

**TITLE 7**  
**LIQUOR LAWS**

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## CHAPTER 7.02

### GENERAL PROVISIONS

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**7.02.010 Definitions.** As used in this Title, the words and phrases herein defined shall have the following meanings:

"Alcoholic Liquor" includes the four varieties of liquor; namely, alcohol, spirits, wine and beer, and every liquid or solid, patented or not containing alcohol, spirits, wine or beer, capable of being consumed as a beverage by a human being, but shall not include cereal malt beverage.

"Caterer" means an individual, partnership or corporation licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated which sells alcoholic liquor by the individual drink, and provides services relating to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

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

"Class A Club" means a premises licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and which is owned or leased by a corporation, partnership, business, trust or association and which is operated thereby as a bonafide non-profit social, fraternal or war veterans' club, as determined by the director of Alcohol Beverage Control of the Kansas Department of Revenue, 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.

"Class B Club" means a premises licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and which is operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverage and for entertainment.

"Club" means a Class A or Class B Club.

"Club and Drinking Establishment Act" means the provisions of Article 26 of Chapter 41 of the Kansas Statutes Annotated and any amendments thereto.

"Drinking Establishment" means premises licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and which may be open to the general public, where alcoholic liquor by the individual drink is sold.

"Individual Drink" means a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. The term "individual drink" includes beverages containing not more than: (1) Eight ounces of wine; (2) thirty-two ounces of beer or cereal malt beverage; or (3) four ounces of a single spirit or a combination of spirits.

"Legal Age of Consumption of Cereal Malt Beverages" means twenty-one (21) years of age; except that "Legal Age of Consumption for Cereal Malt Beverage" shall mean eighteen (18) years of age if at any time the provisions of PL98-363 penalizing states for permitting persons under twenty-one (21) years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

"Licensee" is any person who applies for and receives a license which allows the licensee to sell alcoholic liquor or cereal malt beverages.

"Person" includes any natural person, corporation, partnership or association.

"Place of Business" means any place at which alcoholic liquor or cereal malt beverages are sold.

"Premises" means the specific area described in the license application and approved as the location upon which the cereal malt beverages and/or alcoholic liquor may be sold and/or consumed under the license.

"Retailer" means a person who sells, or offers for sale, alcoholic liquors or cereal malt beverages for use and consumption and not for resale in any form.

"Sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and included and means all sales made by any person, whether principal, proprietor, agent, servant or employee.

"Powdered Alcohol" means alcohol that is prepared in a powdered or crystal form for either direct use or for reconstitution in a nonalcoholic liquid.

"Public Venue" means an arena, stadium, hall or theater, used primarily for athletic or sporting events, live concerts, live theatrical productions or similar seasonal entertainment events, not operated on a daily basis, and containing:

1. Not less than 4,000 permanent seats; and
2. not less than two private suites, which are enclosed or semi-enclosed seating areas, having controlled access and separated from the general admission areas by a permanent barrier.

"Sample" means a serving of alcoholic liquor which contains not more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine; or (3) two ounces of beer or cereal malt beverage. A sample of a mixed alcoholic beverage shall contain not more than one-half ounce of distilled spirits.

“School” means any institution of learning, whether public or private. This definition includes, but is not limited to, a nursery school, kindergarten, elementary school, junior high school, senior high school, college and university. However, for the purposes of this Title, any institution of learning whether public or private located within a typically enclosed mall with a climate-controlled walkway between two facing strips of stores will not be considered a school.

"Temporary Permit" means a temporary permit issued pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated.

"To Sell" includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell. (Ord. 15-63 § 1, 2015; Ord. 15-23 § 1, 2015; Ord. 14-14 § 1, 2014; Ord. 06-109 § 1, 2006; Ord. 05-141 § 1, 2005; Ord. 01-64 § 1, 2001; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

#### **7.02.020 Restriction on Location**

A. No alcoholic liquor or cereal malt beverage 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 two hundred (200) feet of any church or school, said distance to be measured from the nearest property line of such church or school to the nearest portion of the building occupied by the premises; provided, however, that if such school or church is established within two hundred (200) feet of any licensed premises after the premises has been licensed, or such church or school provides written consent approved by its governing authority, the premises shall continue to be an eligible location for an alcoholic liquor license.

B. No license or permit shall be issued for the sale of alcoholic liquor or cereal malt beverage if the building or use does not meet the zoning ordinance requirements of the City or conflicts with the other City laws, including building, fire and health codes. (Ord. 16-07 § 1, 2016; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

#### **7.02.030 Minors on Premises.**

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

B. It shall be unlawful for the operator, person in charge or licensee of any premises licensed for on-premises consumption of alcoholic liquor or a caterer or temporary 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:

1. The person under the age of twenty-one (21) years is accompanied by his or her parent or guardian, or

2. The licensed or permitted premises derives not less than fifty percent (50%) of its gross receipts in each calendar year from the sale of food for on-premises consumption; or

3. The primary purpose of the licensed or permitted premises is a public golf course or art studio. (Ord. 16-07 § 2, 2016; Ord. 09-30 § 2, 2009; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.02.040 Consumption on Public Property.** Repealed 3/17/15. (Ord. 15-23 § 2, 2015; Ord. 13-64 § 1, 2013; Ord. 08-102 § 1, 2008; Ord. 01-54 § 1, 2001; Ord. 97-51 § 2, 1997; Ord. 89-150 § 1, 1990; Ord. 88-121 § 1, 1988; Ord. 87-139 § 1, 1987.)

**7.02.050 Possession on Public Property.** Repealed 3/17/15. (Ord. 15-23 § 3, 2015; Ord. 13-64 § 2, 2013; Ord. 08-102 § 2, 2008; Ord. 01-54 § 2, 2001; Ord. 97-51 § 2, 1997; Ord. 89-150 § 2, 1990; Ord. 88-121 § 2, 1988.)

**7.02.060 Consumption on Private Property--Exceptions.** Repealed 3/17/15. (Ord. 15-23 § 4, 2015; Ord. 97-51 § 2, 1997; Ord. 89-150 § 3, 1990; Ord. 88-121 § 3, 1988; Ord. 87-139 § 1, 1987.)

**7.02.070 Possession on Private Property.** Repealed 3/17/15. (Ord. 15-23 § 5, 2015; Ord. 97-51 § 2, 1997; Ord. 89-150 § 4, 1990; Ord. 88-121 § 4, 1988; Ord. 87-139 § 1, 1987.)

**7.02.080 Sale of Liquor to Incapacitated or Intoxicated Person.** Repealed 3/17/15. (Ord. 15-23 § 6, 2015; Ord. 97-51 § 2, 1997; Ord. 89-150 § 5, 1990; Ord. 87-139 § 1, 1987.)

**7.02.090 Purchase or Consumption of Alcoholic Beverage by Minor; Penalty.** Repealed 10/21/03. (Ord. 03-91 § 1, 2003; Ord. 01-56 § 1, 2001; Ord. 00-44 § 1, 2000; Ord. 97-51 § 2, 1997; Ord. 89-150 § 6, 1990; Ord. 88-121 § 5, 1988; Ord. 87-139 § 1, 1987.)

**7.02.100 Permitting Possession or Consumption of Alcohol or Cereal Malt Beverage on Licensed Premises by a Minor Prohibited.**

A. No licensee or permit holder, or any owner, officer or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor or cereal malt beverage by a minor on premises where alcoholic beverages are sold by such licensee or permit holder, except that a licensee's or permit holder's employee who is not less than 18 years of age may serve alcoholic liquor or cereal malt beverage under the on-premises supervision of the licensee or permit holder, or an employee who is 21 years of age or older.

