

CHAPTER III. BEVERAGES

Article 1. Cereal Malt Beverages

Article 2. Alcoholic Liquor

Article 3. Private Clubs

ARTICLE 1. CEREAL MALT BEVERAGES

3-101. **DEFINITIONS.** For the purpose of this article the following definitions shall apply unless the context clearly requires otherwise:

- (a) Cereal malt beverage. Any fermented but undistilled liquor brewed or made from a malt or a mixture of malt or malt substitute, but shall not include any such liquor which contains more than three and two-tenths percent of alcohol by weight.
- (b) General retailer. A person who has a license to sell cereal malt beverages at retail.
- (c) Legal Age for Consumption means the minimum age established by the State of Kansas for the lawful consumption of cereal malt beverages, specifically: (a) 19 years of age with respect to persons born before July 1, 1966; and (b) 21 years of age with respect to persons born on or after July 1, 1966.
- (d) Limited retailer. A person who has a license to sell cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.
- (e) Person. Individuals, firms, co-partnerships, corporation, and associations.
- (f) Place of business. Any place at which cereal malt beverages are sold.
- (g) Sale at retail and retail sales. Sales for use or consumption and not for resale in any form.
- (h) Wholesaler or distributor. Any individuals, firms, copartnerships, corporations and associations which sell or offer for sale any beverage referred to in this article, to persons, copartnerships, corporations and associations authorized by this article to sell cereal malt beverages at retail.

(Code 1986)

3-102. **LICENSE REQUIRED OF RETAILERS.** (a) It shall be unlawful for any person to sell any cereal malt beverage at retail without a license for each place of business for where cereal malt beverages are to be sold at retail.

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

(K.S.A. 41-2702; Code 1986)

3-103. **LICENSE APPLICATION.** An application for a license to sell cereal malt beverages at retail shall be made to the governing body in accordance with the provisions of K.S.A. 41-2702. (Code 1986)

3-104. **SAME, 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 and a resident of Gray 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 one of the partners is a resident of the city or county in which the premises covered by the license is located and unless all the members of such 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 nonresidence within the city or county.
 - (g) 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.
- (K.S.A. 41-2703; Code 1986)

- 3-105. LICENSE GRANTED; DENIED. (a) The journal of the governing body shall show the action taken on the application.
- (b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.
 - (c) No license shall be transferred to another licensee.
 - (d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.
- (Code 1986)

- 3-106. SAME; TO BE POSTED. Each license shall be posted in a conspicuous place in the place of business for which the license is issued. (Code 1986)

- 3-107. LICENSE FEE. The rules and regulations regarding the license fees shall be as follows:
- (a) General Retailer – for each place of business selling cereal malt beverages at retail, \$100 per calendar year.
 - (b) Limited Retailer – for each place of business selling only at retail cereal malt beverages in original and unopened containers and not for consumption on the premises, \$50 per calendar year.

Full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued. (K.S.A. 41-2702; Code 1986)

- 3-108. LICENSE SUSPENSION/REVOCATION BY GOVERNING BODY. The governing body of the city, upon five day's written notice, to a person holding a license to sell cereal malt beverages may permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:
- (a) If a licensee has fraudulently obtained the license by giving false information in the application therefore;
 - (b) If the licensee has violated any of the provisions of this article or has become ineligible to obtain a license under this article;
 - (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 cereal malt beverages;
 - (d) The sale of cereal malt beverages to any person under the legal age for consumption;
 - (e) For permitting any gambling in or upon any premises licensed under this article;
 - (f) For permitting any person to mix drinks with materials purchased in any premises licensed under this article or brought into the premises for this purpose;
 - (g) For employment of any person under the age established by the State of Kansas for employment involving dispensing 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 of consumption of alcoholic liquor within or upon any premises licensed under this article;
 - (j) The nonpayment of any license fees;
 - (k) If the licensee has become ineligible to obtain a license under this chapter;
 - (l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.
- (K.S.A. 41-2708; Code 1986)

3-109. SAME; APPEAL. The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Gray County. Any appeal taken under this section 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. (K.S.A. 41-2708; Code 1986)

