any purpose.
(Code 1971, Sec. 3-206)
- 3-205. COSTUMES. It shall be unlawful for any entertainer or performer licensed hereunder to perform any manner of obscene, lewd, lustful, lascivious, prurient or sexually indecent dance and it shall be unlawful to allow any such performance. It shall be prima facie evidence of violation of this section to wear any costume or other clothing which does not cover or which is transparent or does not conceal the reproductive or sexual organs, the buttocks, or the female breasts.
(Code 1971, Sec. 3-207)
- 3-206. ENTERTAINER REGISTRATION; DENIAL OR REVOCATION. No person who within two (2) years preceding the date of making application has been convicted of any felony or of any crime involving a morals charge or the violation of any intoxicating liquor law of the city, state of Kansas or United States shall be issued an entertainer registration and any such entertainer registration required herein may be

revoked permanently by the governing body upon hearing at any regular meeting of the governing body, and may be suspended immediately for not to exceed thirty (30) days by the chief of police for any of the following reasons:

(a) If the registrant has fraudulently obtained the entertainer registration by giving false information therefor;

(b) Drunkenness of the registrant;

(c) Violation of any provisions of city ordinances or state statutes pertaining to the sale of intoxicating liquor or beverages;

(d) The conviction of any felony or of any crime involving a morals charge or the violation of any intoxicating liquor law of the city, state or United States.

For the purposes of this section “morals charge” shall include those charges involving prostitution, pimping, indecent exposure, lewd and lascivious conduct, illegal use, possession or sale of narcotics, marijuana, amphetamines, barbiturates, or other controlled substance or gambling.

(Code 1971, Sec. 3-208; Code 1984; Code 2003)

3-207. PENALTY. Any person, corporation, firm, company, association or other entity violating any provisions of this article shall be guilty of a violation of this code and upon conviction thereof shall be punished by a fine of not to exceed \$500 or by imprisonment for not more than one year or by both such fine and imprisonment.

(Code 1971, Sec. 3-209)

ARTICLE 3. ALCOHOLIC LIQUOR

3-301. OCCUPATION TAX. There is hereby levied a biennial occupation tax on each retailer of alcoholic liquor (including beer containing more than three and two tenths percent (3.2%) of alcohol by weight for consumption off of the premises (sales in the original package only) as set out in Chapter 17, in the city who has a retailer’s license issued by the State Director of Alcoholic Beverage Control.

(Code 1971, Sec. 3-301, Ord. 577-A; Code 2003; Code 2007; Ord. 976)

3-302. OCCUPATION TAX; PROCEDURE. A holder of a license for the retail sale of alcoholic liquors by the package in the city, issued by the State Director of Alcoholic Beverage Control shall present such license within five (5) days when applying to pay the occupation tax levied in section 3-301 and the tax shall be received and receipt issued by the city clerk for the period covered by the state license. An additional fee as set out in Chapter 17 will be assessed if more than five (5) days lapse after the effective date of the state license.

(Code 1971, Sec. 3-302; Code 2003; Code 2007)

3-303. OCCUPATION TAX; POSTED. Every licensee shall cause the city alcoholic liquor retailer’s occupation tax receipt to be placed in plain view next to or below the

state license in a conspicuous place on the licensed premises.
(Code 1971, Sec. 3-303)

- 3-304. OCCUPATION TAX; PENALTY; GENERAL PENALTY PROVISION. Any person, co-partnership, association or other entity having a state license to sell retail alcoholic liquor by the package who shall fail to pay the occupation tax herein levied within the time prescribed or who shall violate any other provisions of this article shall upon conviction be fined not more than one-hundred dollars (\$100) for each day's violation. Nothing herein shall be construed to prohibit the city from collecting the occupation tax by any procedure authorized by law.

(Code 1971, Sec. 3-304; Ord. 976)

- 3-305. ALCOHOLIC LIQUOR. Alcoholic liquor includes the following four varieties of liquor as defined below, namely alcohol, spirits, wine and beer, and every liquid or solid patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by human beings, but shall not include any beer or cereal malt beverage containing not more than three and two tenths percent (3.2%) of alcohol by weight:

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

(b) Beer when its meaning is not enlarged, modified or limited by other words, means a beverage containing more than three and two tenths percent (3.2%) of alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water, and includes among other things, beer, ale, stout, lager beer, port and the like having such alcoholic content;

(c) Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substances in solution, and includes but is not limited to brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances;

(d) Wine means any alcoholic beverage obtained by normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries, or other agricultural products, including such beverages containing added alcohol or spirits as above defined, or containing sugar added for the purpose of correcting natural deficiencies.