B. The minimum penalty shall be:

1. Upon a first violation, a fine of Two Hundred Fifty Dollars (\$250.00);
2. Upon a second violation charged within a three (3) year period of a prior violation, a fine of Five Hundred Dollars (\$500.00);
3. Upon a third violation charged within a three (3) year period of a prior violation, a fine of Seven Hundred Fifty Dollars (\$750.00), and
4. Upon a fourth violation charged within a three (3) year period of a prior violation, a fine of One Thousand Dollars (\$1,000.00) and revocation of City license.
5. The three (3) year time period is calculated from the date the Police Chief or designated representative issues an order that a first violation occurred. Any violation charged during the ensuing three (3) year time period (irrespective of the date the Police Chief or designated representative issues the order that another violation has occurred) is calculated towards the enhanced penalty.

C. It shall be a defense to a civil fine under this section if:

1. The licensee or permit holder, or any owner, officer or employee permitted the minor to possess or consume the alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and
2. To possess or consume the alcoholic liquor or cereal malt beverage, the minor exhibited to the licensee or permit holder, or any owner, officer or employee 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.

D. This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward. (Ord. 15-23 § 7, 2015; Ord. 13-08 § 1, 2013; Ord. 97-51 § 2, 1997; Ord. 89-150 § 7, 1990.)

**7.02.110 Open Saloon.** Repealed 3/17/15. (Ord. 15-23 § 8, 2015; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.02.120 Standards of Conduct.** It shall be unlawful for any licensee or holder of temporary permit under this title to:

A. Employ any person under the age of eighteen (18) years in connection with the serving of alcoholic liquor.

B. Employ knowingly 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 have been adjudged guilty of a felony or of any crime involving a morals charge in this or any other state, or of the United States.

C. Knowingly employ or continue to employ any person in connection with the dispensing or serving of alcoholic liquor, or the mixing of drinks containing alcoholic liquor, who has been adjudged guilty of two or more violations of K.S.A. 2012 Supp. 21-5607, and amendments thereto, furnishing alcoholic liquor to minors or a similar law of any other state, or of the United States, pertaining to furnishing alcoholic liquor to minors within the immediately preceding five (5) years, or who has been adjudged guilty of three or more violations of any intoxicating liquor law of this or any other state, or of the United States, not involving the furnishing of alcoholic liquor to minors within the immediately preceding five years.

D. In the case of a club, fail to maintain at the licensed premises a current list of all members and their residence addresses, or refuse to allow any law enforcement officer to inspect such list.

E. Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder.

F. Permit any employee of the licensee or permit holder who is under the age of twenty-one (21) years to work on premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of either the licensee or permit holder, or an employee who is twenty-one (21) years of age or over.

G. Employ any person under twenty-one (21) years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor.

H. Allow, without preventing or suppressing, any violent quarrel, disorder, brawl, fight or other unlawful conduct of any person on the premises. As used in this section, "premises" includes the licensed premises and the parking lots and areas around the business which are owned, used or maintained as part of the business.

I. Fail to immediately report to the police any illegal or violent act committed on the premises when the licensee or the licensee's employee knew or should have known that the act occurred on the premises.

J. Fail to cooperate fully with law enforcement authorities during an investigation of an illegal or violent act committed on the premises.

K. Operate the business in such a manner that it constitutes a nuisance or keeping a disorderly premises.

L. Fail to take appropriate and necessary steps to supervise the outdoor area of the premises including keeping the area free from litter and preventing the parking area from becoming a gathering place for customers of the business.

M. Fail to comply with all provisions of this Chapter and this Code.

N. Fail to prominently post the occupancy of the licensed premises. (Ord. 14-14 § 2, 2014; Ord. 05-141 § 2, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

### 7.02.130 Prohibited Acts.

A. No club, drinking establishments, cereal malt beverage licensee, caterer or holder of a temporary permit, or any person acting as an employee or agent thereof, shall:

1. Offer or serve any free cereal malt beverage or alcoholic liquor in any form to any person;
2. Offer to serve to any person an individual drink at a price that is less than acquisition cost of the individual drink to the licensee or permit holder; (KSA 41-2640 2012)
3. Sell, offer to sell or serve to any person an unlimited number of individual drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;
4. Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of individual drinks as prizes;
5. Sell, offer to sell or serve free of charge any form of powdered alcohol, as defined in K.S.A. 41-102, and amendments thereto;
6. Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections A 1 through 4; or
7. Sell, give away, dispose of, exchange or deliver any cereal malt beverage or 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 alcoholic liquor or cereal malt beverage.
8. It shall be unlawful for an owner, operator, manager or employee of any business establishment that is licensed or holds a permit to sell alcoholic liquor or cereal malt beverages for consumption upon the premises, to permit or allow the making or continuing of any noise upon said licensed premises in violation of Chapter 6.18 and/or Section 9.11.150 of the Olathe Municipal Code. There shall be a rebuttable presumption that the making or continuing of any noise upon licensed premises has been permitted or allowed by the owner, operator, manager and employee of said licensed premises.

B. A public venue, club, drinking establishment, caterer or holder of temporary permit may:

1. Offer free food or entertainment at any time;
2. Sell or deliver wine by the bottle or carafe;
3. Sell, offer to sell and serve individual drinks at different prices throughout any day;
4. Sell or serve beer or cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces;
5. Offer samples of alcoholic liquor free of charge as authorized by the Club and Drinking Establishment Act; or
6. Sell or serve margarita, sangria, daiquiri, mojito or other mixed alcoholic beverages as approved by the state director of Alcoholic Beverage Control.

C. A hotel of which the entire premises is licensed as a drinking establishment may, in accordance with rules and regulations adopted by the Kansas Secretary of Revenue, distribute to its guests coupons redeemable on the hotel premises for drinks containing alcoholic liquor. The hotel shall remit liquor drink tax in accordance with the provisions of the liquor drink tax act, K.S.A. 79-41a01 et seq., and amendments thereto, on each drink served based on a price which is not less than the acquisition cost of the drink.

D. A hotel of which the entire premises is not licensed as a drinking establishment may, in accordance with rules and regulations adopted by the secretary, through an agreement with one or more clubs or drinking establishments, distribute to its guests coupons redeemable at such clubs or drinking establishments for drinks containing alcoholic liquor. Each club or drinking establishment redeeming coupons issued by a hotel shall collect from the hotel the agreed price, which shall be not less than the acquisition cost of the drink plus the liquor drink tax for each drink served. The club or drinking establishment shall collect and remit the liquor drink tax in accordance with the provisions of the liquor drink tax act, K.S.A. 79-41a01 et seq., and amendments thereto.