- 3-110. REGULATIONS. (a) No cereal malt beverage may be sold between the hours of midnight and 6 a.m. of any day, or any Sunday, except sale is thereby authorized to K.S.A. 41-2704(b) (2) in a place of business which is licensed to sell cereal malt beverage for consumption on the premises and which derives not less than 30% of its gross receipt from the sale of food for consumption on the licensed premises. (Ordinance 867 – 1/23/95) See also Section 2 after 3-204(b)(1)
- (b) No private rooms or closed booths shall be permitted in any premises license under this article; unless the business also is licensed as a private club;
 - (c) A place of business licensed under this article shall be open to the public and to police officers of the city at all times during business hours except a private club shall be open to police, but not the general public;

- (d) No person shall sell, give away, dispose of, exchange or deliver or permit the sale, gift or procuring of any cereal malt beverage to any person under 18 years of age. No person under the legal age for consumption shall purchase or receive cereal malt beverages from any person;
- (e) No person shall have any alcoholic liquor in his or her possession while in any place of business licensed to sell cereal malt beverages under this article unless the business also is licensed as a private club;
- (f) The licensee of each premises licensed under this article shall at all times comply with the sanitary and health regulations and ordinances of the city.
(K.S.A. 41-2704; Code 1986)

3-111. **SALE, CONSUMPTION, PUBLIC PROPERTY.** It shall be unlawful for any person to sell, serve, dispense, drink or consume any cereal malt beverage upon any street, public thoroughfare, or in any public place not licensed to sell cereal malt beverages for consumption on the premises within or under the jurisdiction of the city, provided however, this provision shall not be construed to prohibit the owner or operator of the Cimarron Golf Course from selling, serving, or dispensing cereal malt beverages, nor shall this provision be construed to prohibit a duly licensed concessionaire of the Cimarron Golf Course from selling, serving, or dispensing cereal malt beverages, now shall this provision be construed to prohibit the customers and patrons of the Cimarron Golf Course from drinking or consuming cereal malt beverages on such premises.
(Ordinance 918 – 4/09/2003)

- 3-112. **OPEN CONTAINER.** (a) No person shall transport in any vehicle upon a highway or street any cereal malt beverage unless such cereal malt beverage is:
- (1) In the original, unopened package or container, the seal of which has not been broken and from which the original cap or cork or other means of closure has not been removed;
 - (2) In the locked, rear trunk or rear compartment or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion or;
 - (3) In the exclusive possession of a passenger in a vehicle which is a recreational vehicle as defined by K.S.A. 75-1212 or a bus as defined by K.S.A. 8-1406, who is not in the driving compartment of such vehicle or who is in a portion of such vehicle from which the driver is not directly accessible.
- (b) As used in this section, “highway” and “street” have meanings provided by K.S.A. 8-1424 and K.S.A. 8-1473 and amendments thereto.
(K.S.A. 41-2719; Code 1986)

See: Standard Traffic Ordinance Sec. 106 as incorporated by section 14-101 of this code.

3-113. **CONSUMPTION WHILE DRIVING.** No person shall consume any cereal malt beverage while operating any vehicle upon any street or highway. Violation of this subsection is a misdemeanor punished by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both. (K.S.A. 41-2720; Code 1986)
See: Standard Traffic Ordinance Sec. 105 as incorporated by section 14-101 of this code.

- 3-114. **RESTRICTION ON LOCATION.** No person shall operate any business for the consumption of cereal malt beverages upon the premises if the structure in which the business is located is within 200 feet from the nearest property line of any existing school or church. (Code 1986)
- 3-115. **PRIVATE PROPERTY.** Nothing in this article shall be deemed to prevent, regulate or control the consumption of cereal malt beverages upon private property by those occupying said private property as the owner, or as a lessee of an owner and by the guest of the owner or lessee, provided that no charge is made by the owner or lessee for the serving of any cereal malt beverage. (Code 1986)
- 3-116. **WHOLESALE AND/OR DISTRIBUTORS.** It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver cereal malt beverages within the city, to persons authorized under this article to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the director of revenue, state commission of revenue and taxation of the State of Kansas authorizing such sales. (K.S.A. 79-3837; Code 1986)
- 3-117. **SANITARY CONDITIONS.** It shall be unlawful for any licensee to violate any of the statutes of Kansas, or ordinances of the city or rules or orders of the state board of health relating to sanitary or health conditions of the places licensed to sell such cereal malt beverages. (Code 1986)
- 3-118. **PREMISES, ILLUMINATION.** It shall be unlawful for any owner, operator, or licensee to operate any place of business licensed for the sale and consumption of cereal malt beverages on the premises without sufficient illumination to measure not less than five foot candles of light in all portions of said place of business measured at a height of 36" above the floor. (K.S.A. 41-2704; Code 1986)