(K.S.A., 41-102; Code 1971, Sec. 3-307)

- 3-306. EXCEPTIONS. None of the provisions of this article shall apply to the following:

(a) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in strict practice of his or her profession;

(b) Any hospital or other institution caring for sick and diseased persons, from possessing or using alcoholic liquor for the treatment of bona fide patients of such hospital or institution;

(c) Any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of duly licensed physicians;

(d) The possessing or dispensing of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church;

(e) The selling or possessing of flavoring extract, syrups or medicinal, mechanical, scientific, culinary or toilet preparations or food products unfit for beverage purposes.

(Code 1971, Sec. 3-308)

3-307. RESERVED

3-308. PURCHASE, POSSESSION, AND CONSUMPTION OF ALCOHOLIC LIQUOR BY PERSON UNDER TWENTY-ONE YEARS OF AGE. (a) No person under the age of twenty-one (21) years of age shall possess, consume, obtain, purchase, or attempt to obtain or purchase alcoholic liquor except as authorized by law.

(b) Any person less than eighteen (18) years of age who violates this section is a juvenile offender under the Kansas Juvenile Justice Code. Upon adjudication thereof as a condition of disposition the court shall require the offender to pay a fine of not less than one-hundred dollars (\$100) nor more than five-hundred dollars (\$500).

(c) In addition to or in lieu of any other penalty provided for a violation of this section, the court may order the offender to do either or both of the following:

(1) Perform forty hours (45) of public service; or

(2) Attend and satisfactorily complete a suitable educational and training program dealing with the effects of alcohol or chemical substances when ingested by humans.

(Ord. 595; Code 2003)

3-309 SUNDAY SALES OF ALCOHOLIC BEVERAGE. No person shall sell at retail any alcoholic liquor on: (1) Easter Day, Thanksgiving Day or Christmas Day; or (2) before 9:00 a.m. or after 11:00 p.m. Monday through Saturday; or (3) before 12:00 noon or after 8:00 p.m. on Sunday.

(Ord. 947)

ARTICLE 4. DRINKING ESTABLISHMENTS, PRIVATE CLUBS, CATERERS, TEMPORARY PERMIT

3-401. 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 that sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises that 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 cereal malt beverage as that term is defined in K.S.A. 41-2701, and amendments thereto, and such term shall include beer containing not more than 6% alcohol by volume when such beer is sold by a retailer licensed under the Kansas cereal malt beverage act.

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

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

(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 and serve alcoholic liquor for consumption on unlicensed premises, open to the public.

(Code 1988; Ord. 577; Code 2003)

3-402. RESTRICTION ON LOCATION. (a) No alcoholic liquor shall be sold or served by a person holding a license or permit from the city whose place of business or other premises are located within five hundred (500) feet of any church, school, or library, said distance to be measured from the nearest property line of such church, school, or library, to the nearest portion of the building occupied by the premises.

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

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

(d) Pursuant to this Ordinance and Code, a Special Event Permits may be issued for an identifiable outdoor location including public sites (Special Event permitted site), but shall not be located within a public roadway unless such roadway shall have been closed to traffic by action of the Governing Body.

(1) A Special Event Permit shall in no manner be construed to allow alcoholic beverage(s) to be consumed inside vehicles while on public streets, alleys, roads or highways regardless of the boundaries of any such Special Event permitted site.

(2) No person shall remove any alcoholic beverage from inside the boundaries of a Special Event permitted site as such area is described within the approved Special Event Permit.

(3) The boundaries of such Special Event permitted site shall be clearly marked by signs, a posted map, fence or other means which reasonably identify the area in which cereal malt beverage may be possessed or consumed at such Special Event, as approved through the special event permit application process.

(4) No person shall possess or consume either cereal malt beverage or alcoholic liquor inside the premises licensed as a Special Event that was not sold or provided by the licensee holding the associated State and/or City issued permits and licenses.

(5) The Governing Body may shall require the holder of the Special Event Permit to provide adequate insurance, naming the City as an additional insured, if such Special Event is to take place on any public property or roadway.