E. A public venue, club or drinking establishment may offer customer self-service of wine from automated devices on licensed premises so long as the licensee monitors and has the ability to control the dispensing of such wine from the automated devices. (Ord. 15-63 § 2, 2015; Ord. 14-14 § 3, 2014; Ord. 09-30 § 2, 2009; Ord. 05-141 § 3, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.02.140 Regulation of Nude Dancing.** It is unlawful for any licensee, operator, manager, employee, customer or contractor of any Class A Club, Class B Club, Drinking Establishment, Caterer, Temporary Permit Holder or Cereal Malt Beverage Licensee, to provide entertainment to members or other patrons of said establishments, in such a manner as to expose to said members or patrons or other persons:

- (1) His or her genitals, pubic hair, buttocks, perineum, anal region or pubic hair region;
- (2) Any device, costume or covering which gives the appearance or simulates the genitals, pubic hair or buttocks, perineum, anal or pubic hair region;
- (3) Any portion of the areola of the female breast; or
- (4) Exhibit or perform with their genitals in a state of discernible sexual stimulation or arousal even if their genitals are completely and opaquely covered. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.02.150 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 comply with all of the city's building and health code requirements for restroom facilities, but in no event shall such premises have less than one restroom for each sex easily accessible at all times to its patrons and employees. Each 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 time be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city or county health officer or designee. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.02.160 License Limited to Premises.** It shall be unlawful to operate a club, drinking establishment or cereal malt beverage establishment at any other premises than specified in the license. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.02.170 Right of Entry and Inspection.**

A. The right of immediate entry to and inspection of any premises where alcoholic liquor or cereal malt beverages are sold by a licensee or holder of a temporary permit, or any premises subject to the control of any licensee or temporary permit holder, at any time by any duly authorized officer or agent of the City,

or by any law enforcement officer, shall be a condition on which every license or temporary permit is issued, and the application for and acceptance of any license or temporary permit shall conclusively be deemed to be the consent of the applicant and licensee or permit holder to such immediate entry and inspection. Such consent shall not be revocable during term of the license or temporary permit. Refusal of such entry shall be grounds for revocation of the license or temporary permit. Upon the refusal of any licensee to permit immediate entry and inspection as said above, the Police Chief shall report such refusal to the State Director of Alcoholic Beverage Control.

B. Every person holding a license to operate an establishment under this Chapter shall at all times maintain in the place of the establishment a current list of all officers, directors, stockholders, owners and members and the name of the manager, if any, subject to inspections by any authorized officer or agent. (Ord. 09-30 § 3, 2009; Ord. 05-141 § 20, 2005.)

### **7.02.180 Habitual Public Nuisance.**

A. A drinking establishment or private club is a habitual public nuisance when it operates in a manner that habitually harms the public health, safety or welfare of the general public, neighboring properties or occupants of neighboring properties, or patrons. Habitual public nuisances are hereby prohibited.

B. Habitual violations of occupancy limits established by the City, which shall be defined as three (3) or more violations within a twelve (12) consecutive month period. Revocation or suspension of a license for habitual violations of occupancy limits shall require a finding by the Governing Body that the occupancy limit violations represented a substantial threat, in either the number of violations or the excess above the occupancy limit, to the safety of club or establishment employees and patrons.

C. A habitual public nuisance as defined by Subsection A shall only be determined to exist if the Governing Body makes the following findings:

1. The harm to the public health, safety or welfare can be fairly attributed to the operation of the private club or drinking establishment. The proximity of other licensed premises or similar facilities shall be considered by the Governing Body in making this finding.
2. The harm to the public health, safety or welfare is of a habitual nature, and not limited to isolated incidents of an infrequent occurrence.

D. In determining the penalty for a drinking establishment or private club that is a habitual public nuisance, the Governing Body shall consider:

1. Whether the owners and operators of the drinking establishment or private club have taken actions to mitigate or eliminate the harm to public health, safety or welfare; and
2. Whether the harm to public health, safety or welfare includes violations of law on the part of the private club or drinking establishment owners, operators, employees, or patrons.

E. Nothing in this Chapter shall be interpreted as penalizing a drinking establishment or private club, or the owner or employees of such drinking establishment or private club, solely for requesting assistance or reporting an incident to the police department. The City encourages drinking establishments and private club owners and employees to promptly report to the police department harmful or potentially harmful acts or conduct on the part of patrons. (Ord. 09-30 § 4, 2009)

## CHAPTER 7.04

### RETAIL LIQUOR STORES

#### Sections:

- 7.04.010 License Required
- 7.04.020 License Application
- 7.04.030 Occupation Tax - Penalty for Non-payment
- 7.04.040 Issuance of License
- 7.04.050 Occupation Tax - Display of Receipt

**7.04.010 License Required.** It is unlawful for any person to sell, keep for sale or offer for sale any alcoholic liquor as a retailer except on premises licensed for such sales under K.S.A. Chapter 41, this Title, and this Chapter. (Ord. 05-141 § 4, 2005; Ord. 04-142 § 1, 2004; Ord. 97-51 § 2, 1997; Ord. 88-121 § 6, 1988.)

**7.04.020 License Application.** Any person desiring to secure a license or renew an existing license under the provision of this Chapter shall make a verified application with the City Clerk. Such application shall be upon a form provided by the City Clerk and shall contain:

- A. The name and address of the applicant.
- B. The address and legal description of the premises for which the license is desired.
- C. The name and address of the owner of the premises upon which the business is located, if different from the applicant.
- D. The name and address of all officers, director, stockholders, owners, members, employees and the manager, if any.

A copy of the state license shall be attached to the City application. Such application shall be accompanied by the Occupational Tax required by Section 7.04.030. (Ord. 09-30 § 5, 2009; Ord. 05-141 § 5, 2005; Ord. 97-51 § 2, 1997.)

#### **7.04.030 Occupation Tax--Penalty for Nonpayment.**

(a) There is hereby levied a biennial occupation tax in the amount of Six Hundred Dollars (\$600.00) on each retailer of alcoholic liquor who has a retailer's license issued under the provisions of K.S.A. Chapter 41. The tax shall be paid before business is begun under an original state license and within five (5) days after each renewal of a state license.

(b) It is unlawful for any person to fail or refuse to pay the occupation tax, and upon conviction thereof, shall be fined not more than One Hundred Dollars (\$100.00).

(c) Nothing in this Chapter shall be construed to prohibit the City from collecting the occupation tax by any procedure authorized by law. (Ord. 10-61 § 1, 2010; Ord. 97-51 § 2, 1997; Ord. 88-121 § 6, 1988.)

**7.04.040 Issuance of License.** All applications for new or renewal city licenses shall be submitted to the City Clerk for approval. Upon presentation of a state license, payment of the City's Occupational Tax, and a determination that the proposed location of the retail establishment does not conflict with or violate any city zoning ordinance, building, health, or fire codes, or the alcoholic beverage ordinances of the City, the City Clerk shall issue a city license for the period covered by the state license. This license period shall extend for the period covered by the state license. No Occupational Tax shall be refunded for any reason. (Ord. 05-141 § 6, 2005; 1997; Ord. 97-51 § 2, 1997.)

**7.04.050 Occupation Tax--Display of Receipt.** Every licensee shall cause the city occupation tax receipt to be placed in plain view next to or below the state license on the licensed premises. (Ord. 97-51 § 2, 1997; Ord. 88-121 § 6, 1988.)