ARTICLE 2. ALCOHOLIC LIQUOR

- 3-201. **DEFINITION.** Alcoholic beverage or alcoholic liquor as used in this article includes the varieties of liquor as defined in K.S.A. 41-102, namely alcohol, alcoholic liquor, spirits, wine and beer and every liquid or solid, patented or not, containing alcohol, alcoholic liquor, spirits, wine or beer, and capable of being consumed as a beverage by a human being, but does not include any beer or cereal malt beverage containing not more than three and two-tenths percent of alcohol by weight. (K.S.A. 41-102; Code 1986)
Ref.: K.S.A. 41-208
- 3-202. **PRESENT STATE LICENSE.** (a) It shall be unlawful for any person to keep for sale, offer for sale, or expose for sale or sell any alcoholic liquor as defined by the "Kansas liquor control act" without first having procured a license so to do as required by said act to sell the same. Any person violating the provisions of this section shall upon conviction be punished by a fine of not to exceed \$100 or by imprisonment not to exceed three months, or by both such fine and imprisonment.

- (b) The holder of a license for the retail sale in the city of alcoholic liquors by the package issued by the state director of alcoholic beverage control shall present such license to the city clerk when applying to pay the occupation tax levied and the tax shall be received and a receipt shall be issued for the period covered by the state license. (Code 1986)
- 3-203. **POSTING OF RECEIPT.** Every licensee under this article shall cause the city alcoholic retailer's occupation tax receipt to be prominently displayed next to or below the state license in a conspicuous place on the licensed premise. Any person violating this section, upon conviction, shall be fined not more than \$100. (Code 1986)
- 3-204. **HOURS OF SALE.** (a) No person authorized to sell any alcoholic liquor at retail within the city shall sell any alcoholic liquor before the hour of 9 a.m. or after the hour of 11 p.m. on any day when the sale of alcoholic liquors are permitted.
- (b) No sales of alcoholic liquor shall be permitted on:
- (1) Repealed with Ordinance 867 – 1/23/1995
 - (2) any Sunday; or
 - (3) Decoration or Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- (Ordinance 867 – 1/23/1995)
- (c) Any person who shall violate the provisions of this section shall upon conviction of any such violation be subject to a fine not to exceed \$500 or by imprisonment not to exceed six months or by both fine and imprisonment.
(K.S.A. 41-712; Code 1986)
- 3-205. **PENALTY.** Any person, copartnership or association having a state license to retail alcoholic liquor by the package who shall violate any provisions of sections 3-202, 3-203, or 3-204 shall, upon conviction, be fined as stated in the section. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues: Provided, that nothing herein shall be construed to prohibit the city from collecting the occupation tax by any procedure authorized by law. (Code 1986)
- 3-206. **PROHIBITED ACTS.** It shall be unlawful for a retailer of alcoholic liquor to:
- (a) Permit any person to mix drinks in or on the licensed premises;
 - (b) Employ any person under the age of 21 years in connection with the operation of the retail establishment;
 - (c) Employ any person in connection with the operation of the retail establishment who has been adjudged guilty of a felony;
 - (d) Furnish any entertainment in his or her premises or permit any pinball machine or game of skill or chance to be located in or on the premises; or
 - (e) Have in his or her possession for sale at retail any bottles, cask, or other containers containing alcoholic liquor, except in the original package.
- (Code 1986)
- 3-207. **MINORS, INCAPACITATED PERSONS.** (a) It shall be unlawful for any person under the age of 21 to represent that he or she is of age for the purpose of purchasing or

attempting to purchase any alcoholic liquor. No person under the age of 21 shall have any alcoholic liquor in his or her possession.