(6) Special Event means a picnic, bazaar, festival or other similar community gathering which has been approved by the Governing Body.
(Code 1988; K.S.A. 41-719; Code 2015)

3-403. MINORS ON PREMISES. (a) It shall be unlawful for any person under the age of twenty-one (21) years to remain on any premise where the sale of alcoholic is licensed for on-premise consumption, or where a caterer or temporary permit holder is serving alcoholic liquor.

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

(c) This section shall not apply if the person under the age of twenty-one (21) years is accompanied by his or her parent or guardian; or if the person under twenty-one (21) years of age is at least eighteen (18) years of age and employed at the premises as a server as defined by K.S.A. 41-2610; or if the licensed or permitted premise derives not more than fifty percent (50%) of its gross receipts in each calendar year from the sale of alcoholic liquor for on-premise consumption.

(Code 1988; Ord. 577; Code 2003, Ord. 842, Code 2004)

3-404. CONSUMPTION ON PUBLIC PROPERTY. No person shall drink or consume any alcoholic liquor on city owned public property, except in accordance with a properly issued Special Event Permit issued by the City and associated with a temporary permit issued by the State.

(Code 1988; Ord. 577; K.S.A. 41-719; Code 2015)

3-405. PENALTY. If the licensee or permit holder has violated any of the provisions of this article the governing body of the city, upon five (5) days written notice to a person holding a license or permit to sell alcoholic liquor, may permanently revoke or cause to be suspended for a period of not more than thirty (30) days such license or permit and the individual holding the license or permit may be charged in municipal court with a violation of the alcoholic liquor laws of the city and upon conviction shall be punished by:

(a) a fine of not more than \$499; or,

(b) imprisonment in jail for not more than 179 days; or

(c) both such fine and imprisonment not to exceed (a) and (b) above.
(Code 1988; Ord. 577; Code 2003)

3-406. DRINKING ESTABLISHMENTS, LICENSE REQUIRED. It shall be unlawful for any person granted a drinking establishment license by the state of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a city license from the city clerk.
(Code 1988; Ord. 577; Code 2003)

3-407. SAME, LICENSE FEE. (a) There is hereby levied a biennial license fee on each drinking establishment located in the city that has a drinking establishment license issued by the State Director of Alcoholic Beverage Control as set out in the Chapter 17.

(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license or within five (5) days of the effective date of the state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city. An additional fee as set out in Chapter 17 will be assessed if more than five (5) days have lapsed after the effective date of the state license.

(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.

(d) Every licensee shall cause the city drinking establishment license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

(Code 1988; Ord. 577; 577-A; Code 2003; Ord. 976)

3-408. SAME, BUSINESS REGULATIONS. (a) No drinking establishment licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

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

(c) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under twenty-one (21) years of age.

(Code 1988; Ord. 577; Code 2003)

3-409. SAME, PENALTY. If the licensee has violated any of the provisions of this ordinance, the governing body of the city, upon five (5) days' written notice to the person holding such license to sell alcoholic liquor, may permanently revoke or cause to be suspended for a period of not more than thirty (30) days such 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 punished by:

(a) A fine of not more than \$499; or

- (b) Imprisonment in jail for not more than 179 days; or
 - (c) Both such fine and imprisonment not to exceed (a) and (b) above.
- (Code 1988; Ord. 577; Code 2003)

3-410. PRIVATE CLUBS, LICENSE REQUIRED. It shall be unlawful for any person granted a private club license by the state of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a local license from the city clerk.

(Code 1988; Ord. 577; Code 2003)

3-411. SAME, LICENSE FEE. (a) There is hereby levied a biennial license fee on each private club located in the city that has a private club license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five (5) days after any renewal of a state license. The fee shall be as set out in Chapter 17.

(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city. An additional fee as set out in Chapter 17 will be assessed if more than five (5) days have lapsed after the effective date of the state license.

(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.

(d) Every licensee shall cause the city club license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

(Code 1988; Ord. 577; Code 2003; Ord. 976)

3-412. SAME, BUSINESS REGULATIONS. (a) No club licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00a.m. on any day.

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

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

(Code 1988; Ord. 577; Code 2003)

3-413. SAME, PENALTY. If the licensee has violated any of the provisions of this article the governing body of the city, upon five (5) days' written notice to the person holding such license to sell alcoholic liquor, may permanently revoke or cause to be suspended for a period of not more than thirty (30) days such 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 punished by:

(a) A fine of not more than \$499; or

- (b) Imprisonment in jail for not more than 179 days; or
 - (c) Both such fine and imprisonment not to exceed (a) and (b) above.
- (Code 1988; Ord. 577; Code 2003)

3-414. CATERERS, LICENSE REQUIRED. It shall be unlawful for any person licensed by the state of Kansas as a caterer to sell alcoholic liquor by the drink, to sell or serve any liquor by the drink within the city without obtaining a local caterer's license from the city clerk.