## CHAPTER 7.06

### DRINKING ESTABLISHMENTS

#### Sections:

- 7.06.010 License Required
- 7.06.020 License Application
- 7.06.030 License Fee
- 7.06.040 Issuance of License
- 7.06.050 Business Regulations

**7.06.010 License Required.** It shall be unlawful for any person granted a drinking establishment licensed 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. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.06.020 License Application.** Any person desiring to secure a license or renew an existing license under the provisions of this Chapter shall make a verified application with the City Clerk. Such application shall be upon a form provided by the City Clerk and shall contain:

- A. The name and address of the applicant.
- B. The address and legal description of the place for which the license is desired.
- C. A drawing of the premises for which the license is desired showing the location of the proposed premises in relation to other buildings, structures, parking areas, public or private streets, and sidewalks within 200 feet. Sufficient dimensions shall be included to indicate the relationship between the premises and such other buildings, structures, parking areas, etc. The number of parking spaces the premises will use to comply with City parking requirements shall be clearly shown on the drawing.
- D. The name of the owner of the premises upon which the place of business is located, if different from the applicant.
- E. A disclosure statement listing each officer, manager, director, trustee, grantor, beneficiary, owner, stockholder owning a beneficial interest in a corporation, partner, and the spouses of these individuals. The disclosure statement shall certify that all the individuals listed are not disqualified from obtaining a drinking establishment license as provided in K.A.R. 14-21-3.
- F. A disclosure statement listing all personnel who will be mixing or dispensing alcoholic liquor.
- G. A statement of gross receipts showing the ratio of food sales to alcoholic beverage sales is not less than thirty percent (30%). Upon the filing of the statement, a license which authorizes the operation of the premises as an establishment may be issued, if the applicant otherwise qualifies for said license. Thereafter, an annual determination of eligibility for the license shall be made on each such establishment as follows: At least fifteen (15) days, but no sooner than thirty (30) days, prior to the expiration of a City license issued hereunder, the owner of such establishment, or authorized representative, shall make available to the City, adequate evidence of the establishment's gross sales, with sales of food broken out into a separate category. Such evidence shall cover the period from the date of granting of the license through a period no more than thirty (30) days prior to the expiration of such license. After receipt of such evidence, the City shall submit the same to the Director of Resource Management or designee. Upon a determination by the Director of Resource Management or designee that food sales are less than thirty percent (30%) of the total gross sales, said license shall not be renewed. Drinking establishments desiring to provide food service to unaccompanied minors must also comply with the provisions outlined in Section 7.02.030 C.

This information on gross sales shall not be available for inspection except to the Director of Resource Management or designee, who shall report, in writing, his/her findings in reference to the percentage of gross sales to the Governing Body for consideration prior to the renewing or non-renewing of each license. For the purpose of this Section, the term food shall not include cereal malt beverages.

A copy of the state license shall be attached to the City application. Such application shall be accompanied by the license fee required by Section 7.06.030. (Ord. 09-56 § 1, 2009; Ord. 09-30 § 6, 2009; Ord. 05-141 § 7, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

#### **7.06.030 License Fee.**

(a) There is hereby levied a biennial license fee on each drinking establishment located in the City which has a drinking establishment license issued by the state director of Alcoholic Beverage Control, which fee shall be paid before business is begun under an original state license and within five (5) days after any renewal of a state license.

(b) Such license fee shall be adopted by the Governing Body of the City by resolution. (Ord. 10-62 § 1, 2010; Ord. 02-130 § 1, 2002; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

#### **7.06.040 Issuance of License.**

A. All applications for new or renewal City licenses shall be submitted to the Governing Body for approval. Upon presentation of a state license, payment of the City license fee and a determination that the proposed location of the drinking establishment does not conflict with or violate any City zoning ordinances, building, health or fire codes or these alcoholic beverage ordinances of the City, the Governing Body may authorize the City Clerk to issue a City license for the period covered by the state license. The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.

B. The Governing Body may require additional conditions for the issuance of a City license or continued retention of existing City license for a drinking establishment, upon a finding that the public health, safety and welfare require such conditions. The City Manager shall recommend conditions for licensure, as appropriate. Such conditions of licensure may include, but are not limited to the following:

1. Exterior lighting requirements.
2. Exterior fencing requirements.
3. Appropriate structural additions, deletions or changes to the premises to: reduce loitering by patrons outside the premises, reduce noise from the premises, and reduce littering by employees and patrons, or such other structural changes that may be necessitated in the interest of public health, safety or welfare.
4. Posting in the premises or outside the premises appropriate notices or signs advising patrons to leave the area after closing, respect property rights of neighbors and other appropriate notices and signs which the Governing Body may require.
5. Requiring security measures inside and/or outside the premises.
6. Requiring additional parking, restricting parking, requiring additional safety measures to access city streets from parking facilities.
7. Such other conditions as may be appropriate for the protection and preservation of public health, safety or welfare.

C. Additional requirements for City licensure of a drinking establishment as set out above shall only be imposed after the license holder or applicant has been mailed, to the address on the license or application, by certified mail, return-receipt requested, notice of the proposed conditions. After the posting of the certified mail, the license holder or applicant shall have ten (10) days to submit a written request to the City Clerk for a hearing before the Governing Body on the proposed conditions.

D. The Governing Body may issue a City license conditioned upon the licensee complying with all requirements within thirty (30) days after license issuance of such time as established by the Governing Body.

E. During the duration of a City license, the Governing Body may require additional conditions on a City license, under procedures and requirements set forth under this Section. (Ord. 09-30 § 7, 2009; Ord. 05-141 § 8, 2005; Ord. 97-51 § 2, 1997.)

#### **7.06.050 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. No drinking establishment licensed hereunder shall allow anyone except employees to remain on the premises of said drinking establishment between the hours of two o'clock (2:00) a.m. and nine o'clock (9:00) a.m. of any day of the week, except, that drinking establishments may operate between five o'clock (5:00) a.m. and nine o'clock (9:00) a.m. for the sole purpose of food and non-alcoholic beverage sales.

C. Cereal malt beverage 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.

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

E. 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. (Ord. 09-30 § 8, 2009; Ord. 97-51 § 2, 1997.)

**CHAPTER 7.08**  
**PRIVATE CLUBS**

**SECTIONS:**

- 7.08.010 License Required
- 7.08.020 License Application
- 7.08.030 License Fee
- 7.08.040 Issuance of License
- 7.08.050 Business Regulations

**7.08.010 License Required.** It shall be unlawful for any person granted a private club license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a local license from the city clerk. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.08.020 License Application.** Any person desiring to secure a license or renew an existing license under the provisions of this Chapter shall make a verified application with the City Clerk. Such application shall be upon a form provided by the City Clerk and shall contain:

- A. The name and address of the applicant.
- B. The address and legal description of the place for which the license is desired.
- C. A drawing of the premises for which the license is desired showing the location of the proposed premises in relation to other buildings, structures, parking areas, public or private streets, and sidewalks within 200 feet. Sufficient dimensions shall be included to indicate the relationship between the premises and such other buildings, structures, parking areas, etc. The number of parking spaces the premises will use to comply with City parking requirements shall be clearly shown on the drawing.
- D. The name of the owner of the premises upon which the place of business is located, if different from the applicant.
- E. A disclosure statement listing each officer, manager, director, trustee, grantor, beneficiary, owner, stockholder owning a beneficial interest in a corporation, partner, and the spouses of these individuals. The disclosure statement shall certify that all the individuals listed are not disqualified from obtaining a private club license as provided in K.A.R. 14-21-3.
- F. A disclosure statement listing all personnel who will be mixing or dispensing alcoholic liquor.

A copy of the state license shall be attached to the application. Such application shall be accompanied by the license fee required by Section 7.08.030. (Ord. 09-30 § 9, 2009; Ord. 97-51 § 2, 1997.)

**7.08.030 License Fee.**

(a) There is hereby levied a biennial license fee on each private club located in the City which has a private club license issued by the state director of Alcoholic Beverage Control, which fee shall be paid before business is begun under an original state license and within five (5) days after any renewal of a state license.

(b) Such license fee shall be adopted by the Governing Body of the City by resolution. (Ord. 10-63 § 1, 2010; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

#### **7.08.040 Issuance of License.**

A. All applications for new or renewal City licenses shall be submitted to the Governing Body for approval. Upon presentation of a state license, payment of the City license fee and a determination that the proposed location of the private club does not conflict with or violate any City zoning ordinance, building, health or fire codes or these alcoholic beverage ordinance of the City, the Governing Body shall authorize the City Clerk to issue a City license for the period covered by the state license.