- (b) No person shall knowingly sell, give away, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor.
 - (c) Any person convicted of violating this section shall be punished by a fine of not more than \$100 or by imprisonment for not to exceed 30 days, or both.
- (K.S.A. 41-715; Code 1986)

3-208. DRINKING ON STREETS OR IN PUBLIC PLACES. (a) Except as provided in subsection (b) it shall be unlawful for any person to drink or consume alcoholic liquor upon any public street or highway or thoroughfare; in beer parlors, taverns, pool halls, or places to which the general public has access, whether or not an admission or other fee is charged or collected; upon property owned by the state or any governmental subdivision thereof; or inside vehicles while upon a street, highway or other public thoroughfare.

- (b) The provisions of subsection (a) shall not apply to the consumption of alcoholic liquor;
 - (1) upon real property leased by a city to others under K.S.A. 12-1740, et seq. if the property is being used for hotel or motel purposes or purposes incidental thereto.
 - (2) upon property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated.

(K.S.A. 41-719; Code 1986)

3-209. 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 alcoholic beverages may permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:

- (a) If a licensee has fraudulently obtained the license by giving false information in the application therefore;
- (b) If the licensee has violated any of the provisions of this article or has become ineligible to obtain a license under this article;
- (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 alcoholic beverages;
- (d) The sale of alcoholic beverages to any person under the minimum age established by state law;
- (e) For permitting any gambling in or upon any premises licensed under this article;
- (f) [skipped]
- (g) For the employment of any person under the minimum age established by state law for dispensing alcoholic beverages;
- (h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;
- (i) The nonpayment of any license fees;

- (j) If the licensee has become ineligible to obtain a license under this chapter;
- (k) For knowingly employing a person who has been within two years adjudged guilty of a felony or a violation of an intoxicating liquor law. The chief of police may require any employee to submit to fingerprinting to determine if a violation of this section has occurred, and the failure of an employee to submit to fingerprinting if required by the chief of police, shall be prima facie evidence that the employee is ineligible for employment under the provisions of this section.

(Code 1986)

See: Standard Traffic Ordinance Sec. 106 as incorporated by section 14-101 of this code.

- 3-210. CONSUMPTION WHILE DRIVING. No person shall consume any alcoholic liquor while operating any vehicle upon any street or highway. Violation of this subsection is a misdemeanor punishable by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both. (Code 1986)

See Standard Traffic Ordinance Sec. 105 as incorporated by section 14-101 of this code.

- 3-211. RESTRICTION ON LOCATION. No person shall operate any business for the sale of alcoholic liquor if the structure in which the business is located is within 200 feet from the nearest property line of any existing hospital, school, church or library. (K.S.A. 41-710; Code 1986)
- 3-212. OCCUPATION TAX. There is hereby levied an annual occupation tax on each retailer of alcoholic liquor (including beer containing more than 3.2% of alcohol by weight) for consumption off the premises (sales in the original package only) in the sum of \$300 in the city who has a retailer's license issued by the state director of alcoholic beverage control, which tax shall be paid before business is begun under an original state license and within 10 days after renewal of a state license. (Code 1961, 3-212; Code 1986)
- 3-213. RETAILERS RECEIPT. Upon receipt of a valid Kansas retailer's license for alcoholic liquors, an application in correct form, and the correct amount of occupation tax, the city clerk shall issue a receipt of occupation tax to the applicant for the year commencing on the date the Kansas Liquor Retailer's license is issued by the State Director of Alcoholic Beverage Control and shall end one year thereafter. (Code 1986)

ARTICLE 3. PRIVATE CLUBS

- 3-301. HOURS OF OPERATION. No Class A or Class B clubs within the city 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. of any day. (Ordinance 840 – 11/01/1988)
- 3-302. LICENSE TAX. LICENSE TAX. There is hereby levied upon and against each person holding a Class A or Class B club license, as described in K.S.A. 41-2622, a license tax

of \$200 to be paid annually to the city at the time of initial licensing and each anniversary thereof. (Ordinance 840 – 11/01/1988)