(Code 1988; Ord. 577; Code 2003)

3-415. SAME, LICENSE. (a) There is hereby levied a biennial license fee as set out in Chapter 17, on each caterer doing business in the city who has a caterer's license issued by the State Director of Alcoholic Beverage Control, which fee shall be paid before business is begun under an original license and within five (5) days after any renewal of a state license.

(b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.

(c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.

(d) Every licensee shall cause the caterer license to be placed in plain view on any premises within the city where the caterer is serving or mixing alcoholic liquor for consumption on the premises.

(Code 1988; Ord. 577; Code 2003; Ord. 976)

3-416. SAME, BUSINESS REGULATIONS. (a) No caterer licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day

(b) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under twenty-one (21) years of age.

(Code 1988; Ord. 577; Code 2003)

3-417. SAME, NOTICE TO CHIEF OF POLICE. Prior to any event at which a caterer will sell or serve alcoholic liquor by the individual drink, the caterer shall provide written notice to the chief of police at least fifteen (15) 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 times the caterer will be serving.

(Code 1988; Ord. 577; Code 2003)

3-418. SAME, PENALTY. If the licensee has violated any of the provisions of this ordinance, the governing body of the city, upon five (5) days' written notice to the person holding such license to sell alcoholic liquor, may permanently revoke or cause to be suspended for a period of not more than thirty (30) days such 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 punished by:

- (a) A fine of not more than \$499; or
 - (b) Imprisonment in jail for not more than 179 days; or
 - (c) Both such fine and imprisonment not to exceed (a) and (b) above.
- (Code 1988; Ord. 577; Code 2003)

3-419. TEMPORARY PERMITS, REQUIRED. It shall be unlawful for any person granted a temporary permit by the state of Kansas to sell or serve any alcoholic liquor within the city without first obtaining a local temporary permit from the city clerk, and a Special Event Permit if applicable to the site and/or event.

(Code 1988; Ord. 577; Code 2003; Code 2015)

3-420. SAME, PERMIT FEE. (a) There is hereby levied a temporary permit fee as set out in Chapter 17, on each group or individual holding a temporary permit issued by the director of alcoholic beverage control authorizing sales within the city, which fee shall be paid before the event is begun under the state permit.

(b) In addition to the fees charged for a temporary permit fee as provided in subsection (a), there shall be a daily fee assessed for a Special Event Permit based upon the number of days requested to operate the Special Event site, payable upon approval of the Special Event Permit, such fees and payment schedule as set forth in Chapter 17 of this municipal code.

(Code 1988; Ord. 577; Code 2003; Code 2015)

3-421. SAME, CITY TEMPORARY PERMIT. (a) It shall be unlawful for any person to conduct an event under a state issued temporary permit without first obtaining a special event permit in conformance with this Code from the city at least fifteen (15) days before the event. Written application for the local temporary permit shall be made to the city clerk and shall clearly state:

- (1) The name of the applicant;
- (2) The group for which the event is planned;
- (3) The location of the event;
- (4) The date and the 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.

(d) The provisions of this section shall be interpreted in conformance with K.S.A. 41-719.

(Code 1988; Ord. 577; Code 2003; K.S.A. 41-719; Code 2015)

3-422. SAME, PERMIT REGULATIONS. (a) No temporary permit holder shall allow

the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. at any event for which a temporary permit has been issued.

(b) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under twenty-one (21) years of age.

(Code 1988; Ord. 577; Code 2003)

3-423. SAME, PENALTY. If the permit holder has violated any of the provisions of this article the governing body may revoke such temporary permit, 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 punished by:

(a) A fine of not more than \$499; or

(b) Imprisonment in jail for not more than 179 days; or

(c) Both such fine and imprisonment not to exceed (a) and (b) above.

(Code 1988; Ord. 577; Code 2003)

3-424. PROHIBITED CONDUCT. The following conduct by a club licensee or employee of any licensed club is deemed contrary to public welfare and is prohibited:

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

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

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

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

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

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

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

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

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

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

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

(Ord. 471; Code 1984, Sec. 3-415)