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

B. The Governing Body may require additional conditions for the issuance of a City license or continued retention of existing City license for a private club upon a finding that the public health, safety and welfare require such conditions. The City Manager shall recommend conditions for licensure, as appropriate. Such conditions of licensure may include, but are not limited to the following:

1. Exterior lighting requirements.
2. Exterior fencing requirements.
3. Appropriate structural additions, deletions or changes to the premises to: reduce loitering by patrons outside the premises, reduce noise from the premises, and reduce littering by employees and patrons, or such other structural changes that may be necessitated in the interest of public health, safety or welfare.
4. Posting in the premises or outside the premises appropriate notices or signs advising patrons to leave the area after closing, respect property rights of neighbors and other appropriate notices and signs which the Governing Body may require.
5. Requiring security measures inside and/or outside the premises.
6. Requiring additional parking, restricting parking, requiring additional safety measures to access city streets from parking facilities.
7. Such other conditions as may be appropriate for the protection and preservation of public health, safety or welfare.

C. Additional requirements for City licensure of a private club as set out above shall only be imposed after the license holder or applicant has been mailed, to the address on the license or application, by certified mail, return-receipt requested, notice of the proposed conditions. After the posting of the certified mail, the license holder or applicant shall have ten (10) days to submit a written request to the City Clerk for a hearing before the Governing Body on the proposed conditions.

D. The Governing Body may issue a City license conditioned upon the licensee complying with all requirements within thirty (30) days after license issuance of such time as established by the Governing Body.

E. During the duration of a City license, the Governing Body may require additional conditions on a City license, under procedures and requirements set forth under this Section. (Ord. 09-30 § 10, 2009; Ord. 05-141 § 9, 2005; Ord. 97-51 § 2, 1997.)

#### **7.08.050 Business Regulations.**

A. No club licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day.

B. No private club licensed hereunder shall allow anyone except employees to remain on the premises of said club between the hours of two o'clock (2:00) a.m. and nine o'clock (9:00) a.m. of any day of the week, except, that private clubs may operate between five o'clock (5:00) a.m. and nine o'clock (9:00) a.m. for the sole purpose of food and non-alcoholic beverage sales.

C. 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.

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

E. 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.

F. A Class A club shall comply with the provisions of K.S.A. 41-2037, and amendments thereto.

G. A Class B club shall comply with the provisions of K.S.A. 41-2641, and amendments thereto.

H. All clubs shall comply with the provisions of K.S.A. 41-2639, and all amendments thereto. (Ord. 09-30 § 11, 2009; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

## CHAPTER 7.10

### CATERERS

#### Sections:

- 7.10.010 License Required
- 7.10.020 License Fee
- 7.10.030 Business Regulations
- 7.10.040 Notice to Director of Public Safety

**7.10.010 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. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

#### **7.10.020 License Fee.**

(a) There is hereby levied a biennial license fee on each caterer doing business in the City who has a caterer's license issued by the state director of Alcoholic Beverage Control, which fee shall be paid before business is begun under an original state license and within five (5) days after any renewal of a state license.

(b) The license fee shall be adopted by the Governing Body of the City by resolution.

(c) All applicants 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.

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

(e) 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. (Ord. 11-22 § 1, 2011; Ord. 02-132 § 1, 2002; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.10.030 Business Regulations.** No caterer licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 9:00 a.m. on any day.

No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under twenty-one (21) years of age. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.10.040 Notice to Police Chief.** 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 Police Chief at least 48 hours prior to the event if the event will take place within the city. The notice shall contain the location, name of the group sponsoring the event, and the exact date and times the caterer will be serving. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

## CHAPTER 7.12

### TEMPORARY PERMITS

#### SECTIONS:

- 7.12.010 Permit Required
- 7.12.020 Permit Fee
- 7.12.030 City Temporary Permit
- 7.12.040 Permit Regulations

**7.12.010 Permit Required.** It shall be unlawful for any person granted a temporary permit by the State of Kansas to sell or serve any alcoholic liquor within the city without first obtaining a local temporary permit from the city clerk. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

#### **7.12.020 Permit Fee.**

(a) There is hereby levied a temporary permit fee on each group or individual holding a temporary permit issued by the state director of Alcoholic Beverage Control authorizing sales within the city, which fee shall be paid before the event is begun under the state permit.

(b) Such temporary permit fee shall be adopted by the Governing Body of the City by resolution. (Ord. 02-133 § 1, 2002; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

#### **7.12.030 City Temporary Permit.**

(a) It shall be unlawful for any person to conduct an event under a state issued temporary permit without first applying for a local temporary permit at least 48 hours before the event. Written application for the local temporary permit shall be made to the city clerk and shall clearly state:

- (1) The name of the applicant;
- (2) The group for which the event is planned;
- (3) The location of the event;
- (4) The date and time of the event;
- (5) Any anticipated need for police, fire or other municipal services.

(b) Upon presentation of a state temporary permit, payment of the city's temporary permit fee and a written application as provided for in subsection (a), the city clerk shall issue a local temporary permit to the applicant if there are no conflicts with any zoning or other ordinances of the city.

(c) The city clerk shall notify the Police Chief whenever a temporary permit has been issued and forward a copy of the permit and application to the Police Chief.

(d) A temporary permit shall be issued for a period of time not to exceed three (3) consecutive days, the dates and hours of which will be specified in the state permit. Not more than four (4) temporary permits may be issued to any one applicant in a calendar year.

(e) A temporary permit shall not be transferable or assignable. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

### **7.12.040 Permit Regulations:**

(a) No temporary permit holder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 9:00 a.m. at any event for which a temporary permit has been issued.

(b) No alcoholic beverages shall be given, sold or traded to any person under twenty-one (21) years of age. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

## **CHAPTER 7.14**

### **CEREAL MALT BEVERAGES**

#### **Sections:**

- 7.14.010 Retailers - Licenses Required – Unlawful Acts.
- 7.14.020 License Application
- 7.14.030 License Application Procedure
- 7.14.040 License Granted; Denied
- 7.14.050 License To Be Posted.
- 7.14.060 License - Disqualification
- 7.14.070 License Fee
- 7.14.080 Change of Location
- 7.14.090 Wholesalers and/or Distributors
- 7.14.100 Business Regulations
- 7.14.110 Temporary Permit

#### **7.14.010 Retailers - Licenses Required - Unlawful Acts.**

(a) It is unlawful for any retailer to sell cereal malt beverage without having first secured a license for each place of business as herein provided.

(b) It is unlawful for any retailer having a license to sell cereal malt beverages only in the original and unopened containers and not for consumption on the premises, to sell any cereal malt beverages in any other manner.

(c) For the purposes of this Chapter, the following definitions shall apply to retailers:

(1) General Retailer is a person with a license to sell cereal malt beverages at retail only for consumption on the licensed premises.

(2) Limited Retailer is a person with a license to sell cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises. (Ord. 05-141 § 10, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.14.020 License--Application.** A 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 the applicant has not within two years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude, or drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor, or operating or attempting to operate a motor vehicle while the alcohol concentration in the person's blood or breath is .08 or more, as measured from samples taken within two (2) hours after the person operated or attempted to operate the vehicle, or the violation of any other law of this City or state or any other city or state or of the United States pertaining to alcoholic liquor or cereal malt beverages or non-alcoholic malt beverages.

(f) Each application for a general retailer's license shall be accompanied by a drawing of the premises for which the license is desired showing the location of the proposed premises in relation to other buildings, structures, parking areas, public or private streets, and sidewalks within 200 feet. Sufficient dimensions shall be included to indicate the relationship between the premises and such other buildings, structures, parking areas, etc. The number of parking spaces the premises will use to comply with city parking spaces shall be clearly shown on the drawing.

(g) Each application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One copy of such application shall immediately be transmitted to the Police Department, Fire Department and Development Services Department for investigation of the applicant. It shall be the duty of the Police Department to investigate such applicant to determine whether the applicant is qualified as a licensee under the provisions of this ordinance. It shall be the duty of the Fire Department to inspect the premises to be licensed and inform the City Clerk whether the premises to be licensed complies with the Fire Codes, Life Safety Codes and/or other applicable codes of the City. It shall be the duty of the Development Services Department to inspect the premises to be licensed and inform the City Clerk whether the premises to be licensed complies with the building codes, environmental codes and zoning ordinances of the City. All the Departments shall report to the City Clerk no later than five (5) working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the Governing Body at the earliest meeting consistent with current notification requests established by law; provided, however, that the license application shall be scheduled for consideration before the Governing Body and either approved or disapproved within thirty (30) days from the date the application is received by the City Clerk, irrespective of whether the City Clerk has received timely reports from the Police, Fire or Development Services Departments. (Ord. 05-141 § 11, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

#### **7.14.030 License Application Procedure.**

(a) All applications for a new or renewed cereal malt beverage license shall be submitted to the city clerk at least fifteen (15) days in advance of the Governing Body meeting at which they will be considered.

(b) The city clerk shall notify the holder of an existing license thirty (30) days in advance of its expiration.

(c) The city clerk shall provide copies of all applications to the Police Chief, to the Fire Marshal, and to the Chief Building Inspector, Health Department, when they are received. The Police Chief shall run a records check on all applicants and the fire marshal and chief building inspector will inspect the premises in accordance with city building, health and fire codes and/or ordinances. They will then recommend approval, or disapproval, of applicants within five (5) working days of the receipt of the application.

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

(e) An applicant who does not hold a cereal malt beverage license in the city shall attend the Governing Body meeting when the application for a new license will be considered. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.14.040 License Granted; Denied.**

(a) The record of the Governing Body meeting 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. (Ord. 05-141 § 12, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.14.050 License To Be Posted.** Each license shall be posted in a conspicuous place in the place of business for which the license is issued. (Ord. 97-51 § 2, 1997; Ord. 96-10 § 1, 1996; Ord. 87-139 § 1, 1987.)

**7.14.060 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 Johnson County for at least six (6) 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 resided.

(d) A person who, within two (2) years immediately preceding the date of 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 operating or attempting to operate a motor vehicle while the alcohol concentration in the person's blood or breath is .08 or more, as measured from samples taken within two (2) hours after the person operated or attempted to operate the vehicle, or the violation of any other law of this City or state or any other city or state or of the United States pertaining to alcoholic liquor or cereal malt beverages or non-alcoholic malt beverages.

(e) A partnership, unless all 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 twenty-five percent (25%) of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than citizenship and nonresidence within the city or county.

(g) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than twenty-five percent (25%) of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than twenty-five percent (25%) 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. (Ord. 05-141 § 13, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.14.070 License Fee.** The license fee for general retail sales and limited retail sales of cereal malt beverages shall be adopted by the Governing Body of the City by resolution. 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 the license for the remainder of the calendar year in which the license is issued. (Ord. 02-134 § 1, 2002; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.14.080 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. The fee for change of location shall be adopted by the Governing Body of the City by resolution. 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. (Ord. 08-83 § 1, 2008; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.14.090 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 cereal malt beverages within the city, to persons authorized under this ordinance to sell the same within the city unless such wholesaler and/or distributor has first secured a license from the State of Kansas authorizing such sales. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.14.100 Business Regulations.** It shall be the duty of every retailer licensee to observe the following regulations:

A. The place of business licensed and operation under this Title shall at all times have a front and rear exit unlocked when opened for business.

B. The premises and all equipment used in connection with such business shall be kept clean and in a sanitary condition and shall at all times be open to the inspection of the police and health officers of the City, county and state.

C. Except as provided by Subsection D., no cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., or consumed between the hours of 12:00 midnight and 6:00 a.m., or on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises or as allowed by Chapter 7.20.

D. All patrons or customers of any place of business licensed as a general retailer shall exit and be off the premises of the place of business prior to and not later than one hour after the legal hour of closing; provided, however, that those establishments which derive at least thirty percent (30%) of their income from the sale of food and are food service establishments may continue to supply only food and food service after the legal hour of closing as long as no cereal malt beverages are sold or dispensed; provided, further, that this Subsection shall not apply to validly licensed private clubs.

E. Cereal malt beverages may be sold on premises which are both licensed pursuant to this Chapter and at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2701, et seq., and licensed as a club by the State of Kansas.

F. 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 of Kansas shall be opened to the police and not to the public.

G. 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.

H. 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.

I. No licensee or agent or employee of the licensee shall sell or permit the sale of cereal malt beverage to any person under the legal age for consumption.

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

K. 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.

L. No licensee shall employ any person who has been judged guilty of a felony.

M. No private rooms or closed booths shall be operated in a place of business, but this provision shall not apply to premises also licensed as a club pursuant to the Club and Drinking Establishment Act.

N. No licensee shall permit a person under the legal age for consumption of cereal malt beverage to consume; or purchase cereal malt beverage in or about a place of business, and no licensee shall permit a person under the legal age for consumption of cereal malt beverage to possess cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than eighteen (18) years of age may dispense or sell cereal malt beverages if:

1. The licensee's place of business is licensed only to sell cereal malt beverage at retail in 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 either:

a. not less than fifty percent (50%) of the gross receipts from the licensee's place of business is derived from the sale of food or consumption on the premises of the licensed place of business, or

b. the primary purpose of such licensed food service establishment is a public golf course or an art studio.

O. No person shall have alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the Club and Drinking Establishment Act. (Ord. 16-07 § 3, 2016; Ord. 05-141 § 14, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.14.110 Temporary Permit.** A temporary permit for the sale of cereal malt beverage may be issued by the Governing Body for the purpose of selling cereal malt beverage at special events authorized pursuant to Chapter 5.05, Special Event Permit. The term of the temporary permit shall not exceed three (3) days. Applicants for temporary permits must meet the license requirements set forth herein. In addition, applicants for temporary permits shall provide a diagram accurately describing the premises and/or property where cereal malt beverage will be sold, served, dispersed or consumed during the special event and a statement describing the security for the special event. (Ord. 05-141 § 21, 2005.)

\*Numerous sections regarding cereal malt beverages have been repealed. Additional history regarding cereal malt beverages can be found in the following ordinances - (Ord. 96-10, 1996; Ord. 89-150, 1989; Ord. 88-122, 1988; Ord. 87-139, 1987.)

## CHAPTER 7.16

### SUSPENSION AND REVOCATION

#### Sections:

- 7.16.010 Suspension or Revocation of License and/or Imposition of Civil Fine
- 7.16.020 Complaint
- 7.16.030 Notice of Hearing
- 7.16.040 Hearing Procedure
- 7.16.050 Finding of Fact-Order
- 7.16.060 Orders - Suspension or Revocation
- 7.16.070 Appeal
- 7.16.080 Chief of Police Authority Where There is Immediate Threat to Public Safety

#### **7.16.010 Suspension or Revocation of License and/or Imposition of Civil Fine.**

A. The City Clerk shall immediately suspend or revoke the license of any licensee whenever the state license of the licensee is suspended or revoked by the state for any reason.

B. The Police Chief or designated representative upon five (5) days written notice to the licensee, after conducting a hearing, will suspend or revoke such license and/or impose a civil fine against the licensee for the following reasons:

1. If the licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon.
2. If the licensee has become ineligible to obtain a license under this Title.
3. The nonpayment of any license fee payable pursuant to this Chapter.
4. For failure to maintain sufficient records to determine the percentage of gross business obtained from the sale of cereal malt beverages or alcoholic liquor.
5. For failure to permit the inspection of such records at all times during business hours by proper agents of the City.
6. If the licensee, manager, employee, agent, entertainer or performer is convicted of any of the following public offenses, including conspiracy or attempt, if the offense was committed upon the licensed premises:

- 6.06.040 Unlawful Acts.
- 6.18.040 Prohibited Acts.
- 9.04.010 Assault.
- 9.04.020 Assault of a Law Enforcement Officer.
- 9.04.030 Battery.
- 9.04.040 Battery against a Law Enforcement Officer.
- 9.04.050 Unlawful Interference with a Firefighter or a Person Who Provides Emergency Medical Treatment.
- 9.04.060 Terroristic Threat.
- 9.04.070 Interference with Parental Custody.
- 9.04.090 Criminal Restraint.
- 9.04.110 Extortion.
- 9.05.020 Lewd and Lascivious Behavior.
- 9.05.060 Prostitution.
- 9.05.070 Promoting Prostitution.
- 9.05.080 Patronizing a Prostitute.
- 9.05.090 Criminal Sodomy.
- 9.05.100 Sexual Battery.
- 9.05.110 Soliciting for Immoral Purposes.
- 9.06.010 Endangering a Child.

9.06.020 Furnishing Alcoholic Liquor or Cereal Malt Beverage to a Minor.  
9.06.040 Contributing to a Child's Misconduct or Deprivation.  
9.07.010 Theft.  
9.07.030 Theft of Lost or Mislaid Property.  
9.07.040 Theft of Services.  
9.07.060 Criminal Deprivation of Property.  
9.07.070 Fraudulently Obtaining Execution of a Document.  
9.07.080 Criminal Damage to Property.  
9.07.090 Criminal Trespass.  
9.07.170 Criminal Use of a Financial Card.  
9.07.180 Unlawful Manufacture or Disposal of False Tokens.  
9.07.200 Automobile Master Key Violation.  
9.07.250 Theft of Cable Television Services.  
9.07.260 Tampering with Utility Equipment or Service.  
9.08.030 Obstructing Legal Process or Official Duty.  
9.08.040 Disobeying the Lawful Order of a Police Officer.  
9.08.050 Failure to Obey Citation.  
9.08.070 Failure to Appear.  
9.08.090 Falsely Reporting a Crime or Public Offense.  
9.08.180 Resisting Arrest.  
9.08.190 Possession of False Identification Documents.  
9.10.040 Denial of Civil Rights.  
9.11.010 Disorderly Conduct.  
9.11.040 Riot.  
9.11.060 Maintaining a Public Nuisance.  
9.11.070 Permitting a Public Nuisance.  
9.11.090 Giving a False Alarm.  
9.11.120 Harassment by Telephone.  
9.11.150 Unlawful Neighborhood Disturbance.  
9.11.180 Keeping Disorderly Premises.  
9.12.020 Criminal Use of Weapons.  
9.12.030 Criminal Disposal of Firearms.  
9.12.040 Criminal Possession of a Firearm.  
9.12.050 Unlawful Discharge of Firearms.  
9.12.060 Air Gun, Air Rifle, Bow and Arrow, Slingshot.  
9.12.160 Carrying Concealed Explosives.  
9.13.010 Promoting Obscenity.  
9.13.020 Prohibition of Sex Bookstores, Coin-operated Motion Picture Devices  
Showing Sex Movies, and Eating or Drinking Establishments Featuring  
Nude or Semi-nude Dancers, Strippers or Similar Entertainment.  
9.13.030 Promoting Obscenity to Minors.  
9.13.033 Material or Performances Harmful to Minors.  
9.13.035 Promoting Sexual Performance by a Minor.  
9.13.050 Gambling.  
9.13.060 Illegal Bingo Operation.  
9.13.070 Commercial Gambling.  
9.13.080 Permitting Premises to be Used for Commercial Gambling.  
9.13.110 Public Indecency.  
9.14.070 Obstructing Streets or Sidewalks.  
9.14.130 Alcohol without Liquid Prohibited.  
9.15.030 Knowingly Employing an Illegal Alien.  
9.16.040 Police Communication.  
9.17.010 Possession of Marijuana, Controlled Substances; Penalties.  
9.17.030 Use or Possession of Simulated Controlled Substances and Drug  
Paraphernalia, Penalties.

7. If the licensee, manager, employee or agent has violated any of the provisions of this Chapter;

8. Drunkenness of a person holding such license, drunkenness of licensee's manager or employee while on the premises for which said license is issued, or for a licensee whose manager or employee permits any intoxicated person to remain in such place selling alcoholic liquor;

9. The sale or gift of cereal malt beverage or alcoholic liquor to a minor by a licensee, manager or employee;

10. If the licensee or manager or employee or agent, has knowingly permitted any disorderly person to remain on premises where cereal malt beverage or alcoholic liquor is sold by such licensee;

11. For employing a person who has been adjudged guilty of a felony, a violation of an offense involving a morals charge, or a violation of intoxicating liquor or drug law. The Chief of Police may require any employee of a licensee 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; or

12. For knowingly selling or providing alcoholic liquor to any person who is intoxicated.

13. Determination that private club or drinking establishment is a habitual public nuisance as defined by Section 7.02.180 of this Chapter. (Ord. 15-23 § 9, 2015; Ord. 09-30 § 12, 2009; Ord. 05-141 § 15, 2005; Ord. 97-51 § 2, 1997.)

**7.16.020 Complaint.** Whenever the Police Chief has reason to believe that the licensee has violated any of the provisions of this Title, he or she will file a written complaint, specifically setting forth the violations, with the Police Chief or designated representative. Such complaint will be substantially the following form:

**BEFORE THE POLICE CHIEF OR DESIGNATED  
REPRESENTATIVE OF THE CITY OF OLATHE, KANSAS:**

In the matter of the Suspension or Revocation and/or Imposition of a Civil  
Fine Against the Licensee of \_\_\_\_\_ No. \_\_\_\_\_.

**COMPLAINT**

Pursuant to the provisions of Section \_\_\_\_\_ of the Olathe Municipal Code, I, the undersigned, Police Chief for the City of Olathe, Kansas, having reason to believe that \_\_\_\_\_, hereinafter referred to as "licensee", has violated the provisions of said Section \_\_\_\_\_ and that a hearing on such violation would be in the public interest, hereby issue this Complaint and state the reason for such issuance to be as follows:

1. Violation was \_\_\_\_\_.

2. Date of violation was \_\_\_\_\_, \_\_\_\_\_.

3. Facts of the violation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.



You are hereby notified that you are to appear before the Police Chief or designated representative of the City of Olathe, Kansas, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_. M., \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ Room of the Olathe, Kansas, City Hall, 100 East Santa Fe Street, Olathe, Kansas at which time the allegations found in the Complaint will be heard, witnesses produced, and determination made as to the allegations made in the Complaint.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Olathe, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
City Clerk

(SEAL)

(Ord. 15-23 § 11, 2015; Ord. 05-141 § 17, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.16.040 Hearing Procedure.** The Governing Body shall adopt rules and regulations as it shall deem necessary to govern the procedure in such hearing and which will provide a fair hearing. Such rules shall include but not be limited to:

- (a) A record of the entire hearing made by simple minutes and tape recordings;
- (b) The right to call and examine witnesses on any matter relevant to the issues of the hearing;
- (c) To introduce documentary and physical evidence;
- (d) To allow any relevant evidence to be admitted if it is of the type upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state;
- (e) The exclusion of irrelevant and unduly repetitious evidence;
- (f) To allow hearsay evidence for the purpose of supplementing or explaining any direct evidence, but not for the purpose of supporting a finding itself unless it would be admissible in the courts of competent jurisdiction in this state;
- (g) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
- (h) To impeach any witness regardless of which party first called him to testify;
- (i) To rebut any evidence;
- (j) To allow the respondent to represent himself or to be represented by anyone of his choice who is lawfully permitted to do so;
- (k) To allow official notice of any fact which may be judicially noticed by the courts of this state or of official ordinances, records or rules and regulations of the City of Olathe. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.16.050 Findings of Fact – Order.** Following the presentation of evidence, the Police Chief or designated representative will render his or her decision. Such decision will be either to dismiss the Complaint or to order the license to be suspended or revoked and/or imposition of a fine against the licensee. Such decision will be reduced to writing in substantially the following form:

**BEFORE THE POLICE CHIEF OR DESIGNATED  
REPRESENTATIVE OF THE CITY OF OLATHE, KANSAS:**

In the matter of the Suspension or Revocation of the Licensee and/or Imposition of a Fine Against the Licensee of \_\_\_\_\_ No. \_\_\_\_\_.

**DECISION**

This proceeding was commenced by virtue of a complaint filed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, against \_\_\_\_\_.

The complaint alleges that the licensee acted in violation of Section \_\_\_\_\_ of the Olathe Municipal Code, in what licensee did on or about \_\_\_\_\_, \_\_\_\_\_, at which hearing evidence was adduced by the complainant and licensee in their respective behalf.

Based upon the evidence introduced at the hearing I find the following facts:

**CONCLUSION**

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the licensee (did or did not) violate Section \_\_\_\_\_ by \_\_\_\_\_.

**ORDER**

On the basis of the entire record in this case, the Police Chief or designated representative orders the License to be suspended for a period of \_\_\_\_\_ days beginning on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ or revoked as of the date of the order and/or imposition of a fine against the licensee in the amount of \_\_\_\_\_.

(or)

On the basis of the entire record in this case, the Police Chief or designated representative orders this matter to be dismissed.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
POLICE CHIEF OR  
DESIGNATED  
REPRESENTATIVE

ATTEST:

\_\_\_\_\_  
CITY CLERK

A copy of the decision will be delivered to the licensee personally or sent to him or her by certified mail, postage prepaid, return receipt requested. (Ord. 15-23 § 12, 2015; Ord. 05-141 § 18, 2005; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.16.060 Orders--Suspension or Revocation.**

(a) Any order requiring the suspension of a liquor license shall not take effect until five (5) days after the licensee receives a copy of the order. No person who has proprietary interest in a liquor license that has been revoked, or any person acting for or on his behalf, shall be granted a license for the sale of liquor within the city for a period of six (6) months following the date of revocation. No person who has a proprietary interest in a liquor license that has been revoked shall be employed in a place of business which sells or distributes liquor for consumption on the premises for a period of six (6) months following the date of renovation.

(b) Any order requiring the revocation of a liquor license shall not go into effect until five (5) days after the licensee receives a copy of the order. No person who has a proprietary interest in a liquor license that has been revoked, or any person acting for or on his behalf, shall be granted a license for sale of alcoholic liquor or cereal malt beverages within the city for a period of six (6) months following the date of revocation. No person who has a proprietary interest in a liquor license that has been revoked shall be employed in a place of business which sells or distributes alcoholic liquor or cereal malt beverages for consumption on the premises for a period of six (6) months following the date of revocation. (Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.16.070 Appeal.** If the Police Chief or designated representative issues an order suspending or revoking a license, the licensee, up to but not more than fifteen (15) days after the order, may appeal to the City Manager or designated representative. If the City Manager or designated representative issues an order upholding the suspension or revocation of the license, the licensee, up to but not more than thirty (30) days after the order, may appeal to the district court of Johnson County. Any appeal taken under this section will stay the order of suspension or revocation of the license of any licensee. (Ord. 15-23 § 13, 2015; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.16.080 Chief of Police Authority Where There is Immediate Threat to Public Safety.**

A. The Chief of Police, or designee, may require a licensee to close down operations and disperse all patrons whenever conduct by disorderly patrons reaches a magnitude that presents an immediate threat to the public safety and well-being of the patrons and general public in the vicinity. The operations shall remain closed until the threat has passed.

B. It is unlawful for any person to fail to comply with any directive issued by the Chief of Police, or designee, under authority of Section 7.16.080 A. (Ord. 05-141 § 22, 1997.)

## CHAPTER 7.18

### PENALTY

#### Sections:

- 7.18.010 Penalty
- 7.18.020 Injunction Proceedings

**7.18.010. Penalty.** Any person or licensee violating any of the provisions of this Title will be punished, subject to the penalties otherwise provided in the Olathe Municipal Code, and will be punished by a fine of not more than One Thousand Dollars (\$1,000.00). (Ord. 15-23 § 14, 2015; Ord. 05-141 § 19, 2005; Ord. 97-70 § 1, 1997; Ord. 97-51 § 2, 1997; Ord. 87-139 § 1, 1987.)

**7.18.020 Injunction Proceedings.** The City Attorney, or his duly authorized representative, shall have the power to enjoin any party from selling alcoholic liquor or cereal malt beverages with the city notwithstanding said party has a license and permit if it shall appear that the licensee has violated any provisions of this title or the laws of the state of Kansas. Injunction proceedings shall be the same as are now prescribed for the enjoining of intoxicating liquor nuisances under state law. (Ord. 97-51 § 2, 1997.)

## CHAPTER 7.20

### THE SUNDAY SALE AND HOLIDAY SALE OF ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGE

#### Sections:

- 7.20.010 Sunday Sale and Holiday Sale of Alcoholic Liquor at Retail in the Original Package
- 7.20.020 Sunday Sale and Holiday Sale of Cereal Malt Beverage at Retail in the Original Package

**7.20.010 Sunday Sale and Holiday Sale of Alcoholic Liquor at Retail in the Original Package.** Pursuant to 2005 Kan. Sess. Laws, Ch. 201, the sale at retail of alcoholic liquor in the original package is allowed within the City of Olathe on Memorial Day, Independence Day, Labor Day and on any Sunday, except Easter. Sales are not allowed on Thanksgiving Day or Christmas Day. The Sunday sale at retail of alcoholic liquor in the original package is only allowed between the hours of 12 noon and 8 pm. (Ord. 05-65 § 1, 2005.)

**7.20.020 Sunday Sale and Holiday Sale of Cereal Malt Beverages at Retail in the Original Package.** Pursuant to 2005 Kan. Sess. Laws, Ch. 201, the sale at retail of cereal malt beverage in the original package is allowed within the City of Olathe on Memorial Day, Independence Day, Labor Day and on any Sunday, except Easter. The Sunday sale at retail of cereal malt beverage in the original package is only allowed between the hours of 12 noon and 8 p.m. (Ord. 05-65 § 1, 2005.)